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AN ASSESSMENT OF THE LEGAL FRAMEWORKS FOR SHARI'AH COMPLIANT HOUSING FINANCE IN NIGERIA: LESSONS FROM MALAYSIA AND AUSTRALIA

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ABSTRACT

Housing provision remains a fundamental responsibility of the state due to its direct impact on human welfare, economic stability, and social development. Achieving adequate housing depends on coherent legal and regulatory frameworks capable of supporting inclusive and sustainable housing finance systems. In Nigeria, however, existing frameworks are predominantly conventional and interest-based, raising concerns about their capacity to accommodate Sharīʿah-compliant housing finance (SCHF). This paper examines the adequacy of Nigeria's legal and regulatory frameworks for housing finance and their implications for SCHF. Using a doctrinal methodology, it analyses key statutes—including the Constitution of the Federal Republic of Nigeria 1999 (as amended), the National Housing Fund Act, BOFIA 2020, and the Mortgage Institutions Act—to determine the extent to which they facilitate or constrain non-interest housing finance. The study identifies major impediments, particularly mandatory interest provisions under the National Housing Fund, regulatory ambiguity *surrounding non-interest mortgage institutions, and the absence of explicit statutory recognition of SCHF. A comparative analysis of Malaysia and Australia reveals two complementary models. Malaysia operates a specialised and comprehensive legal regime with strong Shari'ah governance, institutional clarity, and regulatory support, enabling the growth and standardisation of SCHF products. Australia, by contrast, demonstrates how SCHF can function within a flexible conventional framework through regulatory neutrality, adaptive legal interpretation, and private sector innovation, albeit with some tax and structural challenges. The paper finds that Nigeria's constraints are primarily legal and structural. It recommends a hybrid reform approach involving targeted statutory amendments, explicit recognition of non-interest mortgage institutions, strengthened Shari'ah governance within regulatory bodies, and alignment of housing policies with SCHF to enhance accessibility and financial inclusion.*

Keywords: *Shari'ah-Compliant Housing Finance (SCHF); Legal Framework; Nigeria; Financial Integration.*

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1. INTRODUCTION

Housing provision constitutes one of the central responsibilities of governments, given its significant effects on human welfare, economic stability, and social development (Bengtsson, 2001). Achieving adequate housing requires more than isolated initiatives; it demands concerted, coordinated, and strategic efforts across multiple sectors. This necessity underscores the importance of establishing robust legal frameworks, policy instruments, and institutional mechanisms to effectively regulate, supervise, and harmonize housing delivery systems. Such structures not only facilitate access to affordable housing but also ensure accountability, sustainability, and efficiency in the implementation of housing programmes (Nixa, 2024).

The foregoing informed the establishment of legal mechanisms specifically for the regulation of housing finance in Nigeria. The conventional orientation of the country however influenced the corpus of these mechanisms i.e. they are fashioned towards the conventional financial systems. Presently, there is yet to be in operation, any legal or regulatory framework that specifically regulates housing finance in a *Shari'ah* compliant manner.

Although there are indications of ongoing regulatory collaboration among key financial regulators in Nigeria - particularly between the Securities and Exchange Commission (SEC) and Federal Mortgage Bank of Nigeria (FMBN) - towards the development of a *Shari'ah*-compliant housing finance framework (Abimbola, 2025). The regulation may encounter legal challenges because of its lack of predication on a clear legal framework.

The absence of a specialised legal and regulatory framework for Sharīʿah-compliant housing finance (SCHF), grounded in a clear and coherent foundation, constitutes a significant impediment to its effective operation and undermines its potential to address Nigeria's housing deficit. Ajetunmobi & Ibrahim identify the predominance of a conventional, interest-based legal framework as a central challenge to SCHF. They contend that although a general legal basis that allows the operation of *Sharīʿah*-oriented financing in Nigeria exists, its practical implementation particularly for housing finance is constrained by systemic inequities. These inequities stem largely from the conventional legal and financial architecture that continues to shape and influence the system, thereby limiting the full realisation of *Sharīʿah*-compliant housing finance mechanisms (Ajetunmobi & Ibrahim, 2016).

Other jurisdictions, such as Malaysia and Australia have achieved significant advancement in term of legal and regulatory frameworks that are directly supportive of SCF generally, Malaysia particularly presents an advanced legal framework for the regulation and operation of SCHF (Badeeu, & Muneeza, 2023), while Australia represents a system where the housing finance sector is regulated by dual legal frameworks, and have effectively leveraged existing conventional legal structures to facilitate the operation of SCHF, achieving notably positive outcomes (Ahmad & Hassan, 2009). This suggests that the legal and regulatory challenges confronting the operation of SCHF in Nigeria are not insurmountable, particularly if careful study is made of the two models. Accordingly, this paper adopts a doctrinal methodology to critically examine the legal and regulatory frameworks governing housing in Nigeria, assess their implications for the operation of SCHF, and draw relevant lesson from the Malaysian and Australian experiences on the integration of SCHF within the legal system.

The study provides a doctrinal and comparative analysis of Nigeria's legal and regulatory framework for housing finance, with a specific focus on its adequacy for SCHF. It critically examined housing finance statutes and their compatibility with Sharīʿah principles. By comparing Nigeria with Malaysia and Australia, it highlights contrasting regulatory models -

Malaysia’s structured Shari’ah-governed system and Australia’s adaptive conventional framework. The study offers practical implications for policymakers on the need for statutory reform, institutional clarity, and strengthened Shari’ah governance. It also guides practitioners on adapting existing structures to support SCHF. The study generally advances the discourse on inclusive housing finance systems that promotes SCHF in particular in dual legal-economic systems.

Apart from the foregoing introductory section, this study is further sectioned into five parts. Section Two reviews the relevant literature on housing finance and Sharīʿah-compliant housing finance frameworks. Section Three outlines the research methodology adopted, particularly the doctrinal and comparative approaches. Section Four presents and discusses the findings, focusing on Nigeria’s legal constraints and comparative insights from Malaysia and Australia. Finally, Section Five concludes the paper by summarising the key findings and offering policy recommendations for strengthening Nigeria’s housing finance framework.

