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Leasing and Factoring Companies Offering Shariah-Based Financing Products in Malaysia: Reference to the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA)

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ABSTRACT

Leasing and factoring companies are examples of non-banking financial institutions offering Shariah-based financing products in Malaysia. Since the introduction of the Islamic Financial Services Act 2013 (IFSA) and the Financial Services Act 2013 (FSA), the legal provisions on leasing and factoring companies as scheduled institutions were no longer available as provided in the previous repealed legislation. This raises the issue of relevant legal provisions regulating leasing and factoring companies, especially those offering Shariah-based financing products. This research explores the applicable legal provisions of the FSA and IFSA related to leasing and factoring companies offering Shariah-based financing products. This study uses qualitative methods to analyse pertinent references from both primary and secondary legal sources. Content analysis is applied to these sources to generate findings related to the topic. This research concludes that the FSA and IFSA provide relevant legal provisions for leasing and factoring companies offering Shariah-based financing products. However, there is currently no explicit legal provision that clearly defines the legal standing of leasing and factoring companies offering Shariah-based financing products. Establishing such legal provisions is essential, as they would create a robust legal framework for these companies, fostering transparency and confidence in the market. This clarity would not only support the effective operation of leasing and factoring companies but also facilitate future development within the industry, ensuring that Shariah-compliant products can thrive in a competitive financial landscape.

INTRODUCTION

The Islamic finance industry in Malaysia features a wide range of players providing financial services based on Shariah-compliant contracts (Saiman & Mohd Zainuddin, 2022). These players include banking and non-banking financial institutions within the Islamic financial system (Thani et al., 2015). Leasing and factoring companies are examples of non-banking financial institutions offering Shariah-based financing

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products (Lee, 2020). These institutions significantly play a role in the Islamic financial system in Malaysia (Wang et al., 2023). Leasing and factoring provide alternative financing options to consumers, particularly small and medium enterprises (SMEs) that may struggle to obtain financial access from traditional banks (Yuan et al., 2020). It is interesting to note that selected leasing and factoring companies in the market offer products that adhere to Shariah-compliant contracts.

According to Ahmad and Ishak (2021), the legal framework for ensuring Shariah compliance in non-banking financial institutions varies depending on the relevant regulatory authority overseeing these institutions (Ahmad & Ishak, 2021). However, the discussion regarding leasing and factoring companies as non-banking financial institutions has yet to be adequately addressed or elaborated upon, despite their inclusion in the same category. Furthermore, these companies have been recognized as loosely regulated (Zhu et al., 2022). Therefore, a robust mechanism is needed to effectively regulate the operations of leasing and factoring companies in Malaysia, particularly concerning Shariah-based financing products.

Leasing and factoring companies are not regulated by the Central Bank of Malaysia (CBM) as they do not fall under the category of financial institutions as defined by law. However, leasing companies that offer hire-purchase are subject to the Hire-Purchase Act 1967 under the purview of the Ministry of Domestic Trade and Cost of Living (MDTCA) (Hassan et al., 2021). On the contrary, the regulation of Shariah-based hire-purchase products does not fall within the jurisdiction of MDTCA (Hassan & Illias, 2019). This creates uncertainty regarding which laws govern leasing companies that offer Shariah-based products in Malaysia.

Before the FSA and IFSA, leasing and factoring companies were considered 'scheduled institutions' as defined by the Banking and Financial Institutions Act 1989 (BAFIA). These scheduled institutions extended their products by offering Shariah-based financing products in addition to conventional products as authorised by BAFIA. The introduction of the FSA and IFSA poses the question of the status of leasing and factoring companies. This paper explores the legal provisions relevant to the FSA and IFSA that pertain to leasing and factoring companies offering Shariah-based financing products. This research examines the relevant legal provisions concerning leasing and factoring companies offering Shariah-based financing products in Malaysia before and after the FSA and IFSA came into effect.

METHODOLOGY

The methodology applied in this research is the qualitative methodology. This methodology focuses on library-based or black letter research by analysing the legal provisions that grant the legal power to offer Shariah-based financing products by leasing and factoring companies. The legal provisions reference the previous legislation, known as BAFIA (pre-IFSA and FSA), and the current legislation, referred to as post-IFSA and FSA. The methodology is conducted through content data analysis from both primary and secondary sources of law to derive findings related to leasing and factoring companies offering Shariah-based financing products. The primary sources refer to the relevant legal provisions, which are analysed under BAFIA, IFSA and FSA, while secondary sources refer to books, journal articles, and official documents from public officials such as the CBM (Abdullah, 2018).

