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المؤتمر الدولي الثاني للتراث الإسلامي

"STRENGTHENING KNOWLEDGE, EMPOWERING ACHIEVEMENT"

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PROCEEDING OF 2ND INTERNATIONAL ISLAMIC HERITAGE CONFERENCE (ISHEC 2017)



2nd International Islamic
Heritage Conference 2017



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2nd International Islamic
Heritage Conference 2017

Foreword



Bismillahirrahmanirrahim. All praise to Allah SWT. Blessing and Prayers be upon Prophet Muhammad SAW, and also to his family members, kindred's, companions and his followers who adhere faithfully to his teaching.

I would like to express my gratitude for this invitation to write a few words in conjunction of this proceeding. Heartiest congratulations go to the organizers of the 2nd International Islamic Heritage Conference 2017 (2nd IsHeC2017) that was held on 14th – 15th November 2017. Congratulations also to the editors for their efforts in publishing the articles presented at the 2nd IsHeC2017.

Proceeding of 2nd International Islamic Heritage Conference 2017 is a very noble effort as it adds to the corpus of literature on Islamic based research in various disciplines of knowledge. I hope that this proceeding can be a catalyst for the germination and strengthening of Islamic knowledge.

Finally, I wish to extend my sincere appreciation to all parties involved in the publication of this proceeding especially Academy of Contemporary Islamic Studies (ACIS) UiTM Melaka, Center for Islamic Philanthropy and Social Finance (CIPSF), Pusat Jaringan Industri, Komuniti dan Alumni (PJI & A) UiTM Melaka and the authors for their contribution.

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2nd International Islamic
Heritage Conference 2017

Preface

In the name of Allah, the Most Beneficent, the Most Merciful. All praise is due to Allah SWT, the Almighty. We all praise Him, seek His Help, and ask for His Forgiveness. We seek refuge with Him from the evil of our souls, and from our sinful deeds. He whom Allah SWT guides, no one can misguide him, and whoever Allah SWT misguides, no one can guide him. Blessings and prayers upon His Messenger Prophet Muhammad SAW. We would like to express our thorough and sincere gratefulness to Allah the Almighty, who has given us the opportunity to write, edit and complete the *Proceeding of 2nd International Islamic Heritage Conference 2017*.

We wish to extend our appreciation to YBhg. Datuk Associate Professor Sabariah Hj. Mahat, Rector of Universiti Teknologi MARA (UiTM) Cawangan Melaka for her full encouragement in ensuring the success of the 2nd IsHeC2017 and also the publication of this proceeding. Special thanks to YBr. Associate Professor Dr. Shafinar Ismail, Deputy Rector of Research and Industrial Linkage UiTM Cawangan Melaka for her continuous support in 2nd IsHeC2017.

A great deal of appreciation also goes to the Center for Islamic Philanthropy and Islamic Finance (CIPSF), Uni-Charity Society, ACIS UiTM Cawangan Melaka and UiTM Press for their tremendous effort in making the 2nd IsHeC2017 a success.

This proceeding comprises the articles that were presented in 2nd IsHeC2017 which held on 14 hingga 15 November 2017 at Avillion Hotel Melaka.

Hopefully, the *Proceeding of 2nd International Islamic Heritage Conference 2017* will give a clearer view of various contemporary issues in Islamic-based research in this country and the Muslim world as a whole. Finally, we hope that this proceeding may inspire and motivate its readers in initiating attempts and contributions for the sake of Muslim ummah.

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Editor

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SHARIAH RISK PROFILING THROUGH SHARIAH BASED BUSINESS MODELING: A RECTIFICATION PLAN FOR SHARIAH AUDIT FINDING (SNCR-01) FOR COMPANY XYZ

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ABSTRACT

This paper aims to discuss the Shariah risk based thinking aspects of Shariah compliant business entity within Malaysian Standard, Shariah Based Quality Management QMS1900:2015 (later on known as the 'Standard'. It initially shares and examines one of Shariah Audit findings classified as Shariah non-conformity (SNCR-01) which is 'Absence of Shariah based business models' in the company dealing with its stakeholders internally and externally. Secondly, it will examine the status of SNCR-01 as one of Shariah risk profile method. The researchers found that the standard does not elaborate explicitly on the risk profiling in certain. It depends on the individual qualified Shariah advisor or officer to do so. Without it, the issue will remain unsolved. Due to the given facts and the mentioned method, the researchers propose that the any organisation (to be precise, the company) shall establish a Shariah based business models as an effort for risk profiling as a tool to mitigate the risk and subsequently establish a proper and sound corrective actions in its rectification plan in the event SNCR occurs in the future.

