



HOUSE OF REPRESENTATIVES

H. No. 8281

BY REPRESENTATIVES TURABIN-HATAMAN, MACAPAGAL-ARROYO, ONG (H.), EVARDONE, SANGCOPAN, TAMBUNTING, OAMINAL, ALMONTE, COLLANTES, LIMKAICHONG, FERRER (J.), SALON, CORTUNA, CAMINERO, VILLARIN, BRAVO (A.), PINEDA AND NIETO, PER COMMITTEE REPORT NO. 875

AN ACT PROVIDING FOR THE REGULATION AND ORGANIZATION OF ISLAMIC BANKS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. *Declaration of Policy.* – The State recognizes
2 the vital role of Islamic banking and finance in creating
3 opportunities for greater financial inclusion especially for the
4 underserved Muslim population, in expanding the funding base
5 for small and medium-sized enterprises as well as large
6 government infrastructure through financial arrangements with
7 risk sharing as their core element, and in contributing to financial
8 stability through the use of financial contracts and services
9 that are founded on risk sharing rather than speculation in
10 compliance with *Shari'ah* principles.

11 SEC. 2. *Definition of Terms.* –

12 (a) As used in this Act:

1 (1) *Shari'ah* refers to the practical divine law deduced from
2 its legitimate sources: the Qur'an, Sunnah, consensus of Muslim
3 scholars, analogical deduction and other approved sources of
4 Islamic law;

5 (2) *Current account* refers to the total deposits at an Islamic
6 bank which are repayable on demand and compliant with *Shari'ah*
7 principles;

8 (3) *Investment account* refers to the total funds placed by an
9 investor with an Islamic bank for a fixed period of time under an
10 agreement to share the profits and losses on the investment of
11 such funds in accordance with the principles of *Shari'ah*;

12 (4) *Islamic banking business* refers to a banking business
13 with objectives and operations that do not involve interest (*riba*)
14 as prohibited by the *Shari'ah* and which conducts its business
15 transactions in accordance with *Shari'ah* principles;

16 (5) *Islamic banking unit* refers to a division, department,
17 office or branch of a conventional bank that conducts business in
18 accordance with the principles of the *Shari'ah*;

19 (6) *Participation* refers to any agreement or arrangement
20 under which the mode of joint investments or specific transactions
21 shall not involve the element of interest charge other than as
22 percentage share in profits and losses of business and which is
23 conducted in accordance with the principles of the *Shari'ah*;

24 (7) *Riba* has the meaning assigned to it by Islamic law
25 and jurisprudence as expounded by authoritative sources; in
26 the context of banking business, the term refers to the receipt
27 and payment of interest, including in the various types of

1 lending and borrowing and in the exchange of currencies on
2 forward basis; and

3 (8) *Savings account* refers to an account reflecting the
4 total deposits at an Islamic bank which normally require the
5 presentation of passbooks or in lieu thereof, such other legally
6 acceptable documents approved by the *Bangko Sentral ng*
7 *Pilipinas (Bangko Sentral)* for deposit or withdrawal of money.

8 (b) The Monetary Board may, by regulation, further define
9 or clarify the terms used in this Act or commonly used in
10 Islamic banking transactions, consistent with the declared State
11 policy and taking into consideration the peculiar characteristics
12 of Islamic banking.

13 SEC. 3. *Establishment of Islamic Banks.* - (a) The Monetary
14 Board may authorize the establishment of Islamic banks. It may
15 also authorize conventional banks to engage in Islamic banking
16 arrangements, including structures and transactions, through a
17 designated Islamic banking unit within the bank: *Provided*, That
18 the bank shall have a system for segregating the transactions of the
19 Islamic banking unit from its conventional banking business.

20 (b) The Monetary Board may, under such rules and
21 regulations as it may prescribe, authorize foreign Islamic banks
22 to establish Islamic banking operations in the Philippines
23 under any of the modes of entry provided for under Republic Act
24 No. 7721, as amended, otherwise known as The Liberalization
25 of Entry and Operations of Foreign Banks. The Monetary Board
26 may regulate the number of participants in the Islamic banking
27 system taking into account the requirements of the economy, the

1 preservation of the stability of the system, and the maintenance
2 of healthy competition.