2. REVIEW OF LITERATURE

2.1 Shari’ah Compliant Housing Finance

SCHF - like all other *Shari’ah* compliant finance system - operates within a distinct financial system grounded in the principles and objectives of Islamic law (Syahriani, 2023). Unlike conventional housing finance, which is primarily debt-based and driven by interest (*ribā*), the Shari’ah-compliant system is structured on asset-backed transactions, risk-sharing, and the prohibition of unjust enrichment (Kulmie, 2023). It emphasises fairness, transparency, and real economic activity, ensuring that

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financing arrangements are tied to tangible assets and that parties share in both risks and rewards. Additionally, the system incorporates ethical considerations such as the avoidance of excessive uncertainty (*gharar*) and speculative transactions (*maysir*), while promoting social justice and equitable wealth distribution.

Compliance with these principles is not merely procedural but foundational. Any departure from *Shari'ah* requirements—such as the inclusion of *ribā*, excessive uncertainty, or the absence of genuine asset transfer—may render a transaction invalid (*bāṭil*) or defective (*fāsid*) under Islamic law. Beyond legal invalidity, non-compliance carries significant ethical and spiritual consequences, undermines the legitimacy of the financial arrangement, and erodes public confidence in *Shari'ah*-compliant systems. It also exposes institutions to reputational risk and *Shari'ah* non-compliance risk, which may necessitate purification of impermissible income through charitable disposal.

Shari'ah-compliant housing finance utilises adaptable contracts rooted in Islamic law to provide interest-free, ethical housing solutions, with validity dependent on strict adherence to Shari'ah principles. *Musharakah Mutanaqisah* represents the most Shari'ah-aligned model, emphasising joint ownership and risk-sharing (Yustiardhi, Aulia & Permatasari, 2019). *Ijarah Muntahiyahbi Tamleek*follows as a lease-to-own structure requiring the financier to retain ownership responsibilities (Mahmoud, 2023). For construction, *Istisna'*enables financing of properties yet to be built through commissioned contracts (Muhammad, Riazuddin, & Galad, 2019).

By contrast, *Murabahah*and *Bay' Bithaman Ajil* (BBA) are sale-based models used for property acquisition but are more prone to criticism where they resemble interest-based financing or lack genuine ownership transfer (Asni, 2022). While these contracts provide flexible alternatives for housing finance, any departure from core Shari'ah principles—such as the prohibition of *ribā*, requirement of real ownership, and risk-sharing—renders them non-compliant and undermines their legitimacy.

2.2 Overview of Legal Frameworks for Housing Finance in Nigeria

This part of the section shall discuss some important legislations, regulatory documents and instruments that affects or have connection with housing provision in Nigeria. As mentioned above, some of the legal frameworks to be discussed may not directly regulate housing; they however have regulatory, implementing or coordinating effect on housing provision and finance in the country.

2.2.1 The 1999 Constitution (as amended)

The 1999 Constitution, by virtue of section 16(2)(d), recognises access to adequate housing as a state responsibility by placing it within the Fundamental Objectives and Directive Principles of State Policy. Accordingly, the provision situates housing not as a directly enforceable right, but as a socio-economic objective to be pursued by the government (Nyamutete, S. & Malenge, 2025).

Even though, the right to housing as provided by the aforementioned constitutional provision falls only within the realm of social right that are not actionable (David, 2024). It however gives legal validation to other laws and regulations promulgated to regulate housing and it financing mechanisms in the Nigeria. The provision further places the provision of adequate housing within the core objective and parameters with which the success of government administrations are measured.

Furthermore, section 43 of the Constitution guarantees every citizen the fundamental right to acquire and own immovable property anywhere in Nigeria without discrimination (Namene & Duson, 2025). This guarantee indirectly promotes access to housing, which is inherently tied to interests in land. Consequently, although the right to housing is not expressly recognised as a fundamental right, a closely related right that facilitates housing has been constitutionally entrenched, thereby shaping the overall constitutional perception of housing.

Specifically, the Nigerian 1999 Constitution outlines the environmental conditions –by virtue of section 20 - within which housing adequacy is to be assessed. It mandates the State to protect and improve the environment (Ekpenisi, 2025), thereby establishing a framework against which the quality of housing may be evaluated. The extent to which these environmental standards are met informs the perspective on housing adequacy, particularly in relation to access to essential amenities such as water, roads, healthcare facilities, and other basic services.

The constitutional recognition of housing underscores the need for government intervention through structured frameworks that facilitate access to adequate housing. In this regard, financial systems constitute a key policy instrument. Consequently, the government has established various housing finance mechanisms to regulate and support housing delivery, most notably the National Housing Fund (NHF), which is administered by the Federal Mortgage Bank of Nigeria (FMBN).

2.2.2 National Housing Fund Act, CAP N45, LFN 2007

The National Housing Fund Act establishes a dedicated fund to mobilise financial resources for the provision of affordable housing in Nigeria (Adeniyi, 2005). Its primary objective is to ensure access to housing finance by addressing the shortage of long-term funds for mortgage lending (Ayotamuno & Obinna, 2014). The Act promotes this goal through mechanisms such as facilitating loan availability for construction, purchase, and renovation of houses (National Housing Fund Act, 2007, s. 2(a)), encouraging investment in property development, and supporting housing programmes, particularly for low-income earners (National Housing Fund Act, 2007, s. 2(d)).

To sustain the Fund, the Act mandates contributions from employees, employers, banks, and insurance companies, with funds managed by the Federal Mortgage Bank of Nigeria. It also prescribes penalties for non-compliance. Although an amendment was proposed in 2018, it was not assented to, leaving the 1992 Act as the current law. However, many of its provisions—especially those relating to contribution thresholds—have become outdated and require review to reflect present economic realities (Adeniji, 2005).

It is important to note that any housing finance arrangement under the NHF is statutorily required to be interest based. sections 4 and 16(1–4) of the Act make provision for the payment of interest on employees' contributions as well as the imposition of interest on housing loan facilities, thereby entrenching interest as an indispensable feature of the Fund's operational framework (Adeniyi, 2005). However, this interest-based structure is fundamentally inconsistent with the principles of *Sharīʿah*-compliant finance, which prohibits the charging or receipt of riba (Ayinla-Edun, 2024). Consequently, the persistence of these provisions constitutes a significant structural impediment to the development and implementation of SCHF alternatives within Nigeria's housing finance system.

