



Consumer Protection in the Context of Regulatory Efforts and Maqasid al Shariah

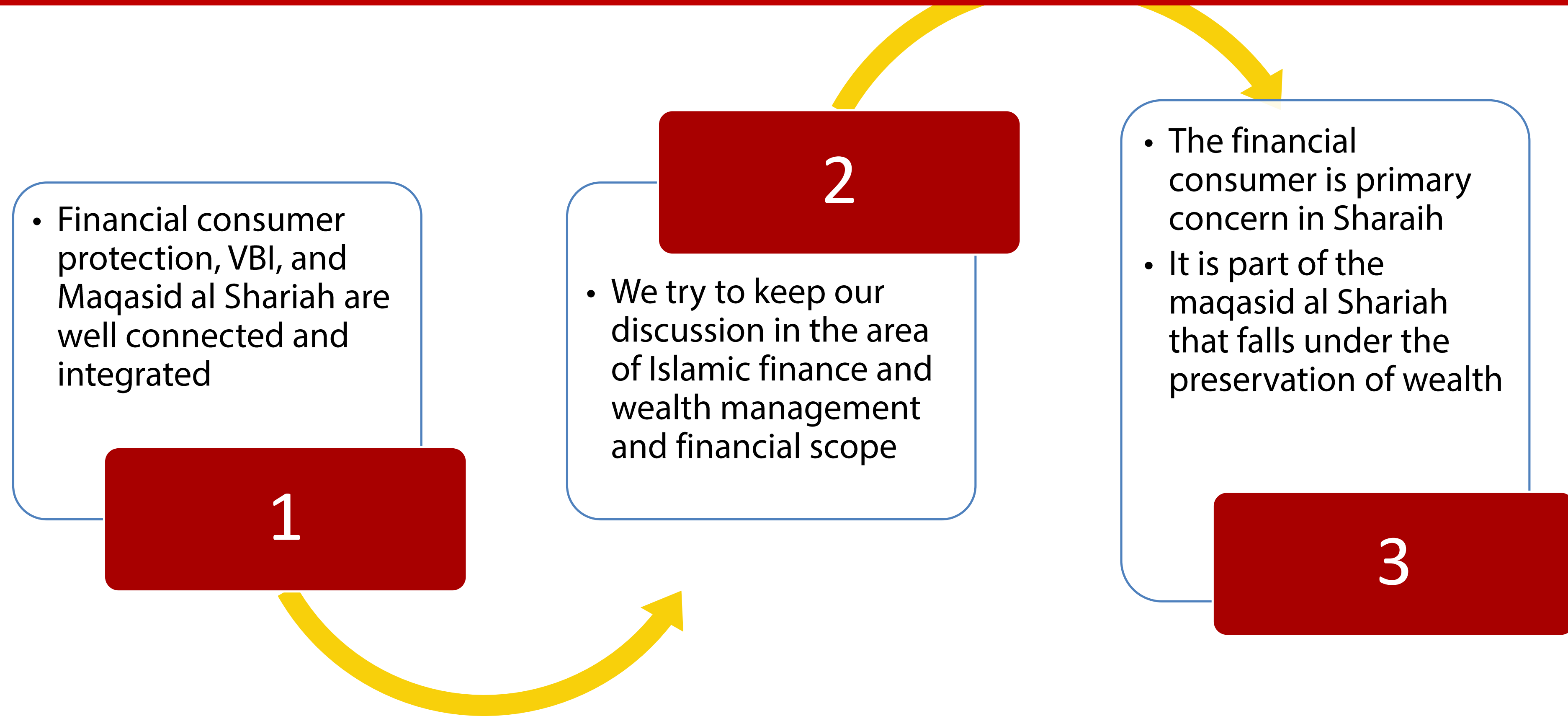
Dr. Ahcene Lahsasna

CEO Salihin Shariah Advisory

ahcene@salihin.com.my