3 (c) For purposes of this Act, the Al-Amanah Islamic
4 Investment Bank of the Philippines, other Islamic banks,
5 designated Islamic banking units of conventional banks, and
6 foreign banks that are authorized to conduct business in
7 accordance with the principles of *Shari'ah* shall be referred to
8 collectively as "Islamic Banks" or "Islamic banking system".

9 SEC. 4. *Supervision and Regulation by the Bangko Sentral.* -
10 The *Bangko Sentral* shall exercise regulatory powers and
11 supervision over the operations of Islamic banks. The *Bangko*
12 *Sentral* shall issue the implementing rules and regulations on
13 Islamic banking.

14 SEC. 5. *Shari'ah Advisory Councils.* - It shall be the
15 responsibility of an Islamic bank to comply with *Shari'ah*
16 principles. For this purpose, it shall constitute a *Shari'ah*
17 advisory council composed of persons who are qualified in
18 *Shari'ah* or who have knowledge or experience in *Shari'ah* and
19 in banking, finance, law or such other related disciplines.
20 The council shall render advice and review applications of
21 *Shari'ah* principles, but it shall not involve itself directly in
22 the operations of the Islamic bank or engage in any activity
23 which may give rise to conflict of interest. Nothing contained
24 herein precludes the establishment of a centralized *Shari'ah*
25 Supervisory Board to ensure that the Islamic banking transactions
26 and products comply with *Shari'ah* principles.

1 SEC. 6. *Powers of Islamic Banks.* – (a) In addition to the
2 general powers granted to corporations, Islamic banks shall have
3 such powers as shall be necessary and prudent to carry out the
4 business of a bank in accordance with *Shari'ah* principles.

5 (b) Islamic banks may perform the following banking
6 services:

7 (1) Accept or create current accounts;

8 (2) Accept savings accounts for safekeeping or custody
9 with no participation in profit and loss except unless otherwise
10 authorized by the account holders to be invested;

11 (3) Accept investment accounts;

12 (4) Accept foreign currency deposits;

13 (5) Act as correspondent of banks and institutions to handle
14 remittances or any fund transfers;

15 (6) Accept drafts and issue letters of credit or letters
16 of guarantee, negotiate notes and bills of exchange and
17 other evidence of indebtedness: *Provided*, That such financial
18 instruments are in accordance with the principles of *Shari'ah*;

19 (7) Act as collection agent insofar as payment orders, bills
20 of exchange or other commercial documents covering *Shari'ah*
21 compliant transactions;

22 (8) Provide *Shari'ah* compliant financing contracts and
23 structures;

24 (9) Handle storage operations for goods or commodity
25 financing secured by warehouse receipts presented to the
26 Islamic bank;

1 (10) Issue shares for the account of institutions and
2 companies assisted by the Islamic bank in meeting subscription
3 calls or augmenting their capital and/or fund requirements as
4 may be allowed by law;

5 (11) Undertake various investments in all transactions
6 allowed by *Shari'ah* principles; and

7 (12) Such other banking services as may be authorized by the
8 Monetary Board.

9 (c) With prior Monetary Board approval, Islamic banks
10 may issue investment participation certificates, *sukuk*, and other
11 *Shari'ah* compliant funding instruments to be used by the Islamic
12 banks in its operations or capital needs.

13 (d) Islamic banks may carry out financing and joint
14 investment operations by way of *mudarabah* partnership,
15 *musharakah* joint venture or by decreasing participation,
16 *murabahah* purchasing on a cost-plus financing arrangement,
17 lease (*ijara*) arrangements, construction and manufacture
18 (*istisna'a*) arrangements, and other *Shari'ah* compliant contracts
19 and structures, and to invest funds directly in various projects
20 or through the use of funds whose owners desire to invest
21 jointly with other resources available to the Islamic bank on a joint
22 *mudarabah* basis in accordance with the foregoing arrangements,
23 contracts and structures.

