

Operational challenges in the Shari'ah governance of Islamic Financial Institutions (IFIs) in Nigeria: Issues and solutions

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Abstract

The paper aims at examining the operational challenges in the shari'ah governance of Islamic finance industry in Nigeria. The challenges include manpower and scarcity of shari'ah talents, research and development, products development, standardization, awareness and other associated issues. The paper argues that manpower challenge can lead to other operational challenges and addressing such a challenge would also help in addressing other operational challenges. The paper recommends that man power challenge can be addressed by establishing research and development centers, introduction of stewardship between the developed talents and the young ones. It is further recommended that the Islamic finance industry should develop a standard on product development with the aim of harmonization and avoid reliance on the glory of conventional finance by adoption of conventional products.

1. Introduction

The governance of IFIs must be *shari'ah* compliant. This is not only to ascertain compliance with *shari'ah* beyond the stakeholders' satisfaction but to have de facto compliance with *shari'ah* in order to meet the required objectives of *shari'ah*.¹

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1. This is different from the conventional finance where the primary objective is economical. However, Islamic financial institutions' objective is not only economical but spiritual

The critical requirement of *shari'ah* governance in Islamic Financial Institutions (IFIs) poses a challenge to the Nigerian Islamic finance industry. The challenge covers both the institutional and operational sphere of the industry. The industry, though at an infancy stage, faced with multifaceted challenges of *shari'ah* based and operational issues.

The operational challenges which include manpower largely affect *shari'ah* talents, who are the driving force of the industry. Other challenges were dragged into the arena due to the scarcity of *shari'ah* talents in the industry, though other factors may have also influenced their existence in the industry.

The paper is to look into the operational challenges within the industry, particularly the challenge of manpower, which are not unconnected with governance of the industry. The chapter would examine the challenges and proffer strategies that would help in mitigating the challenges

Manpower

One of challenges facing the industry is the challenge of manpower. The challenge corners around the shortage of *shari'ah* talents who are the driving force of the industry. The bottleneck of shortage of *shari'ah* scholars is so glaring that is not a subjected to dispute. *Shari'ah* scholars are the gatekeepers of *shari'ah* governance in the industry. The inability of the industry to have adequate gatekeepers to guard against derailing from *shari'ah* compliance in all its operations and services is a serious challenge that touches the constitutionality and the integrity of the industry in the eyes of all the stakeholders and even beyond.²

The challenge in the shortage of manpower includes quality and quantity of scholars. It has been attested at the global level that the challenge does not affects quality only but the number of those who aspire or those who have been appointed to various *shari'ah* boards of various institutions is in small margin compared to the number of institutions.³

where religious duty is also satisfied. See Al Quran 6:162, Imam Ghazali, contended that the objectives of the Shari'ahs to promote the welfare of the people which lies in safeguarding their faith, life, intellect, posterity and property. Imam bin al-Qayyim stressed that the basis of the Shari'ahs wisdom and the welfare of the people in this world and the hereafter. See Chapra, M.U. Objectives Of The Islamic Economic Order in Abod, Agil and Ghazali (eds) An Introduction to Islamic Economics and Finance (Kuala Lumpur, CERT Publications 2008) Pp.3-4

2. Farook, S.Z. Farooq, M.O. Shariah Governance for Islamic Finance: Challenges and Pragmatic Solutions, available at <http://ssrn.com/abstract=1813483> visited on 5th/05/2015

3. Ibid.

This has been corroborated when the CBN went on excursion to Sudan and Malaysia to constitute FRACE⁴. It is further strengthened when Jaiz Bank appointed an expatriate as the chairman of its ACE⁵. Therefore it is a settle issue that the quantity of *shari'ah* talents required to keep and guard the principles that underpins the operations of the industry in Nigeria is below the margin otherwise such nationals could not have been appointed to various institutions as experts and even to chair some committees of experts. The low margin in the number of experts has reached a level of exhausting and utilization of a body of experts in multiple regulatory institutions. FRACE is still the body that serves as an expert advisory body to CBN, NDIC, SEC and other statutory regulatory bodies⁶. These are facts that lead to the conclusion that the quantity of *shari'ah* scholars that need to serve the industry as gatekeepers is far below the margin. The high concentration of a few scholars serving the industry is also a fact that further buttresses the outcry of the industry to the small number of *shari'ah* experts⁷. The identity of those scholars required to serve is indeed without turning to their qualities and experience in dealing with the complexities and linkages in a modern economy. Therefore, the issue of quantity and quality are two issues to be argued differently.

The issue with the existing scholars in terms of their qualifications and training to be effective in dealing with the complexities and linkages in a modern economy is also a challenge in the manpower tussle within the industry. The personalities, particularly the Nigerian personnel, appointed to serve as experts in the industry lack the requisite experience and qualification of modern finance. Most of the scholars so appointed are Islamic based scholars who are mono-*shari'ah* based trained scholars or mono-conventional trained scholars either in formal schools as universities and colleges or in the informal traditional schools in the ancient form⁸. The concept of present Islamic finance industry differs from the ancient Islamic commercial and financial transactions

4. See the composition of FRACE. A member of Sudanese nationality and a member of Malaysian nationality were appointed to serve in FRACE as members. Visit www.cbn.com.

