

Application of Takaful Operational Guidelines 2013 and Insurance Act 2003 in Nigeria: Matters Arising and the Way Forward

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Abstract: The Nigerian insurance industry has a history of lack of penetration and patronage in some parts of the country. The persistent insurance gap has prospered in financially excluding and underserving the majority of the populace. In 2013, National Insurance Commission (NAICOM), the statutory body responsible for the regulation and supervision of insurance business in Nigeria introduced the Takaful (Islamic Insurance) Operational Guidelines which is adjudged as an avenue for increasing insurance penetration being a Shari'ah compliant product thereby bridging the endemic insurance gap. However, some provisions of the Takaful Operational Guidelines are in conflicts with certain provisions of the Insurance Act which left a vacuum in simultaneous application of the laws, a situation that affects the operation of Takaful sector in the country. This paper analyses some grey areas of conflicts in the Takaful Operational Guidelines and the Insurance Act 2004 with a view to resolving and harmonizing the legal frameworks. The study adopted a qualitative methodology of legal research which involved analysis of existing literature and interviews. The study concludes that the Operational Guidelines 2013 issued by NAICOM for smooth operation of Takaful business and the Insurance Act 2003 are inadequate as they left certain regulatory gaps that need to be filled in. Thus, the study recommends, amongst other things, that a comprehensive and robust Takaful Act to be enacted; and a review of the operational guidelines to safeguard the nascent Takaful industry with a clear delineation of authority between the Takaful guidelines and the Insurance Act.

I. INTRODUCTION

Conventional Insurance has been the pillar of insurance practice in Nigeria. However, the Nigerian insurance industry has faced a numerous challenges in recent times to the extent that the industry is practically the unpopular to the populace and the most unpenetrated industry in the financial sector in Nigeria's economic history.¹ It has certainly, excluded a vast majority of the populace from participation.² The insurance growth rate is stagnant; this is attributed to issues that include non-payment of claims, public distrust

which is the worst of all, and an evident lack of deepening insurance penetration.³ Financial inclusion objectives on the global platform summarize the notion of financial services delivery that is easily accessible and affordable by the teeming populace irrespective of beliefs or creed. Overcoming these challenges through introduction of a financial inclusion strategy is therefore crucial in the drive towards improving the lives of populace through deepening insurance penetration and the creation of sustainable financial services in Nigeria.⁴ The problem of poor insurance penetration has been a source of great concern to practitioners and stakeholders alike. With the gross premium income remaining almost stagnant at the close of each financial year, the regulator, National Insurance Commission (NAICOM), and stakeholders have been deploying series of strategies to boost penetration as a way of increasing GPI.⁵ Considering the large number of teeming population who are excluded from the conventional system because of religious reason and other concerns, the prospects and viability of *Takaful* is bright in Nigeria. It is a combination of factors stated above and many more that have snowballed into a huge clamour by Muslims and subsequent emergence of *Takaful* in the Nigerian insurance landscape.⁶ However, the *Takaful* operational guidelines and a lot of other enabling insurance legislations are conflicting and ambiguous.⁷ The legal effect of this is that such a huge regulatory vacuum will have negative impact on capital

¹Yusuf, T. O. 'Prospects of Takaful's (Islamic insurance) Contributions to the Nigerian Economy' (2012) 1(3) *Journal of Finance and Investment Analysis*, pp. 217-230

²As mentioned earlier, insurance sales revenues make up only 0.72% of Nigerias GDP, according to NAICOM's website accessed in April, 2015. According to EFlA survey (Access to Financial Services in Nigeria Report), it is estimated that only 1% of the adult population (about 800,000 people) have insurance. Out of these, 58.8% (0.47 million) have compulsory motor insurance and 21.6% (0.173 million) have life insurance.

³ There is limited product diversification while the conventional insurance sector focuses mainly on mandatory and corporate insurance. The insurance portfolio is dominated by mandatory insurance, large government contracts and insurance for the oil and gas industry. There are at least six insurance products that are mandated by law in Nigeria, and offered by insurance companies. The life segment is very small and this writer found it difficult to find information on it. Life premiums make up 26% of all sales but there are less than one million voluntary individual policies. Due to difficulties in obtaining data, the best logical comparison one could make is using a life density comparison. Nigeria's life density, which is life insurance premiums per capita, is very low compared to some other developing countries. This indicates once again a market that has been ignored.