2.2.3 Federal Mortgage Bank of Nigeria Act, Cap F16

The Federal Mortgage Bank of Nigeria Act (2004) by section 1 establishes the Federal Mortgage Bank of Nigeria (FMBN) as a corporate body with a Board of Directors.The Bank is statutorily mandated to provide long-term credit facilities to mortgage institutions and to promote the development and stability of mortgage finance at the federal, state, and local levels (Ikekpeazu, 2024).

The Act grants the FMBN the power to regulate and administer the NHF (National Housing Fund Act, 2007, ss. 7(1)–(2), 26). The Act further grants the FMBN significant financial autonomy by exempting it from income tax and other company taxation statutes, as well as from the provisions of the Banks and Other Financial Institutions Act. It further vests regulatory powers in the Board to determine lending conditions, interest rates, charges, and the operational mode between of mortgage institutions (Federal Mortgage Bank of Nigeria Act, 2004, s. 22(a–f)).

2.2.4 Central Bank of Nigeria Act

The Central Bank of Nigeria Act 2007 establishes the Central Bank of Nigeria (CBN) as the apex financial regulator and an independent corporate body (Central Bank of Nigeria Act, 2007, ss. 1(1)–(2)), following the repeal of earlier amendment laws. It vests the CBN with broad powers over financial policy formulation, and overall financial system stability (Oladapo & Ajayi, 2024).

With specific relevance to housing finance, the Act places mortgage institutions and other financial intermediaries involved in housing finance under the regulatory and supervisory oversight of the CBN. This ensures that such institutions operate within approved prudential and licensing frameworks, as no mortgage institution may lawfully engage in housing finance activities without prior authorisation from the Bank. In this way, the Act indirectly governs the stability, regulation, and operational integrity of housing finance systems in Nigeria.

2.2.5 Banks and Other Financial Institutions Act, Cap No 5 LFN 2020

The Bank and Other Financial Institutions Act (BOFIA) 2020 repeals the 2004 Act and establishes a comprehensive regulatory framework for the supervision and control of banking and other financial institutions in Nigeria (Banks and Other Financial Institutions Act, *2020*, preamble; Ibrahim, 2022). It requires all entities engaging in banking business, including mortgage banks and other housing finance institutions, to be duly incorporated as companies in Nigeria and licensed by the Central Bank of Nigeria (CBN) before commencing operations (Banks and Other Financial Institutions Act, *2020*, *s 2;* Aguda, 2023).

The Act makes non-compliance with incorporation and licensing requirements a criminal offence punishable by imprisonment and/or monetary penalties (Banks and Other Financial Institutions Act, *2020*, *s* 2 (2)(a-d)). It also empowers the CBN to set licensing conditions, including minimum capital requirements, and to revoke licences for failure to comply. These requirements apply equally to mortgage institutions involved in housing finance.

It is to be noted that notwithstanding other laws governing housing finance, the provisions of BOFIA provisions prevail in cases of inconsistency, thereby giving it overriding regulatory authority (Banks and Other Financial Institutions Act, *2020*, 53). It also classifies mortgage refinance and mortgage guarantee companies as specialised banks. However, it does not expressly recognise primary mortgage institutions or non-interest mortgage finance structures, creating regulatory uncertainty and potential challenges for *Sharīʿah*-compliant housing finance. Consequently, it has been suggested that the Act be amended to accommodate non-interest mortgage institutions to enhance clarity and inclusivity in Nigeria's housing finance framework.

2.2.6 Mortgage Institutions Act 1989 (as amended)

The Mortgage Institutions Act as amended in 2016 (1989) establishes the legal framework for the licensing, regulation, and supervision of mortgage banks and institutions in Nigeria. Its primary objective is to facilitate access to housing finance by enabling licensed institutions to grant loans for the purchase, construction, improvement, and renovation of residential properties, as well as to regulate their savings and deposit operations (Akinwale, 2005).

The Act requires mortgage institutions to be duly incorporated companies whose objects include mortgage business, and to obtain a licence from the Minister through the Federal Mortgage Bank of Nigeria (FMBN), subject to specified documentation and conditions (Mortgage Institutions Act, 1989, s. 1(1)). Certain institutions, including the FMBN and banks already licensed under BOFIA and actively engaged in mortgage activities, are exempt from this ministerial licensing requirement (Mortgage Institutions Act, 1989, s. 1 (2) (a & b)).

It sets a minimum paid-up capital requirement (Mortgage Institutions Act, 1989, s. 4) and criminalises unauthorised mortgage operations (Mortgage Institutions Act, 1989, s. 1 (3)). The Act also outlines detailed procedures for licensing, grounds for revocation, and safeguards such as the right to be heard before revocation.

Additionally, it defines the functions and powers of mortgage institutions, including loan evaluation, supervision of housing projects, and prudent lending limits. It further regulates their financial operations, governance, reporting obligations, and compliance requirements, while empowering the Minister, in consultation with the FMBN, to issue regulations for effective implementation (Mortgage Institutions Act, 1989, s. 2 (2)).

2.3 Implications of the Legal Frameworks for Housing on SCHF in Nigeria

Although the general body of the legal framework accommodates the operation of the Islamic banking system, the specific operation of *Shari'ah* compliant mortgage finance by financial Institutions is an innovative extension of the provisions especially BOFIA. A holistic examination of the Nigerian legal and regulatory framework governing housing finance reveals a system that is structurally anchored on interest-based, conventional financial principles. This has significant implications for the development and operation of SCHF in the country.

Firstly, although the 1999 Constitution recognises housing as a socio-economic objective under the Fundamental Objectives and Directive Principles of State Policy, and indirectly supports access to property under section 43, it does not expressly guarantee a right to housing as fundamental and enforceable. This creates a permissive but non-enforceable constitutional environment, which allows for policy innovation, including SCHF. However, the absence of explicit constitutional recognition also means SCHF lacks direct constitutional backing, relying instead on statutory accommodation.

