



Towards the development of Islamic banking and finance (IBF) in Ghana: A regulatory perspective

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Abstract

Ghana is one of Africa's largest untapped Islamic finance markets. Despite the passing of a bill that allows Islamic Banking and Finance (IBF) activities in the country, there has still not been a full-fledged Islamic banking operation. Several factors, ranging from regulations to awareness of the whole Islamic finance system, are offered as being critical to the smooth operationalization of the IBF system. This paper, therefore, engages this on-going subject from a regulatory perspective. This paper analyzes two main legal issues, using sections one (1) to nine (9) of 'The Banks and Specialised Deposit-Taking Institutions' Act 2016, Act 930.' The paper finds that while there has been a genuine commitment to providing the regulatory ambiance for IBF in Ghana, there is the need to intensify the efforts since Ghana has more to gain than to lose.

Keywords: Islamic banking and finance, *Shari'ah*-compliance, *Riba*, regulatory framework, Ghana

Introduction

Islamic Banking and Finance (IBF) practices are gradually gaining a huge global significance. Even though the practices can be associated with some contemporary developments, it is clear that the whole concept is not a recent phenomenon. Gelbard, Hussain, Maino, Mu, & Yehoue (2014, p. 3) ^[17], for instance, assert that "The concept of Islamic banking is ancient, but its contemporary form is recent." Therefore, to look at IBF developments post-1973 and stop there will be very disingenuous, as the history goes as far back as Prophet Muhammad's (P.B.U.H) era in Arabia. Islamic banking is, in fact, banking without interest, but not banking without profit; it only provides a more secure and ethical alternative (Cerović, Nikolaj, and Maradin, 2017) ^[10].

There has been a renewed interest in IBF since the first Jeddah international conference on Islamic Economics in 1976. Before that, there were records of IBF practiced in different forms in some countries within the Middle East and North Africa (MENA) region, even though not on a larger scale. With the steady rise in IBF activities, it became increasingly necessary to ensure that business transactions were undertaken strictly within the spirit of the *Shari'ah*. This attempt came with its unintended consequences. One of the peculiar consequences, for instance, had to do with the development of *Shari'ah*-compliant finance contracts or products to serve the needs of customers and prospective investors. Oral accounts, for instance, suggest that the Islamic Development Bank (IDB) ^[1] in the immediate aftermath of its establishment, took some time to start operations because it was still considering the types of products to commence with, as the available ones did not seem to receive the expected market recognition at the time. Today, however, the conversation has successfully gone past the development of Islamic finance contracts or

products to the implementation of *Shari'ah*-compliant standards. There is no denying the fact that IBF represents a very viable alternative to the conventional financial system, which has demonstrated consistent failure to address the financial needs of a vast majority of people in different parts of the world, especially the developing countries. Surprisingly, the IBF industry has recorded most of its highest figures over the last decade. According to the IFSB (2016) ^[20], the global financial services industry reached an overall total value of USD1.88 trillion as of 2015. Besides, 2010-2014 country-based figures reported showed Saudi Arabia, Qatar, and Pakistan enjoying double-digit median banking growth in assets (EY, 2016) ^[15]. Based on the estimated assets held by Islamic Financial Institutions (IFIs) worldwide, the growth of about USD3 trillion is expected over the next few years (BearingPoint Institute, 2015) ^[7], from an estimated \$2.1 trillion at the end of 2016 (S&P Global, 2016) ^[36]. There was, however, a supposed sluggish growth in 2017 due to "the impact of policy responses to the decline of oil prices in core markets; and the lack of standardization in the industry, which is still made up of a collection of local small industries," (S&P Global, 2016, p. 8) ^[36]. Based on the earlier growth momentum of global Islamic finance, the global Islamic financial services industry was estimated to reach USD6 trillion in assets by the year 2020 due to a growing number of new market entrants (MIFC, 2017) ^[28]. While Islamic finance has grown rapidly over the past decade, its banking segment has become systematically important in a dozen countries in a wide range of regions, responding to economic growth in countries with large and relatively unbanked Muslim populations (IMF, 2015) ^[21]. In Ghana, there has been a genuine commitment to providing the regulatory ambiance for IBF, following the passing of a new bill called 'The Banks and Specialised Deposit-Taking Institutions' Act 2016, Act 930' ^[39]. This paper consists of seven (7) main sections. Section one (1) captures the introduction. Section two (2) does a review of the literature. Section three (3) contains the methodology. Section four (4) contains the

¹. The Islamic Development Bank is an inter-governmental bank formed by an initially few OIC member countries. The bank currently has a UN observer status.

main discussion. Section five (5) concludes the paper. Section six (6) describes some possible implications of the study. Section (7) recommends further studies.