⁴Kollere, A. U., (2014), *Takaful Insurance: Towards Deepening Insurance Penetration*, *Daily Trust Newspaper*, p. 38.

⁵Adekoya, A.I.B., (2012) *Will Takaful Make a Difference?* Date line Insurance Magazine, vol. 1, no. 5, p. 3.

⁶Muhammad M. S, (2016) *Challenges in Takaful Application Within Conventional Insurance Framework In Nigeria – The Imperative For Legislative Harmonization of Regulatory Instruments* (Unpublished Ph.D Thesis submitted to Faculty of Law University of Malaya Kuala Lumpur).

⁷*Ibid*

investment in *Takaful* and in active participation in the industry. This poses a serious threat to the much-desired financial inclusion and deepening insurance drive of NAICOM and other stakeholders in the industry.⁸

The leading Nigerian Insurance legislation (the Insurance Act of 2003) did not directly recognize *Takaful* as one of insurance businesses in Nigeria. Nevertheless, in the 2003, NAICOM started giving approval in principle to African Alliance Insurance to offer *Takaful* products and services. By 2007, total of three (3) conventional insurance companies were given approval to operate *Takaful* business on window basis.⁹ However, the absence of a law, guideline or a circular that regulate and supervise *Takaful* business in Nigeria, does not stop these conventional insurance companies from operating as *Takaful* providers.

Thus, NAICOM developed and issued guidelines in 2013. The guideline is meant to be used in registering, regulating and supervising *Takaful* operations in Nigeria. This is in line with the requirement of the Insurance Act, 2003 and other enabling relevant legislations. The *Takaful* operational guidelines are also aimed at institutionalising and facilitating migration from *Takaful* window operation to a full-fledged *Takaful* operation and also to provide a level playing field for all operators in Nigeria.¹⁰ More so, the extent of the adequacy of the *Takaful* operating guidelines issued by NAICOM remains unknown and full of conflicts and ambiguities in its relation with Insurance Act and other enabling legislation. This paper reviews the *Takaful* Operational Guidelines 2013 issued by NAICOM and highlights the areas of contention in the provisions of the Insurance Act 2003 as well as the inter relation between the simultaneous application of *Takaful* Guideline 2013 and Insurance Act 2003 in *Takaful* operation.

II. AN OVERVIEW OF NAICOM TAKAFUL OPERATIONAL GUIDELINES 2013

The drive towards having Islamic finance industry can never be achieved without establishing a viable operational framework for Islamic risk management system. This will set the stage for a level playing field. To create an enabling environment for registration and smooth take-off of full-fledged *Takaful* insurance application in Nigeria, the National Insurance Commission (NAICOM) exercised its powers under the Insurance Act 2003 and issued guidelines for *Takaful* insurance that have the objectives of:

- i. “providing minimum standards for the operation of *Takaful* insurance in Nigeria;
- ii. ensuring consumer protection in relation to *Takaful* insurance products;

- iii. setting up general requirements for *Takaful* insurance;
- iv. establishing duties and responsibilities of *Takaful* insurance operators and other insurance institutions in the market; and
- v. setting conditions for the entry and exit of operators from *Takaful* business.”¹¹

The operational guidelines also provide a framework for establishing a workable and favourable business atmosphere for *Takaful* operators which will lead to the growth of economically sound and viable *Takaful* business in Nigeria.¹² These Guidelines further show guidance on elements that are particular to the processes of *Takaful* as delineated and defined by the framework in which *Takaful* operators will carry out *Takaful* business.¹³ The Guidelines remains the main governing mechanism for *Takaful* process that must be read in union with other enabling legislations, circulars and policies considered as secondary instruments. The Guidelines applies to full-fledged license *Takaful* operators otherwise called stand-alone *Takaful* providers and a *Takaful* business conducted by conventional insurance company known as window operators.¹⁴

The *Takaful* Operational Guidelines provides “As part of NAICOM’s on-going pursuit to increase insurance penetration in Nigeria and increase the contribution of insurance to the National GDP, following detailed research that *Takaful* insurance should incorporate elements of mutuality and ethical finance considerations and to be opened to all people regardless of faith and background. These Guidelines are issued to provide regulatory guidance for *Takaful* insurance in the industry with the desire of enhancing financial inclusion in Nigeria and to ensure *Takaful* insurance providers are not disadvantaged”.¹⁵

