H. No. 8281

Republic of the Philippines
Congress of the Philippines
Metro Manila
Seventeenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-third day of July, two thousand eighteen.

[REPUBLIC ACT NO. 11439]

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:

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

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SEC. 2. *Definition of Terms.* –

(a) As used in this Act:

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

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

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

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

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

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

(7) *Riba* has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of banking business, the term refers to the receipt and payment of interest, including in the various types of lending and borrowing and in the exchange of currencies on forward basis; and

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

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

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

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

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

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

SEC. 5. *Shari'ah Advisory Councils.* – It shall be the responsibility of an Islamic bank to comply with *Shari'ah* principles. For this purpose, it shall constitute a *Shari'ah* advisory council composed of persons who are qualified in *Shari'ah* or who have knowledge or experience in *Shari'ah*

and in banking, finance, law or such other related disciplines. The council shall render advice and review applications of *Shari'ah* principles, but it shall not involve itself directly in the operations of the Islamic bank or engage in any activity which may give rise to conflict of interest. Nothing contained herein precludes the establishment of a centralized *Shari'ah* Supervisory Board to ensure that the Islamic banking transactions and products comply with *Shari'ah* principles.

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

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

(1) Accept or create current accounts;

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

(3) Accept investment accounts;

(4) Accept foreign currency deposits;

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 7. *Ownership and Legal Existence.* – Islamic banks to be created under this Act shall comply with pertinent laws, rules and regulations applicable to a private corporation engaged in banking, such as "The Corporation Code of the Philippines" (Batas Pambansa Blg. 68), as amended, and the requirements of the respective regulatory agencies. Islamic

banking units shall be operated and managed pursuant to a management and organizational structure which should be properly disclosed and segregated from the operations of the parent bank.

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

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

SEC. 9. *Fit and Proper Rule.* – In order to maintain the quality of bank management and afford better protection to depositors, investors and the public in general, the Monetary Board shall prescribe, pass upon and review the qualifications of persons who are elected or appointed as directors or officers of Islamic banks and disqualify those found unfit. The Monetary Board shall prescribe the qualifications of bank directors and officers for purposes of this Act.

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

(a) capital adequacy;

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(b) liquidity;

(c) corporate governance;

(d) risk management;

(e) related party transactions;

(f) maintenance of reserve funds;

(g) prudential reporting;

(h) investment ceilings and limitations;

(i) prevention of an institution from being used, intentionally or unintentionally, for unlawful activities; and

(j) consumer protection.

SEC. 11. *Current Accounts of Islamic Banks.* – The *Bangko Sentral* is authorized to open current accounts for Islamic banks for settlement and other purposes under such rules and regulations as the Monetary Board may prescribe. The *Bangko Sentral* may charge administrative and other fees for the maintenance of such facilities as may be allowed under *Shari'ah* principles.

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

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

SEC. 13. *Monetary Stabilization Policy and Tools.* – The *Bangko Sentral*, pursuant to the authority of the Monetary Board under Section 61 of Republic Act No. 7653, to constantly assess price developments and outlook, and based on its analysis and evaluation of inflationary pressures, and its policy instruments to attain and maintain price stability, and taking into consideration the peculiar characteristics of Islamic banking, may require Islamic banks to maintain reserves against their deposit accounts and funds held in trust or under investment accounts. The Monetary Board may further identify and authorize the issuance by the *Bangko Sentral* of other appropriate instruments and measures necessary to implement its monetary policy, including instances of abnormal movements in the price level, taking into account the peculiar characteristics of Islamic banking.

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

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

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

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

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

(b) The provisions of Presidential Decree No. 1445, otherwise known as the "Government Auditing Code of the Philippines" and other enactments thereon inconsistent with this Act: *Provided, however,* That nothing contained herein shall preclude the development of an appropriate framework for the auditing of Islamic banks and the Islamic banking system; and

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

SEC. 18. *Separability Clause.* – If any provision or section of this Act or the application thereof to any person, association, or circumstances is held invalid, the other provisions or sections and their application to such person, association, or circumstances shall not be affected thereby.

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

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

Approved,

VICENTE C. SOTTO III
President of the Senate

GLORIA MACAPAGAL ARROYO
Speaker of the House of Representatives

This Act which originated in the House of Representatives was passed by the House of Representatives and the Senate of the Philippines on November 20, 2018 and June 3, 2019, respectively.

MYRA MARIE D. VILLARICA
Secretary of the Senate

DANTE ROBERTO P. MALING
Acting Secretary General
House of Representatives

Approved: AUG 2 2 2019

RODRIGO ROA DUTERTE
President of the Philippines

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DIRECTOR IV
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