

Legal Documentation in Islamic Finance

Sharing Moment
Universiti Sains Islam Malaysia
18 October 2016
Zalmanizam Mahadi
Development Bank of Malaysia


Special Characteristic of Malaysian Islamic Finance Legal Framework

Dual Legal Systems

Common Law

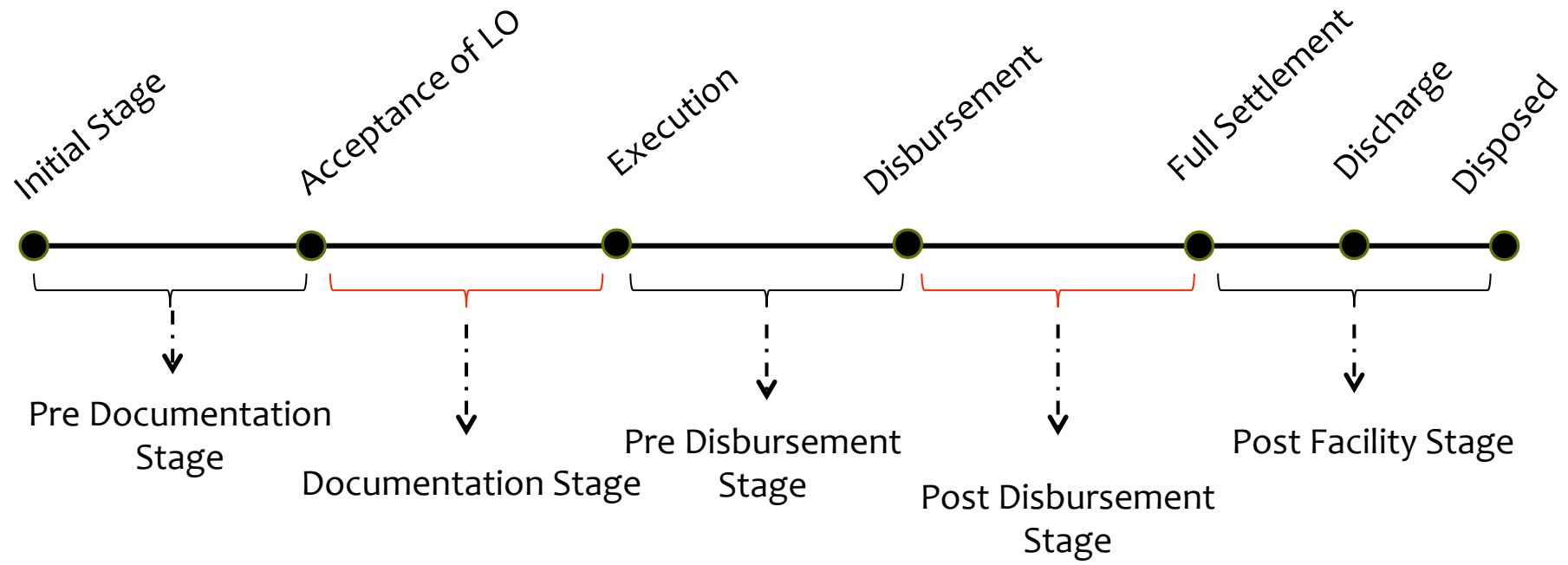
Shariah





“Islamic Finance Laws shall be applied and acted upon **within** existing Common Law system and authorities of all existing laws inclusive the court system and procedures”

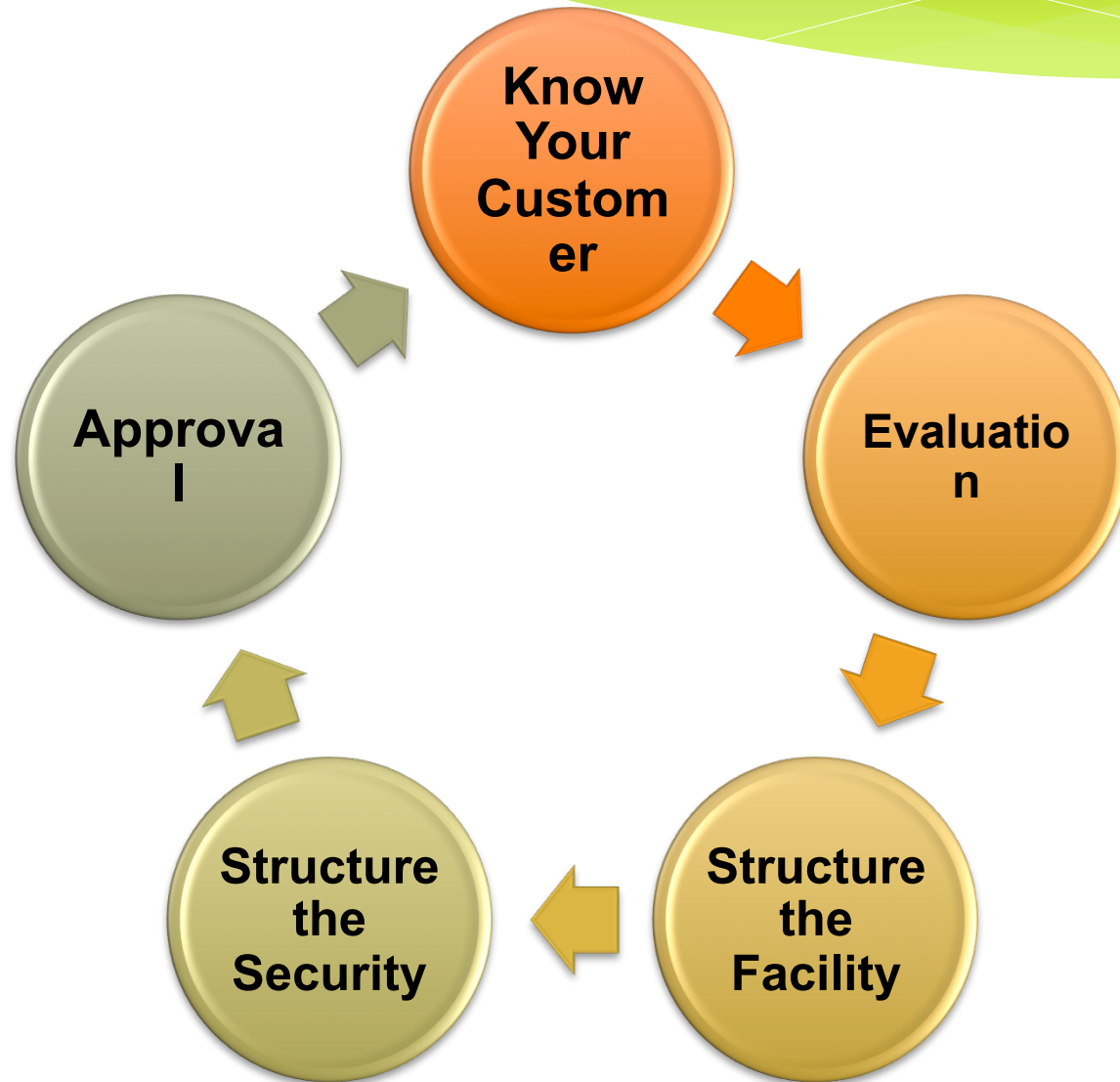
Clash Of Convictions: Conventional Banking vs Islamic Banking [2010] 5 MLJ xi -
Aishath Muneeza, Ismail Wisham & Rusni Hassan