The Guidelines for *Takaful* insurance provide guidance on elements that are specific to the operations of a *Takaful* insurance operator. They are to be read in conjunction with other relevant legislations, guidelines and circulars as determined to be applicable to *Takaful* insurance operators by the Commission. The Guidelines represent primary regulatory framework with regards to *Takaful* insurance.¹⁶ The Operational Guidelines objectives are to set-out minimum standard requirements for operations and disclosure by *Takaful* operators with the aim of protecting the interests of *Takaful* participants.¹⁷ The Guidelines is applicable to all *Takaful* operators carrying out *Takaful* business in Nigeria registered under NAICOM.¹⁸

¹¹Section 100 of the Insurance Act, 2003

¹²*Ibid*

¹³ Sola A., ‘NAICOM Issues Guidelines on Islamic Insurance’ Daily Independent Newspaper (Nigeria 14 November 2013) <<http://www.dailyindependentng.com>> accessed on 20th February, 2014

¹⁴*Ibid* p 4

¹⁵Section 1.2 of *Takaful* Operational Guidelines

¹⁶Section 1.3 of *Takaful* Operational Guidelines

¹⁷ Section 1.5 of the *Takaful* Operational Guidelines 2013

¹⁸ Section 1.6 of the *Takaful* Operational Guidelines 2013

⁸Adamu, A. I. (2013). *Challenges of Integrating Takaful (Islamic Insurance) Within Legal and Regulatory Framework of Insurance in Nigeria* (Unpublished LL.M Thesis) p.78

⁹Sulaiman, Z. D *Factors Responsible for the Absence of Takaful and the Prospect for its Establishment in Nigerian Economy* (University of Gloucestershire, UK 2011) p. 24

¹⁰ National Insurance Commission (NAICOM) *Takaful Operational Guidelines*, 2013

Furthermore, is also part of the main purpose of the guidelines to regulate commercial *Takaful* businesses conducted in Nigeria. It covers the operational processes of establishing and operating models for *Takaful* operators, the requirements of establishing a sound governance framework for *Takaful* operators and also of establishing reliable framework for *Takaful* fund related issues as well as managing participants and operators relationship amongst others.¹⁹ Many controversies surrounds the release of the Guidelines as well as fundamental conflicts with some provisions of the Insurance Act, 2003 that necessitated the emergence of this paper are examined in the later part of the paper.

III. AN OVERVIEW OF THE INSURANCE ACT 2003

The Insurance Act²⁰ is the principal legislation determining if, when and how insurance business can be conducted in Nigeria. The Insurance Act is the evolution of Decree No. 59 of 1976, which constituted the first all-embracing insurance legislation in Nigeria by putting together the provisions of the various previous laws. The Act covers a great deal of detail from specific licensing requirements such as minimum capital, to supervisory reporting and corrective measures.²¹ By establishing such requirements in law, it gives little flexibility for NAICOM to create supplementary legislation. Hence NAICOM has issued very limited number of Guidelines. It should be noted that Guidelines are not the same as regulations although the words are sometimes used interchangeably. Regulations are a prerogative of the Federal Ministry of Finance, the parent Ministry of NAICOM.²²

The Act, as the primary legislation for regulating insurance business in Nigeria, is meant among other things to provide enhanced supervision and regulation of the insurance industry.²³ However, in spite of all the commendable giant steps taken in the provisions of the Act to bring Nigerian insurance practice at par with world standards, this paper submits that certain pitfalls or gaps have been identified which need to be harmonized with other insurance regulatory instruments like the recently released *Takaful* Operational Guidelines. It is noticed that in the delineating section of its scope, the application of the Act is "restricted to insurance business and insurers, other than the insurance business carried on by friendly society or company or persons established outside Nigeria to engage solely in reinsurance business."²⁴ Similarly, the Act does not expressly cater for the business of Islamic insurance or *Takaful* in the entirety of its provisions.²⁵ Considering the recent trending of Islamic finance and its global acceptance as an adjunct of conventional insurance, the study posits that the Act should

have expressly catered for this new phenomenon, instead it chose to allude to it by inference.

This has given much impetus for the development of suitable financial products to those with ethical and faith related reservations towards the practice of conventional finance. It is against this background that NAICOM initiated the Market Development and Restructuring Initiatives (MDRI) project. It is a medium-term plan strategy for installing the first phase of the necessary reforms in areas such as industrial capacity, market efficiency and consumer protection in the Nigerian insurance industry. The development of operational framework for *Takaful* in Nigeria is one of the strategies,²⁶ which is the subject of this paper.