5. Professor MunzirKahf is the chairman of ACE of the Jaiz Bank. Visit www.jaizbanknigeria.com.

6. Section 6.1.ii Guidelines on the Governance of Financial Regulation Advisory Council of Experts for Non-Interest (Islamic) Financial Institutions In Nigeria 2015

7. Farook, & Farooq, Shari'ah Governance for Islamic Finance: Challenges and Pragmatic Solutions, available at <http://ssrn.com/abstract=1813483>

8. FRACE member is required to posses knowledge, expertise and experience in the field of Islamic Jurisprudence with specialization in the field of Islamic Commercial Jurisprudence and to demonstrate Knowledge in the philosophy of Islamic law, Knowledge of written and spoken Arabic as well as English languages and Exposure in the field of business, economics or finance especially Islamic Finance. See section 4.3.2-3 of Guidelines on the Governance of Financial Regulation Advisory Council of Experts for Non-Interest (Islamic) Financial Institutions In Nigeria 2015. The emphasis here is on *shari'ah* science whereas other conventional finance was not emphasized as a qualification.

that were reported in the raw sources and the secondary sources of *shari'ah*; the modern concept of Islamic finance is a transformation process from conventional finance to Islamic finance. The process can as well be referred to as islamisation of the finance industry. The packages and services offered by the conventional finance are the same with that of the Islamic finance, the two industries, the Islamic and conventional industries are regulated by the same institutions, call by the same name as banks or other intermediary financial institutions and regulated by the same set of statutes with some variations to address the specificity of each industry. However, the fundamental difference lies in *shari'ah* governance. Modern Islamic finance industry bears all the identities of conventional finance within the *shari'ah* boundary. Therefore, the *shari'ah* gatekeepers must be well experienced and acquainted with modern finance and Islamic finance to be qualified to give opinion as experts.

Following the above argument would press the arrival of a question as to whether the present so appointed experts suit the label and qualify as experts. Indeed majority of the appointees to various committees of experts, looking at the CBN requirement, may be qualified to be labeled as *shari'ah* scholars. The training they undergo is a training that acquaints one with *shari'ah* expertise. Modern Islamic finance is an islamisation of the products and services of conventional finance, accordingly, for one to be so appointed as an expert need to possess the dual training of Islamic and conventional finance. Short of that is below the expected bench mark and may lead to opinions without appreciating the scenario on ground. Therefore, there is need for change in the approach; the requirement and qualification for experts should make it as a must that the candidate must have expertise in both Islamic and conventional finances or in the alternative a provision for training candidates biased in *shari'ah* or conventional finance for a certain period prior to their appointment as experts.

The manpower challenge cannot be fixed overnight. The challenge calls for a global infrastructure to fill the gap, the seriousness of this issue is exemplified in the recent initiative by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) to set a new standard for *Shari'ah* scholars, although such initiative is meeting stiff resistance from some corners.⁹

AAOIFI has introduced a program called Certified *Shari'ah* Advisor and Auditor program (CSAA). The program is geared toward curtailing the manpower challenge. However, the challenge with the program is that it does not really qualify scholars to create new opinions, but allows successful candidates to apply existing standards to their professions as *Shari'ah* advisors or auditors. Furthermore, the current CSAA program merely provides training equivalent to exam preparation, without ensuring

9. Farook, & Farooq, Shariah Governance for Islamic Finance: Challenges and Pragmatic Solutions, available at <http://ssrn.com/abstract=1813483>

any meaningful training especially, experience-based to the certificate recipients. However, many of these CSAA qualified individuals are already having experience and getting the certificate as recognition. The process is not providing training to new individuals to qualify for the program.¹⁰

The question that comes to one's mind is what is the solution to such challenge? It has been argued that the gap cannot be fixed overnight. The effort made by AAOIFI toward developing *shari'ah* talents through the establishment of CSAA is commendable but is not without challenges as argued previously. Some argued that the university Doctorate system provided the best form of educational discipline and rigor to qualify an individual to be universally recognized as a *Shari'ah* scholar or a scholar in any other field. The higher tier of doctorate requires the submission of a portfolio of published research of a very high standard, much like how some Islamic scholars are recognized by other established scholars for their advanced application of *Shari'ah* concepts to contemporary challenges. Similarly, even the Doctorate system, as employed by most universities in the world now, requires the candidate to prove his level of knowledge in a certain field by undertaking peer examined research, which is also expected to be sustained during one's scholarly career. Further, the system most closely replicates mentored learning as the student relies on the supervisor, an established scholar to transfer his knowledge within a structured framework. This can be referred to as stewardship and the most important period of a steward's formation occurs during formal doctoral education. To understand and appreciate the fact that not only there is no inherent problem with the doctoral educational system from the Islamic perspective, but also that this structure of education is of great merit evolving from accumulated human experience.¹¹ The argument for doctorate as a gate pass for recognition as a *shari'ah* experts admits that the system is not free from inherent problem. Adopting the argument would compress the door for developing the experts; moreover, an academic doctorate without experience is not more than an acclaimed expert with no expertise.

It could further be argued that experts committees should be comprised of members who are trained in different schools of jurisprudence with *Shari'ah* expertise and different lengths of experience, and where appropriate, comprise of different nationalities.¹² The idea of having members of mix expertise and experience in committees is the need for having a consistent supply of highly competent and qualified members that would create adequate time and opportunity to grooming a new group of people who can acquire the relevant competence and experience.¹³ Certainly

10. Ibid.

11. Ibid.

12. Principle 1.1/17 of IFSB-10 Guiding Principles on *Shari'ah* Governance System for IIFS.

13. Notes on Principle 1.1/17 of IFSB-10 Guiding Principles on *Shari'ah* Governance System for IIFS.

the best way of achieving this is through a mentoring system whereby the more experienced members can guide and supervise the less experience ones.¹⁴ The more experienced members, due to their strong reputation and experience and in fact because of scarcity of *Shari'ah* talents, will usually have a lot of other commitments such as serving on other experts committees.¹⁵ Hence, in terms of time allocation, it is likely that the less experienced members can dedicate more time to studying the issues and proposals for deliberation at *shari'ah* board, thus allowing an efficient and effective learning curve between the two.¹⁶ The combination of different caliber of experience and expertise would nurture a better balance between experience and fresh ideas, which would likely facilitate innovations as well as harmonization throughout the experts' deliberations.¹⁷