LEASING AND FACTORING COMPANIES AS NON-BANKING FINANCIAL INSTITUTIONS

The players of the Islamic financial system comprise both banking and non-banking financial institutions. According to the Financial Stability Board (FSB) in 2022, 'non-banking financial institution' is defined as a broad category that encompasses all non-banking financial entities other than central banks, commercial banks or public banks, insurance companies, pensions funds or financial auxiliaries. The category is further refined to various financial intermediaries, which consist of the following:

Table 1. Other Financial Intermediaries by Financial Stability Report 2022

Other Financial Intermediaries by Financial Stability Board (FSB) 2022
Money Market Funds (MMFs)
Hedge Funds (HFs)
Other Investment Funds (OIFs)
Captive Financial Institutions and Money Lenders, Central Counterparties (CCPs)
Broker-dealers (BDs)
Finance Companies (FinCos)
Trust Companies (TCs)
Structured Finance Vehicles (SFVs)

Source: Financial Stability Board (2022)

The Financial Stability Board (FSB) has identified five categories of non-banking financial institutions that are likely to pose financial risks, referred to as the narrow measure of non-banking financial institutions. This measure is based on their economic functions. The five categories are as follows:

Table 2. Narrow Measure of Non-Banking Financial Institution

Num.	Economic Function (EF)	Type of Non-Banking Financial Institution Entity
1.	EF 1 (Vulnerable collective investment instrument)	Money market funds, fixed income funds, real estate funds, mixed funds, credit hedge funds
2.	EF 2 (Lending dependent on short-term funding)	Finance companies, leasing/factoring companies, consumer credit companies
3.	EF 3 (Market intermediation dependent on short-term funding)	Securities finance companies, broker-dealers, custodial accounts
4.	EF 4 (Facilitation of credit intermediation)	Financial guarantors, credit insurance companies, monoline insurers
5.	EF 5 (Securitisation-based credit intermediation)	Asset-backed securities, securitisation vehicles, structured finance vehicles
6.	Unallocated	Other financial auxiliaries

Source: Financial Stability Board (2022)

Based on the above, leasing and factoring companies are recognised as part of the non-banking financial institutions under the subcategory of other financial intermediaries at the global level. They fall within the narrow measure of non-banking financial institutions classified under economic function two, which pertains to lending based on short-term funding. These companies may pose financial risks for several reasons, one of which is legal arbitrage, where the law and regulations governing leasing and factoring are often vague and indefinite.

It is important to note that the FSB's reporting may not be applicable across all jurisdictions. This is due to the varying types of non-banking financial institutions and their different applications in distinct jurisdictions. There is no universally accepted standard definition of non-banking financial institutions (Ahmad & Ishak, 2021). The philosophical reasoning behind this variability lies in the continuous innovation and dynamism of this category, making it challenging to establish a standard definition. The lack of a clear definition for non-banking financial institutions encourages and accelerates industry growth, particularly with advancements in technology and the Industrial Revolution 5.0 (IR5.0).

The Central Bank of Malaysia (CBM) has acknowledged the diversification within the Islamic financial system and has emphasized the importance of monitoring new market developments to mitigate public risk. The CBM has identified non-credit intermediation activities and entities, including leasing and factoring companies, money lenders, pawnbrokers, and others. Furthermore, the CBM recognizes that some

emerging non-banking financial institutions operate beyond their regulatory scope as defined by the Central Bank of Malaysia Act 2009 (Bank Negara Malaysia, 2011). This awareness is in line with the FSB's findings that certain non-banking financial institutions may indeed pose financial risks.

LEASING AND FACTORING COMPANIES IN MALAYSIA

Leasing and factoring companies in Malaysia offer alternative financing options to segments that are unable to secure funding from traditional banking institutions. This is often due to their inability to meet specific requirements or provide necessary documentation. Typically, start-ups and small businesses turn to these companies for working capital to support their growth.