24 (e) With prior Monetary Board approval, Islamic banks may
25 invest in equities of *Shari'ah* compliant undertakings that directly
26 support the delivery of Islamic banking and financing services.

1 (f) Islamic banks may exercise the general powers of a
2 universal bank that are consistent with the principles of
3 *Shari'ah*.

4 SEC. 7. *Ownership and Legal Existence*. - Islamic banks to
5 be created under this Act shall comply with pertinent laws,
6 rules and regulations applicable to a private corporation engaged
7 in banking, such as "The Corporation Code of the Philippines"
8 (Batas Pambansa Blg. 68), as amended, and the requirements
9 of the respective regulatory agencies. Islamic banking units
10 shall be operated and managed pursuant to a management and
11 organizational structure which should be properly disclosed and
12 segregated from the operations of the parent bank.

13 The capitalization requirements of an Islamic bank shall
14 be equal to that prescribed by the *Bangko Sentral* for a universal
15 bank. Islamic banks may take the necessary steps to have their
16 shares of stock listed in any duly registered stock exchange.

17 SEC. 8. *Transfer and Acquisition of Substantial*
18 *Shareholdings*. - No person shall acquire shares in an Islamic
19 bank that will result in ownership or control, directly or
20 indirectly, of more than ten percent (10%) of the voting stock of
21 such Islamic bank, without obtaining the prior approval of the
22 Monetary Board. Prior to the Monetary Board approval, no
23 such transfer or acquisition of shares shall have legal effect
24 nor shall the same be recognized in the stock and transfer books
25 of the Islamic bank or in the records of any government agency.

26 SEC. 9. *Fit and Proper Rule*. - In order to maintain the
27 quality of bank management and afford better protection to

1 depositors, investors and the public in general, the Monetary
2 Board shall prescribe, pass upon and review the qualifications
3 of persons who are elected or appointed as directors or officers
4 of Islamic banks and disqualify those found unfit. The Monetary
5 Board shall prescribe the qualifications of bank directors and
6 officers for purposes of this Act.

7 SEC. 10. *Regulatory Standards.* – Islamic banks shall be
8 licensed and regulated in the same manner as a universal
9 bank. The *Bangko Sentral* shall prescribe prudential regulations
10 and standards of conduct to promote the sound financial position
11 of Islamic banks and to ensure integrity, professionalism and
12 expertise in the conduct of their business, affairs and activities.
13 These standards shall take into consideration international best
14 practices and principles relating to, but not limited to:

- 15 (1) capital adequacy;
- 16 (2) liquidity;
- 17 (3) corporate governance;
- 18 (4) risk management;
- 19 (5) related party transactions;
- 20 (6) maintenance of reserve funds;
- 21 (7) prudential reporting;
- 22 (8) investment ceilings and limitations;
- 23 (9) prevention of an institution from being used,
24 intentionally or unintentionally, for unlawful activities; and
- 25 (10) consumer protection.

26 SEC. 11. *Current Accounts of Islamic Banks.* – The *Bangko*
27 *Sentral* is authorized to open current accounts for Islamic banks

1 for settlement and other purposes under such rules and regulations
2 as the Monetary Board may prescribe. The *Bangko Sentral* may
3 charge administrative and other fees for the maintenance of
4 such facilities as may be allowed under *Shari'ah* principles.

5 SEC. 12. *Financial Facilities for Islamic Banks.* – The
6 *Bangko Sentral* may, taking into consideration the peculiar
7 characteristics of Islamic banking, formulate rules and regulations
8 for the extension of financial facilities to Islamic banks for
9 purposes provided under Chapter IV, Articles IV and V of
10 Republic Act No. 7653, as amended, known as the New Central
11 Bank Act.

12 Subject to the availability of budgetary support and other
13 funding sources, the Philippine Deposit Insurance Corporation
14 (PDIC) may extend financial assistance to an Islamic bank
15 determined by the Monetary Board to be in danger of closing
16 in order to prevent such closing, or when it is determined by
17 the Monetary Board and the PDIC Board of Directors that the
18 continued operation of such Islamic bank is essential to the
19 stability of the economy.