IV. CONFLICTS AND AMBIGUITIES IN THE REGULATORY FRAMEWORKS

The most critical regulatory challenge currently facing the nascent *Takaful* industry in Nigeria are some provisions of the Insurance Act that appear to be in conflict with the released *Takaful* operational Guideline. Specifically, the provision of the Act classifies insurance business into the two (2) traditional major categories i.e. Life Insurance and General Insurance business.²⁷ The Act further categorised life business into individual life business, Group life insurance and pension business and Health Insurance business.²⁸ It does not classify *Takaful* as one of Insurance business in Nigeria.

Takaful is quite different from conventional insurance and as such, it needs to have a specific legislation as obtainable in Malaysia. This legislative gap is bound to make potential *Takaful* business appear risky for hard earned capital investment into high level of uncertainties. This is because, the availability of a substantive legislation on *Takaful* attracts foreign investors as well as the local investors to invest into the nascent industry without any fear as it is obtained in Malaysia and Bahrain where *Takaful* is more developed.

Furthermore, *Takaful* operators might be reluctant to invest heavily on product development and marketing because of lack of express legal guarantee for protection. Legal guarantee is more apparent when legal battle arouse, particularly in the process of litigation before the Court of law.²⁹ An interview conducted further reveals that with the released *Takaful* guidelines on ground, several regulatory areas of concern that affect *Takaful* operation were cleared thereby giving the stakeholders in the industry confidence, hope and assurance of enabling regulatory environment.³⁰ Nonetheless the effectiveness and efficiency of the *Takaful*

¹⁹ National Insurance Commission (NAICOM) *Takaful* Operational Guidelines 2013 p. 3

²⁰ 2003, Laws of the Federation of Nigeria (LFN).

²¹ Section 86 of the Insurance Act, 2003

²² Section 7 of the Insurance Act, 1997

²³ Insurance Act, 2003

²⁴ See the provision of Section 1 of the Insurance Act, 2003.

²⁵ See the provision of Section 2 of the Insurance Act, 2003

²⁶ Ahmad U. K., 'Nigeria *Takaful* Insurance - Promoting Financial Inclusion in Nigeria' Daily Trust Newspaper (Nigeria 19 March 2013) <www.dailytrust.com> accessed on 04 May 2014

²⁷ Section 2(1) a and b of the Insurance Act, 2003

²⁸ Section 2(2) a - c of the Insurance Act, 2003

²⁹ Gambo, G., Sa'ad, N. & Kassim, S., 'Assessing the Impact of Islamic Micro-Finance on Poverty Alleviation in Northern Nigeria' (2014) Vol. 10, No. 4 *Journal of Islamic Economics, Banking and Finance*, p. 43

³⁰ Interview with Ahmed Kollere, Head of compliance *Takaful* Unit NAICOM (Abuja; 15th February, 2016)

Operational Guidelines is being questioned two years after its release. This is as a result of the regulatory gap which has significantly contributed to the slow start of full-fledged *Takaful* operations in Nigeria.³¹

Another challenge confronting *Takaful* operation in Nigeria is a regulatory conflict between the provisions of *Takaful* Operational Guidelines and the provision of Insurance Act 2003. This is in relation to the requirement of minimum paid up share capital of the intending companies.³² Whereas, the requirement of *Takaful* Operational Guidelines is that *Takaful* operator should maintain a minimum deposit with a Non-Interest financial Institution (NIFI) at all times during the operation of the *Takaful* business and the Share Capital of the *Takaful* operator should be in line with the amounts prescribed by the Commission.³³ The *Takaful* operator must provide evidence of this deposit to the Commission prior to the commencement of the *Takaful* business. The *Takaful* operator may request the CBN to provide a deposit structure that is compliant with its fund management policy.³⁴

The above cited requirement of Insurance Act with regard to minimum paid up share capital was relaxed by a provision contained in the Registration Requirement for *Takaful* Operators in Nigeria. The provision scaled down the minimum paid up capital for *Takaful* insurers to N100 million for both General and Family *Takaful*.³⁵ It remains arguable whether the power to increase paid-up share capital vested in NAICOM accommodate the discretion to reduce the prescribed minimum paid-up capital for insurance companies be it conventional or *Takaful*. This discrepancy cannot be unconnected with the desire of NAICOM to encourage *Takaful* promoters to invest heavily into the industry because of the availability of waiver which serves as incentives to the promoters.³⁶

