

Amanah Islamic Bank Rules and Regulations

Amanah Islamic Bank
Rules and Regulations

June 2006 Edition

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Printed by:

Islamic Banking Research Institute

Published by



Islamic Bank (Private)

بنك الاماناه

www.islamicbank6848.com

Al Amanah Islamic Investment Bank of the Philippines
Incorporated by the Congress of the Philippines with a special law
Republic Act No. 6848
officially organized in the Philippines on April 28, 1992

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A note of gratitude

This booklet was prepared in response to many inquiries about the Islamic Bank rules and regulations. Because these inquiries came from the cities of Jeddah and Riyadh, Saudi Arabia, I should like to preface this writing with a reprint of my letter to the editor of the Arab News which has been in the archive of the Islamic Bank.

Arab News

SAUDI ARABIA'S FIRST ENGLISH LANGUAGE DAILY

Page 8, Saturday, January 11, 1986

LETTERS TO THE EDITOR

Islamic banking

In its second session, the Council of the Islamic Fiqh Academy under the chairmanship of Dr. Abdullah Abu Zeid, made timely decisions relating to religious and socio-economic affairs. Undoubtedly, these decisions reinvigorated the unity of Islamic thought, be it in traditional and innovative concepts, indicating the fact that even as Muslims explore into new horizons with various ventures such as insurance and banking, Islamic thought finds integrity and authenticity. The Academy's call on Muslim countries to establish Islamic banking and insurance raised high the banner of Islamic brotherhood.

The need for Islamic banking in Muslim countries is the demand for the same facility in non-Muslim countries where Muslim minorities live in large numbers as in the case of India, Thailand, the Philippines, Yugoslavia and many other countries. In the case of the Philippines, its Muslim constituents were called upon by Dr. Abdullah Omar Nasseef, secretary-general of the Muslim World League, to set up Islamic banking. The proposal was made by him during his visit to the Philippines last April. This call received a positive response from a group of Muslims representing the Majlis Al Da'wah Al Islamia Fil Philippine which submitted a proposal to establish the Philippine Dar Al Maal Al Islami.

Indeed, the call of the leaders of international Islamic organizations shows that the World Muslim community is one.

I express my deepest appreciation to Dr. Nasseef and Dr. Abu Zeid for their efforts to spread the Islamic economic system worldwide.

Abdel Aziz Dimapunong

Riyadh, Saudi Arabia (1986).

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Translations

The official documentation is published in English only. Even where the author has exceptionally permitted the translation of the documentation, only the English version is valid.

Relation to the Amanah Islamic Bank

The author, Mr. Abdel Aziz Dimapunong, was the founding chairman and chief executive officer of the original Al Amanah Islamic Investment Bank of the Philippines from 1992 to 1998.

Legal controversies

There were legal controversies on how the officers, including the chairman and the president (Farouk Carpizo) of the abolished Philippine Amanah Bank were replaced by new directors led by Abdel Aziz Dimapunong during the organizational meeting of the Islamic Bank in 1992. However, all of them had been resolved in the Philippine's courts of law. References to those cases are provided in Appendix “A”. Legal documents may be supplied by the author and or IBRI upon request and fees for due diligence. These include a Decision of the Hon. Court of Appeals, Resolutions of the Hon. Supreme Court, Resolutions of the Department of Justice, Manifestation of the Office of the Solicitor General, and documents issued by the Securities and Commission, all in the Philippines. Some of the documents were authenticated by no less than the Office of the President of the Philippines and the Department of Foreign Affairs.

About the Islamic Banking Research Institute

The Islamic Banking Research Institute, Incorporated (IBRI) was duly organized and officially registered in 1991 with the Securities and Exchange Commission in the Philippines. Since 1992, it has been the official Consultant/Advisor of the Al Amanah Islamic Investment Bank of the Philippines on all matters of Management Information System. It is also a stockholder of the Islamic Bank.

References

All legal references mentioned in this booklet and involving the Islamic Bank may be supplied upon arrangement and payment of reasonable due diligence charges with the Islamic Banking Research Institute, Inc.

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By: Abdel Aziz Dimapunong

Chapter 1

Introduction

The enactment of RA 6848 in 1989 was a very important development in the area of international banking. The Islamic Bank charter serves as a model legal framework for Islamic banking and finance that could be adopted by other countries. This charter is applicable to any country whether it belongs to the World of Muslims or to the Western World. The principles of Islamic banking now reverberate not only in the global banking industry but also virtually in all sectors of the business world and the academies of higher learning. The ethical standards of review that are now being introduced by the so called Sharia' advisory counsels, such as the one provided in the Islamic Bank charter, is now being adopted by western business entities.

The Sharia' advisory boards not only consider the conventional project viability and feasibility – but they also look beyond the traditional way. This is the “Sharia” standard which could include appropriateness, fairness, trust, transparency, the ethical nature of transactions, as well as social responsibility, especially to the poor, the wayfarer, those afflicted with illness, victims of calamities such as the “Tsunami”, and all those in need. That is why the charter provides for “zakat” or tithe. It also provides for “Qard Al Hassan” which means benevolent loans. A “zakat” is paid by every God-fearing believer for the benefit of the poor and the needy. A benevolent loan (qard al Hassan) does not bear interest and repayment may not be expected. It is provided as a loan in much the same manner as a developed country providing development assistance to an underdeveloped country. It is being practiced by the government of the United States of America through the USAID. It is also being done by the government of Japan through JICA. In the Philippines, it is being done by the government of Australia through its Direct Aid Program (DAP). These foreign nations are providing benevolent loans and financial assistance without them knowing that these loans are in the form of “qard al Hassan”. If these benevolent loans are done with intent to be in accordance with “Sura Tagabon” (a chapter in the Holy Qur’an), then it qualifies as “qard al Hassan”.