Leasing companies in Malaysia started with the establishment of United Orient Leasing Company Berhad in 1973 as the first leasing company in the country, followed by Pembangunan Leasing Corporation in 1977 (Bakar, 2016). The emergence of leasing companies was driven by a lack of business financing options due to rapid industrialization, which created a demand for alternative funding sources from non-banking financial institutions (Fay, 2001). These companies provide financial leases for purposes not typically covered by traditional banking institutions. Leasing companies offer financial leases for various industries, including airlines, shipping, manufacturing and others (Ab Yajid et al., 2020; Ruslan et al., 2019). Leasing operations can be classified as either pure or non-pure leasing. Pure leasing refers to companies whose primary business is leasing, but they may also engage in other activities, such as hire-purchase and factoring. In contrast, non-pure leasing refers to companies where leasing is not the main business activity (Bank Negara Malaysia, 1999).

Factoring companies in Malaysia are private entities that offer factoring services to the market. Factoring businesses in the country are provided by banking financial institutions, money lending companies, and private factoring companies (Malaysian Factor Association, n.d.). Factoring is a form of financing where a seller receives immediate cash based on the value of the seller's creditworthy invoices. The factoring company verifies the invoice with the seller's customer. Upon confirmation of the payment assignment, the seller receives a discounted cash amount based on the invoice's value. Once the invoice amount is paid to the factoring company, the balance, minus charges and fees, is remitted to the seller (Moniruzzamana et al., 2023).

When SMEs have creditworthy receivables but struggle to secure sufficient bank financing due to a low credit score or insufficient collateral, factoring emerges as a viable alternative for obtaining critical operating capital (Gupta, 2021). Factoring is distinguished by its role in financing current activities, managing commercial bills, recovering allocated receivables, and providing credit risk coverage (Bunich et al., 2018). In the context of international trade, factoring is regarded as a more efficient financing technique compared to traditional methods. SMEs and large corporations alike often turn to factoring for cash flow management, receivables collection, or supply chain optimization (Do, 2018).

In determining the type of institution offering leasing and factoring services, the Court of Appeal in *Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd [2001] 2 CLJ 321* highlighted the confusion surrounding the defendant's name which is Scotch Leasing Sdn Bhd. The court ruled that, despite the defendant's use of the word 'leasing' in its name, its operations were licensed as a moneylender under the Moneylenders Act 1950 of Malaysia, not as a leasing company. This case demonstrates that determining whether an institution is a leasing or factoring company is not based solely on its name. The crucial factor is the enabling law that authorises the operation of institutions offering leasing and factoring services.

LEASING AND FACTORING COMPANIES OFFERING SHARIAH-BASED FINANCING PRODUCTS IN MALAYSIA

Based on the analysis of selected leasing and factoring companies in Malaysia, these companies provide Shariah-based financing products founded on underlying Shariah contracts. It is important to note that the list below is non-exhaustive and is intended to demonstrate and verify the existence of leasing and factoring companies offering Shariah-based financing products. The examples are presented in the following table:

Table 3. Selected leasing and factoring companies offering Shariah-based financing products in Malaysia

NAME OF LEASING OR FACTORING COMPANIES	NAME OF SHARIAH-BASED FINANCING PRODUCTS	UNDERLYING SHARIAH CONTRACT
Orix Leasing Malaysia Berhad	i-Lease (Al-Ijarah Muntahiya Bi Tamleek)	<i>Al-Ijarah & Al-Bay'</i>
	i-Rental (Operating Ijarah)	<i>Al-Ijarah</i>
	i-Hire Purchase (Al-Ijarah Thumma Al Bay)	<i>Al-Ijarah & Al-Bay'</i>
	i-Factoring	<i>Bay' al- Dayn</i>
PLC Credit & Factoring Sdn Bhd (Pembangunan Leasing Corporation Sdn Bhd)	Hire Purchase – i (Non-Scheduled)	<i>Al-Ijarah & Al-Bay'</i>
	Hire Purchase – i (Scheduled)	
	Leasing-i	<i>Al-Ijarah</i>
	Factoring-i Bank Guarantee-i	<i>Bay' al- Dayn bi Al-Sila'</i>
	Factoring-i and Letter of Credit-i	
	Factoring-i and Letter of Guarantee-i	
	Tawarruq Term Financing	<i>Tawarruq</i>
JCL Credit Leasing Sdn Bhd	JCL i-Fund Personal Financing	<i>Tawarruq</i>
Zikay Factoring Sdn Bhd	Islamic Factoring	<i>Bai' al-Dayn bi Al-Sila'</i>
Ikhtiar Factoring Sdn Bhd	Pemfaktoran-i	<i>Bai' Ad-Dayn</i>
	Surat Kredit -i	<i>Wakalah, Murabahah, Musharakah</i>
	Jaminan Bank	<i>Kafalah</i>
Hidayah Factors Sdn Bhd	Islamic Factoring	<i>Bay' al- Dayn</i>
M24 Tawreeq Sdn Bhd (Ajwa Capital Sdn Bhd)	Digital Islamic Factoring	<i>Bay' al- Dayn</i>
Kenanga Capital Islamic Sdn Bhd	Islamic Factoring	<i>Bay' al- Dayn</i>