Another area of regulatory conflict which creates serious challenge to the operation of *Takaful* in Nigeria is the provision of the Insurance Act.³⁷ The Act requires an insurer intending to commence business to deposit the equivalent of fifty per cent of the paid-up share capital with the Central Bank of Nigeria (CBN) as its statutory deposit. However, after registration, eighty per cent of the statutory deposit

would be released to the insurer with interest not later than sixty days after registration.³⁸ The section further states that in the case of an existing company, ten per cent of the paid-up share capital shall be deposited with the CBN attracting interest at CBN rate on the 1st of January each year.³⁹

Riba is often translated as ‘usury’ or ‘interest’ for which no counter value is given. It is often regarded as any unjust or unjustified increase in capital for the earning of which no appropriate effort was made.⁴⁰ An interview conducted in the course of this study reveals that the doctrine of necessity (*darrurat*) applies to this situation. This is because there is no enough institutional infrastructures for *Takaful* operation in Nigeria. The particular absence of *Takaful* legislation which clearly defines the scope of *Takaful* operation and shortage of institution offering *Shari’ah* compliance instrument such as Islamic Capital Market, *Sukuk* (Bonds) which in the opinion of majority of scholars around the world constitute a serious challenge.⁴¹ Therefore, there is urgent need to set a time-frame for development of the entire needed infrastructure for smooth *Takaful* operation.⁴²

Another source of regulatory conflict between the provision of Insurance Act, 2003 and *Takaful* Operational Guidelines is the provision of the Act with respect to the types of investment portfolio an insurer should invest in. The Act provides that an insurance companies should at all-time invest and hold investment in Nigerian assets equivalent to not less than the amount of policy holder’s funds in such accounts of the company.⁴³ The effect of this provision is that Nigerian insurance company must invest in Nigerian investments portfolio the majority of which are not necessarily *Shari’ah* compliant. This is contrary to the Operational Guideline that requires the *Takaful* fund to be invested in *Shari’ah* compliant investments.⁴⁴ This presupposes that the investment must be devoid of the *Shari’ah* prohibitive elements namely, interest, uncertainty and gambling.

Thus, the *Takaful* Operational Guidelines impress on the operator to establish investment policies for the Participants’ Risk Fund (PRF) and Participants’ Investment Fund (PIF).⁴⁵ However, Insurance Act 2003 which is the main regulatory instrument provides for investment by an insurer in a totally different way from the provisions of the *Takaful* Guidelines. Furthermore, Interest (*Riba*) is a key component of admissible assets under the Insurance Act, while under *Takaful* concept;

³¹ Interview with Ahmed Abubakar, of Takaful Unit NAICOM (Abuja; 15th Febuary,2016)

³² Section 9(1) Insurance Act, 2003 provides for minimum paid up capital to the effect that; No insurer shall carry on insurance business in Nigeria unless the insurer has and maintained, while carrying on that business, a paid-up share capital of the following amounts as the case may require, in the case of- (a) Life insurance business, not less than N150,000,000 ; (b) General insurance, not less than N200,000,000 ; (c) Composite insurance business, not less than N350,000,000 ; or (d) Reinsurance business, not less than N350,000,000

³³ Section 7.2 of the Takaful Operational Guidelines, 2013

³⁴ Registration Requirement for Takaful operators (2013)

³⁵ Paid-up share capital requirement contained in the registration requirements for Takaful operation.

³⁶Section 9(4) Insurance Act, 2003

³⁷ Section 10(1) Insurance Act, 2003

³⁸ Section 10(2) Insurance Act, 2003

³⁹ Section 10(3) Insurance Act, 2003

⁴⁰Mannan, M.A., *Islamic Economic Theory and Practice*, (Idarah wa Adabiyat Delhi, India 1980) p 161

⁴¹Interview with Dr. Abdussalam Ismail Onagun Assistant Professor University of Modern Sciences, Dubai, UAE Member of Advisory Council of Experts, Noor Takaful Plc Lagos, Nigeria.(Kano; 18th January, 2017)

⁴²Interview with Aliyu Buhari Head of Marketing Jaiz Takaful Insurance (Abuja; 30th November,2016)