2. Review of Literature

2.1 The Concept of Islamic Banking and Finance (IBF)

IBF is a system that allows finance to operate under the umbrella of the *Shari'ah*. This means that it has prohibitions, permissions, and requirements within which to conduct businesses and other economic activities. The prohibitions include general and specific prohibitions. The general prohibitions, although limited, are highly effective and important for wealth creation and management. The specific prohibitions, however, are those that have explicit textual backgrounds; they include, *inter alia*, interest from a loan contract (*Riba*), compensation-based restructuring of debts, excessive uncertainty in contracts (*Gharar*), speculative activities such as gambling and chance-based games (*Qimar*)^[2] trading in debt contracts at a discount, and forward foreign exchange transactions. The permissions include, for instance, trading, risk and return-sharing business transactions, alms-giving (*Sadaqat*), interest-free loan (*Qard*), and other contributory contracts (*Tabarru*) such as donations and gifts. The requirements, *inter alia*, include documentation of contracts, honesty, and transparency in transactions. Undoubtedly, these prohibitions and permissions have various implications; they include guided freedom and innovation, individual behavioral changes, and principles-based self-regulation or *Shari'ah* supervision. It is worth noticing that IBF is not all about the prohibition of *Riba*^[3]. It encompasses all the necessary ingredients that are key to establishing a real economy within an Islamic framework and achieving justice and *Falah*^[4-5] (Barom, 2013)^[6]. To say that *Riba* is prohibited only because of exploitation has become a misnomer and, perhaps, only exposes one's limited understanding of the motive. Matter-of-factly, this is an assertion that has been propagated for decades, and potentially centuries, by early writers and commentators. It has only been recently technically understood that *Riba* prohibition has a lot, at least if not everything, to do with the lack of realism. *Riba* is non-increment or non-income generating in wealth and, therefore, does not reflect any real increment in worth or value. In this regard, IBF contracts or products are structured in such a way as to be representative of real assets or properties, whose rights and benefits can be legitimately claimed by the owner(s). It is concerning this that Kahf (2015)^[22] describes the general *Shari'ah* conditions of Islamic finance contracts to include qualifications of parties from whom consent is given; balance; moral commitment or compliance; *Shari'ah* permissibility, and realism.

2.2. Evolution of Islamic Banking and Finance (IBF) in Theory and Practice

The question is asked: Why has the Islamic world taken so

long to come up with an alternative to interest-based banking? Well, in the first place, note that an alternative to interest-based banking has been in existence even in various religious systems before the gradual transition to interest-based banking, especially in the modern, conventional sense of the word. In the second place, though, it could be argued that the Islamic world has been seen, through a series of historical events, to have reflected and replicated its Islamic economic values in its routine even though there came a time of an eventual decline. Contrastingly, however, the Judeo-Christian world has only done that, for the most part, before the European Renaissance^[6]. The answers, nevertheless, lie at the heart of the inevitable historical factors that the Islamic world had to deal with. Key among these factors include, for instance, imperialism, colonialism, and capitalism that accompanied the industrial revolution. Similarly, the cultural reductionism, in western economic thought, of Max Weber and others who have sought to explain the politics and society of the Middle East by reference to some unchanging entity called Islam, typically characterized as instinctively hostile to capitalism, indirectly portrayed the Islamic economic system as a stumbling block to economic revivalism (Rodinson, 2007)^[35, 7]. Despite these factors, a dilemma was created in the Muslim world, which would eventually see Muslims get trapped between two choices; a) accept the institution of commercial banking as it is, side-lining the issue of *Riba* so that they will deal with commercial banking without any reservations or b) accept the fact that interest charged by commercial banks is *Riba* and, as a result, make an attempt to develop an alternative system which will be critically in accord with the tenets of the *Shari'ah*. Fortunately, the latter seemed to have worked after about a centuries-long period of scholarly encounters, and a decades-long period of professional works, on the subject^[8].

A more contextual chronology of the history of IBF can be seen in the evolution of the theories of Islamic financial intermediation as explained by El-Tiby (2011)^[14], and as shown in the following table:

Table 1: Evolution of the Theories of Islamic Financial Intermediation

Period	Theory	Event/development
1870s-1960s	The first-generation theory	The emergence of Islamic banking ideas
1970s-1995	The second-generation theory	Conversion of conventional banking business model into Islamic, i.e., transitioning to Islamic banking
1995-2008	The third-generation Theory	Seeking convergence of Islamic finance with conventional finance
2008 onwards	The fourth-generation theory	Reversion to genuine Islamic banking

Source: Authors' Tabular Representation

It is an inalienable fact that the contemporary IBF movement is a reflection of the tireless efforts made by

². Also "*Maysir*," but "*Maysir*" is technically broader and originally used as a reference in the pre-Islamic context.

³. *Riba* (interest) means any excess paid by borrower to lender in addition to, or above, the principal. The excess could even be 1. It is a debt which does not increase or generate increment by itself.

⁴. Arabic word for success, especially from self-improvement, happiness and well-being.

⁵. Referring to success here and the hereafter, as explained by Barom (2013)^[6].

⁶. It can be observed today that the predominantly Judeo-Christian world centers most of the world's leading interest-based financial markets. This is partly attributable to the rise of corporate interest(s) against the theocratic systems of governance.

⁷. "The alleged fundamental opposition of Islam to capitalism is a myth, whether put forward with good intentions or bad" (Rodinson, 2007)^[35].

