

The Legislative Challenges of Islamic Banking in Tanzania

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Abstract

Tanzania is a multi-religious and a multi ethnic society with a common law legal structure. The Islamic Banking system emerged in 2008 in Tanzania and is growing very fast. However, the adoption of Islamic banking in Tanzania has been accompanied by some legislative challenges which cannot effectively serve the purpose for which the financial institutions were set up. This is a result of the single legal framework working with the Islamic Banking. In this context the enactment of the legislation to allow Islamic Banking to operate according to Islamic rules are needed and give room in financial markets for Islamic financial transactions.

Keywords: key words, Tanzania, Islamic Law, Islamic bank

1. Introduction

The word bank in Tanzania has been defined as an entity that is engaged in the banking business. The banking business means the business of receiving funds from the general public through the acceptance of deposits payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, and to use such funds, in whole or in part, for loans or investments for the account of and at the risk of the person doing such business.¹

Therefore, a bank is an institution which provides fundamental banking services such as accepting deposits and providing loans. Though, there are also nonbanking institutions that provide certain banking services without meeting the legal definition of a bank like Mobile Telecommunication Companies and Savings and Credit Co-operative Societies. Before the establishment of banks, the financial activities were handled by money lenders and individuals. Again there were no security of public savings and no uniformity regarding loans. So as to overcome such problems the organized banking sector was established, which was fully regulated by the government. Therefore, the banking sector is not a static rather is a dynamic. It is product of centuries and the development which has taken place worldwide. It is also the product of the method of trial and error and experiences which were made and the subsequent results related to the acceptance of money and valuables as deposits, keeping them as such, lending them, whether to private individuals or to states or other bodies and for controlling the multifarious and multi-dimensional activities which in the beginning were only trivial and could be ignored.² However with the growth of time, it became international in character and multi-dimensional in nature calling for actions on the part of the states as the actions on the part of the individuals failed and state control became eminent.³

1.1 The history of bank in Tanzania: Colonial era

The history of banking industry in Tanzania is one of immemorial antiquity.⁴ Its origin is beyond the range of authentic history. The banking system in Tanzania has a long history from the colonial era to the times of socialism regime and now to the market oriented economy.⁵ There have been changes in the sector after the enactment of the Banking and Financial Institutions Act No 12 of 1991 whereby the state owned banks have been restructured and the private banks were licensed to carry out the banking business.⁶

1.2 Pre-Independence

The Tanzanian⁷ banking system was developed by Germans to the former Tanganyika during colonial era in 1905, *Deutsche Ostafrikanische Bank* was established in Dar es Salam. The bank had the authority to issue its own currency, notes and coins. Another bank was *Handles Bank of Ostafrikanische* which was established in 1911 in Tanga. There was also another bank institution called Official Saving Bank which was established for the purpose of supporting colonial interests.⁸ During the British colonial era, the banking system continued to

¹ Section 3 of the Bank and Financial Institution Act, no 5 of 2006.

² Palfreman, D. & Ford P. (1992), *Elements of Banking*, CIB's Bankers Workbook Series 2nd Edition.

³ Gup B.E. [ed.] (2007). Corporate governance in banking. A Global Perspective, Edward Elgar, Cheltenham-Northampton.

⁴ *ibid*

⁵ Mutaitina, Oswald. Liberalisation of the Banking Industry in Tanzania: Issues and Prospect, The African Journal of Finance and Management Vol. 7 No 2.

⁶ *Ibid*.

⁷ United Republic of Tanzania is a union of the former independent states the then Tanganyika and Zanzibar. They merged on 26th April 1964 to create a union with the adoption of the Articles of Union between Tanganyika and Zanzibar.