⁴³ Section 25 of the Insurance Act

⁴⁴ Section 4.4 of the Takaful Operational Guidelines, 2013

⁴⁵ The requisite policies shall include: The Takaful operator must seek to manage funds aligned with *Shari’ah* compliant methodology as practised internationally and approved by its Advisory Committee of Experts (ACE)

it is an averting factor of the transaction.⁴⁶ This view however, depends on the purification concept stipulated in provision of the *Takaful* Operational Guidelines.⁴⁷

There is no express exemption of *Takaful* from the requirements of above cited provisions of the Insurance Act and what remains unclear is whether the provision of the Act will apply to *Takaful* insurance or not. An interview conducted indicates that *Takaful* operators in Nigeria with particular reference to Jaiz *Takaful* insurance are trying their best in making sure that *Takaful* fund are mainly invested in *Shari'ah* compliant instruments such as estate development and *Musharaka* arrangement.⁴⁸

The supremacy of the Insurance Act in regulating insurance business in Nigeria has been clearly stated by the Act to the effect that where any of the provisions of CAMA and any other relevant legislations is inconsistent with any provision of the Act, the provision of the Act shall prevail to the extent of that inconsistency without prejudice to the application of CAMA and any other legislations applicable to insurance under this Act.⁴⁹

The murky nature of this regulatory gap will affect the smooth operation of *Takaful* business in Nigeria. The reason is that, whenever and wherever any provision of the Operational Guidelines is enforced on any operational matter regarding *Takaful* operation which contradicts any provision of the Act, the provision of the Act prevails over the Operational Guidelines whether it is on a *Shari'ah* issue or not. This asserts the supremacy of the Act over and above any other legislation in relation to insurance business in Nigeria. An interview with staff of the NAICOM further buttressed this point.⁵⁰

More so, as Nigeria is still governed by Common law, there are sometimes conflicts of laws even in situations of their interpretations. *Takaful* contracts are expected to comply with the *Shari'ah* rules and principles, as well as with the laws of the civil jurisdiction in which contracts are to be enforced. This is a potential area of friction because of the fundamental differences between Islamic law of contract and Common law of contract. Insurance is a contract that is governed by the Insurance Act, other statutory enactments and the received English law of contract, whereas *Takaful* is primarily governed by principles of Islamic commercial jurisprudence and the recently released *Takaful* Guidelines.

Thus, in the event of dispute arising from the *Takaful* contract involving any *Shari'ah* issue, the Court that assume jurisdiction to hear the matter is critical here as the released Guidelines have been silent on the exclusivity of the *Shari'ah*

application on *Takaful* contrary to what is obtainable in other countries like Malaysia and Bahrain. One of the interviewees who is also a member of ACE of Jaiz Bank holds the opinion that specialised Courts that are manned by the *Shari'ah* experts should be established to adjudicate on Islamic commercial jurisprudence matters.⁵¹

A member of *Takaful* Advisory Council with NAICOM and a member of FRACE is of the opinion that Chief Judges of the Federal and States High Courts should initiate and organise special training for their judges in Islamic finance.⁵²

In Malaysia, for example, in the event where there is a dispute before the Court or arbitrator which involves the *Takaful* business in relation to any *Shari'ah* matter, the Court or arbitrator is required to make reference to the *Shari'ah* Advisory Council (SAC) of the Central Bank, Bank Negara Malaysia (BNM).⁵³ Once the reference is made to SAC, their decision is binding on the Court and the arbitrator. Another provision of the Malaysian *Takaful* Act 1984 provides that any prosecution in respect of any offence under the Act is to be referred to the Magistrate Court.⁵⁴ The Malaysian *Takaful* Act also allows for the application of other laws to *Takaful* matters, such as the Companies Act, Contracts Act, 1950 and Insurance Act, 1996, Road Traffic Ordinance, 1958 and Co-operatives Societies Act.⁵⁵ In the event where there is a conflict or inconsistency between the *Takaful* Act and other Acts, the *Takaful* Act prevails. This compared with Section 100 of the Nigerian Insurance Act 2003 cited previously which claims supremacy in any matter on insurance in Nigeria.