Keywords: Shariah audit, Non-conformity, Business models, Rectification plan, Shariah risk profile

INTRODUCTION

People always say, 'seeing is a believing'. That is the correct words used to describe what has been found from Shariah audit exercise done onto the xyz company²²¹ where they are multiple audit findings showing a missing critical element in applying the standard. So, this paper will surely describe the real scenario and event took place. In a glance, there are many ways to ensure the proper and sound quality management in business entities or the companies whether by having ISO standard, MS standard, BNM regulations and guidelines (for IFI), TQM²²² and many more. All these standards stand to establish a proper internal processes and timeline to meet the requirements stipulated therein. It is believed that by applying this standard, it can help the institution to eliminate the unexpected business outcomes i.e. financial loss, reputational loss etc.

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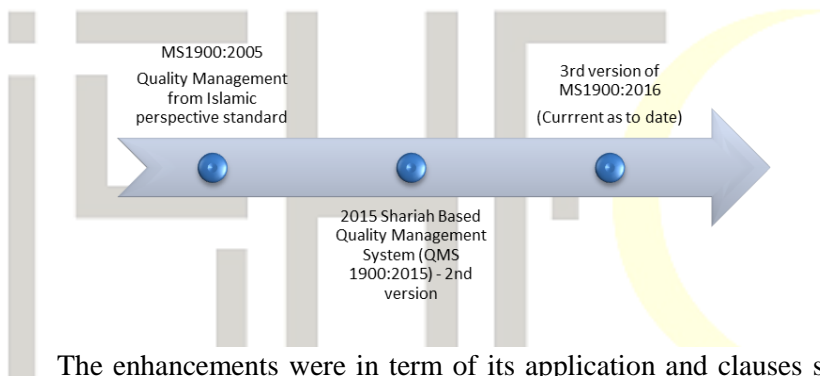
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²²¹ The researcher reserves the right not to expose the actual company audited whereas the company's name is not material. The only thing matters is the event took place.

²²² Total Quality Management standard (TQM)

The focus of this study is mainly is on Malaysian Standard (MS) 1900:2015 (2nd revised version) which also known as *Shariah Based Quality Management System*. Previously, the standard used was known as *Quality Management from Islamic Perspective* which was first introduced in 2005. Alternatively, it will touch on Islamic Financial Service Act 2013 known as IFSA 2013. With regards to MS1900:2015, it started as early as year 2005 with the acronym of MS1900:2005. The new version of this standard was later revised on 2015 with some element and standard enhanced.

Figure 1.0 Malaysian standard on Quality management from perspective Shariah



The enhancements were in term of its application and clauses stipulated therein in MS1900:2016. The term of *Shariah Based* carry a different approach meaning in adopting the Shariah compliant quality objectives and principles. It means the standard emphasize a 100% Shariah compliant standard and practice from its roots and based. Meanwhile, in the older version of Quality Management from Islamic perspective (MS1900:2005) is quite typical and loose in all its terms and clauses used. In other hand, the new MS1900:2016 (3 revised version) considered a different standard from its old version. Despite the new elements introduced in all new MS1900:2016, there is still a room to improve whereas the critical Shariah compliant risk framework is still submerge and need a high end and up to date Shariah advisor hands to identify, understand, comprehend and later on guide the management on how to incorporate this idea along the standard used. Definitely it will face some difficulties. To do that, it has to be done from a different dimension toward enforcing Shariah parameters in the company. One of it is by introducing a Shariah Risk Based Framework (SRBF) in the company as part of Quality Manual (QM). Subsequently, the company will of course poses a corrective action to rectify the non-compliance issue found in future and mitigate any similar event from recurrence. This is where the idea of Shariah Risk Profiling emerges.

