

LEGAL AND REGULATORY FRAMEWORK OF ISLAMIC BANKING IN LIBYA

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Abstract

Banking regulatory framework is a mandatory requirement to ensure sound and effective financial sector, hence, the overall development of the country. The growing demand for Islamic Banking products and services, in Libya, needs to be accompanied with effective regulatory framework to protect the rights of all share/stakeholders and assures Islamic banking development. This study examines the regulatory framework for Islamic banks in Libya in terms of the regulatory authorities, banking laws, Shari'ah governance and dispute resolutions. The study reveals there is still no specific and independent law on Islamic finance in Libya as the case for conventional banks. Therefore, there is a desperate need to establish a comprehensive regulatory framework for Islamic finance industry with the aim to enhance the development of financial investment in Islamic finance. The study also highlights in more details the Banking laws development for Islamic banking from 2005 until 2013. The paper also discloses that arbitration is the best method that can be used for dispute resolution due to lack of availability of specialized judges.

Keywords: Legal, regulatory, framework, Islamic Banks, Libya

INTRODUCTION

The regulations and supervision of the banking sector is an important aspect to ensure the sound and health of the financial sector. The soundness of the banking sector in any country depends on the establishment and enforcement of suitable banking regulations and supervision. Similarly, to the conventional banks, Islamic banks need to have a proper and well established legal framework to gain the investors' confidence and protect all the rights of shareholders and stakeholders. Libya has recently approved to offer Islamic banking products and services either through windows or subsidiaries. However, Islamic banks, in Libya, encounter many challenges in terms of unavailability of; independent law, qualified judges to decide on cases, human capital, customers' awareness, etc.

Therefore, this study aims at bringing in more details about the regulatory framework for Islamic banks in Libya. The study is divided into six sections beside the introductory part and conclusion. In the first section, the author discusses in more details about regulatory authority for banking sector in Libya. The second section provides information about the Banking Laws in Libya. Meanwhile the third section explains the types of banks operate in Libya, requirements for offering Islamic Finance and licensing requirements. The fourth section indicates the responsibilities and a duty of Shari'ah

governance. The fifth section the author demonstrates the dispute resolutions bodies in Libya. The concluding section of this paper is the conclusion and findings.

REGULATORY AUTHORITY FOR BANKING SECTOR IN LIBYA

Central Bank of Libya (CBL)

The law that governs and regulates banks in Libya is the Law Number (1) of 1993 which primarily concerns about the banking currency and credit. The stated law authorizes the central bank to influence the activities of the banks even in determining the interest rates of these banks (Paragraph, a). However, the CBL is more involving in making decision regarding interest rate, how much amount to be lent and to what sectors should commercial banks lend their money and at determined interest rates. (Woldie & Dofan, 2007)

The regulation and supervision over banking sector are done by of the Central Bank of Libya (CBL), CBL is authorized by the Secretary for Finance of the Libyan government. The CBL is wholly owned by the government of Libya. Nevertheless, the CBL has the status of autonomous corporate body, operating under the Libyan Law. (Woldie & Dofan, 2007) The Board of Directors of the CBL is responsible for day to day activities of the bank. The Board comprises of Governor (The Chairman), Deputy Governor as (Vice-Chairman) and another eight members who represent the other financial and economic interests. The Chief Executive Officer (CEO) is responsible for the management of the bank's affairs and policy implementation.

Therefore, CBL supervises and regulates the Commercial Banks by ensuring that these banks maintain their ratios within stipulated conditions stated by the CBL such as, the cash reserve, legal liquidity, etc. The CBL also issues instructions to the commercial banks imposing the quantity and direction of credit outstretched to the banking sector. This is to ensure that more credit extended to the more productive sectors of the economy. The CBL appoints several officers to carry out the responsibility of supervision of the commercial banks by examining their books and ensuring that their financial positions are healthy and the static data provided to CLB is accurate and transparent. Besides that, The CBL acts the lender of last resort for the commercial banks.

Sec (1) of Banking Law 2005 provided that Central Bank of Libya (CBL) as an independent institution with legal personality and independent financial disclosure. It also known to be the monetary institution that is dominated on the top of the banking pyramid of the country, which has the responsibility of the issuance of the currency, exercise the monetary policy to ensure financial stability.