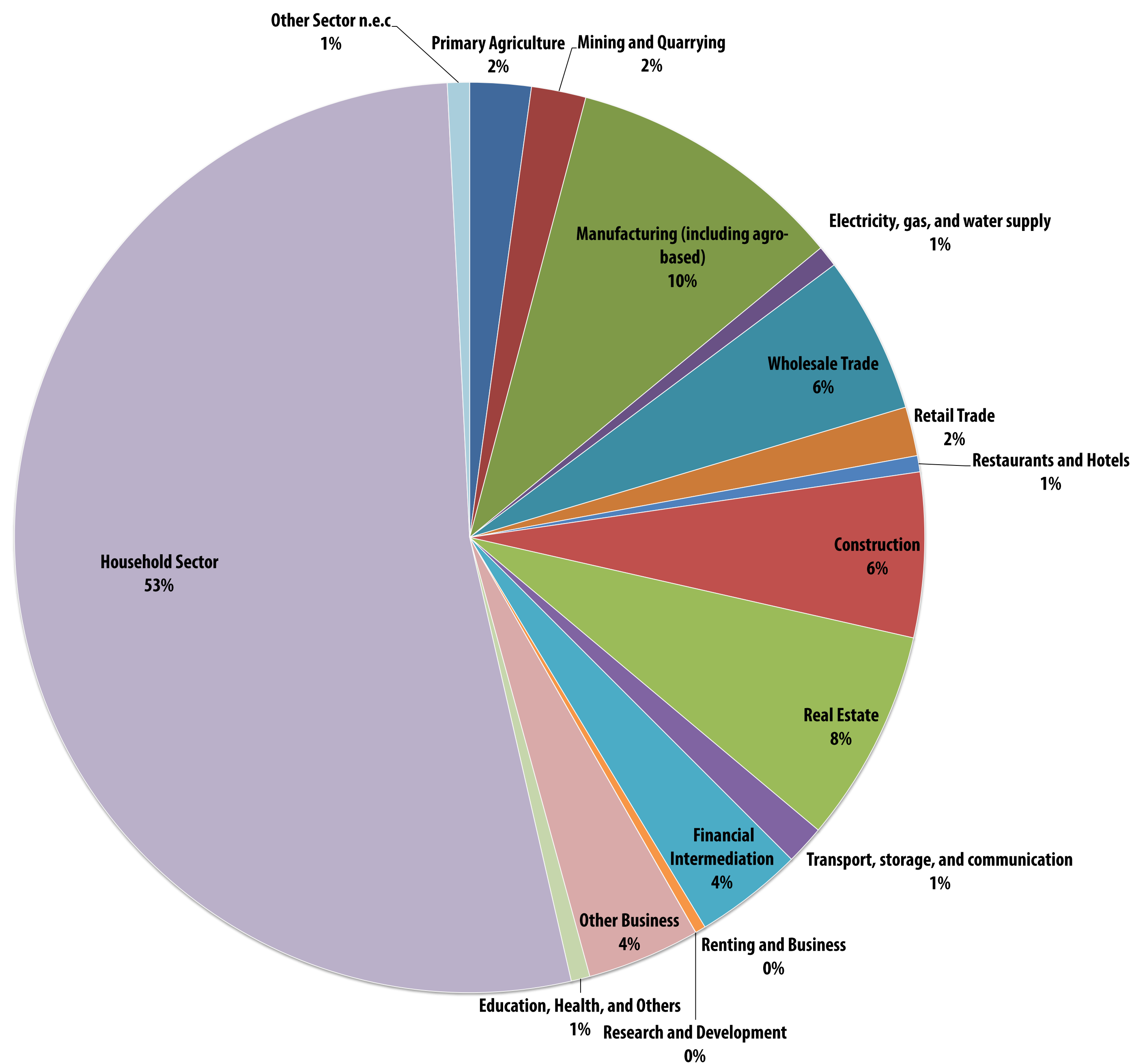
The 6st MFPC International Conference on Islamic Wealth Management &
Financial Consumers Protection and VBI
Berjaya Times Square, 9 April 2019