All business dealings with Islamic banking, finance, trade, commerce, and, in fact all about Islamic economics, can be found in a common reference of all Muslims of the World today and tomorrow. This is the standard under Sharia'. It is common to all Muslims around the World. It is a standard that will never change for all time. That is a fact about Sharia. Its foundation, the Holy Qur'an will never change. The Hadith likewise will never change. Any deviation from the standard that was set by the Holy Qur'an and the Hadith is called “bida'a” and it will be rejected by any real Sharia' counsel. Said “Bida'a” or deviation from standard will be returned to innovators. There is no compromise. For instance, interest charges maybe disguised as bank charges. This kind of deviation will be not be honored by any real Sharia' counsel. Islamic banking under the principles of Sharia' represents a standard way of economic life. Muslims and non-Muslims alike will learn from these moral standards in all business deals. . In its mandate to formulate the rules and regulations for the Islamic Bank, the Monetary Board has been

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required by law under Section 48 of RA 6848 to observe “the universal principle of the Islamic Sharia”.

Paramount of this significant development in international banking is the fact that the Muslim way of doing business is gaining understanding and acceptance in the world of business. This could be the start of international harmony among nations.

Today, even the Federal Bank of USA acknowledges Islamic finance as an important development in international banking. That is according to William L. Rutledge, Exec. V P of the Federal Reserve Bank of New York, in his “Remarks at the 2005 Arab Bankers Association of North America (ABANA) Conference on Islamic Finance: Players, Products & Innovations in New York City... He further said that as US regulators, they “are open to Islamic financial products” within the U.S. structure.

In 1990, the charter of the Islamic Bank was enacted into law. This law provides for a Sharia’ Advisory Counsel to review transactions of the bank in accordance with the Sharia’ standards. The law also provides that the Board of Directors shall sit as a Board of Arbitration to settle intra-corporate disputes among shareholders and investors. To implement this mandate, the Board of Directors was authorized by this law to set the rules and procedure that it shall follow in the arbitration while the Monetary Board was mandated to formulate the rules and regulation

The bank was formally organized on April 28, 1992. Soon after it was organized, the Rules of Practice and Procedure before the Board of Arbitration was adopted and promulgated by the Board of Directors. Even if it was rather late, the Monetary Board also issued the Implementing Rules and Regulation (IRR) for the Islamic Bank under BSP Circular 105.

Exactly ten years after its adoption today, the thickness of the IRR is back to the thinness of what it should have been. Today, with some exceptions the IRR is back to being the image-file of the charter of the Islamic Bank. It should now be known as the New Rules and Regulations (NRR) reflecting the new laws of the Millennium in the Philippines, such as the New Central Bank Act, and the New General Banking Law of 2000. And a new development in international banking and finance.

When the IRR for the Islamic Bank was formulated by the Monetary Board in 1996, it includes all sort of rules and regulations applicable to all banks in general including the receipt and payment of interests (riba) which is what the charter prohibits, made illegal and punishable. The rules and regulations applicable to the conventional banks under the old General Banking Act, RA 337 was also made part of the IRR for the Islamic Bank. Sad to say, the Monetary Board in the Philippines never had a Muslim member. The Monetary Board cannot be blamed for something they are not familiar with. Consequently, the Islamic Bank regular lobbyists, namely: the Filipino Muslim Chamber of Agriculture and Fisheries, Inc., (a major stockholder of the Islamic Bank) and the National Alliance of Muslim NGOs of the Philippines lobbied in Congress relentlessly to remove, revise, or reconstruct the general banking law..

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Consequently, Congress not only revised the old GBA, RA 337, but replaced it with the New General Banking Law (GBL 2000), RA 8791. Under this new law, some of the powers of the old Monetary Board were clipped, most of them transferred to the Department of Finance, and some of them to the Securities and Exchange Commission (SEC). And yet some of them were eliminated. Some other banks are now governed by other banking laws, placing the Monetary Board as “still supervising” but along with other authorities.

There are now many banking laws in the Philippines. Thrift banks, rural banks and cooperative banks are now governed by the provisions of the Thrift Banks Act, the Rural Banks Act, and the Cooperative Code. Cooperative banks are not only monitored but also supervised by the Cooperative Development Authority. Section 94 of 8791 also provides the "phase out of Bangko Sentral Powers over building and loan associations. All the relevant supervisory and regulatory powers of the Monetary Board under that Section were transferred to the Home Insurance and Guarantee Corporation.

As for the Islamic Bank, it is now governed by special laws as provided in Section 71, RA 8791 - rather than the general banking law. This governance covers the "organization" of the Islamic Bank, "its ownership and capital requirements, powers, supervision and general conduct of business".

As an update to IRR under BSP Circular 106 and in pursuance to the provisions of the new GBL 2000, the Monetary Board, in its Resolution No. 2154 dated December 15, 2000, approved Circular No. 271, Series of 2001, otherwise known as the regulations implementing Section 3 and other related sections of R.A. No. 8791. Under this new rules and regulations (NRR), the Islamic Bank is classified as one kind of its own, with its own sets of rules and regulations as distinguished from the other banks.

The Islamic Bank (Private) is now an international bank with multi-national stockholders from Asia, Europe, Australia, and the U.S.A. It has resolved to follow international standards as formulated by international bodies in the global banking industry.

Chapter 2

The Bangko Sentral ng Pilipinas and the Monetary Board

Undoubtedly, the Monetary Board has authority to regulate and supervise the Islamic Bank. This mandate, however, is subject to certain legal limitations. The limitations are set by laws and jurisprudence. Some limitations are very much obvious even to laymen.

Obviously, the Monetary Board has no power to review, revise, modify or reject any provisions of law such as those provided in the charter of the Islamic Bank. Obviously, it is rather wrong for any officers of the Bangko Sentral, including the Monetary Board to require the Islamic Bank an authority to operate as Islamic Bank. The charter of the Islamic Bank, RA 6848, already authorized it to operate as Islamic bank. The charter is very clear. It provides:

SEC. 50. Statutory Articles of Incorporation. - This Act, upon its effectivity, shall be deemed accepted for all legal intent and purposes as the Statutory Articles of Incorporation of the Al Amanah Islamic Investment Bank of the Philippines; and that notwithstanding the provision of any existing law to the contrary, **said Islamic Bank shall be deemed registered and duly authorized to do business and operate as an Islamic Bank as of the date of approval of this Act.** **[Underscoring supplied]**

This vital provision of the law is notably absent in the IRR. Virtually all the other provisions in the charter were restated into the IRR.