The CBL also manages and administrates the means of monetary exchange through the control of the banking sector reserves and the quality and amount of credit. In addition, CBL provides the supervision on all the banks operating in Libya including commercial and Islamic Banks.

Sec (9) of Banking Law 2005 related to the establishment of banks and authorizes the CBL for the establishment of commercial, specialized banks and finance and investment banks, etc, governs their activities, and he basic models and contracts used. Moreover, under this Sec the Banking Law 2005 authorizes CBL regarding licensing activities for banks namely; commercial, specialized, investment banks and financial institutions to carry out operations inside Libya. Additionally, any banks or other institutions involved in the banking activities. The authorization of CBL is not only limited

to granting the licensing to the banks but to monitor and set control measures of the activities of these banks.

- a) **Commercial Banks: Article 65 (1)** of the Banking Law 2005 states the definition of commercial banks as “it is commercial bank any company that accepts deposits in current accounts and payable on demand on regular basis, granting loans, credit facilities and other banking services....” (Hassan, 2010). There are around 12 commercial banks operating in Libya. Such as, Al-Wafa Bank, Alsaraya Trading and Development Bank, Aman Bank, etc.
- b) **Specialized Banks: Article 65 (1)** identifies specialized banks (non-commercial banks) “it is specialized bank any bank that its main purpose to provide financing and granting loans for specific activities. However, deposits payable on demand shall not be considered as its main activities. Furthermore, it allowed for the Board of Directors of CBL to permit specialized banks to exercise some commercial banks ‘activities (Hassan, 2010). There are four specialised banks registered in the Libyan Assembly of Banks namely; Agricultural Bank of Libya, Development Bank, Rural Bank and Saving and Real-Estate Investment Bank (Libyan Assembly of Banks, n.d.).
- c) **Investment Banks:** these banks can invest in Libya according to **Article 16 (9) of the Banking Law 2005** “The authorization to permit the establishment of commercial banks, specialized banks, financing banks, investment banks, etc. Moreover, to provide the rules that govern these banks including the forms of establishment and their main activities. This article also authorizes CBL to permit other business to practice the other banking activities which are not involved in commercial banks, specialized banks, financing and investment banks ‘activities. (Hassan, 2010)

The Banking Law 2005 Amended 2012

The Banking Law 2005 amended 2012 provides one entire chapter named; “A Chapter on Islamic Banking”. This chapter consists of total seven articles particularly about Islamic banking and finance (National Transitional Council:Libya , 2012).

Article 1 (1) explains and clarifies the definition of Islamic Bank. According to first paragraph of this article (National Transitional Council:Libya , 2012); "Islamic bank, which includes in its contract of establishment, is obliged to exercise the banking activities which are permitted according to the law. Besides that, these activities must be free from dealing in kind of *Riba* (interest) and must comply with *Shari'ah* principles in its activities whether in accepting deposits, financing or investment or any other kind of banking services".

Article 2 (2) provides more details on the requirements for Islamic banks to function in Libya. The Board of Directors of CBL provides two forms for the establishment of Islamic bank in Libya and its main functions provided that the later must meet the following requirements (National Transitional Council:Libya , 2012):

1. Islamic banks shall provide the banking services, financing and investment activities which are free from all forms or kinds of *riba*.
2. Attract the savings and the idle wealth and channel it into partnership type of investment in way that does not contradict with the *shari'ah* principles.

Article (3) Islamic banks can exercise all the following banking activities within the terms and conditions specified by the Board of Directors of CBL (National Transitional Council:Libya , 2012):

1. Accepting all kinds of deposits whether in mutual investment accounts or private investment accounts for specified or non-specified period.
2. Exercise the banking activities stated in Article (65/b) of the Banking Law provided that such activities do not contradict the requirement of *Shari'ah*.
3. To provide financing products that are free of *riba* and comply with *Shari'ah* requirements using contracts such as *Musharakah*, *Mudarabah*, *Bay' Murabahah*, *Bay' Al-Salam* and *Bay' Al- Istisna'*, operating *Ijarah*, *Ijarah Muntabiah* *Bittamleek* and other contracts approved by SSA.
4. Invest the clients' funds who intend to have the mutual investment accounts in *Mudarabah*, *Musharakah* or any other contracts agreed upon with the clients.
5. Conduct the direct investment activities for the Islamic bank itself, for others (Agency), or as a partnership with others according to *Musharakah* contract. Islamic banks are also allowed to establish companies that conduct various economic activities or having shares in them.
6. Any other activities that are not based on *riba* and approved by the SSA and Board of Directors of CBL.