It is desirable that the experts committees should comprise members of different nationalities; however, indigenes should be included, among others, to promote the development of local talents and expertise.¹⁸ Indeed, it enhances and develops local talents and expertise, but may cost a higher burden on the market players particularly, IFIs that have just spring up in the Nigerian finance industry.¹⁹ The CBN guidelines have not incorporated the requirement and desirability of having mix nationalities in FRACE and ACE as provided by IFSB guiding principles.²⁰ However, examination of their composition reveals that they have complied with such requirement despite its omission in the CBN guidelines.²¹

14. Ibid.

15. Although FRACE and ACE members have certain limitations and restrictions for serving on more than one board within the purview of the CBN at a time, therefore, a member can serve on more boards of different sectors of finance industry; such as *Takaful* subsector. See section 5.0 of Exposure Draft Guidelines on the Governance of FRACE on Nis, Section 6 of Exposure Draft guidelines on Governance of ACE on NIFIs.

16. Notes on Principle 1.1/17 of IFSB-10 Guiding Principles on *Shari'ah* Governance System for IIFS.

17. Ibid.

18. Ibid.

19. CBN has constituted and inaugurated FRACE (Financial Regulatory Advisory Council of Experts) with Sheikh Sheriff Ibrahim Saleh as the Chairman with three other Nigerians and two foreign nationals of Sudan and Malaysia. See www.nigeriaintel.com accessed on 1st May 2013. Jaiz bank and Stanbic IBTC Bank have constituted ACE. Professor MonzerKahf, a non-Nigerian national, is the chairman of ACE Jaiz bank. CBN, being the regulator, and Jaiz bank, a market player, have complied with the IFSB requirement of having members of mixed nationalities for developing local talents and greater output. See Programme of Events of 1st International Conference on Islamic Banking and Finance organized by Bayero University Kano-Nigeria, between 17th-19th April, 2014 with a Theme: Islamic Banking and Finance: A Leap from Theory to Practice P.9.

20. Principle 1.1/17 of IFSB-10 Guiding Principles on *Shari'ah* Governance System for IIFS.

21. The ACEs of Jaiz bank and Starling bank are chaired by foreign nationals but Stanbic IBTC ACE is constituted by Nigerians. FRACE constitutes two foreign nationals of Sudan and Malaysia, sourced from an interview with some ACE and FRACE members, see also www.nigeriaintel.com accessed on 1st May 2013.

Development of shari'ah experts through the system of stewardship can also serve as a panacea to the challenge. The less experienced scholars would be trained over a period of time under the stewardship of the experienced scholars. A steward is a scholar in the fullest sense of the term, someone who can imaginatively generate new knowledge, critically conserves valuable and useful ideas, and responsibly transforms those understandings through writing, teaching, and application. Stewardship also has an ethical and moral dimension; it is a role that transcends a collection of accomplishments and skills. A steward is someone to whom the vigor, quality and integrity of the field can be entrusted. Scholars of each generation must contribute toward the education and training of the next generation so that their trainees and students become the stewards of the discipline.²² Therefore, two class of experts are to be appointed to constitute the council or committee of experts where the less experienced ones to be mentored and trained by the qualified ones through the system of mentoring and stewardship over a period of time. The problem with this system is that it is not a system that could be designed to train experts from scratch; however it is a system that trains the less experience to a higher level of expertise in Islamic finance. Continuing education and development should be designed for the experts to be abreast and up-to-date with the reality and economic dynamism of the industry for the experts to be able to give appropriate expert opinion at all times.

Research and development centers

The challenge of manpower is a serious threat to the industry. It has been argued that it cannot be fixed overnight. Therefore, because of seriousness of the challenge it calls for a global infrastructure to fill the gap. The wisdom in filling the gab lies in the establishment of learning, research and development centers. Without adequate learning and development centers the challenge of manpower would continue to linger in the industry. The lingering of the manpower problem would in fact leads to the derail of the industry from its actual form of shari'ah governance; inadequate manpower within the industry leave the industry porous because the shari'ah talents or the scholars, who are the gatekeepers, are not there to keep it moving in the shari'ah compliant phase.

Training and development of the experts in the present Nigerian IFIs as evidence shows is below the required standard; CBN have tried to some extent in developing FRACE members by attending conferences, workshops and seminars within Nigeria and beyond. However, other players in the industry have shown less commitment in sponsoring its ACE members for attending workshops, conferences etc.²³ FRACE and

22. Ibid.

23. Sourced from interview with some ACE, FRACE members and some staff of the CBN Abuja, November, 2014.

ACE members need to be continually developed to be able to discharge their responsibilities as experts. Attending workshops, conferences and like would uplift the standard of the experts, particularly those who mono shari'ah trained scholars that have expertise in conventional economics and finance. The argument could as well be invoked on the mono conventional finance trained experts to be able to appreciate the methodology of shari'ah in analyzing economic and financial transactions. The stage and the status of the Nigerian financial experts, who are biased in their respective areas of Islamic or conventional finance, without additional and rigorous training that, would elevate them to being experts of combined expertise, would continue to exist at a phase below the expected bench mark in shari'ah governance.