THE ORIGINS OF RISK MANAGEMENT

What is risk? Where does it started? To answer that question, first let us see few definitions used among practitioners:

ISO 31000 (published in the United States as ISO/ANSI/ASSE 31000) is the only international standard for the practice of risk management.(Gjerdrum, 2015). Risk management is the identification, assessment, and prioritization of risks (defined in ISO 31000 as the effect of uncertainty on objectives) followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events[1] or to maximize the realization of opportunities.(Kuhn, 1998).

The IIA's (Institute of Internal Auditors) International Standards define a risk as "the possibility of an event occurring that will have an impact on the achievement of objectives. Risk is measured in terms of impact and likelihood"(Florea, (2016)). If someone ask about what is risk management about? The researcher choose to say that; "Risk management is the process and exercise of identification, assessment, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the profitability of the organization towards its functions'. This is the most understandable definition pertaining to Risk management.

■ But what about Shariah risk? Does it have anything to do with risk management? ■ ■ ■ ■ ■

■ To answer the question, we have to examine the necessary Shariah evidences starting from Quranic verses to Hadith and relevant Shariah evidence. We also set a research questions and distribute it to the Shariah scholars and Shariah practitioners. To see what we have discovered, we found that there is a need to establish special Shariah risk profiling and visualize the relationship between Shariah and risk management. We came to an amazing preliminary research outcome in the following figure 3.0.

■ So, Shariah risk management is not a new brain child by anyone in this modern world after all. It already started from the first revelation of *wahyu* to mankind. This can be found from five (5) important Shariah objectives and its requirement.

Figure 2.0 Shariah objectives as the ultimate point of Shariah risk management

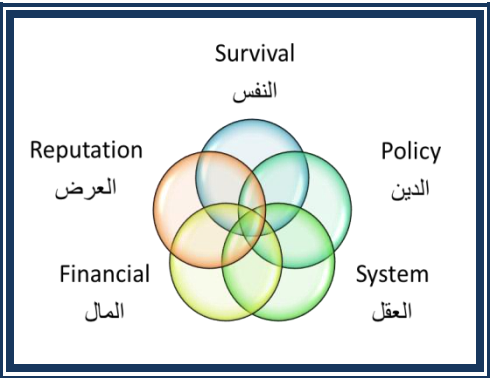
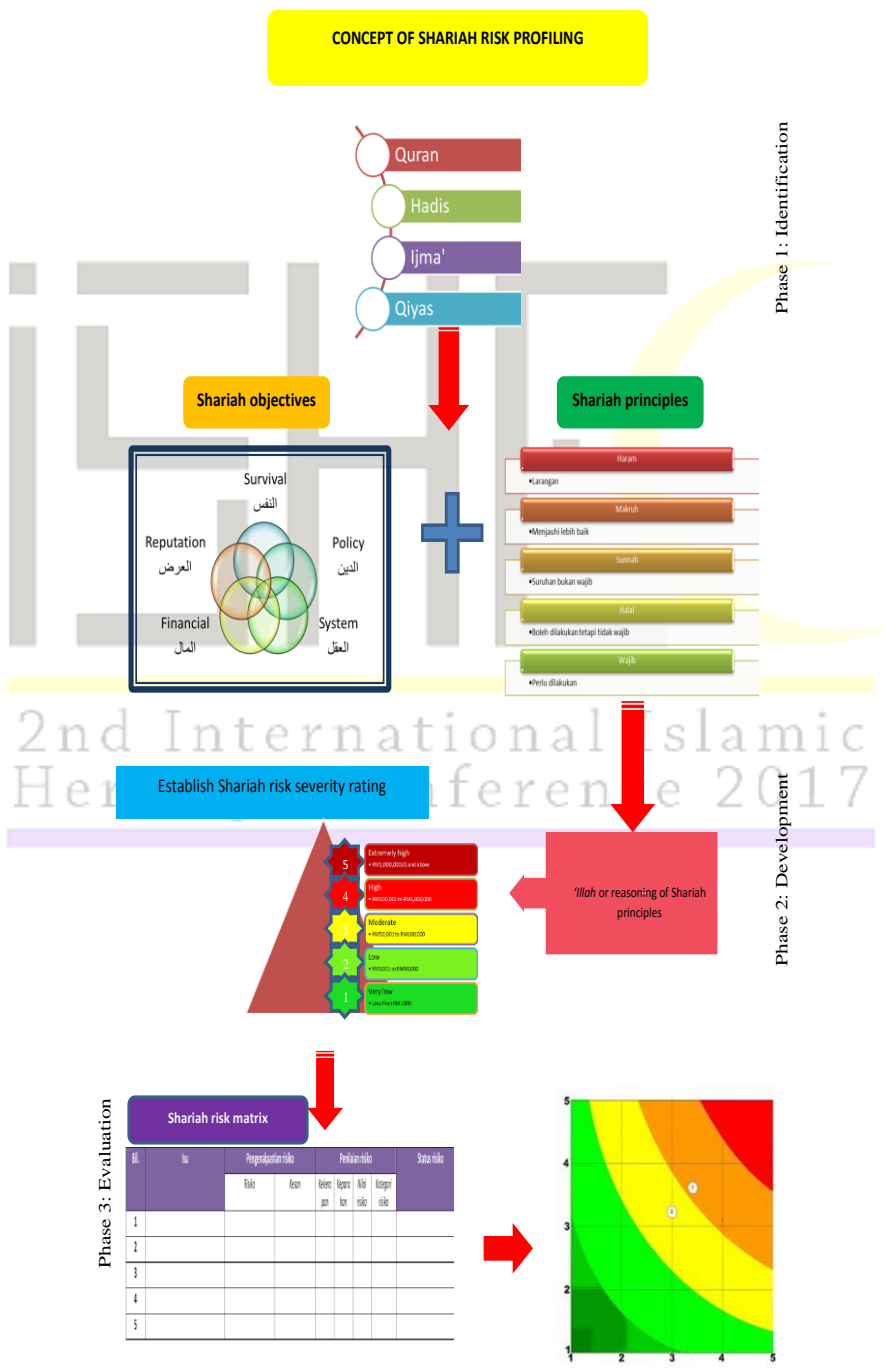