Source: Retrieved from relevant websites of each company listed in the table. The relevant websites are provided in Orix Leasing Malaysia Berhad; Pembangunan Leasing Corporation Sdn Bhd; Zikay Factoring Sdn Bhd; Ikhtiar Factoring Sdn Bhd; Ajwa Capital Sdn Bhd; Kenangan Capital Islamic Sdn Bhd).

Based on the above table, leasing and factoring companies in Malaysia offer Shariah-based financing products in the market. Most leasing financing uses *Al-Ijarah* as the fundamental Shariah contract while factoring financing predominantly applies the concept of *Bay Al-Dayn*. In addition to leasing and factoring, some companies also offer personal financing based on *Tawarruq*, also known as commodity *murabahah*. These companies extend trade financing products in accordance with Shariah principles, such as Letters of Credit and Letters of Guarantee (Orix Leasing Malaysia Berhad; Pembangunan Leasing Corporation Sdn Bhd; Zikay Factoring Sdn Bhd; Ikhtiar Factoring Sdn Bhd; Ajwa Capital Sdn Bhd; Kenangan Capital Islamic Sdn Bhd; JCL Credit Leasing Sdn Bhd).

FINDINGS AND ANALYSIS

The Relevant Legal Provisions of Leasing and Factoring Companies Offering Shariah-Based Financing Products before FSA 2013 and IFSA 2013

The Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA) repealed several key legislations, including the Banking and Financial Institutions Act 1989 (BAFIA), the Islamic Banking Act 1983, the Payment Systems Act 2003, the Insurance Act 1996, the Takaful Act 1984, and the

Exchange Control Act 1953. These new legislations, which came into effect on June 30, 2013, now serve as the legal frameworks for regulating Malaysia's conventional and Islamic financial industries, respectively (Lee & Oseni, 2015). The reason these two legislations are examined together is that leasing and factoring companies were previously regulated under BAFIA. Therefore, it is essential to assess whether the provisions in the FSA adequately cover the regulatory framework for leasing and factoring companies, particularly in offering Shariah-based financing products.

A scheduled institution is defined as a person who conducts scheduled business but does not include cooperative societies, statutory bodies, local authorities, licensed banks, licensed finance companies, or licensed merchant banks engaged in scheduled business (Banking and Financial Institutions Act 1989, section 2). Based on this definition, leasing and factoring companies are classified as scheduled institutions. These entities are governed under Part III of BAFIA and are engaged in scheduled business, as defined by any business listed in the Third Schedule of BAFIA. Notably, factoring and leasing businesses are included in this schedule based on the provision above.

Factoring business is defined as the acquisition of debts owed to any person or other business as designated by the Central Bank of Malaysia (CBM) with the Minister of Finance's approval. Leasing business is defined as the renting or sub-letting of movable property for use in business, trade, profession, occupation, or any commercial, industrial, agricultural, or economic enterprise (Banking and Financial Institutions Act 1989, section 2). This definition includes rentals with or without an option to purchase but explicitly excludes businesses governed by the Hire-Purchase Act 1967.