Archer expresses that;

There were few scholars with knowledge of finance and banking. The handful of scholars that had published on related subjects were without practical experience, having had no exposure whatsoever to modern banks and financial markets. In many cases, banks retained scholars based solely on their reputation as authors and authorities on Islamic subjects in general; not as experts or authors of works on finance or related subjects.²⁴

Most of the senior scholars in high demand today rose to the top not through any formal and systematic process of education, research and gaining of experience. They became practicing scholars through participation in the industry and through learning by doing. it was the only available alternative during that phase. However, it is highly desirable, and some would argue that it is an imperative, that the qualification and preparation of scholars to better serve the industry should be scrutinized so that future generation of scholars and experts can be reared and prepared. This has become even more important, if Shari'ah governance should involve "highly qualified and recognised scholars with vast experience and knowledge concerning modern dealings and transactions in financial matters as well as the macro-environment in which such financial activities take place."²⁵

The gravity of the challenge could be attributed to the non-existence of research and development (R&D) centres or low number of such centers compared to the level of its demand. With the establishment of more centres more talents would be produced that would help in tackling the problem of manpower that guards the industry against its

24. Archer, S., Ahmed, R. and Abdel Karim Islamic finance: the regulatory challenge (John Wiley and Sons, 2007) p. 139 in Farook, & Farooq, Shariah Governance for Islamic Finance: Challenges and Pragmatic Solutions, available at <http://ssrn.com/abstract=1813483>

25. Farook, Farooq, M. Shariah Governance for Islamic Finance: Challenges and Pragmatic Solutions, available at <http://ssrn.com/abstract=1813483>

derail from shari'ah governance. However, the introduction of a program called Certified Shari'ah Advisor and Auditor program (CSAA) by AAOIFI is geared toward curtailing the manpower challenge. Notwithstanding the challenges argued against the program it would in one way or the other assists in shaping minds towards understanding Islamic finance or develop the talents to a higher level. Recently an international institute of Islamic banking and finance was established in Nigeria.²⁶ The institute conducts postgraduate studies in various areas of Islamic economics, banking and finance. Other universities in Nigeria like university of Ilorin and Dan fodio university sokoto conduct various courses related to Islamic banking and finance.²⁷ These are efforts made by some indigenous learning institutions to develop more talents in the Nigerian Islamic finance industry to guard the institutions in its shari'ah governance track.

As part of training and development it is recommended that the composition of FRACE and ACE should be expanded by adding more members. This is to serve as learning centers for new less experienced members. The mingling of new members with the top experienced members would in long time transfer some skills and expertise to the new members. Training and development of FRACE and ACE members should be on focus and be part of the IFIs' mission and vision to serve as a gateway for developing local talents and expertise as well as having qualitative output that would guard the principles of shari'ah in the governance of the industry.

The prediction of expansion and growth of IFIs in the Nigerian finance industry in the near future could be observed given the increasing number of requests from various institutions and individuals to practice Islamic banking and finance.²⁸ The prediction of expansion of the industry backed the argument for the need of more R&D centers. The industry is facing a stiff challenge of manpower and how would it manage with expansion and the challenge of its gatekeepers. Therefore the need for more R&D centers is dearly needed.

Shari'ah acceptability

Shari'ah is the law that governs the conduct and operation of Islamic finance industry, although local legislations and other global standards play a significant role in the governance of the industry. Shari'ah being the primary law that governs Islamic

26. It was established by the Bayero University, Kano (BUK). See the university site and the institute site.

27. Other Nigerian universities also offer individual courses on Islamic banking and finance. It is expected that in the near future with the establishment of more institutions and introduction of more courses related to Islamic finance the challenge would be overcome.

28. Section 1.0 of the Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria 2011.

finance industry, the industry is misconceived by some as Islamic and therefore it should be patronized by people of Islamic faith only. This misconception perceived the introduction of Islamic finance in Nigeria as islamisation of Nigeria. The objection was based on the governance specialty of IFIs that is based on Shari'ah. Their objection was capitalized on the fact that, in their own view Shari'ah governance and especially the institutionalization of FRACE and ACE²⁹ in the Nigerian finance industry regulatory system of Islamic finance is a promotion of Islam and its teachings within the Nigerian economic setup. The group says;

Our members are against the establishment of a body called CBN Advisory Council of Experts within the CBN. We know fully well that the composition, qualification and responsibilities of this body is a camouflage to promote Islamic banking³⁰

It could be observed that the objection was based on the shari'ah governance of the industry. The objection pressed the CBN to change the nomenclature from the use of word shari'ah in the names of institutions and the experts.³¹ CBN tries in providing a level playing ground for all within the industry.³²

However, the views expressed by the Chief Executive of National Insurance Commission (NAICOM)³³ being a financial expert provide a convincing answer to the misconceptions against Islamic finance. He says;

The reason we are taking Takaful insurance seriously now is because the insurance gap in our domain is endemic, problematic and we seemed not to have a solution. But we have found a way out now, one of which is Takaful insurance.³⁴

He further says;

.....Rather than allowing people to see Islamic Insurance as being designed only for the Muslim population, Christians and any other person would patronize Takaful Insurance product by the time they understand what the concept is all about...if you make people to understand what Takaful is all about and that it has a prospect of returning part of their premium at the end of the year, many people will buy into it, it is not about religion it is about a way of sharing risks.³⁵

29. The establishment of FRACE within the CBN governance structure of IFIs.

30. Christian Association of Nigeria (CAN) "Press Release" Daily Trust Newspaper (Nigeria 19th October, 2011) p. 60

31. Section 8.2-9.1 of the Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria 2011.

32. Principle 2.1/18 of IFSB-5 Guidance on Key Elements in the Supervisory Review Process IIFS.

33. Mr. Fola Daniel, The Chief Executive, NAICOM.

34. Alabdan, S. NAICOM with Guildlines for Islamic Insurance July Daily Independent Newspaper www.dailyindependentnewspaper.com accessed on 24th August, 2012

35. Ibid.

He³⁶ views Islamic finance as a panacea of economic gap in the Nigerian economic setup. He³⁷ also sees it as an encompassing financial institution for all without barrier, whether religious or otherwise. Although Mr. Daniel was discussing the benefits of Islamic insurance (Takaful) in finance industry without inclusion of other sectors of the industry, but Islamic finance which include Islamic banking and insurance, Islamic capital and money market are governed by the same system of Shari'ah Governance.³⁸

The rise of terrorism in the recent years and its being associated with Muslims and Islam is a challenge towards the development of the shari'ah compliant industry. Anything related to shari'ah, Muslims and Islam is antagonized and perceived as terror activities and thus, the Nigerian shari'ah compliant finance industry cannot be in isolation to such perception. Recent research shows that Muslims across the globe are against terror activities while others perceive Muslims as terrors or accessories.³⁹ This perception should be corrected. It is against this background that the CBN Guidelines provide for a provision for combating and fighting terrorism by criminalizing of financing that amounts to terrorism financing.⁴⁰ This provision is not enough to correct the misconception, there should a provision for awareness through seminars, workshops, conferences and the media.