Another limitation of the powers of the Monetary Board is the fact that it has no legislative authority. The Supreme Court of the Philippines had already forewarned the Monetary Board about adventurism into forbidden grounds. In the case of Reformina vs. Tonol, Jr., L-59096, Oct. 11, 1985, the Supreme Court rules:

“The Monetary Board may not tread on forbidden grounds. It cannot rewrite other laws. That function is vested solely with the legislative authority. It is axiomatic in legal hermeneutics that statutes should be construed as a whole and not as a series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in violation from one another, xxx”

The Monetary Board has no authority to rule on matters of intra-corporate controversy among shareholders and investors of the Islamic Bank (Such as the case of Dimapunong Group vs. Carpizo Group). Matters of intra-corporate controversies are already assigned by law to the Board of Arbitration of the Islamic Bank. Arbitration is clearly stated in the charter and even in the Rules and Regulation. It does not appear from the new Central Bank Act, the new General Banking Law of 2000, and other banking laws in the Philippines that the Monetary Board has the authority to proclaim who among contending directors are legitimate and who are bogus. If the controversy does not fall within the

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jurisdiction of the Board of Arbitration, then it should be under the regular courts pursuant to the Securities and Regulation Code, RA 8799.

It also does not appear from the new Central Bank Act and the new GBL of 2000 that the Monetary Board is part of the judicial branch of government. It has also no power of a fiscal under Philippine jurisprudence. In the words of the Hon. Supreme Court of the Philippines:

“The Central Bank is a government corporation created principally to administer the monetary and banking system of the Republic, not a prosecution agency like the fiscal’s office. Being an artificial person, the Central Bank is limited to its statutory powers and the nearest power to which prosecution of violators of banking laws maybe attributed is its power to sue and be sued. But this corporate power of litigation evidently refers to civil cases only.” (Damaso P. Perez vs. the Monetary Board, G.R. No. L-23307, June 1967)

In relation to the Islamic Bank, the limited supervisory power of the Monetary Board is tokenized by Republic Act 6848. This was so because the authority and influence of the Monetary Board are limited only to its jurisdiction in the Philippines. On the other hand, the Islamic Bank was conceptualized to be an international bank. Its charter provides for Series “C” shares for foreign investors, equivalent to forty (40%) percent of its authorized capital stock (Sec. 8, RA 6848).

To assure foreign investors, the charter provides “protection against nationalization, sequestrations, or expropriation proceedings”. Thus section 10 of the charter provides: “... the provisions of the Investment Code on the basic rights and guarantees of investors are made applicable to the commercial operations of the Islamic Bank in respect to repatriation or remittance of profits from investments, and to protection against nationalization, sequestrations, or expropriation proceedings. Any proceedings of judicial or administrative seizure may not be taken against the said property or investment except upon a final court judgment.” Section 10 of the charter is restated in the IRR under section 11.

For more attraction to foreign investors, the charter also provides that the board of directors of the Islamic Bank may sit as a board of arbitration. This provision is also found in the BSP Rules and Regulations. These provisions on arbitration also offer an international appeal to foreign stockholders and investors. This is because, as early as the 1950’s, foreign arbitration as a system of settling commercial disputes was recognized when the Philippines adhered to the United Nations’ Convention on the Recognition and the Enforcement of foreign Arbitral Awards of 1958” under the 10 May 1965 Resolution No. 71 of the Philippine Senate, giving reciprocal recognition and allowing enforcement of international arbitration agreements between parties of different nationalities within a state. [Cited by the Supreme Court in the case of Del Monte Corporation-USA, vs. Court of Appeals, Judge Bienvenido L. Reyes, et al. (G.R. No. 136154, February 7, 2001)

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Clearly, the Islamic Bank was intended to be the Philippines' entry to the world of global banking. This is why the charter provides the Islamic Bank with so much legal leverage. The Islamic Bank is not just a bank in the ordinary sense. Aside from a bank pursuant to its charter, it is also an Investment House pursuant to PD 129, and it is also a Venture Capital Corporation pursuant to PD 1688 (Section 17, RA 6848). Should it operate as a venture capital corporation, the Islamic Bank would be under the supervision of the Securities and Exchange Commission – rather than the BSP.

The Islamic Bank is even allowed by its charter to deal with governments of other nations. The law provides under Sec, 11 that "... Under special circumstances in which the Board of Directors considers it advisable to promote or facilitate Islamic banking business and commercial operations, the Islamic Bank may seek financing from governments, organizations, individuals or banks..." This mandate of the charter is also restated under Section 12 of the BSP Rules and Regulations. Stated in other words, the Islamic Bank may seek financial assistance from sovereign countries, including the so-called "super powers". The Islamic Bank may seek financial assistance from the governments of the United States, Canada, Australia, United Kingdom, Japan, Saudi Arabia, and others. There is no limit under the charter. For this purpose, therefore, the Islamic Bank may have its representatives to any of these countries, subject to their respective laws.

The Islamic Bank is a chartered bank. This means that its Articles of Incorporation is not a mere agreement among corporators and incorporators. It means that the charter is a law, i.e. RA 6848. In the Philippines, there are only two banks with charters of their own. These are: 1) the Bangko Sentral Ng Pilipinas that is chartered by the New Central Bank Act, RA 7653, and 2) the Al Amanah Islamic Investment Bank of the Philippines that is chartered by RA 6848. Like other legislative acts, charters have the full force of the law. Violation of the Central Bank Act is a violation of law. In like manner, violation of the charter of the Islamic Bank is a violation of law. No one is exempted from the law, not even the governor of the Bangko Sentral.

The Islamic Bank charter shall remain to be a law even now that the Islamic Bank has been privatized. This is an explicit official opinion of the Secretary of Justice in the Philippines [Opinion No. 42, Opinion of the Secretary of Justice 2001. Confirmation that RA No. 6848, the Charter of Al-Amanah Islamic Investment Bank of the Philippines (Islamic Bank), remains in effect if the bank is privatized, unless said law is repealed by Congress.] This is another guarantee to the stockholders, domestic and foreign investors.

That the Islamic Bank, as part of the banking and financial system, should have international features is reiterated in the new GBL 2000 when it provides and declares, as a matter of policy, that the state shall promote this system to be "globally competitive."