20 SEC. 13. *Monetary Stabilization Policy and Tools.* – The
21 *Bangko Sentral*, pursuant to the authority of the Monetary
22 Board under Section 61 of Republic Act No. 7653, to constantly
23 assess price developments and outlook, and based on its
24 analysis and evaluation of inflationary pressures, and its policy
25 instruments to attain and maintain price stability, and taking
26 into consideration the peculiar characteristics of Islamic
27 banking, may require Islamic banks to maintain reserves

1 against their deposit accounts and funds held in trust or under
2 investment accounts. The Monetary Board may further identify
3 and authorize the issuance by the *Bangko Sentral* of other
4 appropriate instruments and measures necessary to implement
5 its monetary policy, including instances of abnormal movements
6 in the price level, taking into account the peculiar characteristics
7 of Islamic banking.

8 SEC. 14. *Tax Neutrality.* – The Government shall endeavor
9 to achieve neutral tax treatment between Islamic banking
10 transactions and equivalent conventional banking transactions
11 within the provisions of the National Internal Revenue Code of 1997
12 (Republic Act No. 8424), as amended.

13 SEC. 15. *Sanctions.* – Any director, officer, employee,
14 auditor, or agent of an Islamic bank who is found guilty of any
15 act or omission in violation of any provision of this Act and
16 its implementing rules and regulations shall be subject to the
17 sanctions and penalties under Sections 34, 35, 36 and 37 of
18 Republic Act No. 7653, and shall be punished by a fine not
19 exceeding One million pesos (P1,000,000.00) or by imprisonment
20 of not more than five (5) years, or both, at the discretion of
21 the court, without prejudice to administrative and criminal
22 sanctions that may be imposed pursuant to existing banking
23 laws and regulations.

24 SEC. 16. *Consumer Awareness and Capacity Building*
25 *Program.* – The Government shall provide programs for increased
26 consumer awareness and capacity building required by the
27 expanded Islamic banking system.

1 SEC. 17. *Nonapplicability of Selected Acts.* – In order to
2 achieve the international and domestic objectives of Islamic
3 banking, the provisions of the following laws shall not apply to
4 Islamic banks to the extent as herein rendered inoperative:

5 (1) the provisions of Republic Act No. 7653, and Republic
6 Act No. 8791, otherwise known as “The General Banking Law
7 of 2000”, with particular reference to the determination of
8 bank interest rates, loans and discounts, and interest-bearing
9 instruments or charge: *Provided*, That nothing contained herein
10 shall be construed to impair the powers of the *Bangko Sentral*
11 to supervise and regulate the activities of Islamic banks and the
12 Islamic banking system;

13 (2) the provisions of Presidential Decree No. 1445, otherwise
14 known as the “Government Auditing Code of the Philippines”
15 and other enactments thereon inconsistent with this Act: *Provided*,
16 *however*, That nothing contained herein shall preclude the
17 development of an appropriate framework for the auditing of
18 Islamic banks and the Islamic banking system; and

19 (3) the provisions of Republic Act No. 3591, as amended,
20 known as the Philippine Deposit Insurance Corporation (PDIC)
21 Charter, and all laws regulating insurance companies: *Provided*,
22 *however*, That nothing contained herein shall preclude Islamic
23 banks from the establishment of contemporary Islamic *takaful*
24 (solidarity services) free of *riba*, premiums or interests.

25 SEC. 18. *Separability Clause.* – If any provision or section
26 of this Act or the application thereof to any person, association,
27 or circumstances is held invalid, the other provisions or sections

1 and their application to such person, association, or circumstances
2 shall not be affected thereby.

3 SEC. 19. *Repealing Clause.* — All laws, orders, issuances,
4 rules and regulations or parts thereof inconsistent with this Act
5 are hereby repealed or modified accordingly.

6 SEC. 20. *Effectivity.* — This Act shall take effect fifteen (15)
7 days after its publication in the *Official Gazette* or in a newspaper
8 of general circulation.

Approved,

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