Awareness

There is need for awareness against the challenge of the misconception that states that Islamic finance is not more than a conventional finance; it is regulated by the same bodies and the same set of legislations but with some guidelines that guide the specialty of the each sub-sector of the industry; the products and services offered by the two industries⁴¹ resembles each other. These reasons lead to a misconception that concludes that Islamic finance is the same with conventional finance. It is just a market strategy to pull customers. This set of minds need awareness as the legality of the industry in the eyes of shari'ah to avoid losing a huge reserve of untapped investment for Islamic finance industry. Islamic finance is a financial system that operates according to shari'ah. Just like conventional financial systems, Islamic finance features banks, capital markets, fund managers, investment firms, and insurance companies.

36. Mr. Fola Daniel,

37. Ibid.

38. Frenz, T., and Soualhi, Y. *Takaful and Retakaful: Advanced Principles and Practices*(IBFIM, Kuala Lumpur 2010) P.47.

39. People Press, available at (<http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/>) visited on 10th/11/2015

40. Section 1.5.1- 1.5.2 of the Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria 2011.

41. Islamic and conventional finance industries.

However, these entities are governed both by Islamic laws and by the finance industry rules and regulations that apply to their conventional counterparts. Although Islamic commercial banks have many products similar to those offered by conventional banks, the two entities differ conceptually. One key difference is that conventional banks earn their money by charging interest and fees for services, whereas Islamic banks earn their money by profit and loss sharing, trading, leasing, charging fees for services rendered, and using other shari'ah contracts of exchange.⁴²

The misconception that Islamic finance is a Muslim business and it was introduced to islamise finance industry needs awareness with all commitment to correct the anomaly and convince Nigerians that Islamic finance though, being governed by shari'ah, but its doors and services are for all irrespective of religion, region, race or nationality. Islamic finance may be based upon Shari'ah, but its application is not limited to Muslims alone. Islamic finance structures and products are often described as being asset-based derived from ethical and social values, but do share some economic objectives to conventional financing products and can therefore appeal to Muslims and non-Muslims alike. Although the main market for retail and wholesale Islamic financial services in any country is the domestic and international Muslim community, Islamic finance can also provide an alternative source of liquidity and/or means of investment to all consumers and investors.⁴³

The challenge of such misconceptions and the public echo against the Shari'ah governance of Islamic finance industry should not push the regulators, market players and the experts to shift from the established shari'ah principles to please the public in order to pull more investments against the established shari'ah governance principles. The awareness should utilize the entire available avenue within the confine of shari'ah to make the public understand the prospects of Islamic finance industry.

Conflicting shari'ah rulings and the need for harmonization and standardization

The industry is witnessing a challenge of divergent views on contemporary issues being the subject of scholarly Ijtihad. This is not a sabotage to the efforts being made to standardize elements of shari'ah governance. The reality is that both diversity and standardization work hand in hand. The wealth of diversity between the four main schools of Islamic jurisprudence provides ample substance on which to continue to develop modern products which the industry requires. Thus, the pragmatic nature of

42. Jamaldeen, F How Is Islamic Finance Different from Conventional Finance? Available at www.dummies.com visited on 10th/12/2015

43. McViety, P. Barbour, D. common misconceptions about Islamic finance Available at www.dlapiper.com visited on 10th/12/2015

the Shari'ah should be embraced as a system which facilitates the development of Ijtihad to further apply Shari'ah tenets towards achieving the objectives of the Shari'ah. Consequently, the existence of necessary application of Ijtihad should not be seen as a hindrance to harmonization of the industry. Divergence of Ijtihad when applied correctly in matters of fiqhal-muamalat should therefore not be considered as a threat but as a means to achieve a more ultimate objective for the industry. Therefore, a realistic approach to standardization should be adopted without compromising Shari'ah principles.⁴⁴ Ijtihad plays an important role in applying the Shari'ah to contemporary society, moreover, the contemporary Islamic finance industry. Viktor is of the view that "Ijtihad is a prerequisite for the survival of Islam in a modern world." The Prophet practiced ijtihad and encouraged his Companions to exercise it; on several occasions the Prophet was reported to have tolerated his companions' deficient exercise of ijtihad. This does not deny the fact that the Prophet would later revise any inadequacy.⁴⁵

However the challenge of diversity of opinions does not only lies in issuing different and conflicting opinions but it lies also in the absence of standard that guides the issuance of such rulings and opinions. There is no universal framework of due process that Scholars must follow before they issue public opinions contrary to previous opinions established by themselves or other scholars. This effectively places the industry hostage to the change of attitude by scholars who gain prominence through their years of serving the industry.⁴⁶

The guidelines⁴⁷ vested the responsibility of keeping and guarding shari'ah in the governance of IFIs as well as issuing legal rulings pertaining to IFIs on FRACE and ACE.⁴⁸ The possibility of issuing conflicting shari'ah rulings in respect of some virgin or uncultivated issues in respect of operation or products and services of IFIs is not surprising. This may not be unconnected to a particular principle of Islamic legal theory used by a particular ACE or FRACE in arriving at the ruling. The guidelines pre-empted the scenario of divergence of views and opinions among members of ACE and FRACE; conflicts of opinions can take various forms; it may be among members

