<u>GROWTH OF ISLAMIC FINANCE AND THE CRITICAL ROLE OF LAWYERS</u>

Rated one of the fastest growing segments of the global financial Industry by the International Monetary Fund (IMF), Islamic finance and banking has achieved remarkable development and is currently valued at $1.14 trillion, growing at 15 – 20 % annually in the past three years. With such a unique growth potential, the role of Legal Practitioners cannot be over-emphasized as the majority of transactions involve creative legal thinking. Proficient legal drafting skills, knowledge of conventional and Islamic banking and finance, deal structuring, securitization and capital market expertise are essential elements required by a Lawyer willing to specialize in this niche financial sector. Whether as Independent legal Advisers, or as in-house counsels, Lawyers have a critical role in every sphere of Islamic banking including insurance (takaful), Islamic fixed income instruments (sukuk), Islamic asset management amongst others. As a precedent, the rationale for this role is derived from the verse: "*…If you deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing , Let a scribe write down faithfully as between the parties….*" Q 2 v 282.

Generally, the role of lawyers and particularly in-house counsels in Islamic Banking and finance includes the preparation of all transactional documentations and Islamic finance contracts, ensuring compliance with the tenets of Islamic commercial jurisprudence, setting up the appropriate corporate structure for the company including compliance with all corporate formalities, such as board meetings, minutes, resolutions, annual meetings, state filings e.t.c, developing and implementing a code of conduct managing litigation generally handled by external counsel. Another fundamental and in my opinion a more strategic function is the lawyer's role to liaise with Industry Regulators such as the Nigerian Stock Exchange, Securities and Exchange Commission and Central Bank of Nigeria. Furthermore, lawyers are required to liaise with the Shariah Advisory Board of the Institution on Shariah Compliance Audit and ensure that contractual dealings and practices comply with the International best practices of the Islamic Financial Services Board (IFSB) and the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI).

Particularly, an Islamic finance lawyer is expected to be very familiar with the basic principles of Islamic banking and its prohibition on interest based transactions, speculation, gambling, adult entertainment, production of arms and ammunition, and all things prohibited by the Shariah law. More so, the lawyer is expected to understand the various Islamic contracts and the reflection of Shariah provisions and tenets in the contracts. Some of the key contracts lawyers will be required to develop expertise are:

- **Murabaha**: the Institution finances the purchase of goods or assets by buying it on behalf of its client and reselling to the client at a mark-up with payment on the spot or deferred.

- **Ijarah**: transfer of assets usufruct to another for an agreed period and at an agreed consideration.

- **Musharakah**: This is where a bank may decide to join another entity to execute a project or set up a joint venture with each contributing particular amount in equal or varying degrees. While Profit can be shared according to a pre-arranged formula, losses are shared in proportion to capital contribution.

- **Mudarabah**: The bank contributes the finance and the client provides the expertise, management and labour. Profits are shared by both the partners in a pre-arranged proportion, but when a loss occurs the total loss is borne by the bank.

- **Istisna'** : Contracts to manufacturers with the possibility of payment in installments. Can be used to finance 'Buy Operate and Transfer' (BOT) contracts and 'Private and Public Partnerships'.

- **Salam**: Salam are mainly used in the agricultural sector. The seller supplies specific goods to the buyer at a future date for advanced price fully paid at spot.

Interestingly, since the CBN issued guidelines for the operation of Non-Interest Banking in Nigeria in 2011, Jaiz Bank Plc emerged the first full-fledged Bank in Nigeria in November 2011 with regional license to operate in the Northern part of Nigeria, while Stanbic IBTC Plc and Sterling Bank Plc followed acquiring Non Interest Banking window Licenses nationwide. S.23 (1) and S.66 of BOFIA 1991, (as amended) provides for the licensing of Non Interest Banks (NIBs). Being a specialized bank, NIBs could either be Islamic Financial Institutions (IFIs) offering Shariah compliant products and services or other Non Interest Financial Institutions which though not based on shariah principles, are non interest structured based on any other principle or religion.