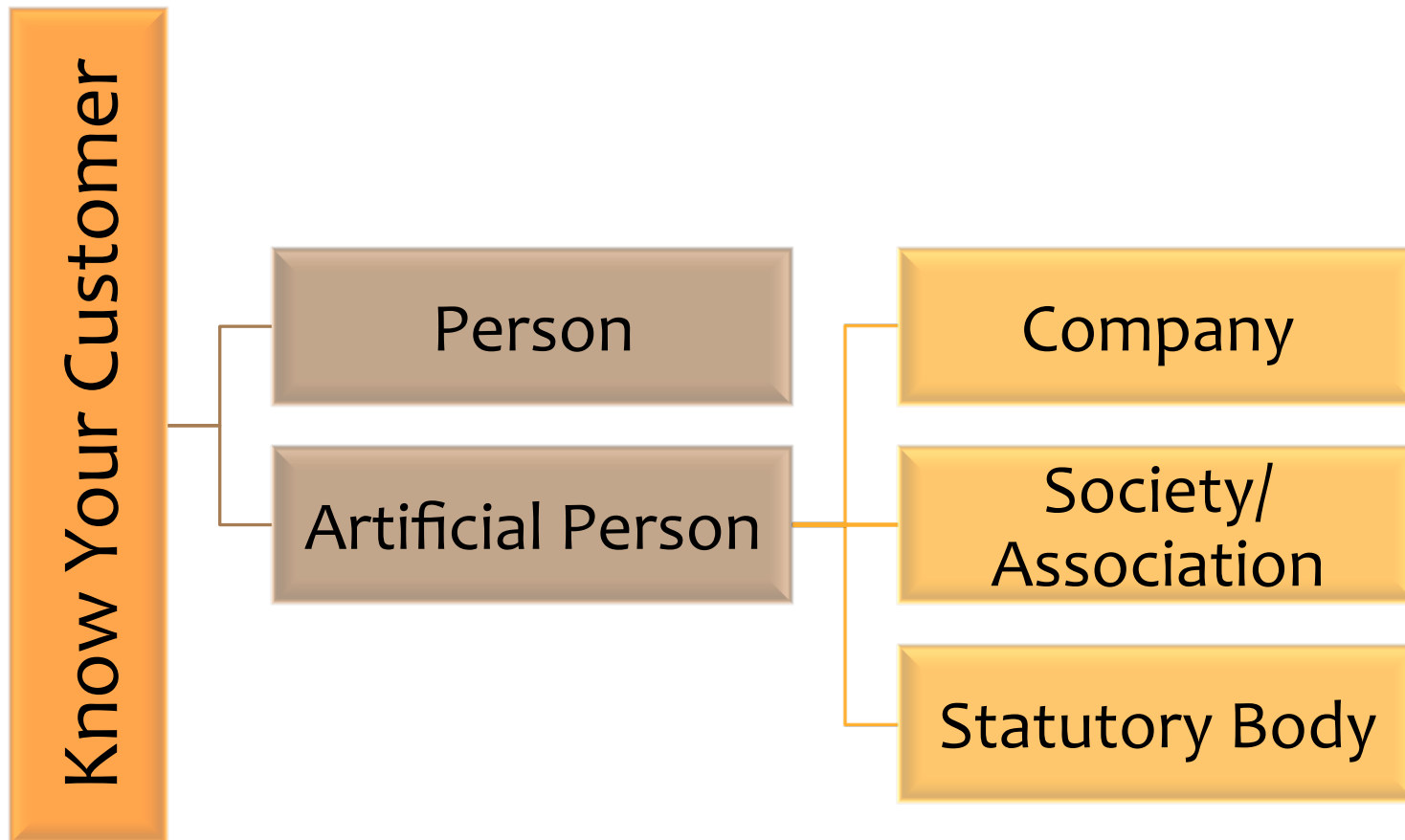
[... Flow Chart ...]



Pre Documentation Stage



Know Your Customer



Reporting Agency




SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA



Official Portal
Malaysia Department of Insolvency

Central Credit Reference Information System (CCRIS) Report (Sample Report)

Example of Credit Report:

RAHSIA		 BANK NEGARA MALAYSIA CENTRAL BANK OF MALAYSIA											ID Pengguna : Inia ID Laporan : PUBLICREQ Tarikh : 16/11/2015														
Borrower Name		Nombor ID 1			Nombor ID 2			Date of Birth/Registration			Nationality		Warning														
ROHANI BINTI YUSOF		123456789900						17/10/1978			MY																
Maklumat Kredit																											
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)												(O)	(P)	
No	Approval Date	Status	Capacity	Lender	Branch Code	Facility	Account/ Application Number	Total Outstanding Balance (RM)	Date Balanced Updated	Limit (RM)	Collateral Type	Prinsipal Repayment Term	Installment in Arrears for Last 12 Months												Legal status	Date Status Updated	
													2015						2014								
													Nov	Oct	Sep	Aug	Jul	Jun	May	Apr	Mar	Feb	Jan	Dec			
1	07/07/2008	Outstanding	Own	ABBank	14003	Credit Card	46878911	3,000	31/10/2015	5,000	00	Monthly	0	2	1	0	0	0	0	0	0	0	0	0			
2	01/01/2000	Rescheduled credit facility	Own	ABBank	14003	Hire Purchase	12345678	8,500	31/10/2015	35,000	30	Monthly	3	2	1	0	0	0	0	0	0	0	0	0	0	Auction/ Summon	31/01/2011
								Total Credit		11,500	Total Limit	40,000															
Special Attention Account (R)																											
3	18/10/2008		Own	BCBank	21020	Credit Card	23456789																				
Application For Credit (S)																											
4	13/11/2015	Pending	Own	CDBank	12040		123454273		13/11/2015	40,000																	
Note (T)																											
Branch Name						Collateral Type																					
ABBank 14003 : Jalan Dang Wangi						00 : Clean 30 : Motor Vehicle																					
THE INFORMATION CONTAINED IN THIS REPORT HAS BEEN COMPILED FROM THIRD PARTIES AND DOES NOT REPRESENT THE OPINION OF BANK NEGARA MALAYSIA AS TO THE CREDIT WORTHINESS OF THE SUBJECT(S), HENCE, BANK NEGARA MALAYSIA CANNOT ASSUME ANY LIABILITY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION. THE INFORMATION CONTAINED IN THIS REPORT IS SUPPLIED ON A CONFIDENTIAL BASIS TO YOU AND SHALL NOT BE DISCLOSED TO ANY OTHER PERSON.																											

RAM Credit Information (RAMCI) Report (Sample Report)



Credit Track by RAMCI
20 Nov 2015

CREDIT INTELLIGENCE INDIVIDUAL – (CRI)

PARTICULARS OF THE SUBJECT PROVIDED BY YOU							
Name Of Subject							
IC / PP No							
New IC No							
Your Ref. No							
INFORMATION IN OUR DATABANK							
Name Of Subject							
IC / PP No							
New IC No							
ADDRESS(S) IN OUR DATABANK							
NOTE: The address (s) stated below may not be the current or last known address of the subject							
Address	Date Captured						
PANGSAPURI MURNI SEKSYEN 6 WANGSA MAJU 53300 KUALA LUMPUR KUALA LUMPUR	11 Nov 2015						
JALAN DAMAI KASHI JALAN DAMAI KASHI ALAM DAMAI CHERAS 56000 KUALA LUMPUR WILAYAH PERSEKUTUAN	21 Sep 2015						
JALAN DAMAI KASHI 6 ALAM DAMAI 56000 KUALA LUMPUR KUALA LUMPUR	16 Jun 2015						
DESA PAHLAWAN JALAN AMPANG HILIR K.LUMPUR. 55000 KUALA LUMPUR KUALA LUMPUR	16 Jun 2015						
JALAN DAMAI KASEH 6 ALAM DAMAI CHERAS 56000 KUALA LUMPUR KUALA LUMPUR	16 Jun 2015						
JALAN SAWAI KASHI 6 JALAN DAMAI KASHI ALAM DAMAI CHERAS 56000 KUALA LUMPUR KUALA LUMPUR	13 Jan 2015						
SHAREHOLDING INTEREST							
NOTE: The following information relating to shareholding/directorship interest by the Subject may not be current. There may be changes which may not be currently available in our databank							
INTEREST IN COMPANY / BUSINESS							
No	Name	Position	Appointed	Business Expiry Date	Shareholding %	Remark	Last Updated by RAMCI
1	CWA FILTRATION TECHNOLOGY SDN. BHD. () Incorporation: 08 Aug 2011 Paidup: 3.00 Activity: TO CARRY ON BUSINESS IN RELATION TO FILTRATION TECHNOLOGY AND PROVIDING INSTALLATION; TO ENTER IN AN ARRANGEMENT WITH ANY GOVERNMENT OR AUTHORITY THAT MAY SEEM CONDUCTIVE TO THE COMPANY'S OBJECTS OR ANY OF THEM; AND TO CARRY ON THE BUSINESS AS GENERAL MERCHANTS.	DIRECTOR / SHAREHOLDER	Aug 2011		1.00 33.33		Nov 2015
2	CWA LEMON GRASS SDN. BHD. () Incorporation: 29 Jan 2008 Paidup: 3.00 Activity: 1: TO CARRY ON	DIRECTOR / SHAREHOLDER	Jan 2008		1.00 33.33		Nov 2015

REMARK LEGEND

Company Status as per SSM record: WU - Winding-Up, DS - Dissolved

PREVIOUS KNOWN COMPANIES / BUSINESSES

Note: The following information relating to shareholding/directorship interest by the Subject is as available from our databank.