⁸ E.J.M Wiketye, Elements of Money and Banking with Reference to Tanzania Economy, Research Information and

operate and hence the East African Currency Board was established in 1919 to manage the supply and exchange of currency in the then British colonies of East Africa and neighbouring countries.¹

While in Zanzibar, the history of banking industry is different to that of former Tanganyika. The banking industry in Zanzibar started in many years ago before the coming of British. The bank practices can be traced way back during the time when the Sultan Said shifted his settlement from Oman to Zanzibar. It was at this time when Zanzibar commercial prosperity grew and hence it attracted many foreigners resulted into the establishment of banks based on family firms. The practice of bank during that time was based on Islamic banking, this was continued until the revolution of 1964.²

1.3 Post Independence and Revolution

The then Tanganyika and Zanzibar made a union which resulted into the name of the United Republic of Tanzania. Among the matters falling under the sphere of the union matters is banking system.³ The banking system is under the Bank of Tanzania (the Central Bank) which was established in 1966, after the Currency Board stopped functioning in 1966. The Bank of Tanzania (BOT) was established in 1966 by the BOT Act No 12 of 1965 providing for the establishment, constitution and functions of the Bank of Tanzania as the central bank. Consequently, the Act was repealed and re-enacted by the Bank of Tanzania Act No.1 of 1995 and Bank of Tanzania Act No. 4 of 2006, the reasons were; to provide for more responsive regulatory role of the bank of Tanzania in relation to the formulation and implementation of monetary policy, to provide for the supervision of banks and financial institutions, to provide for other related matters.

Shortly after its independence and the formation of union, Tanzania pronounced the Arusha Declaration in 1967 in which, all private banks were nationalised.⁴ It was in 1990, when Tanzania under the trade liberalization policy, the banking and finance sector through the Banking and Financial Institutions Act No 12, 1991 which gave the way for the establishment of private banks in the country. The introduction of the private banks in Tanzania has changed the traditional banking system to modern banking. This includes mobile banking and Islamic banking.⁵

2. The Islamic Bank

Islamic banking is a system of banks governed and guided by the Islamic laws (*Sharia*). For the banks to be considered to be offering Islamic services they are required to conform to the Islamic rules and norms; in other words, they are required to make religious features integral to their operations. There are five religious features of Islamic Banks; the first feature is prohibition of interest (*riba*) in all transactions. The second one is the business and investments are undertaken on the basis of *halal* (legal/permitted) activities. The third feature is that *maysir* (gambling) is prohibited and transactions should be free from *gharar* (speculation or unreasonable uncertainty). The fourth feature is that *zakat* is to be paid by the banks for the benefit of society and all activities should be in line with Islamic principles. Finally, there should be a special Sharia Board to supervise and advise the bank on the propriety of the transaction.⁶

The nature of the relationship between customers and the Islamic bank is different from that of the conventional banks. Indeed, for conventional banks the relationship is that of a bank and borrower/depositor, whereas for Islamic banks the relationship is that of a bank and a partner.⁷ In other words, in Islamic banking, customers are regarded as investors and entrepreneurs. Therefore, in Islamic banking, the banks usually provide finances through participation whereby investors and banks provide capital jointly to carry out business and share profits generated or losses incurred according to pre-agreed ratio.⁸

2.1 The Islamic Bank in Tanzania

The Bank of Tanzania (BoT), the country's central bank has allowed the establishments of Islamic Bank to

Publication Department of Mzumbe Publisher 2006 pg111. C.S.Binamungu and G.S.Nwilimi , Regulation of Banking Business in Tanzania (2006) page 39

¹ C.S.Binamungu and G.S.Nwilimi , Regulation of Banking Business in Tanzania (2006) page 39

² *Ibid* page 38

³ Item 12 of the First Schedule Of *The Constitution Of The United Republic Of Tanzania 1977*

⁴ Mutaitina, Oswald. Liberalisation of the Banking Industry in Tanzania: Issues and Prospect, *The African Journal of Finance and Management* Vol. 7 No 2.

⁵ *ibid*

⁶ M. Kabir Hassan and Mervyn K. Lewis (Eds.), *Handbook of Islamic Banking*. Edward Elgar, Cheltenham, UK. (2001:38)

⁷ Marimuthu, M., Jing, C.W., Gie, L.P., Mun, L.P., and Ping, T.Y., "Islamic Banking: Selection Criteria and Implications", *Global Journal of Human Social Science*, Vol. 10, No. 4, 2010, pp. 52-62.