Indeed, even the mandate of the Monetary Board to formulate the rules and regulations was envisioned by Congress to be of an international character, regulation being the basis of supervision. Thus, the law provides: "The Monetary Board of the Central Bank of the

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Philippines shall formulate the necessary rules and regulations to carry out the provisions of this Charter... **and to supervise the operation of the Islamic Bank in accordance with the universal principle of the Islamic Shari'a. (Sec. 43, RA 6848)[Underscoring mine]**

The Islamic Bank is also mandated to employ foreign experts, agents and representatives. SEC. 40 provides that, ... “the Islamic Bank may employ foreign nationals in supervisory, technical or advisory positions for a period not extending five (5) years, extendible for limited periods upon the recommendation of the Governor of the Central Bank.

While the Monetary Board has the power to regulate (i.e. promulgate rules and regulation) and supervise (i.e. monitor) the Islamic Bank, The charter, makes it very clear that not all of the provisions of the Central Bank Act (now the New Central Bank Act) and the General Banking Act (now the New General Banking Law) are applicable to the Islamic Bank. That is one of the legal mechanics of tokenism. In reality, only provisions of special laws are applicable to the Islamic Bank (Sec. 71, new GBL 2000). This renders the Islamic Bank even more powerful.

In order to appreciate the rules and regulations applicable to the Islamic Bank, it is necessary to have a background on the Monetary Board and the BSP. This is necessary. The BSP is not equivalent to the old Central Bank of the Philippines, and the Monetary Board under the *Bangko Sentral ng Pilipinas* is not equal to the old Monetary Board under the old law. Under the banking laws of this new millennium, some of the powers and authority of the powerful Central Bank and its superior Monetary Board were not carried by new laws into the present *Bangko Sentral Ng. Pilipinas* and its new Monetary Board.

Under the present laws, current events and economic circumstances in this new millennium, investors conclusive due diligence work on the Islamic Bank should be done with extreme caution. It is recommended that due diligence be made with more credible documents such as those issued by the Hon. Supreme Court, the Court of Appeals, and other courts of competent jurisdiction. For due diligence work, the office of the President of the Philippines and the Department of Finance are the appropriate offices. One must have a competent lawyer.

In the Philippines, until recently, central banking system had been governed by Republic Act 267. That was the Central Bank Act of 1948, the charter of a powerful Central Bank of the Philippines. The powers of the old Central Bank of the Philippines were exercised by the old superior Monetary Board which was also organized pursuant to this old law. In exercising its authority, as a regulatory and supervisory board, most of its powers were derived from the old General Banking Act, Republic Act No. 337, and a law of general banking applications. Under these two old laws, the then Monetary Board was vested with so much power.

There were many controversies in the old Central Bank and its Monetary Board, including massive corruption. So, to make the story short, the Central Bank of the

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Philippines was abolished. We now have the Bangko Sentral ng Pilipinas with lesser powers.

Only few years after it was established by law, the Bangko Sentral Ng Pilipinas suffered a credibility crisis. Allegedly, some officers of the BSP act with arbitrariness and excesses. On April 26, 2000, to cite one particular case, the Bangko Sentral padlocks the Urban Bank. Three years later it was discovered by the High Court of Appeals to have been closed in a haphazard manner. The 19-page decision was penned by Associate Justice Eugenio Labitoria, who said the BSP should have exercised due diligence in accordance with the procedure on ordering the closure of banks as outlined in the New Central Bank Act of 1993.

In its decision, the CA reversed a ruling by the Office of the Ombudsman when it found that the Bangko Sentral governor Buenaventura "administratively liable of gross neglect of duty" when the BSP ordered the closure of Urban Bank. According to the court ruling, "The closure of Urban Bank Inc., Urbancorp Development Bank and Urbancorp Investments Inc. was done in an arbitrary manner violative of fair play and committed with grave abuse of discretion."

Consequently, former Bangko Sentral governor Rafael Buenaventura, Deputy Governor Alberto Reyes and other high ranking officers of the Bangko Sentral were suspended by the Hon. Court of Appeals for one year without pay. This was certainly a controversial issue in the banking community.

If Congress had its way, it would have abolished the Bangko Sentral ng Pilipinas and the Monetary Board as early as 1999. A group of legislators actually pushed for the removal of the Monetary Board and replace it with a Commission to take charge of supervision and regulation over banks. However, in order to survive, the BSP was quick to raise the issue on constitutionality. In a BSP press statement, released on March 11, 1999, the BSP reminds some legislators that the supervisory and regulatory powers of BSP are based on a constitutional provision. This was the statement of BSP in respond to the reports that congressmen Sergio Apostol and Feliciano Belmonte and other legislators were pushing for the replacement of the Monetary Board by an independent commission to be created by congress. The commission supposedly will replace the Monetary Board in supervising banks and financing companies. The BSP cited section 20, article 12 of the 1987 Constitution which provides "that congress shall establish an independent central monetary authority ... (which) shall provide policy direction in the areas of money, banking and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operation of finance companies and other institutions performing similar functions.

Congress, however, may clip the powers of the monetary board. That much it can do. And Congress did clip the powers of the monetary board. This was done not by amending the new Central Bank Act. but by replacing its "powerhouse", the old General Banking Act, RA 337.

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At the time the Monetary Board padlock the Urban Bank, there was already a bill about banking laws pending in congress. On May 23, 2000, the Philippine legislature put an end to the General Banking Act (GBA) Republic Act No. 337. Needless to say, all the powers of the Monetary Board that were derived from the GBA were also washed overboard. Congress enacted a New General Banking Law of 2000 (GBL 2000); Republic Act No. 8791.

As for the Islamic Bank, Section 71 of the new GBL 2000 provides that:

"The organization, ownership and capital requirements, powers, supervision and general conduct of business of Islamic banks shall be governed by special laws."

With this provision of law, the Rules and Regulations pertaining to the Islamic Bank were capsulated back to the original image-file of its charter with some exceptions. This is the kind of update that the Islamic Banking Institute presents. This is an update by removal of all those repealed provisions, as a result of the changes in banking laws of the Philippines.