Article 4 (1) the legislators clearly prohibit Islamic banks from exercising any banking activities that are based on any kind of *riba* . Particularly in the case of interest on debts (*Riba Al-dayan*) which usually paid and received in the lending or depositing activities. This includes any additional amount paid over and above the principle amount lent. According to SSA, the main reason behind such prohibition because of non-existence of counter value in such lending.

Article 4 (2) states that the restrictions provides in Article (77) of the Banking Law are not applicable to Islamic banks so long as these banks conduct their activities according to the *Shari'ah* principles.

Article 5 (1) clarifies that Islamic banks are subjected to the provisions of the banks supervisions stated in the Banking Law. Islamic banks are also subjected to provision of the Banking Law regarding providing CBL with the annual reports and any other information required. IBs must take into consideration that this information must be amended in a way that fulfills the international standards in respect of auditing the Islamic banks accounts.

In **Article 5 (2)** the Board of Directors of CBL puts the standards that govern the functions of the IBs. This is including the liquidity requirements; total capital preserved, the proportion of each investment, the prudential measures taken to mitigate risks associated with assets, other rules and condition that IBs shall comply with in their relationship with the clients and shareholders.

Article 5 (3) the CBL has the right to put limitations in the following matters:

- The total value or paid up capital for project.
- The percentage of contribution in companies that are established by Islamic Bank or own shares in it or the amount of its contribution in each project.
- The total amount that owed to the bank by each client.
- Funds invest aboard compared to the total invested funds.
- Any other requirements deemed necessary by CBL to control activities of IBs.

Libyan Law No.1 of 2013 on the Prohibition of Interest

The Libyan General Congress adopted Law No.1 of 2013 which prohibits dealing in *riba* (interest) based financing transactions. The mentioned law bans dealing with *riba* in all civil and commercial transactions. The implementation of such law took place on 1st of January 2015 which will have a significant impact on the Libyan banking sector. The suggestion to eliminate interest from all financial transactions was initially made by Mustafa Abdul Jalil, the chairman of the National Transitional Committee and Libyan interim leader after the 2011 revolution on the Celebration of Free Libya on 23 October 2011. Mustaf Abdul Jalil declared on the same occasion that anything that contradict the *Shari'ah* principles must be banned (Bälz & Greco, 2014).

Article 1 (1) of the **Libyan Law No.1 of 2013** provides details on the prohibition of interest of general applications (Bälz & Greco, 2014). This article clearly states that “*Interest on deposits and loans in all civil and commercial transactions between natural and legal entities shall be prohibited. All usurious interest, whether evident or concealed, earned from such transactions shall be invalidated on an absolute basis*”.

Article 1(2) *Forms of concealed usurious interests shall include the charging by the creditor of a commission or benefit, of whatever type and nature; if it is proven that no actual and legitimate benefit or service has been provided by the creditor in return for obtaining such commission or benefit*”.

Article 2 contains a clause which made it obvious that interest no longer can be legally enforced even though in already settled court cases in which judges have made their final decision. This concludes that as from the effective date of Law No. 1 of 2013, no interest of whatever kind can be received regardless of when the transaction was executed (The General National Congress, Libya, 2013).

Article 3 illustrates that the law only repeals the promise to pay/receive interest meanwhile the debtor (borrower) remains obliged to pay the principal amount to the creditor (lender) (National Transitional Council:Libya , 2012).

Article 4 provides the Good-well Lending Fund shall be established under the supervision of the Central Bank of Libya (CBL). The main purpose of the fund is to provide interest free loans (*Qard Al-hassan*) therefore it deemed as a substitute of the commercial lending, based on *riba*, transactions. The other details about the operation and implementation of such fund are not provided in this law (The General National Congress, Libya, 2013).

Article 5 in this article the legislators extend the prohibition of interest by making a statutory provision that interest in all other laws shall be invalidated (Bälz & Greco, 2014).

“All concerned entities shall be obligated to regulate and re-organize all its civil, commercial and banking transactions to be compliant with the Islamic *Shari'ah* law” (The General National Congress, Libya, 2013).

Article 6 (1), explains the penalties imposed in the event of breaking the law. The violators of the prohibition of interest law are subjected to detention for period not less than one year or fine ranges between 1000 to 5000 Libyan Dinars (LD) (The General National Congress, Libya, 2013).