Secondly, the NHF Act presents a major structural constraint to SCHF implementation. By mandating interest payments on contributions and loans, the Act entrenches interest-based financing as the operational norm within Nigeria's dominant housing finance scheme. This is fundamentally incompatible with *Sharīʿah* principles, thereby limiting the ability of Islamic financial institutions to participate fully in NHF-based housing finance arrangements unless statutory amendments are introduced to accommodate non-interest structures.

Thirdly, the BOFIA strengthens regulatory uniformity by subjecting all mortgage and financial institutions to Central

Bank licensing, capital requirements, and prudential controls. While this enhances financial stability, BOFIA does not expressly recognise non-interest mortgage institutions, thereby creating a regulatory gap and legal uncertainty for SCHF providers. The absence of explicit categorisation limits product innovation and complicates licensing pathways for Islamic mortgage institutions.

The gap practically accounts for the non-existence of any mortgage institution operating SCHF system in Nigeria, only commercial banks with little technical know-how and expertise required of mortgage financing operate SCHF housing finance under umbrella of rending *Shari'ah* compliant banking services. this circumstance hinders the full operational potentials and effectiveness of SCHF

Finally, the Mortgage Institutions Act (as amended) establishes a licensing and supervisory framework for mortgage banks that is heavily administrative and compliance-driven, but similarly silent on *Sharīʿah*-compliant structures. Its emphasis on incorporation requirements, ministerial licensing, and conventional prudential thresholds further embeds a uniform financial model that does not reflect the operational needs of Islamic housing finance.

Overall, the combined effect of these statutes is the creation of a predominantly conventional, interest-based housing finance system in which SCHF operates at the margins rather than as an integrated component. While the framework provides regulatory stability and institutional structure, its limited recognition of non-interest financing models constitutes a key

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legal barrier to the mainstream adoption and expansion of SCHF in Nigeria.

3. RESEARCH METHODOLOGY

This study adopts a doctrinal legal research methodology. It systematically analysed primary legal sources, including statutes, regulations, and relevant policy instruments governing housing finance in Nigeria. Key legislative materials examined include the Constitution of the Federal Republic of Nigeria 1999 (as amended), the NHF Act, the BOFIA 2020, and the Mortgage Institutions Act. The doctrinal method is used to interpret these instruments in order to determine their scope, legal effect, and adequacy in accommodating SCHF.

The study equally adopts comparative legal approach. This involves examining the legal and regulatory frameworks of Malaysia and Australia as reference jurisdictions. Malaysia is selected due to its well-developed and institutionally integrated Islamic finance system, while Australia is considered for its flexible, dual-structured regulatory environment that accommodates Islamic housing finance within a conventional legal system. The comparative analysis enables the identification of best practices, structural differences, and regulatory gaps relevant to Nigeria's context.

Furthermore, the research relies on secondary sources of data, including journal articles, textbooks, official reports, and policy documents. These materials provide scholarly perspectives and insights into the operation of SCHF across jurisdictions with similar socio-legal environment. The combination of doctrinal and comparative methods ensures a comprehensive evaluation of legal adequacy, while also enabling the study to generate practical recommendations for regulatory and policy reform in Nigeria's housing finance sector.

4. DISCUSSION

4.1 Legal Frameworks for the Operation of SCHF in Malasia

Malaysia's SCHF sector is highly developed and globally prominent (Mohd Assrudin et al., 2025), largely due to its strong and well-articulated legal and regulatory frameworks (Abd. Wahab, Hamzah & Mohd Yusof, 2016). The sector operates within a comprehensive legal architecture anchored by the Islamic Financial Services Act 2013, which provides the statutory basis for the regulation of Islamic financial institutions and ensures full compliance with *Shari'ah* principles (Islamic Financial Services Act, 2013, s. 7 & 29). This Act mandates the establishment of internal *Shari'ah* Committees within financial institutions to supervise and certify the *Shari'ah* compliance of financial products, including housing finance instruments (Islamic Financial Services Act, 2013, s. 30; Cagamas, 2021).

A central feature of Malaysia's legal framework is the role of the Central Bank (Bank Negara Malaysia), which issues detailed guidelines such as the *Shari'ah* Governance Framework. This framework sets out institutional, operational, and compliance standards that Islamic financial institutions must adhere to, thereby ensuring consistency, transparency, and accountability in SCHF operations (Ahmad & Ishak, 2021).

In addition, the *Shari'ah* Advisory Council (SAC), established under the Central Bank of Malaysia Act, serves as the highest authority on *Shari'ah* matters in Islamic finance (Central Bank of

Malaysia Act, s. 51 & 52). Its rulings are legally binding and take precedence over those of other *Shari'ah* bodies (Mohd et al, 2024). Courts and arbitral tribunals are statutorily required to either consider SAC's published rulings or refer *Shari'ah*-related questions to it for determination (Central Bank of Malaysia Act, No 701, 2009, section 56 of Central Bank of Malaysia Act, No 701, 2009). This unique legal mechanism ensures uniform interpretation of *Shari'ah* principles and reduces uncertainty in the adjudication of Islamic finance disputes.

The effectiveness of these legal frameworks has enabled the development and standardisation of various *Shari'ah*-compliant housing finance products such as *Murabahah*, *Ijarah*, *Musharakah Mutanaqisah*, and others, all structured to avoid interest (*riba*) while promoting risk-sharing and fairness. Furthermore, government policies like the National Housing Policy operate in synergy with these legal frameworks by facilitating access to affordable housing through regulated and Shari'ah-compliant financing options (Madya & Mat Noor, 2025; Noorsidi et al, 2024).

Institutions such as Cagamas also operate within this legal environment, using instruments like sukuk to enhance liquidity in the housing finance market, further demonstrating the integration of legal, regulatory, and financial mechanisms (Chee Leong).

4.2 Legal Frameworks for The Operation of *Shari'ah* Compliant Housing Finance in Australia

Australia's experience with SCHF is best understood within the context of its existing legal and regulatory framework, which, although not specifically designed for Islamic finance, has proven sufficiently flexible to accommodate its operation (Abdulwahid, 2020). The foundational statute governing banking activities is the *Banking Act 1959*, which vests licensing authority in the Australian Prudential Regulation Authority (APRA). Pursuant to section 9(3) of the Act, APRA is empowered to grant authority to corporate bodies to carry on banking business in Australia. This provision, while neutral in its application, has been instrumental in enabling institutions offering *Shari'ah*-compliant financial products to operate legally within the mainstream financial system.