⁸ Henry Chalu: Exploring the distinguishing features of Islamic Banking in Tanzania *Journal of Islamic Economics, Banking* Vol-10, No1 January-March, 2014

operate in the country. Currently, there is only one full-fledged Islamic bank which is Amana Bank Ltd.¹ Many other conventional banks have established non full-fledged Islamic bank, whose services are provided via a separate window. These include the National Bank of Commerce, the Stanbic Bank, the Kenya Commercial Bank, the Bank of Baroda and the Peoples' Bank of Zanzibar. These banks offer current, savings and investment accounts. They, however, do not offer the full range of all the modes of financing available in Islamic banking practices. Thus funds for these banks are collected from such deposit products.²

3. The Islamic law

There are different definitions of the word *sharia*. However literally it means 'the path', while technically *Shariah* connotes 'the idea of a system of divine law: way of believe and practice.'³ Also *Shariah* is defined to mean "the clear path," meaning the clear path chosen by God for man, and refers to what is now known as Islamic law.⁴ The main difference between Islamic law and other non-divine laws is that -- the origin of Islamic law is a Divine Law which means God (Allah) while other laws are a result of human creation. From this background, human being has done nothing in enactment or amendment of this law. The *Sharia* indicates not only what the individual is entitled or bound to do in law, but also what he or she ought, in conscience, to do or refrain from doing.⁵ "The law of God remains the law of God even though there is no one to enforce it"⁶

3.1 Islamic law in Tanzania

There are a number of legislation which provide for application of the Islamic law in Tanzania mainland. These include the Judicature and Application of Law Act⁷, which provides for the application of Islamic law of personal status; The Magistrate Court Act,⁸ which gives the power to the Primary Courts to hear all cases whose disputes relate to Islamic matters; the Probate and Administration of Estate Act,⁹ which provides for the conditions of the application of Islamic law of inheritance and Waqf. The Law Marriage Act,¹⁰ which also recognizes the Islamic marriage and divorce. Despite the fact that Islamic law is applicable in Tanzania, its applicability is subject to many laws. For instances section 11(4) of the JALA provides that the rules of Islamic law shall not apply with regard to any matters provided in the Law of Marriage Act.¹¹ This means that if there is any rule which is mentioned in the Law of Marriage Act, then Islamic law would not be applied. The Probate and Administration of Estate Act provides the test for the application of the Islamic Law of Succession. If the deceased professed Islam at any time and the Court is satisfied that from the written or oral declarations of the deceased or his acts or manner of life he intended his estate to be administered either wholly or in part according to Islamic Law then Islamic Law will apply.¹²

4. Legislative challenge's for Islamic bank in Tanzania

There are many laws which regulate the banking industry in Tanzania. However, most of these laws are not favourable to the functioning of the Islamic banking as their enactment preceded the introduction of this type of banking. This means that, the Islamic banking is alien to our laws. These laws and the challenges wedged against them are as follows:

4.1 The Constitution of United Republic of Tanzania of 1977

The supreme law of the country is the Constitution of 1977, this constitution establishes the state of Tanzania as a secular state. *the profession of religion, worship and propagation of religion shall be free and a private affair of an individual; and the affairs and management of religious bodies shall not be part of the activities of*

¹ *Ibid*

² Zaharani Kisilwa (2012) Emergence Of Islamic Banking In Tanzania: A Critical Analysis of Its Impacts To The Subsisting Regulatory and Supervisory Regime: The Case of the B.O.T Dissertation Submitted in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Laws (Ll.M (Cl) of Mzumbe University (Unpublished)

³ Omar, M., Dictionary of Islam, cited in, www.en.wikipedia.com/sharia accessed on 12-02-08

⁴ Islamic Law: An Overview of its Origin and Elements, I J. ISLAMIC L. 1, 2 (1996).

⁵ Islamic Law: It's Relation to Other Legal Systems By Gamal Moursi Badr The American Journal of Comparative Law, Vol. 26, No. 2, [Proceedings of an International Conference on Comparative Law, Salt Lake City, Utah. February 24-25, 1977] (Spring, 1978), pp. 187-198

⁶ S.G. Vesey-Fitzgerald, Nature and Sources of the Sharia, in Law In The Middle East 85, 85 (Majid Khadduri and Herbert J. Liebesny eds., 1955). God's law even if no enforcer

⁷ Section 11(1)c (ii) CAP 358 R.E 2002.

⁸ Section 18(1)a (1) CAP 11 R.E 2002.

⁹ Section 88 (1)a-b and 140 CAP 352 R.E 2002.