⁸. Check the Islamic Banker Limited on the Evolution of the Concept & Practices of Islamic Banking; from <https://islamicbanker.com>

Islamic scholars and institutions to find *Shari'ah*-compliant means and measures to eliminate interest-based financial and economic dealings from the Muslim world (Khan and Bhatti, 2008) ^[24]. The 1870s to 1900s, i.e. the first and second periods, for instance, saw the emergence of an Islamic awareness campaign about Islamic banking, which was largely in response to the influx of interest-based banking activities and the rise of Western capitalist economic policies in the Muslim world. Islamic banking, indeed, traces its roots back to the early days of Islam, yet its real rebirth can be attributed to the reform period that started in the late nineteenth century and early twentieth century by pioneer Islamic thinkers and reformers (El-Tiby, 2011) ^[14]. At about the same time, the need for financing the construction of the Suez Canal project was accompanied by the establishment of an interest-based commercial bank in Egypt. This was, however, not without criticisms. Upon further awareness of the interest-based banking system, the Islamic world witnessed the emergence of Islamic banks as an alternative to the interest-based banking system (Khan, 2017; El-Tiby, 2011) ^[25, 14].

The Mitghamar Islamic co-operative banks in Egypt and the Tabung Haji (Islamic Savings Association) in Malaysia emerged in 1963. The Mitghamar bank, regarded as the pioneer of the contemporary IBF movement, was successful not least because its operations were in trade and industry and on a Profit and Loss Sharing (PLS) basis, but also due to the increasing community support it received (Khan and Bhatti, 2008) ^[24]. Established in 1975, the Dubai Islamic Bank was the first Islamic bank to have incorporated the principles of Islam in all its practices. Interestingly, most of these events took place within the early periods, subsequently sparking a campaign for the enhancement of Islamic economic co-operation towards the end of the 1970s. By the end of the 1970s, the practice of IBF had already acquired significant momentum due to increases in the general economic prosperity of the Middle Eastern countries from the huge flow of petrodollars (Khan & Bhatti, 2008) ^[24]. The third period witnessed growing interests in Islamic banking in other parts of the world, including the West and Asia (El-Tiby, 2011) ^[14]. El-Tiby (2011) ^[14] adds that the fourth period, which began in the wake of the 2008 global financial crisis, gave the first real testament to the strength of the Islamic banking system; the solid performance of the Islamic banks during the crisis was the best proof that the basics and foundations of Islamic banks were solid and sound.

2.3. Critical Issues in the Development of Islamic Banking and Finance Regulations and the *Shari'ah*

Al-Harran (1995, p. 25) ^[5] highlights, "The establishment of Islamic banking and financial corporate entities is a new development in the contemporary corporate world. This is noticeable not only in Muslim countries but also in non-Muslim countries. These institutions provide Islamic services on the basis of a unique and just profit-and-loss sharing principle. However, such a novel working system should naturally be accompanied by a number of methodological and operational problems." Currently, most, at least if not all, of the key challenges in IBF are related to the legal and regulatory apparatuses. Traditionally, IBF operates within the full rigors of the *Shari'ah*, which most conventional finance laws and regulations have not structurally or sufficiently recognized as yet. There is an

undeniable fact that the *Shari'ah* is fundamentally Islamic. In most cases, however, secular state laws are predominantly composed of, or designed to accommodate conventional finance laws. For the Muslim world in particular, and the Global South in general, the problem has become worse off due to the inability to revise, or reverse, the conventional laws to properly fit local content and to match the pace of current socio-economic development ^[9]. Undoubtedly, the *Shari'ah* has not found enough space to operate in the global legal system despite Muslims making a significant part of the global population ^[10]. The consequence of this has been greatly felt by IBF, which has some regulatory hurdles as the topmost threats to its current and future developments.

The position of law and authority in Islamic thought is a *sine-qua-non* to understanding how the *Shari'ah* informs Islamic finance (Ahmed, 2007) ^[4]. Islamic authority comes from two main sources – the Qur'an and the *Sunnah*. To get a real understanding of the conceptual foundations of the *Shari'ah*, therefore, it is necessary to trace its roots to its early formative stage (Faruqi, 2006) ^[16]. At the heart of the development and growth of the Islamic financial services industry is compliance with Islamic core principles or tenets (Ahmad and Hassan, 2009) ^[3]. IBF tenets are generally derived from the *Shari'ah*, but not all aspects of Islamic finance are found in the classical sources (Ahmed, 2007) ^[4]. Today, for instance, Islamic finance can be more realistically thought of as encompassing some basic codes from the classical sources enhanced by the needs and realities of life in the twenty-first century (Ahmed, 2007) ^[4]. ^[11] Over the past few years, though, the development of Islamic financial market(s) (IFM), Islamic Financial Institutions (IFIs), and their products have accelerated to a remarkable pace (Wackerbeck, 2007) ^[40]. Among the reasons for this development are not only the strong demand for *Shari'ah*-compliant financial services but also the competitiveness of some Islamic financial products, which attract both Muslim and non-Muslim investors (Wackerbeck, 2007) ^[40]. As new developments unfold in the IBF sector, Delorenzo (1998) ^[11] discovers that *Shari'ah* advisory capacity of boards or individual advisors will become increasingly proactive. In this regard, discussing the role of *Shari'ah* experts in the development of Islamic finance and economics will call for a more strategic and structural look at the very nature of economics and the focus of the *Shari'ah* (Siddiqi, 2007) ^[38]. Likewise, in addition to the matter of ensuring *Shari'ah*-compliance through advice to management on how transactions may be structured, or how investments may be screened, the *Shari'ah* supervisory boards of the future will increasingly become involved in issues of advocacy and corporate governance and policy (Delorenzo, 1998) ^[11]. *Shari'ah* supervision finds itself increasingly challenged, even within the Islamic finance sector, as new Islamic financial alternatives are developed ^[12] nonetheless, a proactive *Shari'ah* supervision can bring attention and respect to firms by encouraging them to stick

⁹. Most of these laws are a legacy of the Western colonial systems. Some of them, however, are crafted according to Globally Accepted Standards.