Article 6 (2), those who exploits the weakness, need, or the tendency of the debtors, or whoever makes loans based on *riba* (interest) are subjected to imprisonment of not less than two years or fine not less than 5000 LD and not more than 10,000 LD (The General National Congress, Libya, 2013).

TYPES OF ISLAMIC BANKS IN LIBYA

Windows

There are many banks offer Islamic finance products through Islamic banking windows such as National Commercial Bank which offers *Murabaha* for financing the purchase of cars, furniture and computers. CBL released a policy (**No, 09, 2009**) issued on **29.08.2009** regarding the alternative banking products, to permit commercial banks operating in Libya to open windows that offer Islamic banking and finance products. The policy also defined the alternative banking products “as tools of financing and investment that comply with *Shari’ah* requirements”. The CBL determined that those tools might be in the form of financing based *Murabaha*, *Musharakah* and *Mudrabah*. In addition, The CBL requires commercial banks that offer Islamic banking products and services to adopt the best international standards and practices relevant to Islamic banking and finance particularly AAOIFI standards. In the mentioned policy, CBL requires commercial banks that offer Islamic banking products either through windows or through subsidiaries to take into consideration the following requirements:

a). *Commercial Banks which offer alternative banking products in line with Shari’ah through banking windows*

Firstly, all commercial banks that attend to offer alternative banking products that comply with *Shari’ah* requirements are required to submit their applications to CBL attached together with business plan. Moreover, the business plan must be detailed and contains information on the bank’s vision, the strategic plan, policies, procedures adopted in management and supervision of these products and products offered. For instance, *Murabaha* to purchase order for cars, computers, etc. All the commercial banks are obliged to follow all the instructions given by the CBL including the instructions on capital adequacy and credit limits.

Secondly, all commercial banks that offer Islamic banking products through windows shall ensure the independency of these windows in terms of monetary, administration and accounting from the conventional products. Commercial banks must also develop policies and procedures that are in accordance with the nature of these products and with international standards such as AAOIFI.

Thirdly, the bank is required to provide a completely independent and conspicuous place for the Islamic window inside the branch. The Islamic window must be separated from all other departments of the branch and provide a written signboard indicates the Islamic window and clarifies its functions.

Finally, the banks must disclose in their annual reports all the information required such as the accounting standards applied and level of compliance with the international standards, if there is bank does not comply with international standards the reasons and justification of such non-compliance must be provided.¹

Subsidiaries/Branches

There are number of commercial banks which offer Islamic finance products through branches. Such as, *Jumbouria* Bank (Republic Bank) and *Al-Waha* Bank. The former is a Commercial Bank which is ranked as the second biggest bank in Libya. *Jumbouria* Bank offers various Islamic banking and finance products via branches located in more than 35 cities in Libya. The Islamic finance products offered are *Murabaha*, *Murabaha* to purchase

¹ Central Bank of Libya, “Report On The Rules And Regulations On Offering Alternative Banking Products That Comply With *Shari’ah* Principles”, (2010).

order, *Mudrabab, Musharakah, Istisna', Salam, Ijarah* and *Sukuk*. The later, *Al-Waha* Bank set up a branch for Islamic banking services in 2012 Misrata, Libya. The total paid up capital is 10 million Libyan Dinars, this branch offers various Islamic financing products such as *Murabaha, Musharakah, Istizra'* and *Qard al-hassan*.

a). *Banks that offer Islamic Banking products through subsidiaries/ branches*

Banks that attends to open new Islamic banking branches or to transform the existing commercial branch to Islamic shall consider all the requirements stated by the Board of Directors of CBL in respect of conditions of establishment of banking subsidiaries. The banks shall apply to open the new subsidiary bank to the CBL and attach with the application the business plan and other information such as, vision, strategic plan, products will be offered and other policies, procedures applied to ensure the independency of the subsidiary. The bank shall also meet the following requirements:

1. Clarify the nature of the business in the signboard of the subsidiary bank.
2. Clearly indicate the function of the subsidiary in all documents, checks and vouchers issued by the subsidiary bank.
3. The subsidiary bank must be independent from all other departments of the bank in terms of funding, administration and accounting. The total capital of the Islamic subsidiary bank must be at least 10 million Libyan Dinars and all sources of financing must be *Shari'ah* compliant.
4. The Islamic banking branch must be independent in terms of accounting and accounts from the parent bank and its other branches.