¹⁰ Section 10(2)a and 107(3)a-c CAP 29 R.E 2002.

¹¹ Cap 29 R.E 2002.

¹² Sections 88 CAP 352 R.E 2002.

the state authority.¹ Meaning, the government is not aligned to any religions available in the country, though it recognises peoples' individual faiths. Therefore, it is not engaged into religious affairs of its people. This supreme law limits the government to only the recognition of such faiths but strictly forbids it to engage itself with the management of the affairs of any religious body. Therefore, Constitution² shuts Islamic banking outside the regulatory and supervisory functions of the Bank of Tanzania as the oversight body of all banks and financial institutions in the country.

4.2 The Judicature and Application of Laws Act, Cap 358 (RE: 2002)

The Judicature and Application of Laws Act, Cap 358 (RE 2002) is the principal law that declared the laws applicable to our state, the then Tanganyika and it specifically states these laws to be the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 22nd July, 1920, and the procedure and practice observed in courts of justice in England at that date. Moreover, the law recognised the application of customary and Islamic law.³ From this explanation, there is neither any law specifically enacted to cater for Islamic banking nor at least any relevant legal recognition of Islamic *Shariah* in the country.

4.3 The Banking and Financial Institutions Act, 2006 and the BOT Act, 2006

The Banking and Financial Institutions Act, No.5 2006 and the BoT Act, No.4 2006 are the main laws which provide for comprehensive regulations of banks and financial institutions with the view to maintaining the stability, safety and soundness of the financial system aimed at reduction of risk of loss to depositors. Despite of being the significant for the Bank industry in the country, these laws are not friendly for application of Islamic banks. These were established by the following features:

4.3.1 Eligibility to acquire licence

An entity in Tanzania may not operate as a bank without acquiring license from BOT. Sections 7 (1) of the BFIA, 2006 impair Islamic bank's chances to be eligible to acquire license to operate as a bank in other forms than as a company or as a cooperative society. Regardless whether it was registered in Tanzania Mainland or Zanzibar. From this observation, an Islamic bank must either be a company or a cooperative society to be given a licence to operate its business. However, the only option for an Islamic bank is a cooperative society since the concept of a company is not acceptable in Islamic shariah.⁴ The main reason why there is no corporation in Islam is that, it is natural persons who have connection and thus are answerable to God for their deeds. While modern corporate law theory postulates that a company has an artificial personality responsible for its own deeds. This theoretical constructs on responsibility of a company is not recognised in Islamic philosophy as the company has no faculty of mind as an individual person.⁵

4.3.2 Maintenance of liquid assets ratios

Liquidity refers to the flexibility to an asset that can be converted into cash quickly and easily. It is the liability to sell an asset and convert it into cash, at a price equal or close to its true value, in a short period of time it is the moneyness of an asset.⁶ Section 21 (1) of BFIA reads: "...every bank or financial institution shall maintain liquid assets at levels prescribed by the Banks from time to time." This section makes it mandatory that all banks including Islamic banks should maintain liquid assets at levels which the BOT prescribes indiscriminately. Islamic shariah prohibits dealing in most of liquid assets as such a vast majority of Islamic bank's assets are maintained in the form of illiquid assets. The most liquid of liquid assets is money and Islamic Banks do not deal with money but deal with assets which is the foundation of Islamic Banking Financing.⁷ These liquid assets provide a return in the form of interest which is in direct contravention with the Shariah. There is no objection to investing in liquid assets. However, the returns earned on these liquid assets should be in conformity with the Shari'ah.⁸

4.3.3 Restriction to trade by banks

The law maintains that a bank must get an approval from BOT if it engaged into a trade or other commercial

¹ Article 19 (2) - (3) of the United Republic of Tanzania Constitution of 1977

² Constitution of the United Republic of Tanzania of 1977

³ The Judicature and Application of Laws Act, Cap 358 (RE 2002)

⁴ Kuran, T. (2005, Fall). The Absence of the Corporation in Islamic Law: Origins and Persistence.

The American Journal of Comparative Law, 53 (4). pp. 785-834. Retrieved from <http://www.jstor.org/stable/30038724>.