44. Elshayyal A. Brief Look at Ikhtilaf –Diversity of Ijtihad in Islamic Finance Opalesque Islamic Finance Intelligence p.15 available at opalesque.com accessed on 27th June, 2013

45. Hasan, A. An Introduction to Collective Ijtihad(IjtihadJama'i): Concept and Applications The American Journal of Islamic Social Sciences 20:2 P.29

46. Farook, Farooq, Shariah Governance for Islamic Finance: Challenges and Pragmatic Solutions, available at <http://ssrn.com/abstract=1813483>

47. See CBN Guidelines, particularly on duties and responsibilities of FRACE and ACE.

48. Onagun, A.I. and Malik, A. 'Shari'ah Governance System: A Need for Professional Approach' Proceeding of Sharia Economics Conference- Hannover (2013) P.73, See AAOIFI Governance Standard No 1.

of ACE of a particular IFI, it can be between two or more individual ACEs of different IFIs or between ACE(s) and FRACE. The CBN guidelines, in effort to harmonize the practice and operations of the industry through the means of collective Ijtihad, accord superiority to the opinion of FRACE in a situation where ACE holds a contrary opinion than that of FRACE.⁴⁹ The opinion of FRACE also takes precedence in case of conflict of opinion among members of the ACE concerning a Shari'ah ruling. FRACE is the final authority issuing Shari'ah rulings within the industry.⁵⁰ These are giant steps toward standardization and harmonization of the industry through the feasible method of collective Ijtihad.

However, the CBN guidelines have not provided a solution to the challenge by merely providing a hierarchy in the issuance of the rulings and subjecting the validity of the rulings of ACE to the rulings issued by FRACE. There is need for a standard or a methodology to be issued to guide the issuance of shari'ah rulings whereby the standard would guide the issuance of rulings and opinions. The standard should also provide for the exhibitions of the reasons advanced for the opinion given. This will help in harmonizing the methodology for the issuance of opinions and lead to harmonization and standardization of the industry. Of course, difference in opinion cannot be avoided however; by adopting such a methodology harmonization of opinions would be achieved even if they differ by adopting the same methodology in arriving at the opinion.

Product development and competition in the market

Product development is an important area in which IFIs should focus their resources because of the existence of a pool of IFIs market. However the challenge here is that the study on how the institutions carry out their product development process is still in absence. It is observed that much of the Islamic products are introduced into the market place by adapting and reengineering the conventional products following the success of the conventional products.⁵¹ Islamic finance industry should be able to foresee the needs of the market and roll out Islamic financial products and services in advance of conventional products to ensure constant growth and competitiveness of Islamic financial products. However, Islamic financial products and services tended to duplicate the conventional ones, resulting in these products losing value and causing some confusion in their interpretation.⁵²

49. Section 9.0 of Exposure Draft Guidelines on the Governance of FRACE on NIs.

50. Section 9.2 of Exposure Draft Guidelines on Governance of ACE on NIFIs.

51. Muda, M., Jalil, A. Islamic Financial Product Development: Shariah Analysis available at <https://www.academ.a.edu> visited on 10th/11/2015

52. Ibid.

The conventional financial products emulation by Islamic finance industry can be attributed to the absence of established standard to be followed in product development. Each institution is at the mercy of its experts to develop products and services, which leads to having disparity in the products and services offered by the industry even at the global level. Absence of an established standard is a challenge to the shari'ah governance of the industry as the institutions in trying to develop products to pull investments to the institutions may compromise some shari'ah principles. Some may argue that shari'ah can also be compromised to convince and please the public that the industry is viable to attract patronage, because absence of an established standard can lead to abrasion; moreover most of the products were adapted from the conventional.

Some criticize the concept of Islamic finance that no clear cut difference between Islamic and conventional economics, and if any exists, it is artificial in nature and not substantive in any way. The critics further argued that Islamic products are similar to any other bank products, and hence, separating Islamic from non-Islamic operations would be unrealistic.⁵³ The argument is replicated on the fact that there is a widespread use of securitization *tawreeq*, “fictitious” *Murabaha* deals, and certain “fabricated” *Sukuk*, provided by some financial institutions as Islamic banking products and services. It can also be said that the prevalence of these practices is the engagement of conventional or *ribawy* banks in providing Islamic products in a way that does not distinguish between Islamic and conventional financial operations.⁵⁴ The regulatory frame work that applies to both financial industries contributes to such assumption especially in jurisdictions like Nigeria and Malaysia where the two systems co-exist in the same floor.

Having the above arguments against Islamic finance in mind there is need for standard product development process to comprise of a process to include market intelligence, resources allocation, team selection, marketing and distribution, and research and development. This is a comprehensive tedious process that needs to involve committed and competent people with various backgrounds. It is against this background that some have argued that the Islamic financial product development team should include Shari'ah scholar, Islamic financial advisor, asset manager, custodian and registrar of administrative services, lawyer, directors, distributor/selling agents/marketing group, customer and project coordinator.⁵⁵

53. Al-salem, F.H., Islamic financial product innovation available at www.emeraldinsight.com/1753-8394.htm visited on 10th/12/2015

54. Ibid.

55. Muda, Jalil, Islamic Financial Product Development: Shariah Analysis available at <https://www.academ.a.edu> visited on 10th/11/2015

The proposed requirements for products development seems cumbersome but it can be argued that subjecting the process to such cumbersome procedure may not have achieved the ultimate goal of Islamic finance, the concept of shari'ah compliance. Therefore, the core of Islamic financial products is the Shari'ah compliance. The Shari'ah scholars are responsible in giving opinion on the product with the underlying supporting evidences to the Islamic investors. The product must be Islamically acceptable and economically viable in all aspects. This illustrates the criticality of Shari'ah analysis which must be carried out in order to ensure the marketability of the end-product. Hence, the Shari'ah scholars must be involved in the whole process from beginning and not only at the end of the process.⁵⁶

The challenge of product development does not end at developing a product different from the conventional or labeling a products Islamic with conventional identities but it should be shari'ah compliant and have market viability. A product may be shari'ah compliant but not viable, therefore it requires the composition of multiple experts to draw a product that can viably compete in the market. Developing new products in the Nigerian market may be burdensome with the composition of FRACE and ACE and having in mind the advancement scenario of the conventional market. Thus, the challenge of manpower needs solution to assist in growth and development of the industry as all the challenges are channeled through the development of manpower.