¹⁰. Statistics indicate Muslims have the fastest growing population in the world; check Pew Research Center (2011) ^[32].

¹¹. IBF practices fundamentally follow the general conditions of finance in the *Shari'ah*. *Ijtihad* also forms a substantial part of the *Shari'ah* in the administration of IBF (Faruqi, 2006) ^[16].

¹². Part of the *Shari'ah* supervisory challenge in the Islamic financial industry is the issue of technology (Delorenzo, 2000) ^[12].

to the values while, at the same time, harnessing their competitive capacities (Delorenzo, 2000) ^[12].

The current debate on regulatory issues has a variety of approaches (Siddiqi, 2004) ^[37]. Regulations, for instance, acquire more significance in a sector where they are needed to influence the ability of IFIs to compete favorably and to innovate the Islamic credibility of those institutions and the overall financial performance of the industry (Benaissa, Jopart, Maddux, Tanrikulu, and Whelan, 2007) ^[8]. "Standardized regulation of Islamic finance is one of the main issues facing the IFS industry today. No single regulator exists to perform the task of standardized regulation. Therefore, the regulation of the IFS industry takes place at two levels: By the respective national regulators where the IFS firms are domiciled, and by various industry-sponsored or industry-specific entities" (Ibrahim, 2007, p. 63) ^[19]. More crucial to standardization is the issue of corporate governance. Following other effective practices and adopting relevant principles that have proven to be successful in other regulatory jurisdictions can help the advances in the effective corporate governance of IFIs (Hassan and Dicle, 2007) ^[18]. Hence, not only will standardization benefit Islamic Banks (IBs) in terms of international financial and operational benchmarking, it will also enable IBs to compare themselves to Conventional Banks (CBs) and each other (Hassan and Dicle, 2007) ^[18].

Despite the debate surrounding what would be the best way to regulate Islamic banking, some progress has been made with the introduction of many frameworks, including some regulatory concepts emerging as potential best practices; nevertheless, recent efforts initiated by the industry show great promise in tackling these issues (Benaissa *et al.*, 2007) ^[8]. "Arguably the Islamic finance system has become an accepted phenomenon in the international financial system. The recent unprecedented rapid growth of the Islamic financial system is gradually changing the status of the Islamic banking system as an alternative to the conventional counterpart to a mainstream contender. Due to its universal growing acceptance and popularity, many countries are embarking on legal and regulatory reforms to sustain the global development of the system. This has generated a lot of issues and challenges for the sustainable growth of the financial system. Despite this, a supportive uniform regulatory and legal framework to enhance global integration of the system is yet to be developed. Therefore, considering the critical role of sound and robust legal and regulatory framework in the sustainable development of the Islamic banking system, it is imperative to align the regulatory and legal framework in line with the development" (Muttalib, 2015, p. 1) ^[31].

Even though IBF has not yet attained full development, laws are providing for both comprehensive and parallel IBF systems in several countries. However, there are still key issues of concern regarding the establishment of IBs, for instance, under conventional laws.

2.4. IBF in Sub-Saharan Africa (SSA)

Generally, there are three key driving pillars of IBF in Africa. First is financial inclusion due to access to financial services; second is the spur of economic activities due to SME funding avenues; third is infrastructure funding through Sukuk, additional funds, and project financing mechanisms (MIFC, 2017) ^[28].

Starting with the SSA region, Gelbard *et al.*, (2014) ^[17] is of

the view that although Islamic finance has potential, given the region's demographic structure and potential for financial deepening, it remains small despite the rapidly growing financial sector in some SSA countries in the past two decades. Besides, while the demand for Islamic finance products is likely to rise in the coming years, almost half of the region's total population remains to be banked (Gelbard *et al.*, 2014) ^[17]. Mlachila, Cui, Jidoud, Newiak, Rodzewicz-Bak, Takebe, Yanmin, Zhang, and Jiayi (2016) ^[29] also indicate that there is a negative correlation between financial inclusion and the size of the Muslim population in SSA. Demircug-Kunt, Klapper, and Randall (2013) ^[13] add that only 24% of Muslims juxtaposed with 44% of non-Muslims in the region have bank accounts. With this given trend, MIFC (2017) ^[28] suggests that Muslims are more likely than non-Muslims to report religion as a barrier to having bank accounts. The increase in the population of the region to about 386 million by 2030, as reported by the Pew Research Center (2011) ^[32], coupled with expectations in the financial services industry, signals a promising future for financial activities, Islamic or otherwise, in the region (Gelbard *et al.*, 2014) ^[17]. Even though IBF is not without challenges in SSA, several opportunities are expected to be tapped from it; these include developing retail products to small and medium-sized enterprises, benefitting from the growing middle class along with its young population, tapping from *Sukuk* issuance to finance large infrastructure needs, increasing the depth and breadth of financial intermediation, attracting the larger non-Muslim population by broadening the range of available options with different financial instruments, enhancing credit creation, among others (Gelbard *et al.*, 2014) ^[17]. It should be noted, however, that these opportunities can hardly be extracted if IBF is practiced in the region at the expense of *Shari'ah*-compliance, which almost always sounds like "the big elephant" in the room. Therefore, it becomes necessary for interested countries to fully understand the modus operandi of IBF.