Accessed on 12th November 2015

⁵ *Ibid*

⁶ Mushtak Parker 'Islamic banks face liquidity challenges' available at <http://www.iefpedia.com/english/?p=201> accessed on 25th November 2015

⁷ *Ibid*

⁸ Suleman, Yasser. (2011). The legislative challenges of Islamic banks in South Africa. Available: <http://scholar.sun.ac.za/handle/10019.1/21644> accessed on 21 November, 2015.

activities.¹ This requirement is also a challenge to the Islamic bank in Tanzania. Islamic banking is not possible without trading. In essence trade is the continuous activity of these banks. The fact that the section allows the BOT to approve trading by banks only for temporary purposes is a big challenge to the smooth operation of Islamic banks and to the successful operations of BOT's supervision endeavours.²

4.3.4 Deposit Insurance Fund

The Act³ establishes the Deposit Insurance Fund which is managed by the Deposit Insurance Board (DIB). Monies paid into the Deposit Insurance Fund are contributed by banks in order to secure their customers in case those banks suffer from the failures. When this happens the fund pays back to the bank an amount which is greater than that which had been earlier on contributed by the banks. Moreover, the Act⁴ provides that the moneys constituting the Fund shall be placed in an account with the Bank to be invested in obligations of or obligations guaranteed by the United Republic and other obligations as determined by the DIB to be suitable investments taking into account the purposes of the Fund.

The challenge of these sections are that since deposit insurance involves the exchange of money for money and the exchange occurs with different values with a scholars as an interest-based transaction and therefore non-permissible. The interest element could also exist in deposit insurance when the deposit insurance fund is invested in interest-based transactions or projects not approved by Islamic *Shariah*. The profit would be viewed as not permissible and thus doubtful to be applied in paying an Islamic bank when it has failed.⁵ To solve this challenge there is a need for Islamic banks to pool funds together under the supervision of the central bank to help each other in times of need. This money can be invested in Shari'ah compliant liquid assets until they are required.⁶

4.3.5 Supervisory challenges

Supervision mainly relates to liquidity requirements and adequacy of capital in banks. The two depend on an assessment of the value of assets of the banks supervised. The general findings here are that all regulations that are currently used by the BOT in supervising banks are not applicable to Islamic banking since the Islamic banking has new commands as opposed to the conventional banks. It is my opinion that supervision of Islamic banks is as important as that of the conventional banks. This lack of effective supervisory framework is one of the challenges which deserves serious attention. There are three main reasons why regulation and supervision of banking industry are important: To increase the information available to investors (transparency), to ensure the soundness of the financial system and to improve control of monetary policy.⁷ In case of Islamic banks, there is an additional dimension of supervision. This relates to *shari'ah* supervision of their activities. The roles of both the *shari'ah* advisory boards and the Central banks need to be streamlined and strengthened⁸

4.3.6 Risk Assets Management

Management of risk assets is governed by the Banking and Financial Institutions (Management of Risk Assets) Regulations, 2008: The objectives of these Regulations are generally to provide prudential guidance on management of risk assets and bases for providing for losses on loans and other risk assets. These regulations in view of its objectives require banks to do thorough analysis of creditworthiness of a client as regards to his character and financial capacity. This requirement does not capture the primary expectations of Islamic banking in the loan client. Since the Islamic bank does business in a partnership with a client it is not much interested in the latter's character but rather whether he has skills to engage himself in a profitable venture.

4.3.7 Banks Liquidity Measuring and Monitoring

Measuring and monitoring Liquidity of banks is governed by the Banking and Financial Institutions (Liquidity Management) Regulations, 2008. The main Islamic banks cannot be as liquid as conventional banking as they mainly deal with assets instead of cash. Assets are less liquid compared to cash. The effect of this regulation is like the effect of Sections 21 (1) of the BFIA, 2006 and section 45 of the BOT, 2006 as have been discussed above.

¹ Section 24 (4) of the BAFIA

² Zaharani Kisilwa (2012) Emergence Of Islamic Banking In Tanzania: A Critical Analysis of Its Impacts To The Subsisting Regulatory and Supervisory Regime: The Case of the B.O.T Dissertation Submitted in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Laws (LL.M (Cl)) of Mzumbe University (Unpublished)

³ Section 36 (1) of BAFIA

⁴ S. 36 (4) this is not clear!