No	Registration No	Name	Incorporated Date	Status	Position	Cessation Date
1				RESIGNED	DIRECTOR	N/A
2				WITHDRAWN	SHAREHOLDER	N/A
3				WITHDRAWN	SHAREHOLDER	N/A

Winding Up & Bankruptcy Search



JABATAN INSOLVENSII MALAYSIA
MALAYSIA DEPARTMENT OF INSOLVENCY (Mdi)

KEPUTUSAN CARIAN PENGGULUNGAN SYARIKAT
COMPANY WINDING UP SEARCH RESULT

TARIKH TRANSAKSI / TRANSACTION DATE : 03/08/2015 09:44:21

Bayaran Diterima / Payment Received : RM 12

No. Resit / Receipt No. : 21508039605/01

No. Syarikat
Company No. :
Nama Syarikat
Company Name :
Jenis Penggulangan
Mode of Winding Up :
No. Kes Mahkamah
Court Case No. :
Mahkamah
Court :
Tarikh Petisyen Difaikkan
Date of Petition Filed :
Tarikh Perintah Penggulangan/Resolusi
Date of Winding Up/Resolution :
Tarikh Perintah Penggantungan Sementara
Date of Interim Stay Order :
Cawangan Yang Mentadbir
Administering Branch :
Status : **TIDAK DIGULUNG**
Status : **NOT WOUND UP**

Dokumen ini dijana oleh cetakan komputer dan tandatangan tidak diperlukan.
This is a computer generated document and no signature is required.

HASLINA MANSOR
Ketua Pengarah Insolvensi / Director General of Insolvency
MALAYSIA

Jika anda mempunyai sebarang maklumat berkaitan aset dan hal ehwal syarikat di atas, sila hubungi pelikuidasi syarikat atau e-mel kepada infomdi@insolvensi.gov.my. Maklumat dan identiti anda akan dirahsiakan.
If you have any information concerning the assets and affairs of the above named company, please contact the company's liquidator or email to infomdi@insolvensi.gov.my. The information and your identity will be kept confidential.

Walaupun segala usaha telah dilakukan untuk memastikan semua maklumat adalah tepat dan terkini, Ketua Pengarah Insolvensi tidak bertanggungjawab atas apa-apa kerugian yang timbul akibat ketidaktepatan atau ketinggalan maklumat.
Although all efforts have been carried out to ensure that the information provided is accurate and up to date, the Director General of Insolvency shall not be liable for any losses arising from any inaccurate or omitted information.

Jabatan Insolvensi Malaysia, Aras 2 & 3, Bangunan Hal Ehwal Undang-undang, Presint 3,
Pusat Pentadbiran Kerajaan Persekutuan, 62692 Putrajaya
Tel : 03-88851345 E-mel : infomdi@insolvensi.gov.my



JABATAN INSOLVENSII MALAYSIA
MALAYSIA DEPARTMENT OF INSOLVENCY (Mdi)

KEPUTUSAN CARIAN KEBANKRAPAN
BANKRUPTCY SEARCH RESULT

TARIKH TRANSAKSI / TRANSACTION DATE : 03/08/2015 09:40:36

Bayaran Diterima / Payment Received : RM 12

No. Resit / Receipt No. : 21508039592/01

No. KP Baru/ Lama/ Pasport/ Polis/ Tentera
New IC/ Old /Passport/ Police/Armed Forces :
Nama
Name :
Alamat Terkini
Latest Address :
No. Kes Mahkamah
Court Case No. :
Mahkamah
Court :
Tarikh Perintah Penerimaan
Date Of Receiving Order :
Tarikh Perintah Penghukuman
Date Of Adjudication Order :
Pempetisyen
Petitioner :
Cawangan Yang Mentadbir
Administering Branch :
Status : **TIDAK BANKRAP**
Status : **NOT BANKRUPT**

Dokumen ini dijana oleh cetakan komputer dan tandatangan tidak diperlukan.
This is a computer generated document and no signature is required.

HASLINA MANSOR
Ketua Pengarah Insolvensi / Director General of Insolvency
MALAYSIA

Jika anda mempunyai sebarang maklumat berkaitan aset dan hal ehwal penama di atas, sila hubungi Ketua Pengarah Insolvensi atau e-mel kepada infomdi@insolvensi.gov.my. Maklumat dan identiti anda akan dirahsiakan.
If you have any information concerning the assets and affairs of the above named, please contact the Director General of Insolvency or email to infomdi@insolvensi.gov.my. The information and your identity will be kept confidential.

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Pusat Pentadbiran Kerajaan Persekutuan, 62692 Putrajaya
Tel : 03-88851345 E-mel : infomdi@insolvensi.gov.my

Company Search



1 / 11

Although all efforts has been carried out to ensure that the information provided is accurate and up to date, the Registrar of Companies will not be liable for any losses arising from any inaccurate or omitted information

CORPORATE INFORMATION

Company Name :
 Last Old Name : Nil
 Date of Change : Nil
 Company Number :
 Registration Date : 11-04-199
 Type : LIMITED BY SHARES
 : PRIVATE LIMITED
 Status : EXISTING
 Registered Address : PUSAT PERDAGANGAN
 , BLOK
 JALAN PJU , PJU
 PETALING JAYA
 SELANGOR
 Postcode : 47301
 Origin : MALAYSIA
 Business Address : NO. , JALAN PUTRA
 TAMAN PUTRA
 AMPANG
 SELANGOR
 Postcode : 68000
 Nature of Business : CIVIL CONTRACTOR, GENERAL CONSTRUCTION WORK



2 / 11

SUMMARY OF SHARE CAPITAL

Company Name :
 Company Number :

TOTAL AUTHORIZED (RM)	AMT	DIVIDED INTO	NOMINAL VALUE (Sen)
10,000,000.00			
ORDINARY	10,000,000.00	10,000,000	100
PREFERENCE	0.00	0	0
OTHERS	0.00	0	0

TOTAL ISSUED (RM)	CASH	OTHERWISE THAN CASH	NOMINAL VALUE (Sen)
6,000,000.00			
ORDINARY	6,000,000	0	100
PREFERENCE	0	0	0
OTHERS	0	0	0

Company Search



SURUHAMAJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

3 / 11

DIRECTORS/OFFICERS

Company Name :
Company Number :

Name/Address	IC/Passport	Designation	Date of Appointment
BIN NO. , JALAN TAMAN JAYA 68000 SELANGOR	670112-0 -	DIRECTOR	12-11-1994
BIN NO. JALAN KEMENSAH TAMAN 53100 KUALA LUMPUR WILAYAH PERSEKUTUAN	670518- -	DIRECTOR	12-07-2005
BT NO. , JALAN TAMAN JAYA 68000 SELANGOR	700602- -50	DIRECTOR	10-10-1998
BINTI , JALAN TAMAN SEGAMBUT AMAN 51200 KUALA LUMPUR WILAYAH PERSEKUTUAN	620528- -60	SECRETARY	07-07-1997
BIN APARTMENT JALAN PUTRA 47100 PUCHONG SELANGOR	670123- - 9	SECRETARY	11-04-1994



SURUHAMAJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

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SHAREHOLDERS/MEMBERS

Company Name :
Company Number :

IC/Passport/ Company No	Name/Company Name	Total of Share
670112- -50	BIN	3,870,000
700602- -50	BT	1,530,000
670518- -50	BIN	600,000

Company Search



5 / 11

COMPANY CHARGES

Company Name :
Company Number :

1. Charge Number : 001
Total of Charge : 702,000.00
Date of Creation : 05-09-
Name of Chargee : 1. PERWIRA AFFIN BANK BERHAD
Charge Status : FULLY SATISFIED

2. Charge Number : 002
Total of Charge : 52,000.00
Date of Creation : 05-09-
Name of Chargee : 1. PERWIRA AFFIN BANK BERHAD
Charge Status : FULLY SATISFIED

3. Charge Number : 003
Total of Charge : 250,000.00
Date of Creation : 18-03-
Name of Chargee : 1. BANK OF COMMERCE M BERHAD
Charge Status : FULLY SATISFIED

4. Charge Number : 004
Total of Charge : 1,000,000.00
Date of Creation : 14-09-
Name of Chargee : 1. PERWIRA AFFIN BANK BERHAD
Charge Status : FULLY SATISFIED

5. Charge Number : 005
Total of Charge : 750,000.00
Date of Creation : 21-05-
Name of Chargee : 1. AMBANK (M) BERHAD
Charge Status : FULLY SATISFIED



11 / 11

SUMMARY OF FINANCIAL INFORMATION

Company Name :
Company Number :
Auditor : AZ R N ZA Z N N
Auditor Address : NO. , JALAN
KERAMAT BUSINESS CENTRE
TAMAN KERAMAT
5 00
KUALA LUMPUR

Exempt Private Company : N/A

Financial year end : 30-06-2014
Unqualified reports (Y/N) : Y
Consolidated accounts (Y/N) : N
Date of tabling : 30-12-2014

BALANCE SHEET ITEMS

Non-current assets : 33,267,410.00
Current assets : 106,878,930.00
Non-current liabilities : 1,377,483.00
Current liabilities : 124,992,435.00
Share capital : 5,000,000.00
Reserves : 8,701,301.00
Minority interests : 75,121.00

INCOME STATEMENT ITEMS

Revenue : 65,014,989.00
Profit/(loss) before tax : 161,692.00
Profit/(loss) after tax : 236,571.00
Net dividend : 0.00
Minority interests : 0.00

****END OF REPORT****

This information are from the company's document registered as at 05-05-2014

Registrar of Companies

Dated : 03-08-2015

This is computer generated document . No signature is required.

UserID: zabby Date: Mon Aug 03 09:49:43 MYT 2015

Printing Date : 03-08-2015

This company information is generated from SSM e-Info Services. This information is as at 03-08-2015 09:49:43

MERANA SENGHENTRAL, NO. 3 JALAN SENGHENTRAL 5, KUALA LUMPUR SENGHENTRAL, 50470 KUALA LUMPUR.
Tel: 03-2299 4400 Fax: 03-2299 4411



Structuring the Facility

Conventional



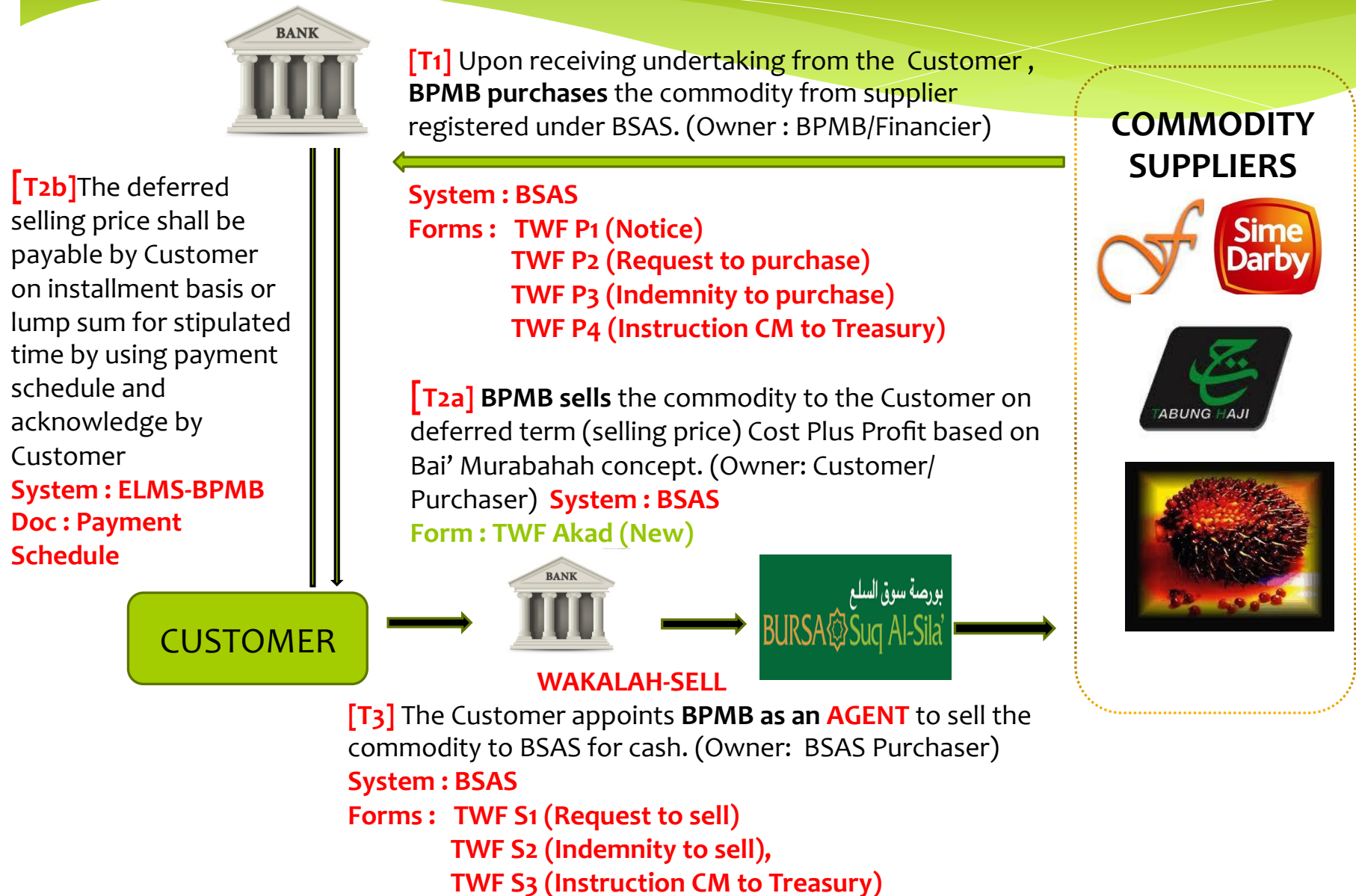
- Term Loan
- Bank Guarantee/
Advance Payment Guarantee
- Letter of Credit
- Factoring
- Leasing
- Bridging Loan
- Bonds