Financial Consumer



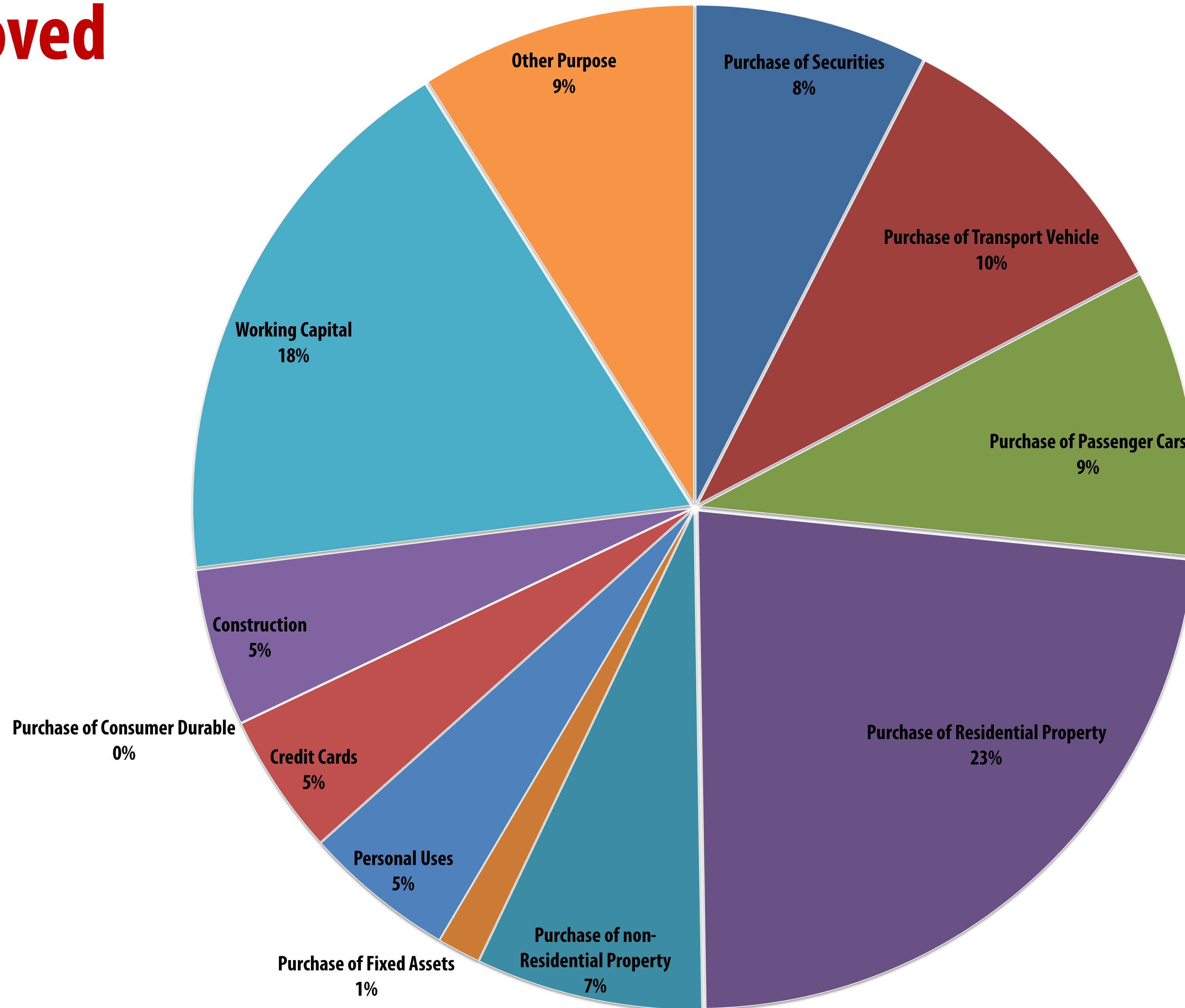
- The financial consumer protection does not start from the product offering but it started before the product is offered to the market
- The regulators guidelines and standards that the IFI should comply with
- The Shariah board/ Committee review and assessment on the terms and conditions where fairness, equity and justice are observed and enforced

Loans Approved by Sector



Source: BNM Monthly Statistical Bulletin March, 2018

Loans Approved by Purpose



Source: BNM Monthly Statistical Bulletin March, 2018

Bankruptcy Cases Based on Age

| Age | 2013 | 2014 | 2015 | 2016 | 2017 | Total Case | Percentage |
|--------------|--------|--------|--------|--------|--------|------------|------------|
| Below 25 | 208 | 635 | 122 | 91 | 80 | 1,136 | 1.13% |
| 25-34 Years | 5,212 | 4,822 | 4,648 | 5,183 | 4,785 | 24,650 | 24.5% |
| 35-44 Years | 7,616 | 7,641 | 6,507 | 6,601 | 6,241 | 34,606 | 34.4% |
| 45-54 Years | 5,973 | 6,223 | 4,744 | 4,967 | 4,628 | 26,535 | 26.37% |
| 55 and above | 2,818 | 2,867 | 2,299 | 2,536 | 2,354 | 12,874 | 12.8% |
| Others | 160 | 163 | 137 | 210 | 139 | 809 | 0.8% |
| Total | 21,987 | 22,351 | 18,457 | 19,588 | 18,227 | 100,610 | 100% |