This booklet, "Islamic Bank Rules and Regulation" is actually a part of a bigger book, "Islamic Banking in the Philippines" by the same author.

Chapter 3

Rules of Practice and Procedure before the Board of Arbitration

Section 9, R.A. 6848, the Charter of the Bank, provides for a Board of Arbitration and specified that: "The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission." The law also provides that: "The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration which it shall follow in hearing and deciding the dispute. Pursuant to this mandate of law, the Board of Directors adopted on March 30, 1993 the following RULES OF PRACTICE AND PROCEDURE: In promulgating the said Rules, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, and the Office of the President of the Philippines, and the Office of the Solicitor General were furnished their copies.

Section 9, RA 6848 provides:

“SEC. 9. Board of Arbitration. - The Board of Directors, acting as an arbitrator, shall settle by the majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. The Board shall not be bound in this respect to the procedures of laws on civil and commercial pleadings, except in regard to the basic principles of due process. If the dispute is between the Islamic Bank and any of the investors or the shareholders, a Board of Arbitration shall settle such dispute. In this case, the Board of Arbitration, consisting of three (3) members, shall be formed by two (2) parties to the dispute within forty-five (45) days from receipt of written notice by either party to the dispute. The three (3) members shall be selected as follows: one (1) arbitrator from each party who shall then select a casting arbitrator as the third member of the board. The three (3) shall select one of them to preside over the Board of Arbitration. The selection by each party of its arbitrator shall be deemed as an acceptance of the arbitrator's decision and of its finality. In the event that one of the two parties shall fail to select its arbitrator or in the case of nonagreement on the selection of the casting arbitrator or the presiding member of the Board of Arbitration within the period specified in the preceding paragraph, the matter shall be submitted to the Shari'a Advisory Council to select the Arbitrator, the casting arbitrator or the presiding member, as the case may be.

“The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration which it shall follow in hearing and deciding the dispute. The decision shall include the method of its execution and the party that shall incur the costs of arbitration. The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission.

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”The Board of Arbitration's decision, shall in all cases, be final and executory. It shall be valid for execution in the same manner as final judgments are effected under Republic Act No. 876 otherwise known as the Arbitration Law.

In September of 1993, six months after the adoption and promulgation of the Rules of Practice and Procedure, the Bangko Sentral prodded the Securities and Exchange Commission to rule on intra-corporate controversies then prevailing in the Islamic Bank. It was a case between the Board of Directors of the abolished Philippine Amanah Bank led by Roberto de Ocampo and Farouk Carpizo and the Board of Directors of the Al Amanah Islamic Investment Bank of the Philippines created under RA 6848 led by Abdel Aziz Dimapunong.. This provided a test of whether the S.E.C. will take cognizance of intra- corporate controversies in the Islamic Bank. In response, the SEC (ruling en banc on October 1993) passed the responsibilities to the authority of the Islamic Bank Board of Arbitration to settle any controversy the bank might sustain. This then confirms that the Islamic Bank has jurisdiction over intra-corporate disputes among its stockholders and investors...

It is then on record that the Securities and Exchange Commission did not encroach on the jurisdiction of the Board of Arbitration of the Islamic Bank. In order to further clarify the legal basis of the SEC, I wrote a letter of inquiry to the SEC in my capacity as then chairman of the Islamic Bank. I got a reply from no less than the chairman of the SEC, the Hon. Rosario N. Lopez. She responded to me by citing "the SEC ruling in Alfredo C. Gray, Sr. vs. Augustine Marketing et. el., (SEC Case No. 2102 dated March 9, 1992) wherein it was held that the Commission has no jurisdiction over corporations created by special law".

The jurisdiction of the Islamic Bank over corporate controversies among its stockholders and investors was debated upon and argued in the Court of Appeals in a case that I filed in my capacity as then Chairman. It was a petition for certiorari entitled “Abdel Aziz Dimapunong vs. Hon Judge Zosimo Angeles, C.A. GR. SP. No. 28445. In this case, the Office of the Solicitor General of the Philippines submitted its Motion and Manifestation, where it manifested thus:

“A better and certainly much wiser rule is, to consider the ultimate source of the controversy as determinative of whether the SEC has jurisdiction over a given case:

x x x [The existence of [an] intra-corporate relationship at the time of the filing of the complaint does not determine the jurisdiction of the Securities and Exchange Commission. x x x Rather, the factor which decides whether the action is within the jurisdiction of the Commission is just what the law provides, i.e., the controversy arose out of intra-corporate relations between and among the stockholders [and the corporation]. (Securities and Exchange Commission v. Court of Appeals, 201, SCRA 124, 136; emphasis supplied)

Amanah Islamic Bank Rules and Regulations

Applying the foregoing rule, it is evident that the controversy below arose out of intra-corporate relations. The complaint by AIIBP questions the apparent usurpation of functions by the Dimapunong Group. The latter, however, appears to have acted only in pursuance of the mandate they received at the annual General Shareholders Meeting. They participated in said meeting either by virtue of their right as private stockholders or the nomination given by stockholders or AIIBP. Ultimately, the precursor of the dispute between AIIBP and the Dimapunong Group is, in the case of petitioner Dimapunong and Santos, the nomination given by the office of the President and the GSIS, respectively, and, in the case of petitioners Abbas, Malambut and Dianaton, their right as private stockholders to vote and be voted for as directors or officers of the corporation. Thus the case below is clearly one which arose out of the intra-corporate relations between AIIBP and its stockholders.

That was the manifestation of the Office of the Solicitor General in so far as the determination of intra-corporate controversy is concerned. The issue on jurisdiction is another matter. Under what circumstance an intra-corporate controversy falls under the jurisdiction of the Islamic Bank Board of Arbitration? On this matter, the following is the Manifestation of the OSG:

“Republic Act No. 6848, the charter of the AIIBP, provides for a Board of Arbitration to settle conflicts between and among shareholders of AIIBP, and between the latter and any of its investors and shareholders:

Sec. 9. Board of Arbitration – The Board of Directors, acting as arbitrator, shall settle by majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. x x x

x x x

”As mentioned the complaint in Civil Case No. 92-1487 was filed by AIIBP, impleading as defendants therein both stockholders and non-stockholders. Obviously, the above provision defining the jurisdiction of the Board of Arbitration finds no application to the case below by reason of the inclusion of non-stockholders in said Complaint”.