BAFIA outlines several prerequisites for starting a scheduled business (Banking and Financial Institutions Act 1989, section 19). First, the scheduled institution must be a company regulated by the former Companies Act 1965. Second, the institution must obtain a written acknowledgement from CBM, verifying compliance with the initial requirements (Banking and Financial Institutions Act 1989, section 21). Scheduled institutions are also required to submit relevant documents to obtain the written acknowledgement of CBM (Banking and Financial Institutions Act 1989, section 5).

Once scheduled institutions obtain the written acknowledgement of compliance to carry on scheduled business under BAFIA, they are considered financial institutions regulated under BAFIA. The next issue is whether BAFIA allowed them to offer Shariah-based financing products. Financial institutions regulated under BAFIA were granted the enabling power to offer Shariah-based financing products subject to specific requirements, as stipulated in the provision for carrying on Islamic banking business or Islamic financial business (Banking and Financial Institutions Act 1989, section 124(1)). BAFIA institutions were mandated to consult with CBM and obtain advice from the Syariah Advisory Council (SAC) under CBM. Furthermore, these institutions were obligated to adhere to any written guidelines or directives concerning Islamic banking or Islamic financial activities (Banking and Financial Institutions Act 1989, sections 124(3) and 124(4)).

However, the wording confines the power to offer Shariah-based financing products to licensed institutions under Section 6 of BAFIA, and not to scheduled institutions, where leasing and factoring companies fall under this category. However, in the High Court decision of *Malaysian Debt Ventures Bhd v. FLH ICT Services Sdn Bhd & Anor [2014] 8 MLJ*, the court accepted the plaintiff's argument that the CBM had provided a written acknowledgement confirming that the plaintiff had fulfilled all the requirements of Section 21 of BAFIA. As a result, the plaintiff was recognised as a licensed institution under BAFIA.

Thus, despite Section 124 indicating that 'licensed institution' refers to those institutions under Section 6, this case establishes that a scheduled institution governed under Section 21 may also be recognized as a licensed institution under BAFIA provided it complies with all requirements specified in Section 21.

Based on the above, it can be concluded that BAFIA acknowledges leasing and factoring companies as scheduled institutions that can offer Shariah-based financing products, provided they fulfil all the requirements mentioned in Part III of BAFIA, particularly Section 21.

Leasing and Factoring Companies Offering Shariah-Based Financing Products after FSA 2013 and IFSA 2013

As mentioned earlier, the Financial Services Act (FSA) has repealed several significant Acts, including the Banking and Financial Institutions Act 1989, the Exchange Control Act 1953, the Insurance Act 1996, and the Payment Systems Act 2003 (Laldin & Furqani, 2018). This is in accordance with the definition of 'repealed Acts' as provided in Section 2(1) of the FSA 2013. For this research, the provisions of the FSA are examined to determine the legal frameworks enabling leasing and factoring companies to offer Shariah-based financing products.

When discussing the regulation of leasing and factoring companies following the introduction of the FSA, it is vital to reference the saving provisions of the FSA. These provisions are crucial for addressing the existing leasing and factoring companies that obtained approval of 'scheduled business' under the previous BAFIA as a 'scheduled institution'.

In the case of *Amanah International Finance Sdn Bhd v Medini Square Sdn Bhd & Ors [2020] MLJU 1168*, the defendant claimed that the plaintiff was no longer a scheduled institution due to the repeal of the previous BAFIA and the introduction of FSA. The defendant argued that the plaintiff was a money lender with no valid license, rendering the lease facility to the plaintiff illegal and unenforceable under Section 24 of the Contracts Act 1950. Under the previous BAFIA, a scheduled institution was exempted from the legal provisions of the Moneylenders Act (MA) as outlined in Section 2A(2) and First Schedule of Moneylenders Act and Moneylenders Exemption Order (P.U.(B) 219/2005).

The court held that, due to the saving and transitional provisions under section 272 of the FSA, the exemption privileges of a scheduled institution under the previous BAFIA continue to be effective under the FSA. This applies since the plaintiff has been in existence since 1985 and was registered as a scheduled institution with CBM in 2011. Based on this ruling, any leasing and factoring companies classified as scheduled institutions and established prior to the FSA remain valid by virtue of the saving and transitional provision.