Source: MDI Bankruptcy Statistic December, 2017

- Statistics is showing a worrying rising trend in the number of bankruptcy recorded
- The total bankruptcy cases from those aged between 35-44 alone is 34.4%

- In conjunction to this worrying issue, the Financial Sector Blueprint 2012-2020 has highlighted that,

“the financial integrity and consumer protection will also be further emphasised with enhanced arrangements for the investigation of financial crimes, regulation of all consumer credit activities and coordination of financial capability initiatives”

- The highlight from the Blueprint depicts the vital importance of the matter to both BNM and the Government

Consumer Information

- Following to the worrying statistics, Government has start looking into a national strategy to help Malaysians improve their personal financial literacy and develop the necessary skills to keep their personal financial matters in the proper perspective.
- In 2004, BNM proposed that financial education be made part of the school curriculum in view of its importance in the nation's economic activities.
- As an initiative by BNM, the Credit Counselling and Debt Management Agency (AKPK) was establish to provide financial education on responsible use of credit and basic money management skills.
- In addition to this, the Financial Mediation Bureau (FMB) was established to become an alternate resolute medium.

Consumer Awareness and Protection



Financial Mediation Bureau

- Incorporated on 30th August 2004 and officially commenced operations on 20th January 2005
- Non-Profit organisation set up under BNM as an alternative dispute resolution channel to resolve complaints between the Financial Service Providers and their customers



Credit Counseling and Management Agency (AKPK)

- Agency set up by BNM in April 2006 to help individuals to take control of their financial situation and education in the wise use of credit
- AKPK offers the following services to individuals, free of charge:
 - a) Financial education on the responsible use of money and credit management skills
 - b) Counselling and advice on financial management
 - c) Debt management programme to assist consumers to regain financial control



BNM Integrated Contact Centre

Another initiative of the BNM is through establishment of Integrated Contact Centre:

- BNMLINK - Walk-in Customer Service Centre
- BNMTELELINK - Contact Center (Call, fax, mail, e-mail or SMS)
- Complaint Management and Advisory Unit



PIDM

- PIDM is a Government agency PIDM was set up in 2005 to administer the Deposit Insurance System (DIS) aimed at protecting depositors.
- It was established under (Malaysia Deposit Insurance Corporation Act) in December 2010
- PIDM's role was expanded to administer the Takaful and Insurance Benefits Protection System (TIPS) to provide protection to owners of takaful certificates and insurance policies.

| Consumer Awareness and Protection



| Consumer Protection

- The rapid evolvement of financial environment has put major challenges for the regulators to enhance both the financial situation and the consumers' interest
- The enactment of (FSA 2013) and (IFSA 2013) have strengthened business conduct and consumer protection requirements to promote consumer confidence in the use of financial services and products
- Given the importance of financial capability in promoting individual financial well-being, financial literacy and education initiatives continue to form a crucial component of the Bank's consumer protection framework
- As a collaborative effort, BNM has collaborated with the Ministry of Education (MOE) to entail financial education into school curriculum

FSA 2013

FSA specifies prohibition of business conduct (Schedule 7 of the FSA) where contravention may result in imprisonment not exceeding five years and/or a fine of no more than RM10 million, or both.

The Act also prohibit from exerting undue influence and pressure on consumers to make debt repayments and to accept unsolicited offers for financial products and services.

| Cont.

A. Where any Party provides to the other Party with personal data of third parties including information relating to its individual shareholders (if applicable), directors, officers or authorized representatives (hereinafter be referred to as “Data Subjects”) for purposes of the performance of this Agreement, the Party providing such personal information shall:

- obtain the consent of each Data Subject to allow the other party to process the personal data of the Data Subject in accordance with the Personal Data Protection Act 2010 (Act 709) (hereinafter referred to as “the PDPA”);
- ensure that each Data Subject reads and understands the Personal Data Protection Notice issued pursuant to this clause;

| Cont.

- submit to the other Party upon the execution of this Agreement, the Personal Data Protection Consent form (hereinafter referred to as the 'Consent Form') that has been duly signed by each Data Subject; and
- in the event of any change to the Data Subjects, immediately require the new Data Subject to sign the Consent Form and submit the duly signed Consent Form to the other Party prior to the new Data Subject performing any part of this.