No doubt, the CBN guidelines on Non Interest Finance has been long awaited due to the fast growing scale and demands for Islamic banking globally as Islamic finance is now practiced in Europe, America and Asia. Britain established the Islamic Bank of Britain and major banks such as HSBC, Citibank and Lloyds Bank created subsidiaries or window to provide Islamic banking services to customers in UK and around the world. There are at least 8 major Islamic Banks in Britain(HSBC Amana Finance, Baclays Capital, Islamic Bank of Britain, ABC International, Citibank, Lioyds Bank, Halal Financial Services, Ahli United Bank), 4 in the United States (Amana Mutual Funds Trust, LARIBA Bank, MSI Financial Services, Manzil USA),2 in Germany (Arab Bank, FAI WEBER), 1 in France (Arab Bank Corporation), and more than 8 in Malaysia (Standard Chartered, OCBC Al-amin, HSBC Amanah Malaysia, RHB Islamic Bank, Unicom Bank, Hong Kong Islamic Bank, Asian Finance Bank, Public Islamic bank amongst others). Nigeria with a large muslim population of about and a macro-economic strategy of situating Africa's financial hub cannot lack behind in such a strategically important sector of the global banking financial industry.

In 2013, Osun State raised infrastructure funds using a sukuk (bond) which was listed in the Nigerian Stock Exchange and given an A rating by the Local Credit Rating Agency Agusto & Co. The role of Shariah Compliant Asset Fund Managers, Capital Market Solicitors and issuers in the Sukuk issuance in Osun State and its oversubscription at 60% is illustrative of not only the promising growth rate of the sector but a call for a more codified regulatory framework and guidelines by the Securities and Exchange Commission aimed at promoting future sukuk issuance and protecting investors' interest in Shariah Compliant investments. The regulatory framework should also provide for increased but regulated licensing requirements for Islamic fund managers, provisions for corporate governance, enhanced operational standards, enterprise-wide risk management, accounting, audit and disclosure requirements, Advisory council of experts (Shariah Advisory board) requirement, rendition of periodical regulatory return on Shariah compliance and prudential guidelines relating to fund reserve, liquidity ratio and provision for asset losses.

The regulatory framework will also instill confidence in foreign investors particularly those from the Middle East who own some of the largest Sovereign Wealth Funds in the world. Most of these are currently exploring opportunities in emerging markets and are inclined to Islamic finance principles. The Islamic Corporation for the Development of the Private Sector (ICD), a subsidiary of the Islamic Development Bank (IDB) has expressed its commitment to expand its investments in Africa. The ICD and IDB have joined to launch a Project Facility Fund, with $4.5 million initial funding aimed at 10 projects in Africa. ICD has also extended a $100million line of financing to Nigeria to fund SMEs in the country which are being disbursed through four local Nigerian banks. Standard Chartered Bank (SCB) made its entry into Kenya in April, 2014, its first such foray in Africa. Standard Chartered is capitalizing on its existing network of 28 conventional banking branches in Kenya, where enquiries about and demand for Shariah-compliant financial products have been increasing and using its unit in Nairobi to spearhead its Islamic finance activities into other African countries. One may wonder why SCB chose to launch its debut operations in Kenya rather than South Africa or Nigeria, the two largest economies in Africa. One of the major driver of SCB's decision to use Kenya as a hub is the adoption of the Capital Markets Master Plan (CMMP) which though still under consultation for comments, has detailed proposals for developing an Islamic finance and capital market synergy in Kenya both in the short and medium term. (African Banker, 2nd Quarter 2014, Issue 28).

It is evident today that the growth of Islamic finance in Nigeria requires legal practitioners both internal and external regardless of their faith to scale up their knowledge and exposure to Islamic banking and finance. They have the opportunity to play a role in drafting regulatory frameworks and guidelines or rendering consultancy services for the regulators. They will create the viable synergy between Islamic finance and the Nigerian Capital Market. They will prepare all Islamic commercial contracts for businesses and ensure Shariah and business compliance. The pending applications to the CBN from Conventional banks for Non-Interest banking licenses testifies to the avalanche of demand soon to visit the financial market for lawyers who have gained expertise in Islamic finance. Would the present Islamic finance lawyers be sufficient to quench the demand of the industry? Should we secure the services of lawyers overseas as is currently the case when we can and must develop our local capacity? This growing niche market prospect is an opportunity for lawyers to once again demonstrate our versatility and creativity as an indispensable driver in the growth of modern day commerce.

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