Figure 3.0 Concept of Shariah risk profiling from various Shariah resources and objectives



Shariah risk management is an established framework and function since the revelation of Islam on its early stage. After the evolution of the human practice and the expanding of geographical border among Islamic states, Shariah risk management has encountered few evolutions as well. (Helmi, 2013)

At this point, we confidently can say that risk management was originated from the *wahyu* and Islamic revelation. It was the first and most important Islamic teaching. Nevertheless, the role of modern risk management is still applicable as long as it is in line with Shariah principles.

Talking about Shariah jurisdiction and school of Islamic thought, of course there are distinctions among them with regard to any Islamic teaching especially Shariah matters. Among others, they are not talking at the same page in case of keeping a dog by a Muslim. One says it is acceptable and the other opted to not to allow that. This is due to their differences in accepting and using Shariah evidences i.e. *hadith* and its authenticity. So, there of course a long and non-limited time debates among Shariah or Islamic scholars from the day one until the present day.

In this paper, we didn't see that sharing distinctions occurs among Shariah scholars, particularly in this project of research can benefit the public or the readers. It is better to use the universal approach and avoid any form of non-uniformity. For that, we shall start by search and examine most probably or likely Shariah evidence (especially Quranic verses only) to highlight the important meaning and the reasoning behind them. This is what is called '*illah al hukm* or the reasoning behind Shariah jurisdiction. We will list down at least 10 Quranic verses and relate them with their remedies and later on categorize them according to risk appropriate appetites. To do that, we shall follow these steps:

(a). List down Quranic verses.

(b). Categorize them according to type of *ayah*.

(c). Apply Shariah principles with the following categories:

(*Harus-permissible, Haram-prohibited, Makruh-avoidable, Sunnah-encouraged and Wujub- Compulsory*).

(d). Apply risk categories according to Shariah objectives.

Kindly refer to table 1.0 in the appendix.

SHARIAH AUDIT FINDING AND THE RECOMMENDATION

Many Shariah scholars previously used a multiple approach and methods to define something that is not certain. One of the classical and dominant theories used is what is called السبر والتقسيم approach.²²³ This approach can be done by either audit process and observation or experimental study. This research definitely has chosen the audit process which has took place in a certain date and place.