Islamic

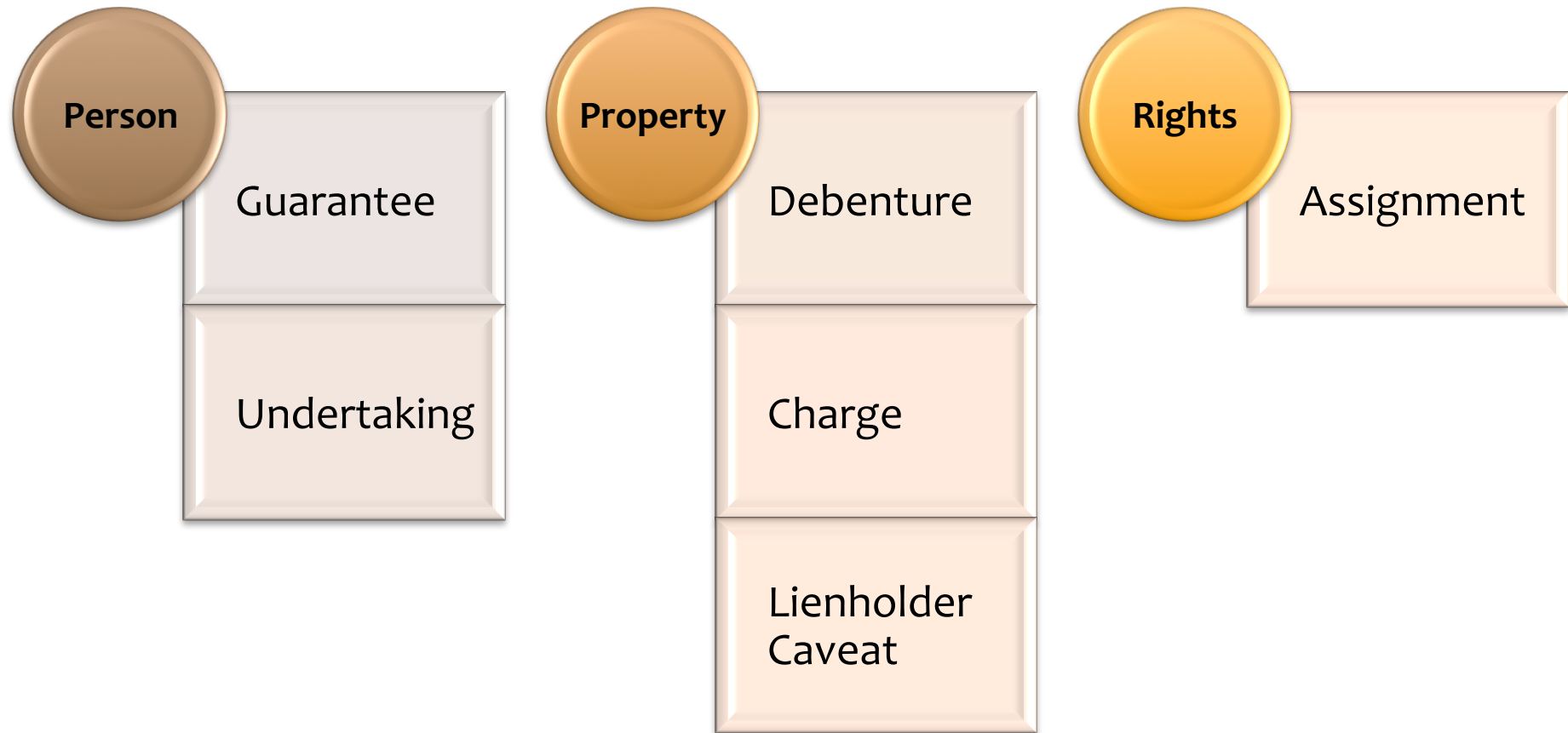


- Bai al Innah
- Murabahah
- Musyarakah
- Ijarah
- Mudharabah
- Dayn
- Kaffalah

TAWARRUQ FINANCING - STRUCTURE - SAMPLE



Structuring the Security



Pre Documentation Stage



Product Offered

- Shariah Compliance
- No inter conditional
- No Pre Signing



Pillars & Validity of the Contract

- Purchaser/ Seller;
- Asset(s);
- Amount
- Transferable
- Ownership
- Deliverable
- Valuable
- Determine
- Price;
- Clear under one price
- Clear on the period repayment
- Aqad



Prohibited Elements

- Illegality (Financing Activities, Transaction Asset & Financing Asset)
- Falsehood (*batil*);
- Illegal conditions;
- Mixed business;



Allowable Fees & Conditions

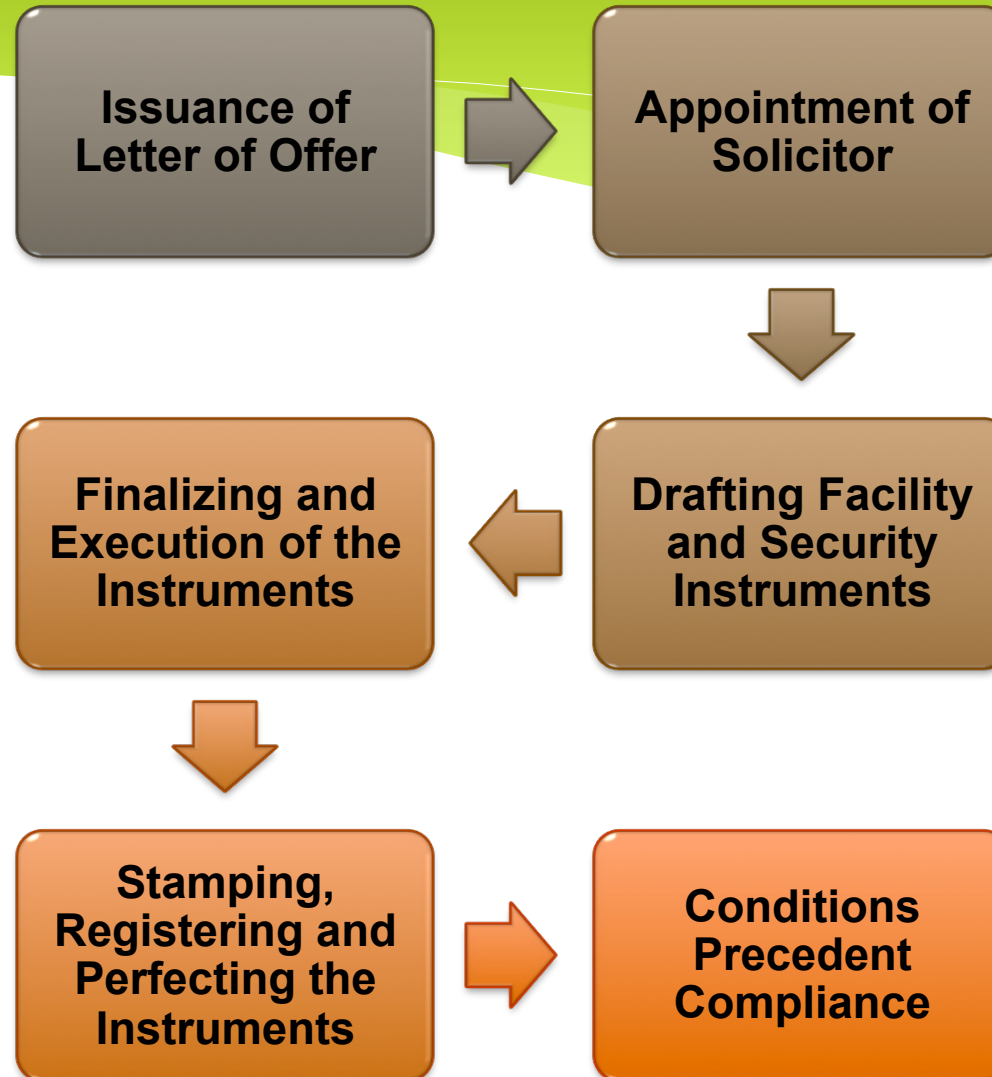
- Ujrah
- Ta'widh
- Gharamah;
- Takaful



Security Conditions

- Charge;
- Assignments;
- Memorandum of Deposit;
- Guarantee;
- Debenture
- Undertaking

Documentation Stage



Letter of Offer

**Conditional
Contract**

Drafting Facility and Security Instruments

Conventional Loan

- Loan Agreement

Bai' Istisna'

- Master Facility Agreement
- Istisna' Sale Agreement
- Istisna' Purchase Agreement

Bai' Innah

- Master Facility Agreement
- Property Purchase Agreement
- Property Sale Agreement

Drafting Facility and Security Instruments

Bai' Murabahah

- Master Facility Agreement
- Murabahah Sale Agreement
- Murabahah Purchase Agreement