Prepare financial reports that are related to Islamic subsidiary bank, in case the parent bank has more than one Islamic subsidiary, it shall treat them as one group and prepare one financial report for all Islamic branches. The commercial bank that set up an Islamic subsidiary bank must develop a general framework with detailed measures that control the relationship between the Islamic subsidiary and the parent bank. All operations that take place between the Islamic subsidiary and the parent bank must be approved by the *Shari'ah* Supervisory Authority.²

Table (1) Commercial banks with Islamic window/Subsidiary

Bank Name	Year founded	Islamic window/Branch	Islamic Banking Products offered
Jumhouria Bank	1970	Islamic Subsidiary Bank	<i>Murabaha, Murabaha to purchase order, Mudrabab, Musharakah, Istisna', Salam, Ijarah and Sukuk</i>
Libyan Foreign Bank	1972	Islamic Window	-

² Central Bank of Libya, 2010.

Al-Waha Bank	1973	Islamic Branch	<i>Murabaha, Musharakah, Istizra' and Qard al-hassan.</i>
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Licensing of the Banks

Granting licenses to the banks not only to authorize such banks to operate in a country but it also way of the CB to regulate the banking sector. In case of Libya, the bank intends to operate in Libya must be licensed by a way of a permit issued by the Secretary for Finance of the Libyan government and upon recommendations provided by the Governor of CBL. On the other hand, to be qualified to obtain such permit, the bank must fulfill the following conditions (Woldie & Dofan, 2007):

1. Any bank intends to operate in Libya must not contradict with the exigencies of public interest.
2. The name of the bank must not create any kind of ambiguity with already existed banks.
3. Concerning the ownership, the bank must have Libyan Joint Stock Ownership within the underwritten capital of at least LD 3 million should be distributed in form of nominal shares of less than 10 dinars each.
4. The subscription is allocated to Libyan members of public and private entities of Libyan nationality. However, everyone must not hold more than 1% of these allocated shares. Moreover, the roots and off springs must not own more than 2 % of the total shares.
5. In the case of foreign banks, can operate in Libya however they must comply with strict regulations. First, they need to get the approval of CBL and, they need to get such approval prior to merge and acquisition or to cease trading (Woldie & Dofan, 2007) .

Management

The chairmen and members of the board of commercial bank must be of Libyan nationals and must not be the board members of other banks. Furthermore, the members of the board must meet certain restrictions regarding their character, qualifications, etc. Board members are also obliged to disclose any share ownership in company within a period of two weeks to CBL. With respect to foreign banks whose headquarters are outside Libya must appoint local managers with the authorization to receive notices this is including summons. The empowerment of the manager entitles him to the full responsibility prior to the Libyan authorities. In case of any changes in the composition of board must be reported to CBL within 15 days (Woldie & Dofan, 2007).

Capital Adequacy

Commercial banks are required to retain a reserve for capital before the declaration of the profit (Woldie & Dofan, 2007). The banks are obliged to transfer not less than 50% of the profits into these reserves until the reserves are at least 50% of the total paid up capital.

Once this requirement is met then the bank is required to transfer 25% of profit into the reserve until the reserve becomes equal to paid up capital. Additionally, banks must maintain in Libya funds equal to the total liabilities payable. Regarding the foreign banks, the funds maintained abroad are considered as a part of the available funds. Banks are not allowed to pay dividend until their capital expenditure, administrative costs and other expenditure items not covered by tangible assets which have been written off.

Quality Of Asset Audit

Banks are required to have two chartered accountant's auditors to examine the annual accounts. Concurrently, these auditors are independent in the sense that they are not related in any form of relations to the board members. In addition, the board members must neither be employees nor have borrowed from the bank. Detailed instructions are also provided for the auditors on how they shall conduct their tasks. The auditors are required to read out their reports to the shareholders at the annual general meeting. The auditors are also required to file their reports with CBL. The banks should display in conspicuous position always a copy of their latest annual reports showing the balance sheet and other information to be disclosed (Woldie & Dofan, 2007).