The absence of a dedicated statutory framework for *Shari'ah*-compliant finance has not precluded its development (Ahmad, 2007). Rather, private financial institutions have leveraged the general provisions of the *Banking Act 1959* and other applicable financial regulations to design and offer products that comply with Islamic legal principles, particularly the prohibition of interest (*riba*). For instance, the licensing of the Muslim Community Credit Union Limited (MCCU) in 1999 under the Act illustrates how existing legal mechanisms can be utilised to accommodate non-interest financial models. Similar authorisations have been granted to other institutions without the need for specialised legislation (Ahmad, 2013).

In addition to APRA's prudential oversight, the Australian Securities and Investments Commission play a complementary regulatory role by supervising market conduct, consumer protection, and financial services compliance. Together, these regulatory bodies ensure that all financial institutions, including those offering *Shari'ah*-compliant housing finance, operate within established legal and prudential standards (APRA, 2026; MCCA, 2024).

Within this regulatory environment, *Shari'ah*-compliant housing finance products are structured using recognised Islamic contracts such as *Murabahah* (cost-plus sale), *Ijarah* (leasing), and *Musharakah* (partnership). These contracts are often combined into hybrid arrangements, including *Musharakah Mutanaqisah* (diminishing partnership) and *Ijarah Muntahiyah bi Tamleek* (lease-to-own), to replicate the economic function of conventional mortgages while remaining compliant with Islamic law. The legality of these structures is sustained by their conformity with general principles of contract and property law in Australia, rather than any specific Islamic finance legislation (Zeller & Hassan, 2022).

Private sector institutions have been the primary drivers of this development. Entities such as the Muslim Community Co-operative Australia (MCCA), Islamic Co-operative Finance Australia Limited (ICFAL), and Iskan Finance Property Limited operate within the ambit of the existing legal framework to provide *Shari'ah*-compliant housing finance solutions. Their activities demonstrate the capacity of a conventional legal system to support alternative financing models through adaptive interpretation and application of general laws.

This challenge that arises from the operation of SCHF products within a conventional legal and regulatory regime particular with regards to the multiple taxation applicable to most *shari'ah* products that often involve multiple layer of transfers (Maria Bhatti, 2015) is mitigated through tax relief mechanisms under the Commercial and Industrial Property Tax Reform Act 2024. The Act provides for reductions and exemptions within approved tax arrangements (Commercial and Industrial Property Tax Reform Act, No. 16, 2024, s. 31).

4.3 Insights from Malaysia's and Australia's Legal Frameworks for The Operation of SCHF In Nigeria

A comparative examination of Malaysia and Australia reveals two distinct yet complementary pathways for the development of SCHF, both of which offer valuable lessons for Nigeria. While Malaysia demonstrates the effectiveness of a deliberate and comprehensive legal and regulatory framework specifically tailored to Islamic finance, Australia illustrates how SCHF can evolve within a flexible, conventional legal system through adaptive interpretation and private sector innovation. Together, these experiences underscore that the sustainable growth of SCHF depends not only on the existence of formal legal structures but also on regulatory inclusiveness, institutional support, and policy alignment. For Nigeria, these models provide a dual insight: the need for a coherent and dedicated legal architecture in the long term, alongside the strategic utilisation and reform of existing laws in the short term to accommodate and promote SCHF. The insights from the legal frameworks from both jurisdictions are specifically highlighted below;

4.3.1 Insights from Malaysia

Malaysia's experience demonstrates that the success of Shari'ah-compliant housing finance (SCHF) is firmly rooted in a coherent and well-integrated legal and regulatory architecture, from which Nigeria can draw concrete lessons.

At the core of this framework is the Islamic Financial Services Act 2013, which provides a comprehensive statutory basis for the regulation of Islamic finance. The Act clearly delineates institutional responsibilities, mandates *Shari'ah* compliance, and requires the establishment of internal *Shari'ah* Committees within financial institutions. This highlights for Nigeria the critical need to enact a dedicated legal regime for Islamic finance and SCHF, as reliance on general banking laws is insufficient to address its unique operational and doctrinal requirements.

Complementing this is the Central Bank of Malaysia Act 2009, which institutionalises a centralised *Shari'ah* governance system through the *Shari'ah* Advisory Council (SAC). By virtue of Section 56 of the Act, courts and arbitral tribunals are mandated to either consider SAC rulings or refer *Shari'ah*-related questions to it, thereby ensuring uniformity and legal certainty. This provides a direct lesson for Nigeria to strengthen and legally empower its *Shari'ah* advisory mechanisms—particularly within the Central Bank of Nigeria—so that their pronouncements attain binding or at least persuasive authority in judicial and arbitral proceedings involving SCHF.

Further operational clarity is achieved through regulatory instruments such as the *Shari'ah* Governance Framework issued by Bank Negara Malaysia. These guidelines translate statutory provisions into enforceable standards on governance, compliance, and risk management. The implication for Nigeria is the necessity for the Central Bank of Nigeria to develop more detailed, sector-specific regulations that can guide the operation of SCHF institutions beyond broad policy statements.

Malaysia also demonstrates the importance of aligning legal frameworks with national policy objectives through instruments like the National Housing Policy. This policy integrates housing delivery goals with *Shari'ah*-compliant financing mechanisms, thereby enhancing affordability and access. Nigeria can adopt a similar approach by embedding SCHF within its national housing strategies, ensuring synergy between legal provisions and socio-economic policy objectives.

In addition, institutional support for liquidity is facilitated by Cagamas Berhad, which operates within the legal framework to provide funding through *sukuk* and other *Shari'ah*-compliant instruments. This offers a practical model for Nigeria, where the Federal Mortgage Bank of Nigeria can be repositioned—through appropriate legal backing—to access diversified funding sources, including Islamic capital market instruments, to scale up housing finance.

Overall, Malaysia's model illustrates that the effectiveness of SCHF depends on the deliberate integration of statutory enactments, regulatory guidelines, and policy frameworks. For Nigeria, the key lesson lies in developing a similarly coordinated legal infrastructure that ensures certainty, strengthens *Shari'ah* governance, enhances regulatory oversight, and supports sustainable housing finance delivery.