On the West African sub-region, the MIFC (2017) ^[28], on financial inclusion, for instance, illustrates that borrowing from family and friends in Niger, Nigeria, and Senegal at 56%, 37.5%, and 41.4% as opposed to borrowing from formal financial institutions at 1.4%, 5.3%, and 3.5% respectively. Coincidentally, these West African Countries have some of the highest Muslim populations in the world. Surprisingly, however, this borrowing trend is typical of several West African countries, given the relatively unbanked nature of their Muslim populations (Demircug-Kunt, Klapper, and Randall, 2013) ^[13]. Abdullahi (2013) ^[1], based on the sizes of GDP, population, and percentage of Muslims, does a cross-country analysis of the opportunities and obstacles in the way of establishing IBs in six West African countries, including Ghana, and concludes that there is a slow take-off of the IBF system despite the relatively larger Muslim populations of the West African sub-region. Therefore, the fact that the system will have a lot of catch up to do in this region is not enough an excuse not to embrace it, considering the length of time and process it took other parts of the world to embrace it (Abdullahi, 2013) ^[1]. However, "The reason why the work is more tedious in West Africa is that the obstacles surmountable are enormous. These obstacles are not only restricted to problems such as that of liquidity problems, slow development of new products, regulatory issues,

competition from bigger conventional banks, which are common to the global Islamic banking industry but includes others such as opposition from West Africa's Christian communities, low economic status of the Muslim population, scarcity of skilled manpower, ignorance of the workability of the system, governments indifference to the success or otherwise of the system in their domains," (Abdullahi, 2013, p. 43) ^[1]. Therefore, despite the significant success accomplished by, for instance, the Central Bank of Nigeria (CBN) through incorporating key IBF regulations into its mainstream regulatory structures to facilitate rapid supervision of IBF activities within its jurisdiction, especially following a decades'-long series of banking reforms in Nigeria (Central Bank of Nigeria, 2012; Karkarku, 2016) ^[19, 23], the support of, and investments from, the established Islamic banking markets such as Malaysia, the United Arab Emirates, Saudi Arabia, and Bahrain will be, somewhat, generally useful in the SSA's IBF drive, going forward (Abdullahi, 2013) ^[1].

2.5. IBF in Ghana

Despite the passing of a bill to allow IBF in the country, there has still not been a full-fledged Islamic banking operation. Several reasons, ranging from the lack of regulations to the lack of knowledge about the whole Islamic finance system, are offered as the likely stumbling blocks to introducing the IBF system in the country (Muhammad, 2016) ^[30]. The news about the introduction of IBF in Ghana has received mixed feelings among Ghanaian consumers because some members of the public recognize its potential economic benefits even though they believe its dangers are far greater (Mbawuni & Nimako, 2016) ^[27]. Before the recent clean-up of the financial sector, for instance, there were two licensed Islamic microfinance institutions in Ghana – Ghana Islamic Micro-Finance (GIMF) and Salam Capital (Mbawuni and Nimako, 2016) ^[27]. Going forward, in the event of full-fledged IBF activities, the BoG has been charged not to allow licensed Islamic banks to discriminate as to whom to do business with (Acquah-Hayford, 2015) ^[2]. Be that as it may, any attempt to introduce full-fledged IBF activities will certainly have its prospects and hurdles. Mbawuni and Nimako (2016) ^[27] conclude that the economic, legal, political, and business environment characteristics of the Ghana Banking Industry (GBI) and the economy of Ghana present great prospects for the introduction and adoption of IBF in Ghana; these include the opportunity for employment, the democratic political system of governance, flexible industry regulatory framework, existing productive agrarian sectors, high demand for banking products, high-interest rates, Muslim population, and quest for socially responsible business practices. On the other hand, however, Mbawuni and Nimako (2016) ^[27] recognize that IBF is likely to face some challenges in areas such as compliance with *Shari'ah* law and governance, consumer behavior factors, and performance of IBF institutions. Ghana is not a member of the Organization of Islamic Co-operation (OIC). If it does become a member, it will find it easier to build a relationship not just with the IDB, but also with the countries that have more advanced Islamic finance infrastructure (Abdullahi, 2013) ^[1]. This potentially means attracting new IBF entrants to tap into Ghana's vibrant financial industry, and attracting foreign direct investments to boost the economy. Currently, there is a great deal of