⁵ Munawar Iqbal And Others (1998) Challenges Facing Islamic Banking Islamic Development Bank Islamic Research And Training Institute *Occasional Paper – No. 1*

⁶ Ghazana Binti Said Atan Concept of Deposit Insurance is Appropriate for Mudharabah Investment available at <http://webcache.googleusercontent.com/search?q=cache:http://www.assaif.org/content/download/5023/29510/file/deposit> accessed on 21/10/2015.

⁷ Inwon Song and Carel Oosthuizen Islamic Banking Regulation and Supervision: Survey Results and Challenges IMF Working Paper December 2014.

⁸ *Ibid.*

4.3.8 Limitation to invest on equity and assets

Directives on this aspect are obtained from the *Banking and Financial Institutions (Credit Concentration and Other Exposure Limits) Regulations, 2008*. The main objective of these Regulations, among others, is to prescribe limits for investment in equity and fixed assets. Investment and trade in assets and equities in Islamic banking cannot be divorced. It is the only products which underlie the foundations of any Islamic banking business. Money in Islamic banking is inferior to property.

4.3.9 The reserve bank as lender of last resort

The Bank of Tanzania (BOT), like most central banks, serves as a lender of last resort in times of liquidity crunches.¹ Although the Bank of Tanzania supervises Islamic banks, Islamic banks cannot benefit from these loans as they are provided on the basis of interest; i.e: the repo rate. There is a need for creating other forms of returns to the Bank of Tanzania so that Islamic banks can benefit from loans granted by the Bank of Tanzania.

4.4 The Legal Concept of goods

The Islamic banks provide finance to clients revolves around the sale of goods to clients on credit. In this case the bank procures goods or services and resells it to the client at a profit. The only laws that are greatly useful in Islamic banking in relation to goods are the Sale of Goods Act, Cap 214 (RE: 2002) and the Law of Contract Act, Cap 345 (RE: 2002) for Mainland Tanzania and the Contract Decree Cap 149² for Zanzibar. A few challenges, however, against these laws are: Section. 2 of the Sale of Goods Act defines goods as all chattels personal excluding things in action and money, emblements, industrial growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale and by this a contract of sale involving the things excluded is not acceptable. This definition is para material with the definition of goods under the Contract Decree. In Islamic banking, the 'bai salam' mode of financing is mainly used for sales of goods such as crops which have not been planted or severed from the farm the same things which are not recognised as goods that can be sold under the Sale of Goods Act, Cap 214 and Contract Decree.³

Under 'bai salam' the fact that one can sell crops even before he has planted the same is not accepted in the law relating to contract. Under s. 29 of the Law of Contract Act, Cap 345 and section 29 of the Contract Decree agreement on this kind of transaction is void for uncertainty and under Section. 31 of the same law is referred to as a contingent contract. Contingent contracts under section 32 of the same law are unenforceable. A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. In Islamic law a farmer may receive funds from Islamic bank to cultivate in return for crops he will harvest. The crops may or may not be obtained contributing bank receiving more than it gives. This would be viewed by shariah this fact makes the contract contingent upon availability of such crops.

4.5 Double taxation with respect to sales modes transactions

The Islamic banking brings forth issues relating to stamp duty fee. The fee often relates to the value of real property or a financial agreement and is usually charged as a standard part of conventional commercial banking and in business practice.

Section 5 of the Stamp Duty Act, Cap 189 (Re 2002) provides:

“(1) Every instrument specified in the Schedule to this Act and which—

(a) is executed in Tanzania; or

(b) if executed outside Tanzania, relates to any property in Tanzania or to any matter or thing to be performed or done in Tanzania, shall be chargeable with duty of the amount specified or calculated in the manner specified in that Schedule in relation to such instrument.

The challenge is as regards to the purchase and resale agreements associated with some Islamic financing. Usually stamp duty is paid when the ownership in the asset is transferred. So the buyer must pay this over and above the purchase price paid to the seller. With Islamic sales, however, the bank buys the property instead and then resells it to the client with an appropriate mark-up. The taxation problem is; these two transactions would normally incur two separate stamp duty payments.⁴ Here there is only one financing arrangement but that two transactions are needed to achieve the desired outcome.