4.3.2 Insights from Australia

Australia's experience with Shari'ah-compliant housing finance (SCHF) offers practical and adaptable lessons for Nigeria, particularly when viewed against specific legal and regulatory frameworks.

A foremost insight is the strategic utilisation of existing general financial laws to accommodate SCHF, even in the absence of a dedicated Islamic finance statute. Under the Banking Act 1959, particularly section 9(3), the APRA grants licences to institutions to carry on banking business without restricting the nature of financial models employed. This flexible provision enabled institutions such as the MCCU to operate *Shari'ah*-compliant products within a conventional legal system. The lesson for Nigeria is that, even without immediate enactment of a specialised SCHF law, existing statutes such as the BOFIA can be purposively interpreted and applied by the Central Bank of Nigeria to license and regulate non-interest mortgage institutions more explicitly.

Closely related is the lesson on regulatory neutrality and inclusiveness. Australian regulators, including APRA and the ASIC, supervise SCHF providers under the same prudential and consumer protection standards applicable to conventional institutions. This demonstrates that SCHF can thrive within a unified regulatory system where the law is functionally neutral as to the form of financing. Nigeria can adopt this approach by ensuring that its regulatory frameworks - particularly under BOFIA and the Central Bank of Nigeria Act 2007 - are interpreted and operationalised to accommodate both interest-based and non-interest models without discrimination or uncertainty.

Another key lesson lies in the role of private sector innovation within a flexible legal environment. In Australia, institutions such as MCCA and ICFAL have developed SCHF products - such as *Musharakah Mutanaqisah* and *Ijarah* - by adapting classical Islamic contracts to fit within existing legal and regulatory parameters. This highlights for Nigeria the need to create an enabling legal environment that encourages private sector participation and innovation in SCHF, rather than relying predominantly on state-driven schemes like the National Housing Fund.

Australia's experience also underscores the importance of non-state institutional support and awareness mechanisms. Organisations such as the ANIC and the Islamic Council of Victoria have played complementary roles in promoting SCHF through advocacy, financial literacy, and stakeholder engagement. For Nigeria, this suggests that beyond formal legal frameworks, the growth of SCHF requires collaboration with religious bodies, professional associations, and community organisations to build trust and awareness.

A critical legal lesson emerges from the challenge of multiple taxations under existing property and tax laws. In Australia, *Shari'ah*-compliant structures such as *Murabahah* and *Ijarah* often involve multiple transfers of property, thereby attracting repeated stamp duties. This has been partially addressed through reforms such as the Commercial and Industrial Property Tax Reform Act 2024, which provides reliefs that can mitigate the tax burden. The implication for Nigeria is clear: existing tax and property laws must be reviewed to eliminate structural disadvantages against SCHF products. Without such reforms, non-interest housing finance will remain less competitive compared to conventional mortgages.

Finally, Australia demonstrates that a dedicated legal framework, while beneficial, is not an absolute precondition for SCHF development. The sector has grown through adaptive use of general banking, corporate, and tax laws. However, this flexibility also comes with limitations, including regulatory ambiguity and tax inefficiencies. For Nigeria, this suggests a dual pathway: in the short term, maximise the potential of existing laws such as BOFIA, the Mortgage Institutions Act, and the CBN Act through purposive interpretation and regulatory guidelines; in the long term, enact a clear and comprehensive legal framework that expressly recognises and regulates SCHF.

In sum, Australia's model teaches that effective SCHF operation can emerge from legal flexibility, regulatory inclusiveness, and private sector dynamism, but its sustainability ultimately depends on deliberate legal reforms—particularly in licensing clarity, tax treatment, and institutional recognition of non-interest finance.

5. CONCLUSION, LIMITATION AND RECOMMENDATIONS FOR FUTURE STUDIES

This paper examined the legal and regulatory framework governing housing finance in Nigeria with specific emphasis on its implications for the operation of SCHF, drawing comparative lessons from Malaysia and Australia. The analysis reveals that Nigeria operates a predominantly conventional, interest-based housing finance system anchored on statutes such as the Constitution of the Federal Republic of Nigeria 1999 (as amended), the NHF Act, the FMBN Act, and the CBN Act, BOFIA, and the Mortgage Institutions Act.

While these frameworks collectively provide institutional stability and regulatory oversight for housing finance, they are largely silent on or structurally incompatible with *Shari'ah*-compliant financing principles, particularly the prohibition of *riba* and the use of alternative risk-sharing contracts. The result is that SCHF operates at the periphery of Nigeria's housing finance system, rather than as an integrated and fully recognised component. The NHF's interest-based structure, combined with regulatory gaps in BOFIA and mortgage legislation, further constrains the establishment and expansion of dedicated non-interest mortgage institutions.

In contrast, the comparative experiences of Malaysia and Australia demonstrate two viable but distinct models for integrating SCHF into national financial systems. Malaysia adopts a specialised, highly structured legal and regulatory regime with strong *Shari'ah* governance institutions and binding advisory mechanisms, thereby ensuring certainty, uniformity, and institutional support for SCHF. Australia, on the other hand, illustrates a flexible, inclusionary approach in which SCHF is developed through adaptive use of general banking, corporate, and tax laws, supported by regulatory neutrality and private sector innovation.

Accordingly, the study concludes that the challenges facing SCHF in Nigeria are not insurmountable but are primarily structural and legal in nature. Addressing them requires deliberate statutory reform, enhanced regulatory clarity, and policy alignment that accommodate non-interest housing finance within the national legal framework. A hybrid approach - combining Malaysia's structured regulatory certainty with Australia's legal flexibility – offers the most suitable pathway for Nigeria's sustainable development of SCHF.

The study is however limited in methodological and geographical scopes, it only adopts doctrinal methodology that does not allow for empirical study that will provide real and measurable data. It is also restricted to three jurisdictions—Nigeria, Malaysia, and Australia—thereby excluding other relevant systems such as the UK, UAE, and Saudi Arabia that could offer additional comparative insights. In addition, differences in legal systems and variations in the availability and accessibility of up-to-date regulatory materials may affect the depth of comparison across jurisdictions. Despite these constraints, the study remains adequate for drawing meaningful doctrinal and comparative conclusions relevant to the reform of Sharīʿah-compliant housing finance in Nigeria.