cordial relationship and understanding among Muslims and non-Muslims which makes it conducive for IBF operations in Ghana. One of the major obstacles hindering the smooth establishment of Islamic banking, however, is the existence of laws and regulations originally promulgated to cover the conventional banking system (Abdullahi, 2013) ^[1]. This means that a series of reforms will have to be made to accommodate IBs if they will be established. Well, some measures have been taken by the BoG to respond to any such demand, maybe in their near future, as Quist (2015) ^[34] states. Quansah (2015) ^[33], in another study, finds that none of 17 out of 27 licensed banks operate an IBF window in Ghana although some banks hint they operate IBF windows in their original countries of operations. However, 1 of the 17 banks indicates that it offers interest-free loans as part of its product offerings although it does not operate an IBF window. Besides, the interest-free loan is not designed in line with *Shari'ah*-compliance, but it is added to the bank's normal operations. The study also shows a low level of knowledge of the nature of IBF products even among conventional bankers. For this reason, Quansah (2015, p. 72) ^[33] warns, "Before the IBF model can be practiced effectively by bankers, there is the need for bankers to have adequate knowledge on the nature of IBF products." Further, the study shows bankers are largely neutral and partly pessimistic about the possibility of the IBF model to improve competitiveness; also, there is a great deal of uncertainty among bankers about the possibility of the IBF model increasing their customer base. With regards to some of the challenges, the study shows that there is a general agreement among bankers on the possibility of interest-free loans reducing their profitability; bankers also agree education on the model is low; bankers are generally unaware of the existence of *Shari'ah* boards and their functions; bankers are generally pessimistic about the outcome of operating the Profit and Loss (P&L) sharing mechanism; and, finally, bankers are generally neutral on the existence of regulation and guidelines set by the BoG for the operation of the model in Ghana. Overall, these mixed-feelings lead Quansah (2015) ^[33] to conclude that the IBF model does not have positive prospects in the near to medium-term. Frankly, though, the study provides good literature on the introduction of the IBF model in Ghana. Critically, however, the study is overly-concentrated on bankers' perspective of the IBF model, with virtually no input, whatsoever, by existing and prospective bank customers. Similarly, the study does not demonstrate a considerable understanding of the dynamics of the IBF model; it predominantly relies on second-hand knowledge, which is usually based on a conventional misconception of the IBF model in particular, and a global misconception of Islam in general.

3. Methodology

The paper employs the doctrinal legal research methodology, otherwise known as the black-letter methodology, to analyze two main legal issues that emanate from 'The Banks and Specialised Deposit-Taking Institutions Act 2016, Act 930.' The following are the two main legal issues:

1. Whether or not the BoG can grant a full-fledged (100%) standard Islamic Banking License under Act 930.
2. Whether or not a new or an existing CB, tailoring some

of its products along Islamic banking and finance principles, i.e., non-interest-bearing banking and finance principles is possible under Act 930.

This methodology enables a researcher to analytically study existing laws, related cases, and authoritative materials on some specific matter, or study legal propositions based on secondary data of authorities (Kharel, 2018) ^[26]. Hence, based on the subject of the paper, this methodology is chosen to help ensure the internal consistency of the secondary data used for the discussion. The data are extracted from the ‘*The Banks and Specialised Deposit-Taking Institutions Act 2016, Act 930,*’ and composed of sections one (1) to nine (9) of the provisions therein.

4. Discussion

In 2016, the *Banking Act 2004, Act 673* was repealed by the ‘*The Banks and Specialised Deposit-Taking Institutions Act 2016, Act 930*’ ^[39] which is the current primary Statute governing the Ghana Banking Industry (GBI) and giving the Bank of Ghana (BoG) much wider scope and powers. *Act 930* has, to a larger extent, consolidated the laws governing deposit-taking and regulated the various institutions that are in the deposit-taking business. Notwithstanding, the coming into force of *Act 930* does not apply to credit unions and leasing companies that are licensed, regulated, and supervised under the *Non-Bank Financial Institutions Act 2008, Act 774*. Generally, ‘*The Banks and Specialised Deposit-Taking Act 2016, Act 930*’ ^[39] serves as a documented regulatory framework for the Banking Sector in Ghana. However, a few key selected provisions would be considered for this paper.

Currently, Ghana’s banking industry has several flexible regulatory instruments that allow for continuous review to reflect the emerging dynamics of the business environment in Ghana. First, by law and its policy, the BoG has not closed the admission of new entrants into the GBI. This provides opportunities for other banks and financial institutions to apply to the BoG for a license to operate both conventional and innovative forms of banking and financial operations such as IBF. Second, the BoG, as an open regulator, welcomes innovations, contributions, and suggestions from stakeholders towards continuous improvement in existing banking regulatory frameworks. To this end, as the business environment in Ghana is affected by international and local business innovations and developments in IBF, it becomes critically relevant for policymakers to allow the banking regulatory framework to be adjusted to incorporate IBF development. This is one way the banking laws and regulatory instruments could be consistently relevant to the banking and other financial institutions for which the laws are made. It was, therefore, in this regard that Ghana, in 2016, reviewed its banking regulations to incorporate key aspects and implications of IBF. Thus, the flexible banking regulatory framework provides opportunities for the introduction and success of IBF in Ghana. The framework, as stipulated by *Act 930*, intends to achieve the following;

- Grant a universal banking license allowing either of;
 1. A full-fledged (100%) standard Islamic banking.
 2. A new or an existing CB, tailoring some of its products along with Islamic banking and finance principles, i.e., non-interest-bearing banking and finance principles.
- Study the IBF modus operandi to adequately

understand how the IBF model works, and to properly monitor IBF operations within the Ghanaian jurisdiction.