The Motion and Manifestation of the OSG in the example case above was the consideration taken by the Hon. Court of Appeals in its Decision on the case. Stated in summary, the Board of Arbitration has jurisdiction over a case when the case involves only stockholders and investors of the Islamic Bank. It has no jurisdiction when a case involves non-stockholders or non-investors. It has no jurisdiction when the case involves third parties.

Amanah Islamic Bank Rules and Regulations

In one of its rulings about arbitration, the Supreme Court held in the case of Del Monte Corporation-USA vs. Court of Appeals, Judge Bienvenido L. Reyes, et al. (G.R. No. 136154, February 7, 2001):

“... The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract and is itself a contract. As a rule, contracts are respected as the law between the contracting parties and produce effect as between them, their assigns and heirs. Clearly, only parties to the Agreement, i.e., petitioners DMC-USA and its Managing Director for Export Sales Paul E. Derby, Jr., and private respondents MMI and its Managing Director LILY SY are bound by the Agreement and its arbitration clause as they are the only signatories thereto. Petitioners Daniel Collins and Luis Hidalgo, and private respondent SFI, not parties to the Agreement and cannot even be considered assigns or heirs of the parties, are not bound by the Agreement and the arbitration clause therein. Consequently, referral to arbitration in the State of California pursuant to the arbitration clause and the suspension of the proceedings in Civil Case No. 2637-MN pending the return of the arbitral award could be called for²⁵ but only as to petitioners DMC-USA and Paul E. Derby, Jr., and private respondents MMI and LILY SY, and not as to the other parties in this case. This is consistent with the recent case of *Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation*, which superseded that of *Toyota Motor Philippines Corp. v. Court of Appeals*.”

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Amanah Islamic Bank

Rules of Practice and Procedure before the Board of Arbitration of the Al Amanah Islamic Investment Bank of the Philippines

Pursuant to the authority provided by section 9 and other sections of R.A. 6848, otherwise known as “the Charter of the Al Amanah Islamic Investment Bank of the Philippines” the Board of Directors adopted and promulgated on March 30, 1993 in its Board Resolution No. 92-C-30-56, Series of 1993 the following rules on the practice and procedure before the Board of Arbitration, herein referred to as the "BOA", of the AIIBP.

Rule 1

Section 1. Title.

Amanah Islamic Bank Rules and Regulations

These rules shall be known as the Rules of Practice and Procedure before the Board of Arbitration of the Al Amanah Islamic Investment Bank of the Philippines.

Sec. 2. Applicability. –

These rules shall apply to all matters brought before the Board of Arbitration, in the exercise of the powers and functions under R.A. 6848.

Sec. 3. Construction.

These rules shall be liberally construed in order to promote public interest in the Islamic Investment Bank with the end in view that investment in this Bank may be encouraged and protected, and the Bank's activities pursued for the promotion of economic development in the Autonomous Region of Muslim Mindanao, and in order to promote further the stockholders interest in this Bank and to assist the stockholders in obtaining just, speedy and inexpensive determination of every action brought before the Board of Arbitration. Formal requirements may not affect the intrinsic validity of the proceedings, provided that the information and facts alleged therein are clearly indicated for the judicious disposition of the case.

Sec. 4. Nature of Proceedings.

Subject to the requirements of due process, proceedings before the BOA shall be summary in nature not necessarily adhering to or following the technical rules of evidence obtaining in the courts of law. The Rules of Court may apply in said proceedings in suppletory character whenever practicable.

Sec. 5. Prohibited Pleadings and Motions.

The following pleadings, motions, petition shall not be allowed:

- a. Motion to Dismiss or Quash;
- b. Motion for a bill of particulars;
- c. Motion for reconsideration and/or reopening of hearing;
- d. Motion for Extension of time to file pleadings, affidavits or any other paper when intended to cause delay;
- e. Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the Hearing Officer;
- f. Dilatory Motions for postponement.

Sec. 6. Verification of Pleadings.

All pleadings filed under these rules must be verified and sworn to before the Shari'a Advisory Council of the Al Amanah Islamic Investment Bank of the Philippines.

Amanah Islamic Bank Rules and Regulations

Rule 11- Authority of the Board of Arbitration

Sec. 1. Authority of the Board of Arbitration.

Pursuant to Section 9 of R. A. 6848, the Board of Arbitration is primarily charged with the following:

The duly elected Board of Directors of the IIBP, acting as an arbitrator, shall settle by the majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. The Board shall not be bound in this respect to the procedures of laws on civil and commercial pleadings, except in regard to the basic principles of due process.

If the dispute is between the Islamic Bank and any of the investors or the shareholders, a Board of Arbitration shall settle such dispute. In this case, the Board of Arbitration, consisting of three members, shall be formed by two (2) parties to the dispute within forty five (45) days from receipt of written notice by either party to the dispute. The three (3) members shall be selected as follows: -- one (1) arbitrator from each party who shall then select a casting arbitrator the third member of the Board. The three (3) shall select one of them to preside over the Board of Arbitration. The selection by each party of its arbitrator shall be deemed as an acceptance of the arbitrator's decision and of its finality.

Sec. 2. Role of the Shari'a Advisory Council in Arbitration.

In the event that one of the two parties shall fail to select its arbitrator or in the case of non-agreement on the selection of the casting arbitrator or the presiding member of the Board of Arbitration within the period specified in the preceding paragraph, the matter shall be submitted to the Shari'a Advisory Council to select the arbitrator, the casting arbitrator, or the presiding member, as the case may be, as provided for under paragraph three of Section 9, R.A. 6848.

Sec. 3. Hearing, Decision, and Final Judgment.

The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration which it shall follow in hearing and deciding the dispute. The decision shall include the method of its execution and the party shall incur the costs of arbitration. The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission.

Sec. 4. Execution of Final Judgment.

Amanah Islamic Bank Rules and Regulations

The Board of Arbitration's decision shall, in all cases, be final and executory. It shall be valid for execution in the same manner as final judgments are effected under Republic Act No. 876 otherwise known as the Arbitration Law.