Ijarah

- Master Facility Agreement

Tawarruq

- Master Facility Agreement

Effect of the Void Instruments

Tan Sri Abdul Khalid Ibrahim v Bank Islam Malaysia Berhad [2009] 6 MLJ 416 HC

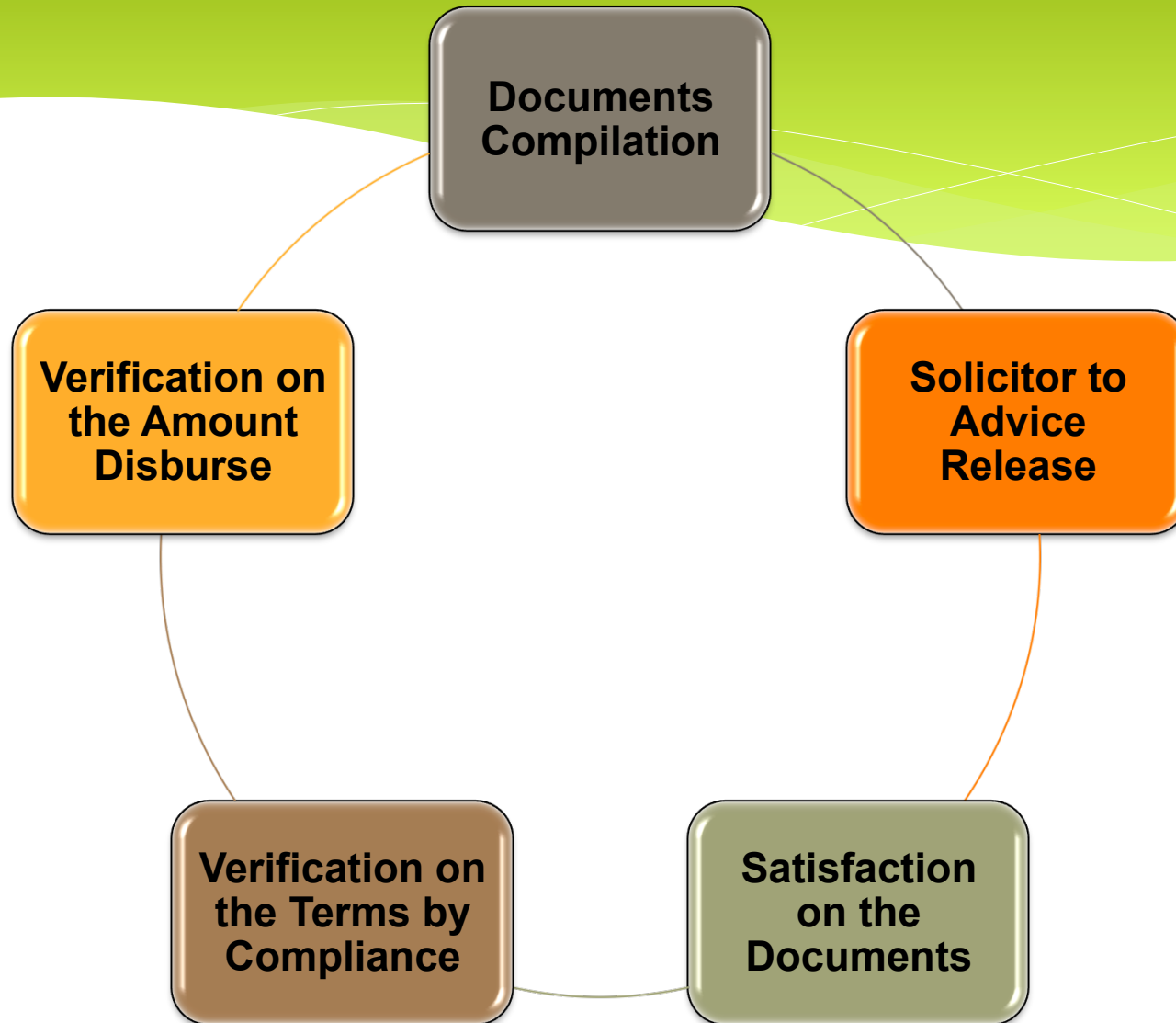
- “... Learned counsel contends that the mode of execution of APA and ASA was **improper** because Tan Sri Khalid was made **to sign both agreements first before they were passed back to be completed by the bank**. There was therefore **no separation of the APA with the ASA and no distinction in term of time of execution as required under the said ruling of the SAC**. As such there was **no complete sale of shares to the bank under the APA before the bank can resell shares** to Tan Sri Khalid in the ASA. To my mind, **this issue is based on mere technicality and a trivial one**. The **consensus between parties has been arrived at the point the letter of offer was accepted** by Tan Sri Khalid. **The agreement to be bound is subject to the formalities of the execution of various documents**. Signing of the written agreements is **to formalise and to translate the consensus of parties in the terms clearly agreed upon**. Besides, it has always been a practice, for the borrower to affix signatures on all banking documents before the bank execute the same, and it is rather inconceivable to suggest that it can affect the validity of the contract. Furthermore, a written confirmation from the bank’s own Shariah Council in exh GN4 confirmed that the mode employed for the execution of the documents in the present case is in order and has no bearing from Shariah perspective. With seven sets of APA and ASA documents signed in the same manner, the parties would have condoned and accepted such practice. As such, I fail to see how these agreements will not be binding on parties merely because they are signed without following orders of precedent, when after entering into the seven sets of transaction the defendant never protests or raises any issue.”

Effect of the Void Instruments

Maybank Islamic Berhad v M-10 Builders Sdn Bhd & Anor [2015] 3 CLJ 526 HC

- It was held that, if the murabahah contract contradicts the Shariah principles and the basis tenets of the financing based murabahah, the murabahah Facility was declared null, void and unenforceable

Pre Disbursement Stage



Documentation & Pre Disbursement Stage



Correct Instrument Used

- Master Facility Agreement;
- Asset Sale/Purchase Agreement;
- Wakalah Agreement;
- Ancillary instruments;



Pillars & Validity of the Contract

- Purchaser/ Seller;
- Asset(s);
- Price;
- Aqad.



Sequence & Transaction Documents

- Agency Agreement prior to purchase;
- Invoice Date;
- Agency Agreement prior to sell;
- Commencement of lease.



Prohibited Elements

- Illegality (Financing Activities, Transaction Asset & Financing Asset);
- Falsehood (*batil*);
- Illegal conditions;
- Mixed business;