Pursuant to *Section 1 of Act 930*, however, the Act does not apply to credit unions and leasing companies that are licensed, regulated and supervised under the *Non-Bank Financial Institutions Act 2008, Act 774*, but it is limited to banks; specialized deposit-taking institutions; financial holding companies; and affiliates of banks, specialized deposit-taking institutions and financial holding companies. Again, the Act (*Act 930*) is to be read in tandem with the *Companies Act 2019 (Act 992)* since pursuant to *Section 2* and *Section 4 of Act 930* respectively, only body corporate incorporated under the laws of Ghana has the locus to apply for a license from the BoG. However, Corporate Bodies not incorporated under the laws of Ghana may also engage in the banking business with the prior written approval of the BoG.

Now, the BoG is mandated, pursuant to *Section 3 of Act 930*, to be the sole regulatory body of the GBI. This Section conferred on the BoG the overall supervisory and regulatory authority in all matters relating to deposit-taking business. This includes, but limited to, promoting the safety and soundness of banks and specialised deposit-taking institutions, considering and proposing reforms of enactments relating to deposit-taking businesses, ensuring the soundness and stability of the financial system, and protecting depositors in the country through the regulation and supervision of financial institutions. Again, only the BoG can have the locus to issue a license to persons (i.e., body corporate) seeking to engage in the banking industry pursuant to *Section 5 of Act 930*. However, the person must meet the requirements stipulated under *Section 6* as well as satisfy the procedures under *Section 7* of the Act. Under *Section 8*, the BoG may determine the type of license to be issued to the applicant. It must be noted, however, that the BoG retains the power to refuse the issuance of a license pursuant to *Section 15*, or revoke a license pursuant to *Section 16* if it is in the view of the BoG that the conditions for the issuance have not been met or complied with.

In analyzing the statutory provisions in the context of IBF, two main legal issues arise;

1. Whether or not the BoG can grant a full-fledged (100%) standard Islamic Banking License under *Act 930*; and
2. Whether or not a new or an existing CB, tailoring some of its products along with Islamic banking and finance principles, i.e., non-interest-bearing banking and finance principles, is possible under *Act 930*.

Following the above-stated principles of law, in resolving the stated legal issues, it can be argued that since the person must meet the requirements stipulated under *Section 6* as well as satisfy the procedures under *Section 7 of Act 930*. *Ipsissima verba, Section 6 of Act 930* titled requirements that:

1. “A person shall not accept a deposit from the general public or carry on a deposit-taking business in or from within the country without a licence issued in accordance with this Act.
2. The Bank of Ghana may prescribe classes of liabilities that constitute deposits.
3. Where it is uncertain in a particular case whether a

particular liability of a bank or specialised deposit-taking institution is to be regarded as a deposit, the Bank of Ghana shall determine whether that liability is a deposit.

4. A person shall not use a licence under this Act for a purpose other than that for which the licence is issued.”

The BoG, pursuant to *Section 7 of Act 930*, again, provides the procedures for the application for a license as follows:

1. It must be in writing.
2. Must include a certified copy of the company regulation and other relevant documents.
3. Personal details of the shareholders and the share values.
4. If it is a body corporate group, a complete description of the group structure as well as the inclusion of the modus operandi of the group.
5. The personal details of the proposed directors and key management, including their business and personal history for the preceding 10years and a statutory declaration to that effect.
6. A Feasibility report and financial projection for the first 5years.
7. Documented evidence of the proposed bank or special deposit-taking institution.
8. A statement on the measures and structures intended to be adopted by the corporate body to ensure business efficacy with sound corporate governance principles.
9. An indication of the type of license applied for.

Apart from the requirements under *Section 7*, foreign applicants must include the certificate of incorporation, company regulation, and other related instruments and by-laws or similar documents, as well as written confirmation from the supervisory authority in the country of incorporation. *Section 9 of Act 930* further established the pre-requisites for a license to include:

- a. The feasibility report submitted by the applicant under section 7 is based on sound analysis under reasonable assumptions;
- b. The proposed directors and key management personnel of the applicant are fit and proper persons;
- c. The significant shareholders are suitable and the ownership structure of the proposed bank or specialised deposit-taking institution will not hinder effective supervision, including supervision on a consolidated basis;
- d. The paid-up capital of the applicant is adequate and the original sources of capital are acceptable and do not include borrowed funds;
- e. The arrangements for governance, including accounting, risk management, and internal control systems and records of the applicant are adequate;
- f. The applicant is not a shell company; and
- g. The applicant has complied with this Act, the Regulations, directives, and other legally-binding instruments made under this Act and any conditions that the Bank of Ghana may impose.”

It can be inferred that Act 930 has made provisions for IBF operations. However, as it stands now, the BoG, unlike the CBN, has no unique *Shari'ah* supervisory and/or advisory unit that can work to help oversee IBF operations in Ghana

^[13]. This could be partly due to the lack of sufficient regulations in that regard since the regulator—the BoG—is still studying the nature of the IBF system in its entirety. Now, this is especially necessary for the nature of the *Shari'ah* corporate governance framework—centralized or decentralized. Hence, the need for a *Shari'ah* board charged with the responsibility of ensuring the implementation of best practice’ standards must be emphasized even though it can be done at the level of the IBs. Once the *Shari'ah* boards of the IBs come out with their sets of regulations, for instance, the regulations have to be scrutinized by the BoG; it is the same regulations that the BoG will use to assess the performance of the IBs and their windows if any. It is, therefore, submitted that since the statutory framework for the establishment of the banking institution in Ghana will not be breached if the same is to be applied in the establishment of an IBF ^[14]. It is strongly argued that this provides opportunities for other banks and financial institutions to apply to the BoG for a license to operate both conventional and innovative forms of banking and financial operations such as the IBF. Second, the BoG, as an open regulator, welcomes innovations, contributions, and suggestions from stakeholders towards continuous improvement in existing banking regulatory frameworks. To this end, as the business environment in Ghana is affected by international and local business innovations and developments in IBF, it becomes critically relevant for policymakers to allow the banking regulatory framework to be adjusted to incorporate IBF development.