Sec. 5. Complaints.

The Board of Arbitration shall receive complaints on violations of the Charter of the Al Amanah Islamic Investment Bank of the Philippines, R. A. 6848, and other incidental laws mentioned in R.A. 6848 which are relevant to stockholdings in the Islamic Bank, the By-Laws of the Bank, and the rules and regulations promulgated pursuant thereto including the terms and conditions or equity investment agreement entered into by and between the Islamic Bank and its shareholders.

Sec. 6. Investigations.

The BOA initiates and conducts investigations as well as gathers data from intelligence sources and from such persons involved in shareholders disputes. It renders reports and recommends appropriate actions and measures thereon; it files and prosecutes civil or criminal cases before the Securities and Exchange Commission and other courts of justice involving violations of R.A. 6848 when such cases cannot be resolved by BOA for lack of jurisdiction.

Rule III – Complaints and Respondents

Sec. 1. Complaint and Respondent (s).

In all cases filed with the Board of Arbitration, the party initiating the action shall be called the complainant and the party/entity against whom an action is made shall be called the respondent.

Rules IV – Commencement of Action

Sec. 1. Caption and Title.

In all complaints filed with the BOA, the full name of all parties, as far as they are known, shall be stated in the caption, motion, resolution, or order and in all summons, notices and processes to be served upon them.

If the action is initiated by anyone other than the BOA, the caption shall be as follows:

**AL AMANAH ISLAMIC INVESTMENT
BANK OF THE PHILIPPINES**

Amanah Islamic Bank Rules and Regulations

BOARD OF ARBITRATION

Complainant
CASE NO. _____

For: _____
-versus- (state the nature of the action)

Respondent/s

X - - - - - X

Sec. 2. When Action is Deemed Commenced.

An action is deemed commenced upon the filing of a verified complaint/affidavit in accordance with these Rules of Procedure.

Sec. 3. Forms and Contents

The complaint shall be in writing, under oath and drawn in clear and concise language, specifying the names and addresses of complainant/s, respondent/s and witnesses, if any. It shall state the ultimate facts constituting the cause of action or specific violation of law or rules and regulations as well as information pertinent thereto. It shall also specify the remedies/relief sought.

Rule V - Proceedings before the Board of Arbitration

Sec. 1. Hearing.

The Board of Arbitration shall have the following powers:

- A. To hear and decide cases that falls within its jurisdiction consistent with these Rules of Procedure and exercise full and active control of the proceedings at any stage thereof;
- B. To issue subpoena and subpoena duces tecum or other legal processes;

Amanah Islamic Bank Rules and Regulations

C. To hear and resolve all motions.

Sec. 2. Preliminary Conference/Hearing.

The BOA or its duly authorized officer shall, not later than twenty (20) days after the answer is filed, conduct preliminary conference/hearing of the case during which the parties if they so desire, and their respective counsels shall be present for the purpose of considering the following:

A. The simplification of the issues and stipulation of facts and admissions of documents;

B. The number and names of witnesses and a brief statement of their testimony; and

C. Such other matters as may aid in the prompt disposition of the case.

Sec. 3. Submission of Documents.

During the preliminary conference/hearing, or immediately thereafter, the BOA may require the parties to simultaneously submit their respective verified position papers accompanied by all supporting documents and the affidavits of their witnesses, if any which shall take the place of their direct testimony. The parties shall furnish each other with copies of the position papers together with the supporting affidavits and documents submitted by them.

Sec. 4. Disposition of Case.

If the BOA finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, it shall so inform the parties stating the reasons therefore and shall ask them to acknowledge the fact that they were so informed by signing the minutes of the hearing and the case shall be deemed submitted for resolution.

Sec. 5. Postponement.

Motion for postponement shall be filed three (3) days prior to the scheduled hearing, copy furnished/served on the adverse party by the movant, if any, except motion for continuance made in the presence of the adverse party, or those made in the course of hearing. Postponement shall be granted only in clearly meritorious cases like illness of a party or counsel.

Sec. 6. Admission of Evidence.

The BOA shall admit evidence relevant or material to the case. The testimonies of witnesses and manifestations of parties during the hearing shall be duly recorded.

Amanah Islamic Bank Rules and Regulations

In case of doubt, he shall admit all the evidences presented, subject to the objections interposed, if there be any. All documents forming part of the records of the case and material to the issues of the case, whether marked as exhibits or not, shall be deemed admitted as evidence and may be considered in the resolution of the case.

Sec. 7. Marking of Exhibits.

All exhibits shall be properly and consecutively marked by alphabetical letters if presented by the complainant and by Arabic numbers if presented by the respondents. All evidences introduced in the hearing shall be attached to the records of the case.

Sec. 8. Submission of Memoranda.

The hearing officer may allow the parties to submit their memoranda and/or position papers not later than ten (10) days from the submission of the case for resolution.

Rule VI – Orders and Resolution

Sec. 1. Order or Resolution.

Upon submission of the case for resolution, the BOA shall issue the corresponding order or resolution as the final consideration upon the matters submitted to it within thirty (30) days.

Sec. 2. Finality of the Order or Resolution.

Any order or resolution of the hearing officer, in the absence of appeal therefrom, shall become final and executory thirty (30) days from the date of receipt thereof.

RULE VII DOCKET NUMBERS

Sec. 1. Docket Numbers and Calendar of Case.

All cases cognizable by the BOA shall be numbered and docketed consecutively and entered into an appropriate docket book. Corresponding code numbers and/or abbreviations may be used for ready reference.

Rule VIII - Withdrawal of complaint

Sec. 1. Effect of Withdrawal of Complaint.

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The withdrawal of complaint shall not have the effect of automatically dismissing it or terminating the proceedings thereon. The BOA may muto proprio continue the same if it deems necessary in the interest of the Islamic Bank and the public.

Rule IX - Summons and Notices

Sec. 1. Summons and Notices of Hearing.

Upon docketing of the complaint, the BOA shall issue summons requiring respondent/s to file its Answer/Counter-Affidavit within fifteen (15) days from receipt thereof, and to appear for preliminary conference/hearing on the date specified thereof, copy furnished the complainant . Copy of the complaint shall be sent to the respondent together with the summons.