V. MATTERS ARISING AND THE WAY FORWARD

From the foregoing discussion, the following issues and their solutions among others were observed as result of simultaneous application of *Takaful* Operational Guidelines and Insurance Act in *Takaful* business in Nigeria;

- i. The absence of any provision of the Insurance Act on *Takaful* is a grave error that has serious impact on the operation of *Takaful* business and is bound to produce ambiguities in the complex application of *Takaful* under conventional insurance structure in Nigeria and therefore the panacea lies in the establishment of *Takaful* comprehensive legislation for smooth operation of the industry.
- ii. The waiver of the minimum capital requirement for *Takaful* operators by NAICOM is however, subject to controversy as the NAICOM's power under the Act relates only to upward review of the minimum paid-up share capital and not its downward review. The Act should be amended to allow flexibility and

⁴⁶ Section 24(13) of the Insurance Act

⁴⁷ Section 4.4(a) of the *Takaful* Operational Guidelines

⁴⁸ Aliyu Buhari Head of Marketing Jaiz *Takaful* Insurance, interview by the authors (Abuja: 30th November, 2016)

⁴⁹ Section 100 of the Insurance Act, 2003

⁵⁰ Alhaji Sabi'u, of *Takaful* Unit NAICOM, interview by the authors (Abuja; 15th February, 2016)

⁵¹ Dr Ahmed Bello Dogarawa member ACE Jaiz Bank Plc, interview by the authors (Zaria; 4th January, 2017)

⁵² Dr Bashir Aliyu Secretary CBN FRACE, member NAICOM TAC, interview by the authors, (Kano; 6th January, 2017)

⁵³ Section 56 of the Central Bank of Malaysia Act, 2009

⁵⁴ Section 63 of the Malaysian *Takaful* Act 1984

⁵⁵ Section 67 of the *Takaful* Act 1984

more powers at the disposal of the NAICOM to allow concurrent and smooth operation of parallel insurance industry.

- iii. Interest (*Riba*) is unacceptable and clearly violates the *Shari'ah* principles. The issue of concern here is that the Insurance Act requires certain percent of the paid-up share capital is to be deposited in CBN. The challenge is how the CBN can handle deposits given the fact that it is not a non-interest deposit institution. CBN Act should be amended to allow CBN operate *Shari'ah* compliant deposit scheme.
- iv. The types of investment portfolio an insurer should invest in as provided by the Act applies to *Takaful* business as well. Thus, the section of the Act is in direct conflict with the investment requirement of the *Takaful* Operational Guidelines. Compliance with this provision of the Act renders *Takaful* investment non-*Shari'ah* compliant. Therefore, an excuse should be created for *Takaful* in respect of this provision to avoid contravention of the principle underpinning its establishment.
- v. The issue of Court that has jurisdiction to hear *Takaful* dispute is critical here as the released *Takaful* Guidelines and the Insurance Act have been silent on the exclusivity of the *Shari'ah* application on *Takaful* contrary to what is obtainable in other countries like Malaysia and Bahrain. Therefore, specialized Court should be established to adjudicate on Islamic commercial jurisprudence matters. In the alternative, High Court judges should be trained on Islamic commercial jurisprudence or the Constitution of the Federal Republic of Nigeria, 1999 should be altered to enlarge the jurisdiction of Sharia Court of Appeal to entertain the matter as Court of first instance in addition to its appellate jurisdiction.

VI. CONCLUSION

What remains critical to the realisation of growth and development of *Takaful* is overcoming the regulatory challenges that confront this trending form of insurance often referred to as Islamic insurance, cooperative insurance and sometimes ethical insurance. These challenges, if not properly handled, will surely act to the detriment of the teeming populace who have waited patiently and for so long for this financial inclusion opportunity.

Part of the problems identified by the NAICOM diagnostic study⁵⁶ on insurance which is in tandem with the objectives of this study is that the current regulatory framework of insurance in Nigeria is not adequate for the development of *Takaful* and micro insurance by extension to full potential. The study conducted by NAICOM found that the existing insurance rules and regulation in Nigeria were not developed to meet the peculiarities of *Takaful* operations. Considering

the challenges and opportunities posed by regulation of the insurance industry and the specific business needs of *Takaful* operations in Nigeria, there is a need to draw heavily from the Malaysian experience in overcoming these teething challenges. There is a greater need for a more enabling regulatory framework like the Malaysian *Takaful* Act of 1984, in addition to a strict minimum consumer protection and market conduct standards that should be effectively enforced. This will no doubt protect the *Takaful* operators and at the same time protect the policy-holders.

⁵⁶Sulaiman Z 'Takaful Insurance Implementation: The Drive Towards an Inclusive Insurance Sector in Nigeria in *Takaful and Mutuality*' p. 28