The process of audit started with examines the documentations. This includes the Quality Manual (QM) of the organisation, Shariah governance manual and Shariah critical point registration. During the exercise, the auditor

²²³ Al Ghazaly, Al Mustasfa., pg. 1997, Beirut.

found some events which can be considered as non-comply to Shariah as well as to the regulatory requirement i.e. SGF, IFSA 2013 and MS1900:2005. Among others, the auditor has witnessed the absence of Shariah based business models while dealings with multiple internal or external stakeholders.

To be more specific of the finding, the auditor has verified the contracts used by the organisation by using the Nominal Group Technique (NGT) by gathering all the risk coordinators inside the company. The purpose of the workshop is to identify the existing contracts used by the company linked with its clients. It has come to the auditor's intention that there are more than 5 different business activities and 100 over vendors dealing with the companies which were later chosen as the study case of the research. All those businesses activities didn't have any Shariah contract to support from mu'amalat point of view. To name few, following are some of that significant findings:

1. The company obtained a financial aid from the parent company via corporate loan without interest (*Qardhul Hassan* in nature) but had failed to establish such contract as one of its business model in the QM.
2. The company also introduced the financial assistance to its employees to lift their financial burden especially during festive seasons. When they were asked about the Shariah model or contract used to handle this type of activity, they responded that they are not aware on this matter. It seem no issue to them.
3. The company purchased the assets or inventories and resells it to the end user or customer with a markup price. This is similar to *Bay' Murabahah* contract of business but the auditor found it absence from its QM.
4. In another event observed by the auditor, the company also offers a rental service by renting its vehicles and transportation to the member of public. This is equitable to the hire contract or *ijarah*. However contract was not addressed either by Shariah advisor or Shariah compliance officer (SCO).

Again, these entire events were identified as **absences of Shariah contracts and business models**.

After completing the audit processes and examines all relevant findings, the main issue remains here is the *Absence of Shariah business models*. This of course is significant in term of Shariah non-compliant record against the standard. It must be eliminated by establishing a proposed corrective action which shall be ***Establish Shariah based business models*** of the company. Without which, the company shall remain doing an unidentified activities or worse unrecognized businesses and revenues. This will also leads to the uncertainty or *gharar* when it dealing with others. The auditor subsequently proposed four (4) major ideas in developing Shariah risk profiles for the organisation.

1. Every organisation or business entity intends to get a certification or certified as Shariah compliant organisation must have a least one business model embedded in its Quality Manual.
2. To have a certain business model, the organisation shall establish at least one Shariah contracts applied therein. For some event, the business model is consist of two Shariah contracts together i.e. *Ijarah* and *Murabahah*.

3. The company must eliminate the threat and rectify the issue caused by the ‘**absences of Shariah contracts and business models**’ which will be, definitely the ring fence against the financial risk, reputational risk etc.
4. Attain Shariah advice or experts to help the company and show them on how it works and facilitate them doing their daily business without any obstacle and Shariah concern.

SHARIAH RISK PROFILING TOOLS AND HOW IT WORKS

Shariah risk and audit is like a twin. Whenever we find audit requirement, there will be a risk requirement in the following inception clause. This can be found in Shariah governance Framework 2012, BNM and IFSA 2013. For example, IFSA 2013 itself has repeated the word of risk 33 times in singular manner and 4 times in plural term. This shows that risk is much important as the regulatory requirement itself.

<p style="text-align: center;">Division 1</p> <p style="text-align: center;"><i>Standards on prudential matters</i></p> <p style="text-align: center;">Power of bank to specify standards on prudential matters</p> <p>Section 57. (1) The Bank may specify standards on prudential matters to promote —</p> <p style="padding-left: 40px;">(a) the sound financial position of an institution; or</p> <p style="padding-left: 40px;">(b) integrity, professionalism and expertise in the conduct of the business, affairs and activities of an institution.</p> <p style="padding-left: 40px;">(2) Without limiting the generality of subsection (1), standards specified under that subsection may include standards relating to—</p> <p style="padding-left: 40px;">(a) capital adequacy;</p> <p style="padding-left: 40px;">(b) liquidity;</p> <p style="padding-left: 40px;">(c) corporate governance;</p> <p style="padding-left: 40px;">(d) risk management;</p> <p style="padding-left: 40px;">(e) related party transactions;</p> <p style="padding-left: 40px;">(f) maintenance of reserve funds:(BNM. 2013)</p>
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We can understand from this section that the organisation or any financial institution must establish a risk management policy and standard. This includes the risk framework and all its necessary elements. In the other hand, ignoring Shariah risk management and it necessary element can lead to the following Shariah non-compliance residuals and affects:

- (a). Impediment from Allah’s blessing
- (b). Against the command of Allah
- (c). Tarnish business reputation
- (d). Involves in invalid contracts

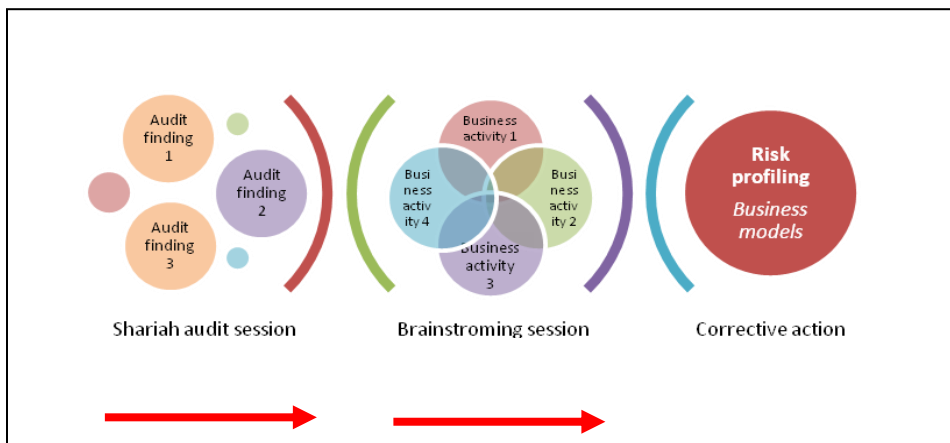
- (e). Involves in non halal income
- (f). Potential cancelation of business entity and registration (license)
- (g). Imposed the monetary penalty by the regulator(Hong Leong MSIG Takaful Berhad, 2013)

A risk profile can be constructed in a number of ways;

- (a). A group of “subject matter experts” can be convened to debate, assess and quantify their views on how much risk the firm faces, typically reducing their output to the well-known green/orange/red “heat-map” structure – despite much skepticism, this highly visual mechanism highlights where experienced people consider their risk to be.
- (b). The organisation can define different severity bands, based on economic capital applied to individual business units as well as their respective loss history, then can ask business managers and even subject matter experts to express their views on the likely frequency of the risk manifesting itself, the likelihood of such a manifestation and then a range of severity impacts, covering worst case, most probable case and average case. These can then be interpreted through weighted equations to arrive at a less subjective low/medium/high risk profile. (Halesowen, 2016)

As we mentioned before, the auditor has recommended that the company must rectify the issue of absence of Shariah business models. And such, the company may reach to its consensus its risk profile by gathering all its risk coordinators and form a close discussion and brainstorming session to find what it's the solution to their missing important element in their QM. In directly, Shariah audit has something to do with Shariah risk profiling in the sense of demanding a rectification plan for the certain non-conformity which has been recorded. This relationship can be seen in the following figure 4.0.

Figure 4.0 Relationship Shariah audit as bridge to risk profiling



For some author, Audit can be used as a tool to define a risk assessment. For example, Jonathan Estreich mentioned that audit is a tool to define a risk profile and extended to risk mitigation process ahead. Whereas he said, ‘The audit department is expected to select audits using a risk-based approach that provides a reasonable belief that critical risk’. (Estreich, 2013)

He then added that; ‘Audit risk assessment poses drives the audit plan. As such, a successful risk assessment should result in a detail risk profile for each Business unit’. (Estreich, 2013)

NOMINAL GROUP TECHNIQUE AS A TOOL TO ESTABLISH SHARIAH RISK PROFILES

The **nominal group technique** (NGT) is a **group** process involving problem identification, solution generation, and decision making. ... For example, it can identify strengths versus areas in need of development, rather than be used as a decision-making voting alternative. (Wikipedia)

The company has gathered all relevant risk coordinator in to meet and join a brainstorming session. The session was guided with a facilitator. It started with the questions and answers session pertaining to the audit findings. The set of questions has been addressed and discussed among the participants and individually each participant will be asked on their personal or department opinion on the matters arises.