On-Site Examinations

For prudential measures shareholders who own 25% or more of the total shares issued and depositors with more than 50% of total deposits have the right to request CBL for inspection to the bank. Nevertheless, the parties mentioned must provide valid reasons for CBL to proceed with such request. The inspection is usually done by two persons who have been authorized by CBL to fulfill the mission. The expenses arising from such inspection are borne either by the parties requested for it or by the bank upon the approval of the Governor of CBL (Woldie & Dofan, 2007).

Punitive Measures

There are many laws existed for dealing with those banks which break the rules. The penalty for breaking the rules varies from cancellations of the permit, fines and imprisonment. The licensee granted for the trading purposes can be cancelled in the case the rules are violated. The Secretary for Finance has the decision to cancel the license upon recommendation of the governor. In some cases, those who violate the rules subjected to pay fine imprison or both depending on the type of the crime committed. Manager or directors can be charged as individuals (Woldie & Dofan, 2007).

SHARI'AH GOVERNANCE

All the banks, that offer Islamic banking products that comply with *Shari'ah* principles, must appoint *Shari'ah* Supervisory Authority. The SSA supervises Islamic banking products and services and ensures compliance with *Shari'ah* requirements. Besides that, the bank is obliged to adopt decisions and *fatwas* of SSA.³

a) *Composition of SSA and conditions for appointment:*

³ Central Bank of Libya, 2010.

1. The SSA must comprise of at least three members who are scholars specialized in *Fiqh Mu'amalat*. It is allowed that one of the members is not *Shari'ah* scholar but has an adequate knowledge in field of Islamic finance and *Fiqh Mu'amalat*.
2. The SSA is appointed by the General Assembly of the Bank based on recommendation of the Board of Directors. It is also allowed for the General Assembly of the Bank to dismiss anyone of the SSA members based on recommendation of BOD.
3. All the SSA members must be independent from the bank and execute their duties with highest levels of integrity and transparency. Avoidance of any situation that might influence the decision of SSA members in any way.
4. It is prohibited for the bank to appoint the following persons as a member of SSA:
 - i. Managers of the bank and their assistants, managers of the main departments in the bank and members of the board and shareholders (whose shares are 5% and above).
 - ii. The relatives of the people mentioned above, the partners of them or any other person who works in a company or institution belongs to one of the people mentioned.
 - iii. People who are the debtors of the bank or any other institution that is related to the bank directly or indirectly.⁴

The members of SSA should assess their independency on continuous basis. determine any factors or situations that might hinder their level of independency and inform other members for discuss such issue. Shall there be any situation that influence the level independency of the member, the later must resign from SSA and inform General Assembly of the Bank of such decision.

Furthermore, it is allowed for SSA to seek the assistance of specialists in the field of economic, business administration, law, or accounting for purpose to assist the SSA in pursue their duties.⁵

Article 1 (2) of the Banking Law 2005 includes the definition of the *Shari'ah* Supervisory Authority (SSA) which comprises of number of qualified scholars in *Shari'ah* and have knowledge in law. SSA is appointed to provided oversight over the banks' activities and contracts to ensure compliance with *Shari'ah* requirements.

Article 6 (1) in addition the obligations stated in **Article (81) and (82)** of the Banking Law, regarding the internal audit management, auditors of the accounts and compliance, unit each Islamic bank must have *Shari'ah* Supervisory Authority consists of at least three members who have the knowledge and expertise in *Shariah* and law. SSA 'members will be appointed for a period of three years by the General Assembly of the Bank which also determines the salary and commissions provided and re-appointment of members (if any).⁶

Article 6 (2) clarifies that in appointing the members of SSA the **Article 69 (1)** of the Banking Law shall be taken into consideration.

Article 6 (3) highlights the responsibilities of *Shari'ah* Supervisory Authority as follows:

⁴ Central Bank of Libya, 2010.

⁵ Central Bank of Libya, 2010.

⁶ Central Bank of Libya, 2010.

1. Supervising and monitoring all the Islamic Banks' activities to ensure that they comply with *Shari'ah* principles.
2. Providing advice over the Islamic banks contracts that are required to facilitate the banking activities.
3. Ensures zakat calculation on the bank's fund generated from Islamic banking products and in accordance with fatwas and decisions of SSA in the bank.
4. Any other responsibilities as specified by CBL or Islamic bank.