As for leasing and factoring companies incorporated after the FSA, the examination of the provisions reveals that definitions and provisions relating to scheduled institutions are absent in the new FSA. This raises questions regarding the legal status of these companies in providing financial services generally and specifically in offering Shariah-based financing products. Section 131 of the FSA defines financial institutions as including licensed banks, licensed investment banks, approved payment system operators, registered payment system operators, operators of designated payment systems, and approved issuers of designated payment instruments. From a literal interpretation, leasing and factoring companies do not qualify as financial institutions under the FSA.

Based on the analysis of the relevant legal provisions, leasing and factoring companies are recognised under FSA as a prescribed financial institution (Pheng et al., 2019). The FSA stipulates that individuals not under the supervision of the CBM may be designated to conduct financial intermediation activities as prescribed by financial institutions (Financial Services Act 2013, section 212(1)). The Minister of Finance is empowered to authorise these financial intermediation activities based on recommendations from the CBM or through joint recommendations with other pertinent regulatory authorities. Leasing business and factoring businesses are recognised as financial intermediation activities under the FSA. In addition to leasing and factoring, activities such as accepting deposits, providing facilities, accepting and giving guarantees, and hire-purchase agreements are also recognised as financial intermediation activities under the FSA (Financial Services Act 2013, section 211).

Section 15 of FSA, similar to section 124 in the previous BAFIA, authorises financial institutions to offer Shariah-based financing products. However, this provision specifically excludes prescribed financial institutions as the wording in this provision is confined solely to operators of designated payment systems and authorised persons as defined in FSA. Nonetheless, FSA allows for any relevant provisions to apply to the prescribed financial institutions, subject to recommendations made by CBM when deemed necessary. This is contingent upon prescribed financial institutions being considered as financial institutions under section 131 (Financial Services Act 2013, section 212(3)). Moreover, the prescribed financial institutions must comply with the relevant legal provisions determined by the CBM (Financial Services Act 2013, section 212(4)).

Based on the analysis above, although Section 15 of the FSA does not explicitly address prescribed financial institutions, section 212(3) seems to authorise such institutions to provide Shariah-compliant financing products within the framework of permitted Islamic financial activities. Islamic financial business is defined as financial activities conducted in compliance with Shariah principles and regulated by the Central Bank of Malaysia Act 2009 (Act 701). This definition is broad enough to include Shariah-compliant financing products offered by leasing and factoring companies. However, the implementation of these products is contingent upon obtaining written approval from the CBM.

Under the IFSA, the recognized Islamic financial institutions include a licensed Islamic bank, a licensed international Islamic bank, an approved payment system operator, an operator of a designated payment system, and an approved issuer of a designated Islamic payment instrument. Similar to the FSA, leasing and factoring companies are not categorised as Islamic financial institutions under IFSA according to the literal interpretation. However, Islamic leasing business and Islamic factoring business are acknowledged as Islamic financial intermediation activities under IFSA (Islamic Financial Services Act 2013, section 222(1)). IFSA provides legal provisions that grant the Minister of Finance, with a recommendation from the CBM or a joint recommendation with other relevant regulatory authorities, the authority to prescribe any person not under the supervision of CBM to engage in Islamic financial intermediation activities (Islamic Financial Services Act 2013, section 223(1)). This is particularly significant if the prescribed Islamic financial institutions are deemed to pose a risk to financial stability, as per the assessment of CBM. It is important to note that this provision excludes persons licensed or recognised under securities law under the purview of the Securities Commission and any entity licensed under the Labuan Islamic Financial Services and Securities Act 2010 (Lexis Nexis, 2015). The table below reflects the relevant provisions for leasing and factoring companies offering Shariah-based financing products.

Table 4: Pre-FSA and IFSA and Post FSA and IFSA on relevant provisions related to leasing and factoring companies offering Shariah-based financing products in Malaysia

	BAFIA 1989	FSA 2013	IFSA 2013
Status of Leasing and Factoring Companies	Scheduled institutions	Prescribed Financial Institutions	Prescribed Islamic Financial Institutions
The business activities of Leasing and Factoring Companies	Scheduled business Section 2 of BAFIA and Third Schedule	Section 211 – Financial Intermediation Activities	Section 222 – Islamic Financial Intermediation Activities
Scope of regulation	Financial institutions, scheduled institutions and non-scheduled institutions.	Financial institutions and prescribed financial institutions.	Financial institutions and prescribed financial institutions.
Enabling Provisions for Leasing and Factoring Companies to offer Shariah-based financing products	Section 124 of BAFIA	Section 211(3) and 211(4) of FSA read together with Section 15 of FSA	Section 223(3) and 223(4) of IFSA read together with PART IV of IFSA