The session ends with a number of business activities done by the company dealt with its external and internal stakeholders. Every of the business involves monetary transaction. This is to say that all transaction involved was not tagged to any of available Shariah contract. To name few, beneficial loan, purchase and sell it back at a hirer price to the customer, credit with the vendors, personal loan to the employees etc.

The NGT outcomes will be addressed in the subsequent discussion.

SHARIAH BASED BUSINESS MODELS IS A CRITICAL ELEMENT IN QM

It has come to the end of discussion of NGT and finally it results that the company has the following business activities and numerous transactions involves.

Table 1.0 Developing Shariah risk profile through business models (Company xyz Sdn Bhd.)

Stakeholders	Business activity	Shariah contract involves	Potential risks
<i>Cycle and Carriage</i>	Supply spare parts	<i>Bay'</i> <i>Bay'murabaha</i>	Business risk Financial risk Reputational

			risk
Employees	Apply financial aid Service with the company	<i>Qardhul Hassan Ijarah al 'amal</i>	Business risk Financial risk
Group of company	Offer a financial aid in term of corporate loan	<i>Qardhul Hassan</i>	Business risk Financial risk
SPAD	Issue license to the company	<i>Wakalah</i>	Regulatory risk Business risk
End users	Passengers or any other services rendered	<i>Al Ijarah</i>	Business risk Financial risk Reputational risk
Agents	Selling tickets or products to the end user on behalf of the company	<i>Wakalah</i>	Business risk Financial risk Reputational risk Regulatory risk

All these potential risks are included in Shariah concerns. Whatever can trigger any of this type of risk, it also can affect to Shariah principle and subsequently Shariah risk. This is to say that Shariah risk is not just a matter of risk relating to rituals believes and religious matters, but is also extends to anything that can affect *Maqasid Shariah* or Shariah objectives.

CONCLUSION

This study originally discusses the important of Shariah risk profiling aspects in the organisation. This is to say, failing to have a proper and sound Shariah risk profiling would leads to a subsequent event of Shariah non-compliance incident. This suggestion is deemed important to the certified Shariah compliant organisation such as MARA Liner Sdn Bhd under MS1900:2005, Malaysian Electronic Payment Sdn Bhd (currently known as Paynet Sdn Bhd) and Takaful Ikhlas Sdn Bhd and Daya Bersih Sdn Bhd whereas these companies are certified to be compliant with the Malaysian Standard MS1900:2005 and MS1900:2015 and later). Whilst the Zurich Takaful Berhad and Hong Leong MSIG Takaful Berhad for instance, are governed by the IFSA 2013 and SGF and other relevant requirements. Not to forget also that the *Halal* certified organisation such as KFC, Mandarin Oriental Hotel, Savanah Cocoa and many more which are governed under Halal act and MS1500:2009, MS2424:2010 etc. Shariah risk profiling starts from identifying the potential threat to the organisation until establishing Shariah risk matrix and Shariah risk score card. It can help identifying the

prohibited and permitted elements. Whatever permitted is halal and good to go with it. And whatever is prohibited is strictly undesired and therefore it should be eliminated and avoided at once.

There is no reason to any institution to be fear of applying Shariah compliant standards i.e. MS1900:2015 or IFSA 2013. In the actual world and practice, by adopting the certificate of compliance with a certain certification body or relevant authority is a chance to preserve and enhance the business entity.

Finally, Shariah compliance risk management is important and in need to establish a proper and sound risk profiles either generic or unique. It stands as first line of defense by all means which can be concluded in this Shariah legal maxim saying:

درء المفسد أولى من جلب المصالح

Meaning: It is preferred to avoid corrupting elements over achieving benefits.

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