Future studies may build on this study by incorporating empirical data such as interviews, surveys, or case studies involving regulators, financial institutions, and users of housing finance products to provide deeper practical insights into the operation of SCHF. In addition, broader comparative research involving other advanced jurisdictions such as the United Kingdom, United Arab Emirates, and Saudi Arabia could further enrich the analysis by offering more diverse regulatory and institutional perspectives. Such expansion would enhance the social relevance and empirical depth of the subject while providing more comprehensive policy insights for improving housing finance frameworks in Nigeria.

In view of the findings of this paper, the following recommendation are made to robust legal and regulatory frameworks that are supportive of the integration of SCHF within the mainstream and national housing finance in Nigeria;

a. **Enactment of a Dedicated Legal Framework for SCHF in Nigeria;**
   Nigeria should develop a comprehensive statute specifically regulating Shari'ah-compliant financial services, particularly housing finance. Such legislation

should clearly recognize SCHF as a distinct system of housing finance in Nigeria, licencing requirements for SCHF Institutions, define permissible Shari'ah contracts, requirements for product formation and operational compliance, and Shari'ah governance mechanisms and dispute resolution mechanisms among other sundry legal matters.

b. **Amendment of the NHF Act;** The NHF Act should be reviewed to remove mandatory interest-based provisions, other anti-shari'ah requirements. This will allow for the introduction of non-interest financing alternatives. It will enable equal participation of Islamic financial institutions in national housing schemes.

c. **Reformation of BOFIA and Related Financial Laws;** BOFIA 2020 should be amended or operationally clarified to expressly recognise non-interest mortgage institutions. This includes defining licensing categories for SCHF providers and eliminating regulatory ambiguity under the CBN's supervisory framework.

d. **Strengthening Shari'ah Governance within the CBN;** A formal, legally empowered *Shari'ah* advisory structure should be institutionalised within the CBN, similar to Malaysia's *Shari'ah* Advisory Council. Its rulings should be given clear legal status to ensure consistency and reduce judicial uncertainty in SCHF disputes.

e. **Adoption of Regulatory Neutrality and Inclusiveness;** Nigerian financial regulators should ensure that prudential, licensing, and supervisory frameworks are neutral as to financial structure, allowing both conventional and non-interest housing finance institutions to operate under equal regulatory conditions.

f. **Review Tax and Property Laws Affecting SCHF Transactions;**
Existing tax laws should be reformed to eliminate multiple taxation arising from asset transfer structures commonly used in SCHF. Tax reliefs or exemptions similar to those in comparative jurisdictions especially Australia should be introduced to enhance competitiveness.

g. **Encourage Private Sector Participation and Innovation;**
The regulatory environment should be structured to support private financial institutions in developing Shari'ah-compliant housing products, reducing over-reliance on government-driven schemes such as the NHF.

h. **Integration of SCHF into National Housing Policy Frameworks;**
Housing policies at federal and state levels should explicitly recognise SCHF as a viable financing option and incorporate it into broader strategies for addressing Nigeria's housing deficit.

i. **Enhancement of Institutional Capacity and Public Awareness;**
Government agencies, financial regulators, and religious institutions should collaborate to improve awareness, technical expertise, and public confidence in SCHF products through education and capacity-building initiatives.

REFERENCES

Abd Wahab, N., Hamzah, H., & Mohd Yusof, R. (2016). Promoting housing affordability in Malaysia: Can Islamic finance play a role? *International Review of Management and Marketing*, *6*(S8), 88–102.

Abimbola, O. (2025, November 17). SEC, FMBN collaborate to tackle housing deficit. *Punch Newspapers*. https://punchng.com/sec-fmbn-collaborate-to-tackle-housing-deficit/

Adeniyi, O. A. (2005). The national housing fund scheme: The journey so far. *CBN Economic & Financial Review*, *43*(4), 105.

Aguda, O. O. (2023). An analysis of the legal and institutional frameworks for the control of banking operations in Nigeria. *Ajayi Crowther University Law Journal*, *4*(1), 5.

Ahmad, A., Azmir, A., & Ishak, M. S. I. (2021). Shari'ah governance of Islamic non-banking financial institutions in Malaysia: A conceptual review. *Journal of Management Theory and Practice*, *2*(1), 72. https://journal.unisza.edu.my/jmtp/index.php/jmtp/article/view/91/48

Ahmad, A. U. F. (2007). *Law and practice of modern Islamic finance in Australia* (Doctoral dissertation, University of Western Sydney).

Ahmad, A. U. F. (2013). Islamic finance in Australia: A critical analysis from taxation and prudential standards' perspectives. *Advances in Natural and Applied Sciences*, *7*(2), 123–135. https://www.researchgate.net/publication/286920768_Islamic_finance_in_Australia_a_critical_analysis_from_taxation_and_prudential_standards'_perspectives

Ahmad, A. U. F., & Hassan, M. K. (2009). Legal and regulatory issues of Islamic finance in Australia. *International Journal of Islamic and Middle Eastern Finance and Management*, *2*(4), 305–322.

Ajetunmobi, A. T., & Ibrahim, N. (2016). Islamic home financing in Nigeria. *Journal of Islamic Economics, Banking and Finance*, *12*(4), 234. https://www.researchgate.net/publication/330390806_Islamic_Home_Financing_in_Nigeria

Akinwale, J. A. (2005). Legal and regulatory framework for the mortgage industry in Nigeria. *CBN Economic and Financial Review*, *43*(4), 31–32.

APRA. (2026). APRA and ASIC: A new era in cooperation. https://www.apra.gov.au/about-apra

Asni, F., et al. (2022). Analysis of hadith and athar arguments in bayʿ ʿīnah contract based on tarjih method. *International Journal of Academic Research in Business and Social Sciences*, *12*(6), 1733–1746.

Ayinla-Edun, M. J. (2024). Shari'ah compliant finance and financial inclusion: A critique of palliative measure on the removal of fuel subsidy in Nigeria. *Jurnal Syariah*, *32*(1), 209.