B. Notwithstanding any clause to the contrary, the Party providing third parties' personal information shall indemnify and keep the other Party fully and effectively indemnified against all costs, claims demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim relating to processing of the personal data of the Data Subjects by other party is in breach any of the requirements under the PDPA.

SCHEDULE 7. [Subsection 136(1)]

LIST OF PROHIBITED BUSINESS CONDUCT

In addition to Division 5 on Restrictions relating to consumer protection. The act was very strict in schedule 7. where list of prohibitions have been listed as follows:

1. Engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive in relation to the nature, features, terms or price of any financial service or product.
2. Inducing or attempting to induce a financial consumer to do an act or omit to do an act in relation to any financial service or product by
 - a) making a statement, illustration, promise, forecast or comparison which is misleading, false or deceptive;
 - b) dishonestly concealing, omitting or providing material facts in a manner which is ambiguous; or
 - c) recklessly making any statement, illustration, promise, forecast or comparison which is misleading, false or deceptive.
3. Exerting undue pressure, influence or using or threatening to use harassment, coercion, or physical force in relation to the provision of any financial service or product to a financial consumer, or the payment for any financial service or product by a financial consumer.

Cont.

4. Demanding payments from a financial consumer in any manner for unsolicited financial services or products including threatening to bring legal proceedings unless the financial consumer has communicated his acceptance of the offer for such financial services or products either orally or in writing.
5. Exerting undue pressure on, or coercing, a financial consumer to acquire any financial service or product as a condition for acquiring another financial service or product.
6. Colluding with any other person to fix or control the features or terms of any financial service or product to the detriment of any financial consumer, except for any tariff or premium rates or policy terms which have been approved by the Bank.



Personal Data Protection Act 2010

- In November 2013, the Personal Data Protection Act has been enforced to protect the public personal data. In view of this, the financial sector also involved in this enactment
- As financial institutions involved in consumer's personal data, the enforcement of this act will help enhance consumer protection.
- The Personal Data Protection Act 2010 ("PDPA") is an Act that regulates the processing of personal data in regards to commercial transactions. It was gazetted in June 2010.



shutterstock.com • 175199546

Maqasid al Shariah and financial consumer protection

Maqasid al shariah

A. Ibn Ashur defined *Maqasid al-Shariah* based on two aspects:

- 1: The general aspect which is the purpose and wisdom behind the enactment of all or most of the shari'ah ruling. (This is more related to the general objective of *Shariah*).

- 2: The second definition of *Maqasid al-Shariah* is very specific.

It is related to specific objective that are designed to achieve specific benefits to people in their daily activities, such as Islamic finance.

B. Alal al-Fasi defined *Maqasid Shariah* as the end sought behind the enactment of each of the ruling of *Shariah* and the secret involved.

- This definition covers the public *Maqasid (ama)* and the private *Maqasid (khasa)*.

In short

- *Maqasid al-Shariah* aims to protect the interest of mankind and prevent the evil
- To realize the public benefit for the society
- To encourage virtues and avoid vices.

Importance of *Maqasid al-Shariah* in Islamic finance

- Maqasid helps to validate the different resolutions and ruling derived from the text
- The Muslim jurists depend on Maqasid approach in all types of ijthad in Islamic law including Islamic finance
- Major reference for Shariah Advisory in issuing fatwa and resolution.
- Major reference for the regulators such as Bank Negara & Securities commission.
- Major reference for the setting body such as AAOIFI & IFSB.
- Major reference for the financial planning sector
- the main driver behind the VBI.

Classification of *Maqasid al-Shariah*

Maqasid al-Shariah is divided into three major categories as follows:

1. The necessities or essentials (*daruriyyat*).
2. The needs (*hajiyyat*).
3. The complementary (*tahsiniyyat*).

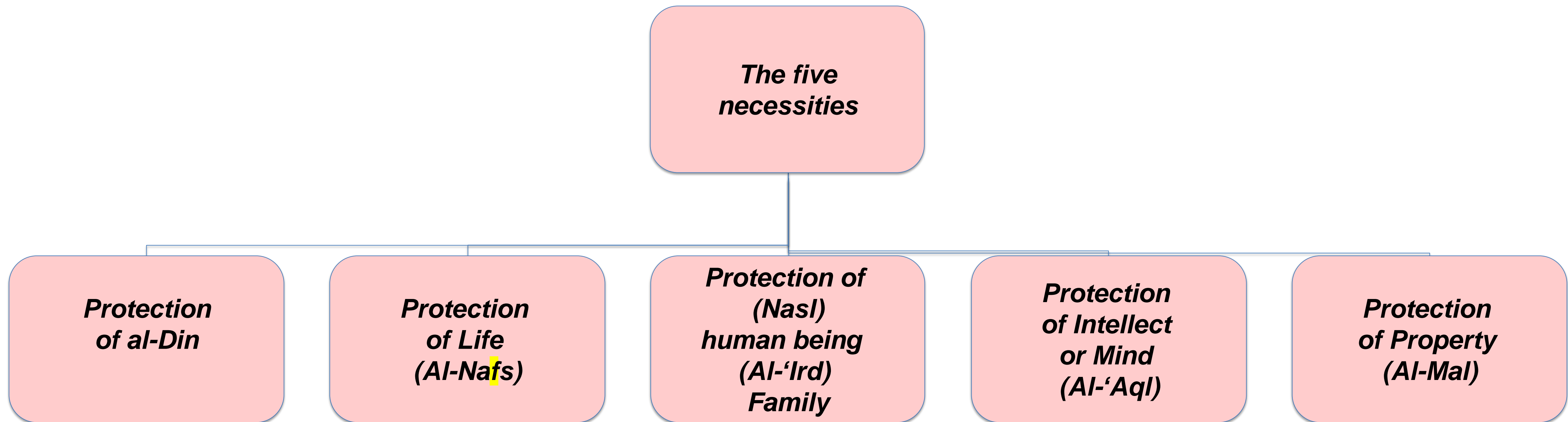
All the Islamic legal ruling refers to realize one of the above categories.

Maqasid al shariah

1. The Necessities (al-Daruriyyat). 2. The needs. 3. The Complementary

1: The Essentials, Necessities (al-Daruriyyat)

The al-daruriyyat refer to the necessities and the essentials that the people depend on them and without them the whole society will be in total disaster and disorder and end with total collapse.



Cont.

2: The needs

- It is refer to the supporting needs and interests required in order to have smooth life.
- The life without protection of these needs leads to hardship and affects the social functions very badly.
- *Shatibi* defined it as “it consists of what is needed to attain conform and alleviate hardship.
- If it is neglected, human subjects (*mukallafin*) will suffer distress and hardship.
- The harm resulting from neglecting it cannot be equated with the fundamental universals.
- Examples: Salam, Istisna, Leasing.

3: The complementary

- The complementary or embellishments or *tahsiniyyat* refer to the interest which provide Improvement in the society and lead to better life, and give progress in the moral and spiritual in the Muslim society.
- The disappearances of complementary don't affect the society function, and will not interrupt the normal process life in the society.
- As result of that the nation will become an attractive model for other.
- Examples: voluntary (*sadaqah*).

**The objectives
of shariah in
Islamic finance**

```
graph TD; A["The objectives of shariah in Islamic finance"] --- B; B --- C["The circulation of Wealth"]; B --- D["Ensure justice in circulation of the wealth in business transaction"]; B --- E["Achieving Comprehensive Communal Prosperity"]; B --- F["The Financial Transparency"]; B --- G["Prevent harm and hardship in wealth and finance"]; B --- H["Achieving Comprehensive Communal Prosperity"];
```