Shariah Governance	Section 124 of BAFIA	Section 211(3) and 211(4) of FSA read together Section 15(2)(a) and 15(2)(b) of FSA	Section 223(3) and 223(4) of IFSA read together with PART IV of IFSA
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Sources: Authors

To conclude, the legal provisions of FSA and IFSA encompass the business activities of leasing and factoring companies. However, there are no explicit legal provisions that specifically categorize leasing and factoring companies as non-banking financial institutions. This absence of designation highlights a gap in the regulatory framework concerning the status and operations of these entities within the financial system.

The Way Forward: Leasing and Factoring Companies Offering Shariah-Based Financing Products in Malaysia

The legal standing of leasing and factoring companies as non-banking financial institutions has remained ambiguous since the introduction of FSA and IFSA, particularly following the removal of the designation of 'scheduled institution' in the recent FSA. Although the provisions of both IFSA and FSA provide a pathway for prescribed financial institutions or Islamic financial institutions to engage in leasing and factoring activities, they also acknowledge the potential risks to financial stability arising from the legal arbitrage associated with these institutions. Legal arbitrage refers to a scenario where legal provisions are insufficient or not explicitly governed by a specific regulatory authority, law, or regulation. This situation implies that leasing and factoring companies may not be directly regulated by any particular authority, leading to uncertainties in their legal and operational frameworks.

In addition to the potential threat to financial stability, the legal arbitrage surrounding leasing and factoring companies may expose consumers to risks due to the lack of monitoring and the possibility of unfair practices within these operations. The provisions of the FSA and IFSA regarding consumer protection do not extend to leasing and factoring companies. Specifically, section 121 of the FSA only encompasses authorised and registered persons, thereby excluding leasing and factoring companies classified as prescribed financial institutions.

In response to these concerns, the CBM established the Consumer Credit Oversight Board (CCOB) in 2022, creating a dedicated regulatory authority for leasing and factoring companies. The proposed Consumer Credit Act (CCA) aims to provide a clear definition of credit business, encompassing not only conventional leasing and factoring but also Shariah-compliant leasing and factoring activities (CCOB, 2022; CCOB, 2023). The introduction of the CCA is anticipated to offer a more explicit legal and regulatory framework governing leasing and factoring companies that provide Shariah-based financing products.

CONCLUSION

Leasing and factoring companies are key players in the provision of Shariah-based financing products in Malaysia. However, the introduction of the Financial Services Act (FSA) and Islamic Financial Services Act (IFSA) has placed these companies in a regulatory grey area, particularly following the removal of critical provisions related to 'scheduled institutions'. While the current laws of the FSA and IFSA provide some enabling provisions for leasing and factoring companies to operate as Islamic-prescribed financial institutions, these legal provisions remain broad and lack specific regulations governing their operations. The Consumer Credit Oversight Board (CCOB) further underscores that leasing and factoring companies do not fall under direct regulatory oversight or monitoring. However, with the establishment of the CCOB as the relevant regulatory authority, the proposed Consumer Credit Act (CCA) aims to create a distinct legal and regulatory framework. This new structure will specifically address the ambiguities surrounding the licensing and scope of business for leasing and factoring companies. This research contributes to the

understanding of the legal status of leasing and factoring companies that offer Shariah-based financing products in Malaysia. The anticipated introduction of the CCA is expected to provide a clearer legal framework, particularly for entities looking to engage in Shariah-compliant financing. This will not only enhance the Islamic finance sector but also offer alternative financing options to those who may struggle to access traditional banking and financial institutions.

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CONFLICT OF INTEREST STATEMENT

The authors agree that this research was conducted in the absence of any self-benefits, commercial or financial conflicts and declare the absence of conflicting interests with the funders.

AUTHORS' CONTRIBUTIONS

Ulfah Mansurah Zainudin conducted the research, while Ahmad Azam Othman supervised the research progress, provided guidance on the review and revisions, and approved the submission of the article.

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