Thus while the interest a conventional bank receives is regarded as a 'passive' income, profit received by Islamic bank is regarded as an earned income which is treated differently for purposes of tax. In addition, in trade financing there are title transfers twice, once from seller to bank and then from bank to buyer and therefore

¹ Section 41(b) of Bank of Tanzania Act 2006.

² The law relating to the sale of goods is governed by Part VII of the Contract Decree.

³ Yasser Suleman (2011) The Legislative Challenges of Islamic Banks in South Africa Research report presented in partial fulfilment of the requirements for the degree of Master of Business Administration at the University of Stellenbosch(Unpublished)

⁴ Khan, M., & Bhatti, M. (2006). Why Interest-free Banking and Finance Movements Failed in Pakistan. *Humanomics* 22(3)

both these transactions are twice taxed. This decreases the profitability of the venture.¹ Other jurisdictions, including the United Kingdom and Luxembourg have modified their tax laws to exempt the Islamic banks from double taxation on assets they acquire for financing purposes.² Singapore waived the imposition of double stamp duties in real estate transactions or in income earned from Islamic bonds. Also, Singapore waived in income taxes and taxes applicable for goods/ services.³ It was ensured that Islamic financial products do not burden more taxes due to the nature of their structure.

4.6 Jurisdiction of the Court in Tanzania in Islamic banks disputes

Tanzania's legal system is based on the English common law. Judicial functions are administered by various courts established in accordance with the law. The Islamic Bank disputes fall under the ordinary court's jurisdiction. This situation based on the fact that the Islamic banking is considered as under the item commercial one. While the court system in Tanzania is, in reality, adversarial in nature where litigants present their cases before the presiding officer/s who will decide based on the evidence adduced and submissions forwarded by the respective parties or their respective counsels. As Islamic banks disputes fall under the same purview, all disputes arising out of Islamic bank transactions will be subject to the same procedure and process as experienced by its conventional counterpart. This situation may result into a bad decision on Islamic banking matters keep into consideration that, many of those presiding judges and magistrates do not have the requisite knowledge of Islamic banking system.⁴

5. Conclusion and Recommendations

The Islamic law offers its own framework for execution of commercial and financial contracts and transactions. It is necessary that special laws for the introduction and practice of Islamic banking be put in place. The legal framework of Islamic banking and finances might include the following:

5.1 Islamic Banking Courts

To ensure a proper, speedy and supporting Islamic legal system, amendments in existing laws, which are repugnant to injunctions of Islam, are required to promulgate Shariah compliant law for resolution of disputes through special courts. However, while we are waiting for new laws it is important to use Alternative Dispute Resolution (ADR) in solving any dispute which emerged from the Islamic banks in Tanzania. Muslim scholars have always argued that (ADR) has its source in the prime references of Islamic law since it is a practice encouraged in Islam.⁵ Therefore, dispute resolution in Islamic law is a wide area of study that, though similar to the conventional practice of ADR, has its unique principles and concepts. The varieties of dispute resolution processes have been practiced since the advent of Islam about fourteen centuries ago.⁶

5.2 Amendment of Existing Laws

The Islamic banking has some kind of resemblance to universal banking. Therefore, laws and regulations have to be amended accordingly to accommodate this new concept. For instance, through its Banks and Other Financial Institutions Act, Nigeria, has already established various rules and regulations relating to Islamic banking and set up a national Sharia advisory board to ensure all Islamic financial activity adheres to Sharia. Tax legislation should be amended to recognize the bank as the facilitator of the transaction as opposed to a participant in the transaction.

¹ Basiru Oyeniran Fatai, Can Islamic Banking Work In Nigeria? Journal of Sustainable Development in Africa (Volume 14, No.2, 2012).

² Ibid.

³ Agn lio M. P. Chicava Pita, Some Issues to Consider when Regulating Islamic Banking Business in Secular Countries Journal of Islamic Banking and Finance March 2014, Vol. 2, No. 1, pp. 389-405

⁴ Umar A. Oseni and Dr. Abu Umar Faruq Ahmad, Dispute Resolution In Islamic Finance: A Case Analysis Of Malaysia

⁵ The Quran at Surah 4, verse 35, "If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things."

⁶ Blazing The Trail: The Institutional Framework For Dispute Resolution In Malaysia's Islamic Finance Industry Umar A. Oseni And Abu Umar Faruq Ahmad*