***The circulation
of Wealth***

***Ensure justice
in circulation
of the wealth
in business
transaction***

***Achieving
Comprehensive
Communal
Prosperity***

***The Financial
Transparency***

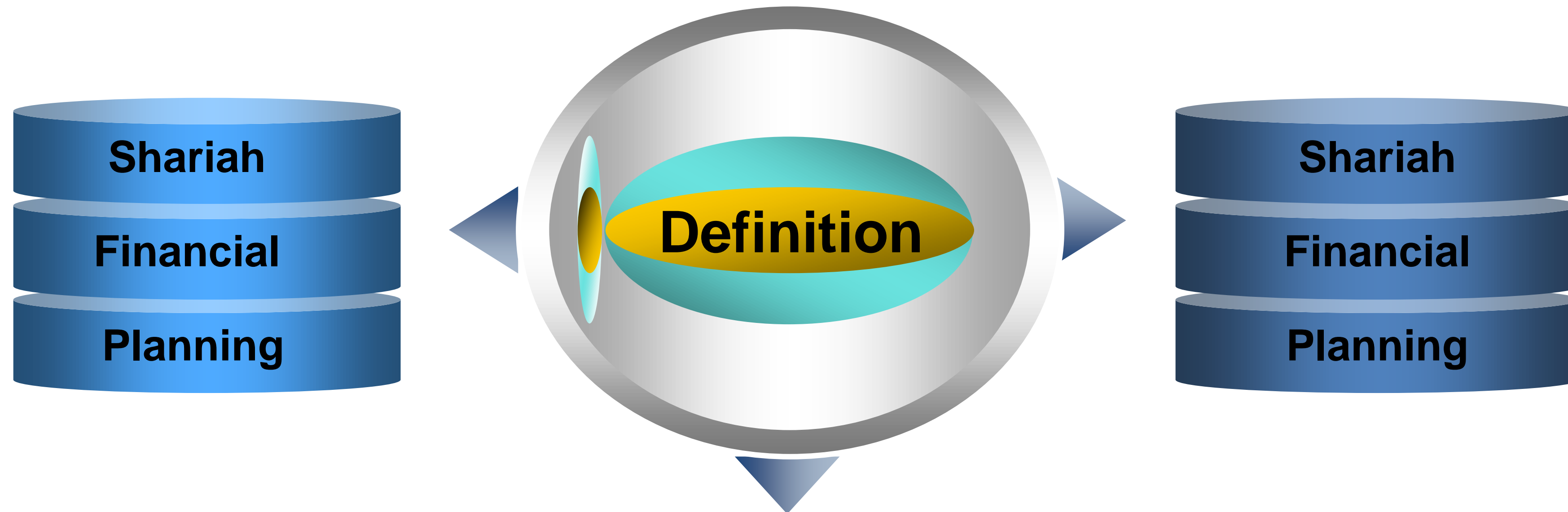
***Prevent harm
and hardship
in wealth
and finance***

***Achieving
Comprehensive
Communal
Prosperity***

Maqasid al Shariah & VBI in the financial Planning Profession

Defining Shariah Financial Planning

Shariah financial planning it is:



"a process of assisting clients in determining their financial goals and priorities and the resources to meet them optimally within the parameters of the Shariah."

The objectives of financial planning:

Providing direction to a person's financial decisions;

Allowing a person to understand how each financial decision affects other areas of his finances;

Proper fulfilment of obligations and recommendations of a financial Nature prescribed by the Shariah,

conducting the financial management process in a way compatible with Shariah precepts.



Essentials of a Comprehensive Financial Plan

The following elements should usually be included in a comprehensive financial plan.

Financial Planning

Personal data

Client's goals
and objectives

Identification of
issues & problems

Assumptions

Balance sheet

Cash flow
management

Zakat and
Income tax

Risk management

Investments

Estate planning

Education

Recommendation

Implementation

People

Profit

Planet

Incorporate of maqasid shariah in designing the priorities of the client

- The conventional financial system focuses primarily on the economic and financial aspects of transactions, it is driven by profit maximization.
- According to the principles of Maqasid Al Shariah the Islamic system places equal emphasis on the ethical, moral, social and religious dimensions in order to ensure equality and fairness for the good of society.
- The *daruriyyat*:
- The primary category are:
 - Preservation and protection of religion (*al-din*),
 - Preservation and protection of life (*al-nafs*),
 - Preservation and protection of progeny or dignity (*al-'ird*) (Nasl),
 - Preservation and protection of intellect (*al-aql*),
 - Preservation and protection of wealth (*al-mal*).
- The needs (*hajiyyat*)
- Complementary (*Tahsiniyyat*)

Consumer Protection in the context of Business and market conduct

Business and market conduct

Information disclosure

- the IFI shall provide adequate information with regard to the *ijarah* financing.
- The IFI shall provide additional disclosures in the Product Disclosure Sheet on the followings
 - (a) the roles, responsibilities, rights and liabilities of the contracting parties;
 - (b) in the case of the *ijarah mawsufah fi zimmah*, specific disclosure is required on–
 - (i) the applicable profit rate prior to the delivery of asset; and
 - (ii) the obligation to refund the advance rental to customers in case of non-delivery of the asset and termination arising from the failure to meet the agreed specifications on the asset;
 - (c) mechanism for the transfer of asset ownership. If *wa`d* is employed, IFI shall disclose the implications arising from any breach of *wa`d* to ensure that the customers are aware of their obligations and liabilities arising from the provision of *wa`d*;