Governance and risk management

The action often taken by investors and entrepreneurs in relation to financial risk in finance are; take no risk, take excessive risk and transfer risk.⁵⁷ Islam rejects all three approaches to dealing with risk on the following grounds; The concept of “no risk, no gain” dictates that any profit earned on money is the reward of bearing risks of the business which entails the investor to profit from the financial transaction. Thus, Islamic IFIs are expected to take business risk between the time of purchasing the asset from the vendor and the sale of the asset to the party requiring the goods. Excessive risk (such as focusing on loan sales and disregarding loan quality to earn fees,) be it investment bank or retail bank, is considered speculation that eventually amounts to gambling, which is strictly prohibited in Islam; and the risk transfer by lending institutions is deemed an unjust and unethical practice since it seeks to ensure that borrowers bear all the risk associated with their investments, thus releasing lenders from their moral and professional responsibilities of monitoring the use of funds. Instead, Islam promotes risk sharing based on PLS financing as a more equitable means of wealth creation and distribution and to enhance economic stability and

56. Ibid.

57. Hassan, M.K. and Kayed, R. The Global Financial Crisis, Risk Management And Social Justice In Islamic Finance ISRA International Journal of Islamic Finance Vol. 1 Issue 1 (2009) Pp.34-36.

expedite economic maturity. The ultimate aim is to realize socio-economic justice, which is a condition for achieving prosperity in this worldly life and in the hereafter. Islamic finance has a built-in risk management mechanism that enables the financial system to perform in an orderly manner and avoid crises.⁵⁸

The most important feature of shari'ah governance in Islamic finance is that it promotes risk sharing between the provider of funds (investor) on the one hand and both the financial intermediary (the bank) and the user of funds (entrepreneur) on the other hand. By contrast, under conventional banking, the investor is assured of a predetermined rate of interest. The nature of this world is uncertain, and therefore the results of any project are not known with certainty *ex-ante*. Therefore, there is always some risk involved. In conventional banking, all the risk is borne in principle by the entrepreneur. Whether the project succeeds and produces a profit or fails and results in a loss, the owner of capital gets away with a predetermined return. In Islam, this kind of unjust distribution is not acceptable and hence in Islamic finance both the investor and the entrepreneur share the results of the project in a way that depends on the supply and demand for funds. In case of profit, both share it in a pre-agreed proportion. In case of loss, all financial loss is borne by the investor and the entrepreneur loses his labour.⁵⁹

What matters to a financial institution in a conventional setting is whether the loan and the interest thereupon are paid on time. Therefore, in granting loans, the dominant consideration is the credit-worthiness of the borrower. Under Profit-Loss Sharing (PLS), the institution will receive a return only if the project succeeds and produces a profit. Therefore, an Islamic financial institution will be more concerned with the soundness of the project and the business acumen and managerial competence of the entrepreneur. This feature has important implications for the distribution of credit as well as the stability of the industry.⁶⁰

Risk management issue has started to figure prominently in public domain in the wake of increasing notorious mismanagement scandals involving different corporations including financial institutions like Barings and Bank of Credit and Commerce International (BCCI)⁶¹ and Enrons.⁶² There is no reason to assume that, even though IFIs have done fairly well so far, they have necessarily been able to escape the trappings of the prevailing weak risk management structure.⁶³

58. Ibid

59. Iqbal, M., Ahmed, A. and Khan, T. Challenges facing islamic banking (Islamic Research and Training Institute, IDB, Jeddah 1998) Pp.13-18.

60. Ibid.

61. Ibid.

62. Amer, S. Corporate Governance from an Islamic Perspective in Ahmad, Islam and Ismail (eds) Issues in Islamic Management Theories and Practices (Perpustakaan Negara, IUM Press 2012) P.94

63. Chapra, and Ahmed, Corporate Governance in Islamic Financial Institutions P.9

The collapse of Ihlas Finance House (IFH) of Turkey in 2001 provides an example how weakness in shari'ah governance practice⁶⁴ entails negative repercussion for soundness and sustainability of an IFI.⁶⁵

The CBN sacked eight bank CEOs and their respective Board of Directors. They were fired from their jobs as helmsmen of financial institutions in 2009.⁶⁶ The grounds for CBN intervention principally lays in the absence of sound governance and ethical issues, which equally can affect IFIs. The CBN Guidelines⁶⁷ required that all IFIs to put in place appropriate policies, systems and procedures to identify, measure, monitor and control their risk exposures. In addition, they are required to put in place a risk management system that recognizes the unique risks faced by IFIs such as displaced commercial, fiduciary, transparency, reputational, equity investment and rate of return risks.

IFIs are required to be guided by the guidelines issued by the CBN and international standard setting organizations which include:

1. CBN Prudential Guidelines;
2. Risk Management Guidelines issued by the Basel Committee on Banking Supervision; and
3. IFSB Guiding Principles of Risk Management for Institutions Offering Only Islamic Financial Services.⁶⁸

It should be observed from the above that certain globally accepted principles on risk management applies to IFIs as well, however, IFIs are to complement the existing structure and address risks management issues that are peculiar to them.⁶⁹

However, the provision of the CBN guidelines that require IFIs to comply with three guidelines on risk management is really challenging to shari'ah governance framework. Two out of the three guidelines are conventional and were issued with the goal of governing conventional industry. The third guidelines that CBN enjoins IFIs to comply with were issued by a non-indigenous institution; such a guideline requires

64. This include lack of good risk management system.

65. Dusuki, Corporate Governance And Stakeholder Management: An Islamic Approach P.392

66. Chiejine, F.C. Corporate Governance In The Nigerian Banking Sector: An Ethical Analysis Of The 2009 Regulator

Intervention And Operators' Behaviors Unpublished thesis of Master of Science in Organizational Dynamics, University of Pennsylvania, Scholarly Commons http://repository.upenn.edu/od_theses_msod/29 Pp.1-3 accessed on 28th/06/2014.