5. Conclusion

Ghana stands to benefit tremendously from IBF activities on various fronts. On the macroeconomic front, for instance, there are benefits such as opening other employment avenues, improving political or democratic accountability, providing for a flexible industry regulatory framework, supporting the existing productive agrarian sectors, stimulating the demand for banking products through financial inclusion, helping to manage the problem of exorbitant interest rates, helping to fund the relatively huge infrastructure gap, and normalizing the quest for socially responsible business practices. While these benefits can be reaped from IBF operations, there could also be challenges in areas such as compliance with *Shari'ah* finance law and corporate governance, consumer behavior factors, among others. No doubt operating IBF in Ghana may have its challenges, regulations, or otherwise. However, this does not stand enough grounds to impede the development of the IBF system in Ghana, especially at the time that the IBF industry is picking up across the globe and catching up with new developments in the global financial industry. Therefore, while there has been a genuine commitment to providing the regulatory ambiance for IBF in Ghana, there is still more to gain than to lose. Hence, the need for a sound regulatory framework that monitors IBF in Ghana cannot be overemphasized.

6. Implications of this Study

Although key stakeholders have demonstrated a genuine commitment to allow the development of IBF in Ghana,

¹³. Whether or not this can be incorporated into the banking supervision department to achieve some homogeneity is another subject.

¹⁴. IBF operates not only in accordance with the tenets of the *Shari'ah*, but also in accordance with the legalities of a certain domain.

there still stand other critical issues insufficiently addressed at the regulatory level; a) the issue of reserve requirement rate b) the issue of interest, or non-interest, bearing last-resort lending c) the issue of product-based or product-specific regulations and d) the BoG's alliance with the IDB or, more generally, Ghana's membership with the OIC. Being such a predominantly conventional finance setting, it is expected that introducing IBF will not be, but with its consequences. The point, however, has to be made that Ghana will not be the first SSA country to introduce IBF; other SSA countries like Uganda, Kenya, and South Africa already have some regulatory procedures for any form of IBF activity that is carried out within their jurisdictions. The UK itself, with such a huge conventional financial center, is also craving to be the leading Islamic financial center of Europe. In West Africa, Nigeria seems to set a good example as far as regulating IBF activities is concerned; the Gambia, Senegal, and Ivory Coast all have experiences Ghana can learn from. Relevant to this paper, therefore, the following are some key regulatory implications in the operationalization of IBF in Ghana:

1. **Reserve Requirement Rate:** It is true that only qualified parties or persons will be, and should be, issued the universal banking license for non-interest financial transactions or products. Being that the IBF model has not been fully experimented in Ghana just yet, and given that the issue of reserve requirement is generally one of the main challenges of smaller or newer banks, it will be advisable for the BoG to adopt a flexible or floating reserve requirement regime for banks engaged in 100% non-interest financial activities conducted along with Islamic banking principles, at least in the beginning.
2. **Non-Interest Last Resort Lending:** Provided that those banks engaged in non-interest financial activities will not violate the non-interest finance principles, pursuant to *Section 6 of Act 930*, it should be possible for the BoG to provide them with non-interest last-resort financial structures. This will serve as an incentive to boost their capacities.
3. **Product-Based Regulations:** There is also the crucial need to design product-specific regulations for the non-interest financial institutions. The reason being that Islamic finance contracts may have some distinct characteristics that conventional finance contracts do not have due to the *Shari'ah* base. Hence, applying the traditional approaches to regulating the contracts may be an exercise in futility. Indeed, this is why incorporating a *Shari'ah* supervisory or advisory unit into the banking supervision department may be an unwavering and inextricable fact.
4. **Ghana's Membership with the OIC:** Joining the OIC takes Ghana a step closer to dealing with the IDB. The IDB is an inter-governmental bank. Therefore, it becomes pressing that Ghana's membership with the OIC only opens the floodgates for the economy to receive some boost in any eventual dealings with the IDB in the sense of raising additional, non-interest financial resources to finance its huge infrastructural gap.
5. **Research and Development (R&D):** R&D constitutes the bedrock of any industrialized society. Today, for instance, it can be argued that there is no industrialization without adequate financialization. Day

in and out, very interesting developments occur in the global financial industry. With Islamic finance and economics widely perceived to be one of the most sustainable financial and economic alternatives, it is only appropriate that more research is done to fully come to grasp with the nitty-gritty of the model. This, therefore, assigns extra responsibilities to the already existing research department of the BoG.

6. Recommendations for Further Study

This paper uses selected sections of '*The Banks and Specialised Deposit-Taking Institutions' Act 2016, Act 930*'^[39] to analyze two key arguments that may arise in the development of IBF in Ghana. Future studies should add to this research by looking at the *Shari'ah*-compliance mechanisms of prospective IBs and IFIs in Ghana.

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