- (d) clarification on the purpose of deposits payable by customers, either as a security deposit, rental deposit or earnest money and the implication from any breach of terms or discontinuation of the *ijarah* financing
- (e) clarification on the applicable formula and profit rate, an illustration on the calculation and the minimum and maximum rental limits for the *ijarah* with variable profit rate; and
- (f) clarification on the applicable formula and conditions associated with the settlement prior to the maturity of the *ijarah* financing.
 - The IFI must ensure that the appropriate terminologies that are reflective of the nature of the *ijarah*
 - The IFI must provide relevant and timely information to the customer during the period of the *ijarah* contract such as notice of changes to terms and conditions, features, rights, obligations, fees or charges.

Cont.

Fair dealings

- The IFI shall implement and enforce clear policies and procedures to ensure fair dealing practices particularly on the following matters:
 - (a) suitability and affordability assessment of potential customers;
 - (b) disclosure of clear and accurate information to be provided in a timely manner to customers to facilitate informed decision making; and
 - (c) imposition of charges and responsibilities of customers.
- Under the *ijarah mawsufah fi zimmah*, the IFI shall not invoke the *wa`d* to purchase by the customer in the event of any failure of the contractor to deliver the asset within the agreed duration.
- The IFI shall observe the following in the event that the *ijarah* financing is terminated or settled prior to its maturity:
 - (a) the maximum amount payable by the customer shall be the settlement amount (*i.e.* the rentals due that are yet settled plus balance of the principal amount); and
 - (b) any early termination fee imposed shall represent reasonable estimation of costs to be incurred by the IFI arising from the termination or settlement prior to the financing maturity as per the policy document on *Responsible Financing*;
 - (c) other relevant fees and charges imposed on the customer, shall be based on the *Guidelines on Imposition of Fees and Charges on Financial Products and Services*; and
 - (d) the SC of the IFI shall perform an effective oversight over the implementation and in the determination of the early termination fee to reflect reasonable cost incurred by the IFI.

Cont.

Repossession of consumer goods and motor vehicles

- The IFI shall set out policies and procedures on the repossession of the leased asset in the event of default by customer on obligations under the *ijarah* financing which involve consumer goods and motor vehicles.
- The policies and procedures on the repossession shall include the following:
 - (a) the triggering events for the repossession of the asset;
 - (b) requirement for the IFI to obtain a court order before repossessing any leased asset where the total rental paid by the customer throughout the *ijarah* period is more than 75% of the *ijarah* financing amount;
 - (c) the IFI's notification to the customer of its intention to repossess the leased asset;

- (d) rights of the customer who surrenders the asset upon receiving a repossession notice from the IFI within the notice period to not be imposed any cost of repossession, costs incidental to the repossession and cost of storage;
- (e) procedures after the IFI repossesses the asset which include the notification to the customer and any guarantor on the repossession and communication on the procedures for the customer to make settlement of the financing;
- (f) obligations and restrictions of the IFI on the repossessed asset; and
- (g) procedures relating to the disposal of the repossessed asset, where the IFI must provide the customer the first option to purchase the asset if the disposal is carried out through means other than a public auction.

Cont.

- The IFI shall ensure that the rights and obligations of the customer in respect of the repossession of the leased asset as provided in the internal policies and procedures are reflected in the legal documentation of the *ijarah* financing.
- In the event that the proceeds from the disposal of the asset by the IFI exceed the amount payable to settle the *ijarah* financing, the IFI must give the excess amount to the customer

Financial disclosure

To enhance clarity on the structure of the *ijarah* financing, the IFI shall disclose the following information in additional notes to the financial statement:

- (a) assets funded under this mode of financing are owned by the IFI throughout the tenure of the *ijarah* financing; and
- (b) ownership of the assets will be transferred to the customers *via* suitable mechanism at the end of the *ijarah* financing

Conclusion

- Financial consumers in Malaysia will continue to evolve and will project more challenging obstacles for the future regulators in protecting the consumers interest
- It is with hope that the continuous positive growth of financial sector in Malaysia will further spur the economic growth of Malaysia and that sound regulative framework will be put in place in line with the need of the sector.



www.salihin.com.my | www.salihinpremier.com

Careline: 1 300 88 5678