67. Section 14.0 of CBN Guidelines for the Regulation and supervision of IIFS, 2011.

68. Ibid.

69. Ahmad, I.M. Achieving Transparency in Corporate Governance: A Tool for Developing a Sustainable Islamic Finance Industry in Nigeria in Dawud, K,A (ed) The Law at a Glance a Book in Honour of Honourable Justice Kashim Zannah (OFR) (MULAN, Maiduguri, 2014) P.295

adaptation and adoption to suit Nigeria setting. The Nigerian Islamic finance industry has come to stay and therefore it needs to face reality; the industry should be objective and realistic by issuing its own guidelines and principles that can conveniently operate in Nigeria. It should avoid importing Asian or some European guidelines that were meant to operate for specific issues.

Although, Nigeria is a member in Islamic Financial Services Board (IFSB) and therefore participates in IFSB activities, membership and participation in its activities does not ipso facto a license to import everything to the Nigerian Islamic finance industry. IFSB itself admits when it states that it does not reinvent the wheel by proposing a wholly new governance framework. Instead, the Guiding Principles aim to complement the existing internationally recognized standards of good corporate governance by particularly addressing the specificities of IFIs.⁷⁰ This may contradict some principles of Shari'ah Governance in IFIs by implementing certain principles invented by some conventional organizations like Organization of Economic Corporation and Development (OECD). Principles invented by conventional financial institutions may be accepted for practice in IFIs when the said principles do not contradict Shari'ah principles.⁷¹ That is why IFIs regulators⁷² and Standard Setting Organizations⁷³ need to evaluate such principles on shari'ah scale, accept the principles to the extent of its consistency with shari'ah or reject it to the extent of its contradiction with shari'ah. There is a presumption on IFIs that the industry undertakes not to compromise shari'ah at the institutional and operation level.⁷⁴

The compromise to adopt governance guidelines issued by conventional institutions without a thorough scrutiny on shari'ah scale as it is shown in some guiding principles issued by some standard setting institutions in Islamic finance industry is tilting towards pleasing the public to accommodate Islamic finance industry. The industry should be allowed to determine its faith by invoking the principles enshrined in the raw sources of Islamic law. However, an excuse can be assumed in country where its regulatory framework does not leave a door for a full and complete application of shari'ah governance within the industry. Therefore, the standard setting institutions should be guided by the principles of shari'ah governance in issuing their guidelines and allow the respective member countries to adapt and adopt the guidelines based on

70. See IFSB-3 and IFSB-10 Guiding Principles.

71. Khallaf, A. *IlmuUsool Al Fiqh* (Dar El-Hadith, Cairo 2003) Pp.99-101

72. CBN, NAICOM, NDIC and SEC in Nigeria; see Section 8.0-8.2, 12.0-12.3 and 14.0, Section 3.0-3.1 of CBN Exposure Draft Guidelines on Corporate Governance for Non-interest (Islamic) Financial Institutions (NIFIs).

73. AAOIFI, IFSB etc.

74. Global Islamic Finance Report (GIFR) Corporate Responsibility in Islamic Finance in Humayon Dar, Rahman, Malik and Kamal (eds) Global Islamic Finance Report (Edbiz Consulting publication, London 2012) Pp.211-212.

the Islamic school of law or the methodology the country adopt within its territorial jurisdiction.

Strategies for mitigating the challenges and the way forward

The manpower challenge can be mitigated through the establishment of Research and Development (R&D) centers where the experienced and the less experience would be continually be developed and upgraded to meet the demands of the industry at all the times and avoid stagnation. Universities and colleges should brand and open courses in various areas of Islamic finance; the courses to be branded in graduate and post graduate degrees where the graduands would come out as specialist of Islamic finance and related disciplines. The current practice of offering individual courses related to Islamic finance in the Nigerian universities is not enough. Law faculties, economics departments, business departments and banking and finance departments in Nigerian universities should design courses biased in shari'ah in the respective departments as course of study; the courses can be branded as LLB and Islamic finance, BSc Islamic Economics, BSc Islamic Banking and Finance and the likes.

By developing a pool of shari'ah talents and overcoming the challenge of manpower in the industry, the industry can develop products and services that can viably compete in the market. The products can be marketed at the financial market and even beyond at the media houses. Such activity of marketing and advertisement would create awareness and acceptability of the products and services of the industry to the public and even to its critics particularly when a standard methodology for issuing opinions is harmonized and published. This would also lead to the autonomy of the products and services of the industry where emulations of conventional products would also be avoided, though adaption of products per se is not contrary to shari'ah if the product adapted is compliant to shari'ah, such adaptation is immaterial.⁷⁵

Conclusion

The chapter has advanced arguments on the challenges facing the Islamic finance industry in Nigeria and proposed some strategies as a panacea to such challenges; the chapter recommends that the operational challenges can be substantially addressed when the manpower challenge in the industry is addressed. The man power challenge can be addressed by establishing research and development centers, introduction of stewardship between the developed talents and the young ones. The paper further recommends that the Islamic finance industry should develop a standard on product development with the aim of harmonization and avoid reliance on the glory of conventional finance by adoption of conventional products.

75. Khallaf, A. Ilmu Usool Al Fiqh (Dar El-Hadith, Cairo 2003) Pp.99-101