Ayotamuno, A., & Obinna, V. C. (2014). Housing in Nigeria: An evaluation of contribution of Nigerians to the National Housing Fund (NHF). *International Journal of Scientific Research and Education*, *2*(1), 2524.

Banks and Other Financial Institutions Act, Cap N5, Laws of the Federation of Nigeria 2020.

Bengtsson, B. (2001). Housing as a social right: Implications for welfare state theory. *Scandinavian Political Studies*, *24*(4), 262–265.

Badeeu, F. N., & Muneeza, A. (2023). Striving for Authenticity: Enhancing Shariah-Compliance in Home Financing Products within Malaysia's Islamic Finance Industry. *International Journal of Islamic Economics and Finance Research*, 1(1), 48–62. https://doi.org/10.53840/ijiefer112

Bhatti, M. (2015). Taxation treatment of Islamic finance products in Australia. *Deakin Law Review*, *20*(2). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2707822

Central Bank of Malaysia Act, No 701, 2009.

Chee Leong, D. C. (2020). Islamic mortgage finance & liquidity facility. National Mortgage Corporation of Malaysia (Cagamas). https://www.cagamas.com.my/sites/default/files/content/presentation/202011/IFC%20Webinar%20Cagamas%20Presentation%20%28June%202020%29.pdf

Chegwe, E. (2014). The right to housing in the context of Nigerian law and human rights practice. *AGORA International Journal of Juridical Sciences*, *1*, 11. https://scispace.com/pdf/the-right-to-housing-in-the-context-of-nigerian-law-and-v3cv1so5cl.pdf

Constitution of the Federal Republic of Nigeria, 1999 as Amended.

David, A. (2024). Arguments against the non-justice status of Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4731935

Ekpenisi, C., et al. (2025). Constitutional and legislative framework for sustainable environmental management in Nigeria: Issues and challenges. *Journal of Indonesian Constitutional Law*, *2*(2), 201. https://ejournal.pustakaparawali.com/index.php/jicl/article/view/69/51

Federal Mortgage Bank of Nigeria Act, Cap F16, Laws of the Federation of Nigeria 2004.

Hassan, A. (2020). *The challenges and prospects of Islamic finance in Australia: A case study of murabaha contract* (Doctoral dissertation, Victoria University). https://vuir.vu.edu.au/40458/1/HASSAN%20Abdilwahid-thesis_nosignature.pdf

Ikekpeazu, F. O. (2024). Mortgage financing for housing delivery in Nigeria: The role of government in the development of an effective mortgage market. *Journal of Environmental Management and Safety*, *5*(1), 7. https://cepajournal.com/index.php/jems/article/view/411/206

Islamic Financial Services Act, 2013.

Kulmie, D. A., et al. (2023). Effects of Islamic modes of financing on profitability of banking institutions. *International Journal of Business and Management*, *18*(5), 237–254.

Madya, T. S., & Mat Noor, N. A. (2025). Malaysia's housing challenges and progress towards affordability. https://news.utm.my/2025/01/malaysias-housing-challenges-and-progress-towards-affordability/

Mahmoud, F. (2023). Reconstructing lease-to-own contracts: A contemporary approach to Islamic banking standards. *Heliyon*, *9*(9), 4.

MCCA. (2024). Understanding Australia's financial regulators: A guide for Muslims seeking Shari'ah-compliant finance in Australia. https://mcca.com.au/understanding-australias-financial-regulators-a-guide-for-muslims-seeking-shariah-compliant-finance-in-australia/

Mohd, M. A., et al. (2024). Enhancing the statutory roles of the Shariah Advisory Council of Bank Negara Malaysia through technological advancement: A way forward. *Proceedings of the 4th International Conference on Law Reform (INCLAR)*, 928–940.

Mohd Assrudin, W. A. W., et al. (2025). Innovative Shariah-compliant financing solutions for affordable housing: Integrating payment technologies. *International Journal of Islamic Business*, *10*(1), 45–46.

Mortgage Institutions Act 1989 (as amended).

Muhammad, N. N., Riazuddin, A., & Galad, M. B. (2019). Examining the viability of istisna for project financing: An economic perspective. *International Journal of Management and Applied Research*, *6*(4), 260.

Namene, B. P., & Duson, N. A. (2025). Constitutional right to land in Nigeria and Kenya: A comparative analysis. *Journal of Law and Global Policy*, *10*(2), 154.

National Housing Fund Act, Cap N45, Laws of the Federation of Nigeria 2007.

Nixa, E., Ibbetson, A., Zhou, K., Davies, M., Wilkinson, P., Ludolph, R., & Pineo, H. (2024). Getting to effective housing policy for health: A thematic synthesis of policy development and implementation. *Cities & Health*, *8*(3), 486–503.

Noorsidi, et al. (2024). Shariah-compliant housing: Opportunities and challenges in modern markets. *Indonesian Journal of Islamization Studies*, *2*(1), 120–121.

Nyamutete, S., & Malenge, C. N. (2025). The right to housing and shelter security in Nigeria: A case of Lagos slum. *International Relations and Diplomacy*, *3*(1), 15–20.

Oladapo, S. O., & Ajayi, A. T. (2024). Central Bank of Nigeria's regulatory role and financial system stability in Nigeria. *Journal of Banking and Finance Law*, *12*(2), 67.

Oni, S. A. (2005). Mortgage institutions and financing in Nigeria: Performance, constraints and prospects. *CBN Economic and Financial Review*, *43*(4), 77.

Sheu, I. (2022). Electronic legal issues introduced by the Banks and Other Financial Institutions Act (BOFIA 2020). *International Journal of Law*, *6*(2), 174.

Syahriani, F., et al. (2023). Application of maqasid al-shariah in Islamic economics and finance as the development of products of Islamic value. *HAKAMAIN: Journal of Sharia and Studies*, *2*(1), 150–162.

Yustiardhi, A. F., Aulia, M., & Permatasari, R. O. (2019). Islamic contracts for home financing: A comparative analysis. *International Journal of Management and Applied Research*, *6*(4), 387.

Zeller, B., & Hassan, A. (2022). Prospects and challenges of Islamic finance in Australia: A case study of murabaha financing. *Uniform Law Review*, *50*(4), 331–359.