Post Disbursement Stage



**Repayment
Monitoring**



Project Monitoring



**Compliance of the
Agreed Covenants**

Post Disbursement Stage

Monitoring



No breach of the agreement



Repayment shall not exceed
Sale Price



Prevent any unnecessary fees



To monitor on illegal activities

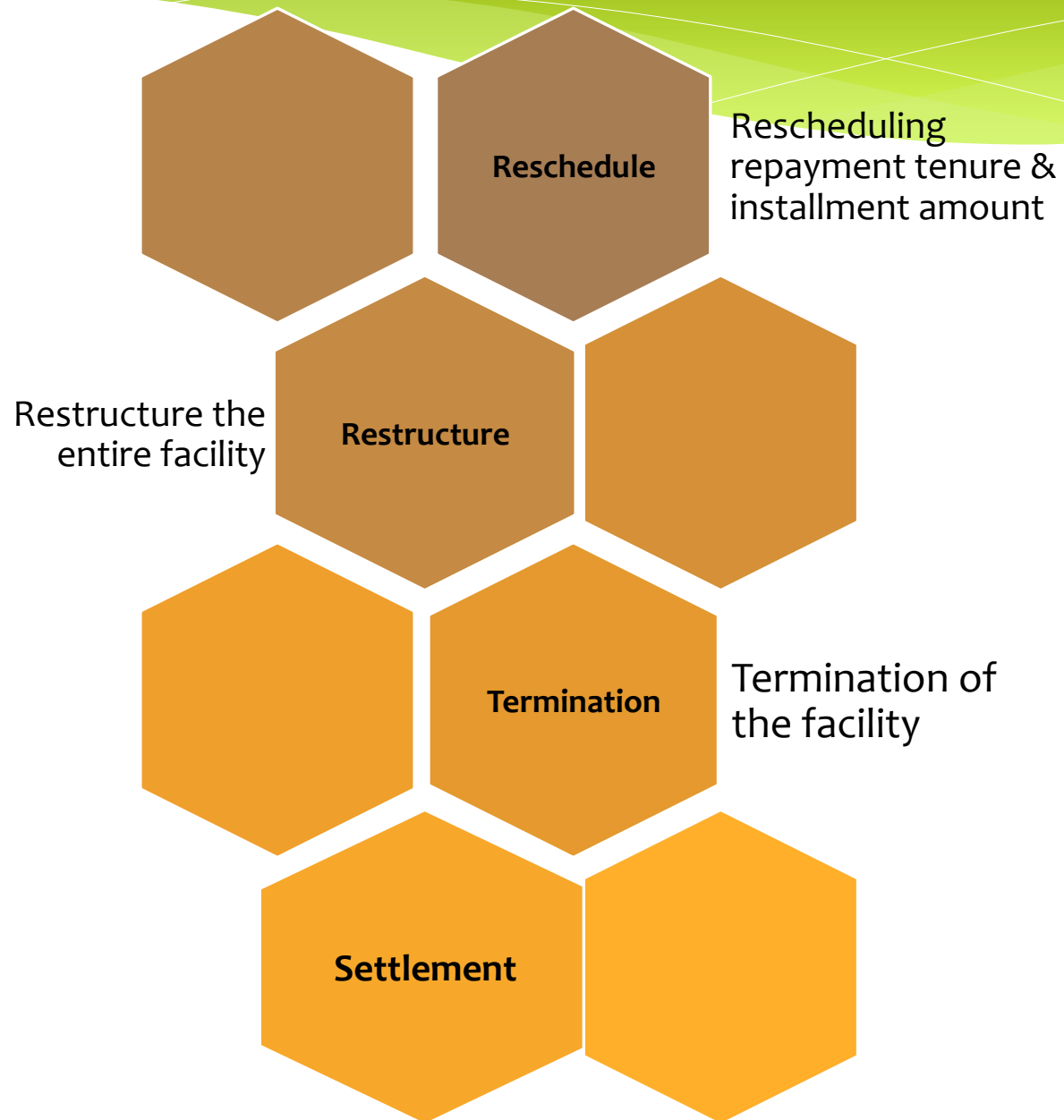


Keep insure/takaful coverage

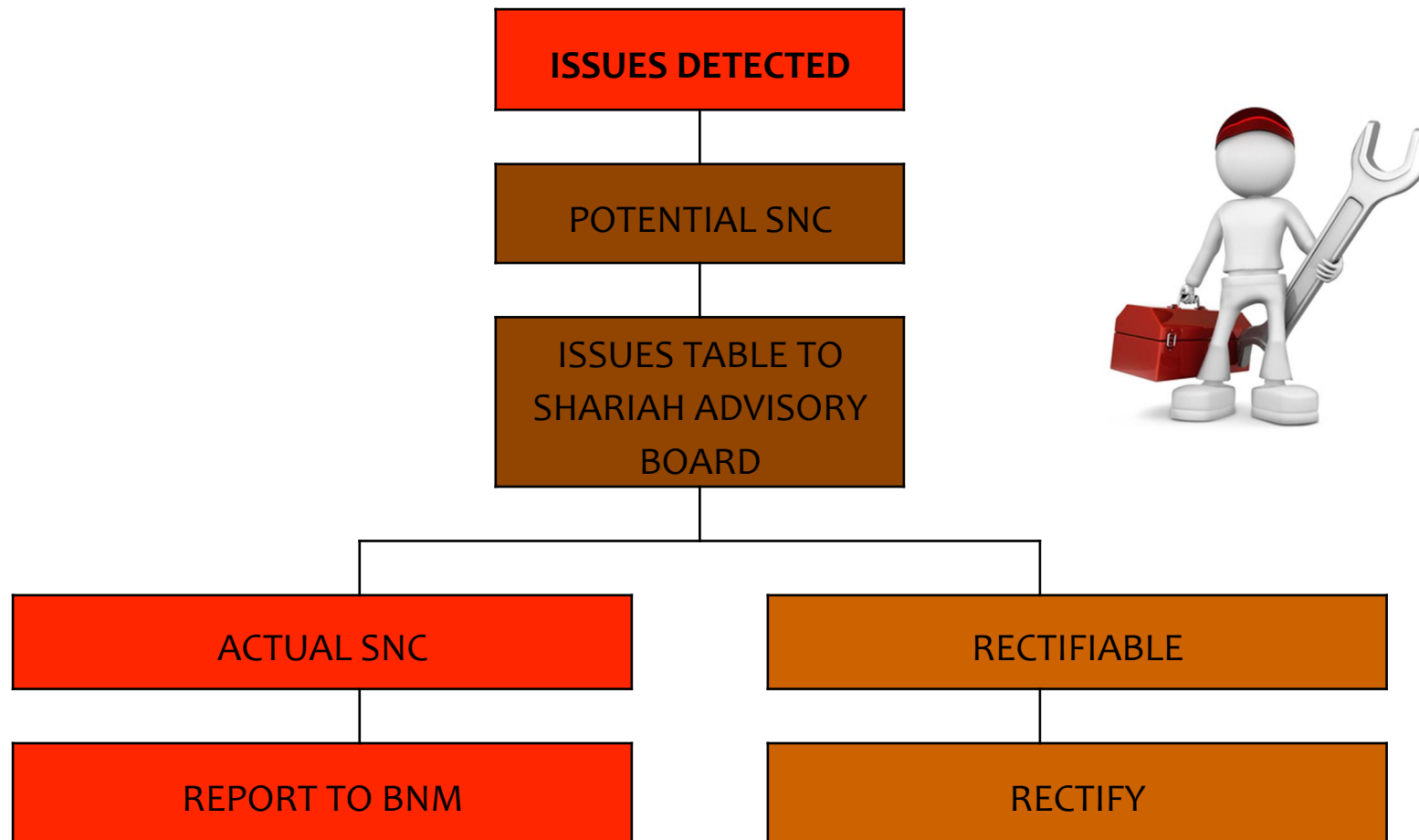


To monitor on any rescheduling/
restructuring

Non-Performing Loan



Shariah Non-Compliance ("SNC")



Effect on Shariah Non-Compliance ("SNC")