Article 6 (4) requires CBL to consult *Shari'ah* Supervisory Authority which comprises of number of *Shari'ah* scholars who got the knowledge in *Shari'ah* and law, to provide advice on matters related to the activities of IBs. The Board of Directors of CBL appoints the SSA and decides on the commissions and responsibilities of it.⁷

DISPUTE RESOLUTIONS

Islamic banks in Libya face many legal and judicial challenges. This is since these banks could offer *Shari'ah* compliant products a few years ago. Some of the legal and judicial challenges can be summarized in following section.

First: There is no independent law which regulates and governs Islamic banking:

After 1969 revolution, the legislators made certain number of amendments in the legislations at that time. The new amendments made to comply with the *Shari'ah* principles were adopted and officially issued. Both Civil and Commercial Laws were subjected to such amendments as a result *Riba al Nasi'ah* was prohibited in both civil and commercial transactions among natural persons according to **Law No, 74 of 1972** (Bakar, 2010). Furthermore, the legislators also repealed all *Gharar* based contracts according to **Law No, 86 of 1972**. It was expected that this specialized committees to carry on their work until *riba* (usury) eliminated in the banking transactions. Nevertheless, these committees were stopped and the legislators began to issue laws that regulate the work of the commercial banks (Bakar, 2010). Some suggested that the current legislations are sufficient to cover the activities of Islamic Banks meanwhile others pointed that it is very essential to issue law specific for Islamic Banks. Up to this moment, there is no law specific to Islamic banks however there is a chapter (as mentioned earlier) in Banking Law 2012 about IBs.

Arbitration

Legitimacy of arbitration was derived from *Quran, Sunnah* and *Ijma'* (consensus). Despite the organization provided by legislators of arbitration in Pleadings Law Articles from (737 – 771), this method of dispute resolutions has not gained yet the required popularity among disputed parties. The reason of might be due to lack of understanding or trust in arbitration (Bakar, 2010). Nevertheless, majority are of the view that arbitration is the best method that can resolve disputes in IBs, particularly most judges in Libya lack the knowledge and expertise in field of Islamic banking and finance. Therefore, in order to resolve such disputes judges must have a good knowledge in *Shari'ah, Usul Al-Fiqh, Fiqh Mu'amalat, Islamic finance, law, etc.* However, this requirement is unattainable at present time because

⁷ Central Bank of Libya, 2010.

most of the judges in Libya are graduated from Libyan Law colleges which do not teach any Islamic banking and finance subjects (Bakar, 2010).

On the other hand, arbitrators are more specialized and have the knowledge and expertise to resolve the disputes more effectively and fairly than the judges do. Besides that, arbitrations is a faster method in dispute resolution and less expensive than court system. Arbitration saves time, efforts and costs unlike court system which consumes more time and usually requires years to decide on cases. Concurrently, the arbitration is more flexible so that the disputed parties are free to choose the arbitrators and determine the time, place and procedures of arbitration. On contrary, the Pleadings Law are very formal and the disputed parties must obey all the legislators 'decisions in terms of procedures, deadlines of cases to be presented to the court and the parties disputed must comply with the legislators (Bakar, 2010).

Even though, the court hearings are declared to the public which enhances the level of trust and confidence in the court system, this attribute might not be appreciated in the cases that have a great economic importance which requires highest level of confidently. Therefore, arbitration is considered as more confidential in terms of hearings, documents and the attendance is restricted only to the disputed parties (Bakar, 2010).

CONCLUSION AND FINDINGS

We can conclude that the main regulatory body for both Islamic and conventional banks, in Libya, is the CBL. There are certain number of requirements must be taken into consideration by the banks intend to offer Islamic banking products either through Islamic banking window or subsidiaries/branches. As one of the most effective ways to regulate the banking sectors, banks intend to operate in Libya must get the license and fulfill all the requirements related to it. Additionally, All Islamic banks must appoint *Shari'ah* Supervisory Authority to ensure that activities, products and services are done according to the *Shari'ah* principles.

The research finds out that Islamic banks in Libya do not have independent law as the conventional counterparty does. However, the legislators settle for the existing Banking Law 2005 and providing a chapter on Islamic banking in the Banking Law No, 46 of 2012. Moreover, the laws which regulate the banking sector are as follow; Banking Law No,1 of 2005, Banking Law No,46 of 2012 which amends the Banking Law 2005 and lately Law No,1 of 2013 on prohibition of *riba*. All these mentioned laws are valid and active from the date of their issuance. The articles in the former laws still operative and active unless new laws come up with new articles repeal or amend the former articles.

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