NON-COMPLIANCE



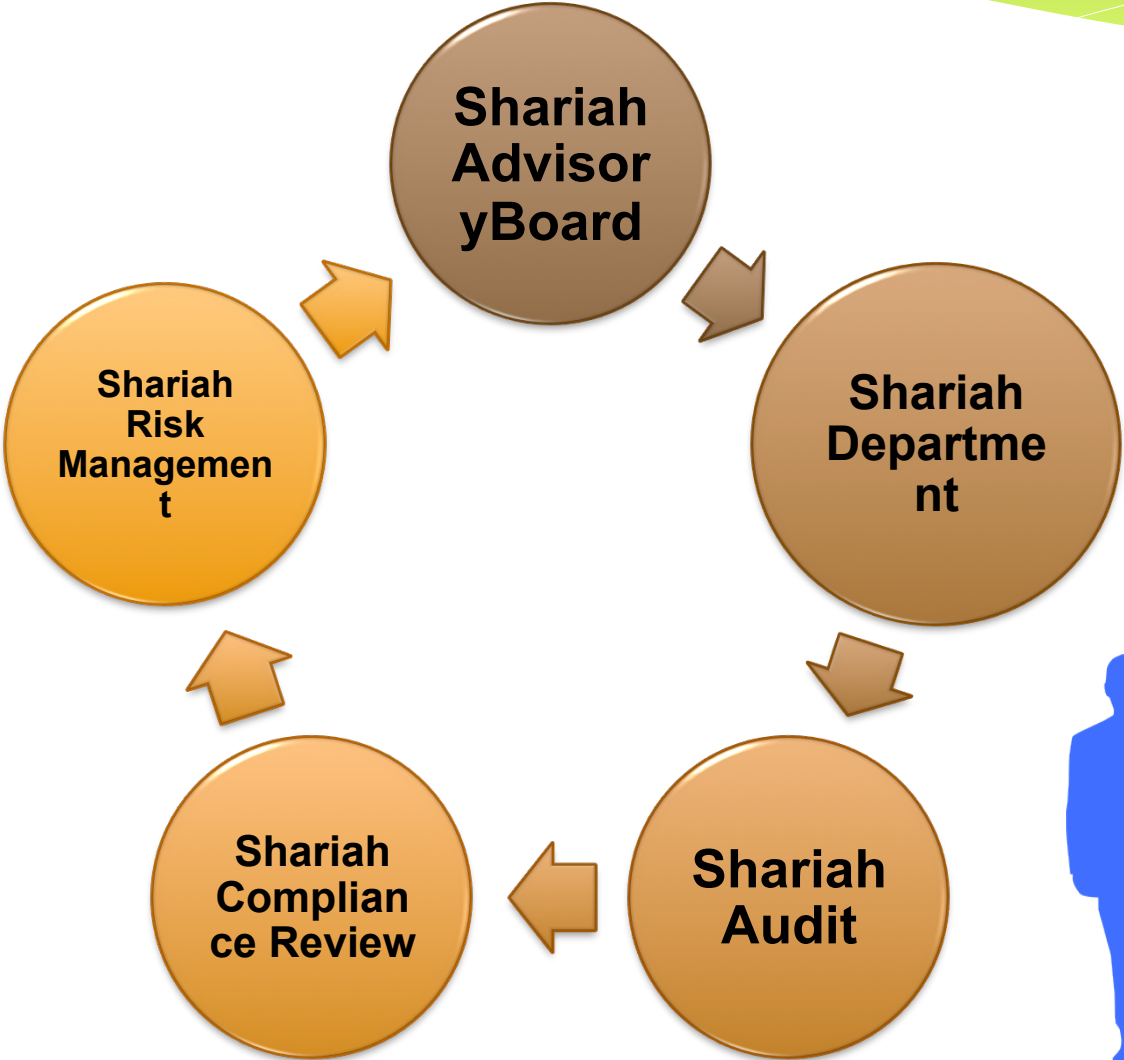
**Financial
Impact**

- Total Loss;
- Derecognize Profit;
- Fine;

**Reputable
Impact**

- BNM Reprimand;
- Public Assumption;

Shariah Personnel



Shariah Advisory Board

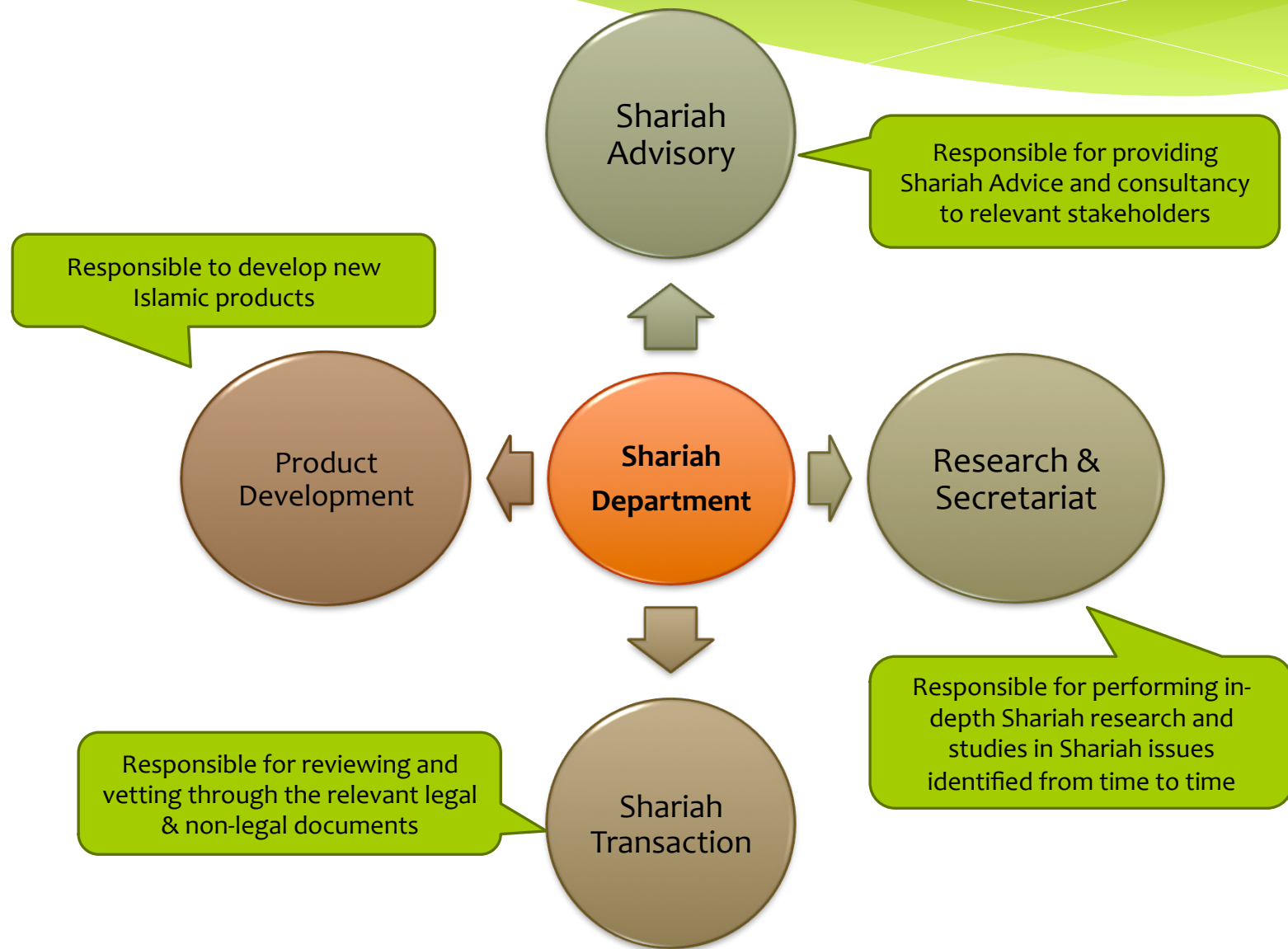
Responsible and
accountable for
all shariah
decisions,
opinions and
views

To advise the
bank to consult
Shariah Advisory
Council BNM

To advise Board
and
Management on
Shariah matters

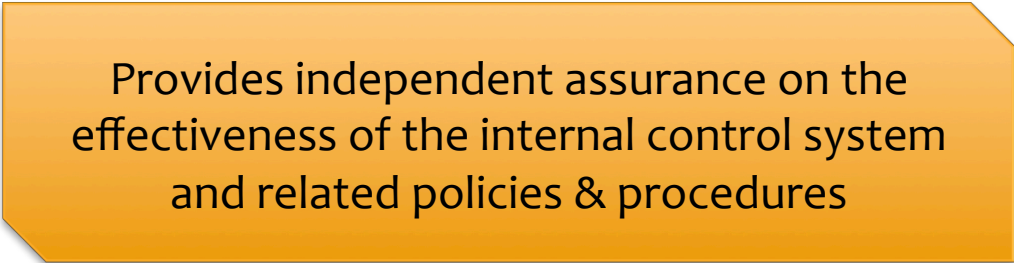
To confirm and
form an
independent
opinion on
Shariah

To validate and
endorse on the
Islamic products,
services, policies
and procedures





Shariah Audit



Provides independent assurance on the effectiveness of the internal control system and related policies & procedures



Shariah Compliance Review

Ensuring the activities and operations are Shariah compliance including examine & evaluating level of shariah compliance, remedial rectification measures on non compliance and control mechanism to avoid recurrences



Shariah Risk Management



To facilitate a systematic and consistent approach in managing shariah non-compliance



Thank you

zalmanizam@bpmb.com.my / zalmanizam.mahadi@gmail.com