Sec. 2. Contents of Summons.

The summons shall be addressed to the respondent/s and shall contain the following:

- A. The names and addresses of the parties to the action;
- B. The date, nature and place of proceedings;
- C. Directive that respondent/s answers the complaint within fifteen (15) days from receipt of summons together with a copy of the complaint.

Sec. 3. Service of Summons, Writs, and Processes.

All summons, writs and processes shall be served either by registered mail or personally to the complainant and the respondent/s and any interested party prior to the proceedings. Personal services of summons shall be made by handing a copy thereof to the respondent in person or to his authorized representative or, if the latter refuses it, by tendering it in his presence, provided that where a party is represented by counsel or authorized representative, service shall be made on the latter.

Sec. 4. Default.

Should the respondent fail to answer the complaint within the reglementary period as provided for in the summons, he shall be declared in default and the BOA shall proceed with the hearing ex parte, and shall decide the case on the evidence presented. However, respondent who filed his answer but failed to appear in person or by counsel on the preliminary hearing shall be declared as in default and the proceedings shall proceed ex parte.

Amanah Islamic Bank Rules and Regulations

Rule X - Effectivity

Sec. 1. Effectivity.

These rules shall take effect fifteen (15) days after approval by the Board of Directors of the Al Amanah Islamic Investment Bank of the Philippines.

Makati, Metro Manila, March 30, 1993

APPROVED BY:

**THE BOARD OF DIRECTORS
BOARD RESOLUTION NO. 92C-30-56, SERIES OF 1993**

**(sgd) ABDEL AZIZ DIMAPUNONG
Chairman and Chief Executive Officer**

**(sgd) ATTY. MACAPANTON ABBAS, JR.
Member**

**(sgd) GRANDE M. DIANATON
Member**

**(sgd) ALI MALAMBUT
Member**

**(sgd) ATTY VICTOR SANTOS
Member**

**(sgd) ABDUL MALIK RANGAIG
Member**

CERTIFIED BY:

**(sgd) ATTY. KUNUNG U. PUMBAYA
Secretary to the Board**

Chapter 4

General comments on the Rules and Regulations

Illegal portion of the IRR

When the IRR for the Islamic Bank was formulated by the Monetary Board in 1996, it was obviously done in haste. The IRR includes all sort of rules and regulations applicable to all banks in general including the receipt and payment of interests (riba) which is what the charter prohibits, made illegal and punishable.

Republic Act 6848 provides:

SEC. 44. Definition of Terms. - For purposes of this Act, the following definition of terms is hereby adopted:

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(2) **Islamic banking business means banking business whose aims and operations do not involve interest (riba) which is prohibited by the Islamic Shari'a principles [Underscoring supplied] ;**

(3) Shari'a has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of this Act, it is construed by reference to pertinent Qur'anic ordinances and applicable rules in Islamic jurisprudence or business transactions;

(4) Riba has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of banking activities, **the term include the receipt and payment of interest in the various types of lending and borrowing and in the exchange of currencies on forward basis; [Underscoring mine]**

On the contrary, BSP Circular 105, the IRR provides:

Sec. 47. Circular 105. Transformation to Islamic Banking Business

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During the transformation period, the Bank **may continue to perform conventional banking activities under R.A. 337**, as amended, insofar as they are not in conflict with R.A. 6848, and the applicable rules and

Amanah Islamic Bank Rules and Regulations

regulations of the Bangko Sentral Ng Pilipinas.

This rule is covered with smokescreen, almost amounting to a cover up. It is to be noted that there was a clear conflict between R.A. 337 and R.A. 6848. The former was the old General Banking Law which allows the payment and receipt of interests. On the other hand, R A 6848 is the charter of the Al Amanah Islamic Investment Bank of the Philippines which prohibit, made illegal and punishable the payment and receipt of interest. But this is already moot and academic now because RA 337 was the old General Banking law that was already repealed by the new GBL of 2000. And the Islamic Bank is now governed by its charter.

Omissions and cover up

Republic Act 6848 provides:

SEC. 39. - In order to achieve the international and domestic objectives of Islamic banking business, **the provisions of the following acts and laws shall not apply to the Islamic Bank to the extent as herein rendered inoperative:**

(1) **The provisions of the Central Bank Act and the General Banking Act** with particular reference to the determination of bank interest rates, loans and discounts, and any interest-bearing instruments or charge: Provided, that nothing contained herein shall be construed to impair the powers of the Central Bank to supervise and regulate the activities of the Islamic Bank;

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SEC. 43. - The Monetary Board of the Central Bank of the Philippines shall formulate the necessary rules and regulations to carry out the provisions of this Charter for the purpose of providing adequate credit facilities primarily to the people of the Autonomous Region, **and to supervise the operation of the Islamic Bank in accordance with the universal principle of the Islamic Shari'a. [Underscoring ours]**

SEC. 50.

This Act, upon its effectivity, shall be deemed accepted for all legal intent and purposes as the Statutory Articles of Incorporation of the Al Amanah Islamic Investment Bank of the Philippines; and that notwithstanding the provision of any existing law to the contrary, **said Islamic Bank shall be deemed registered and duly authorized to do business and operate as**

Amanah Islamic Bank Rules and Regulations

an Islamic Bank as of the date of approval of this Act. [Underscoring ours]

On the other hand, BSP Circular 105 did not touch on the fact RA 6848 provides certain exemptions of the Islamic Bank from certain provisions of the Central Bank Act, RA 267 And the General Banking Act., RA 337. Instead of highlighting these extraordinary exemptions, the Monetary Board superimposed on the IRR the applicability of other banking laws, rules and regulations. This is clearly a reversal of the intended exclusion of the Islamic Bank from other laws, rules and regulations. It was an attempt to rewrite the law which is prohibited by the Supreme Court, as mentioned earlier. Again, the Supreme Court warns:

“The Monetary Board may not tread on forbidden grounds. It cannot rewrite other laws. That function is vested solely with the legislative authority.

Cover up in the IRR

BSP Circular 105 provides:

Sec. 46. Supervision; Applicability of Banking Laws, Rules and Regulations

The Islamic Bank shall be under the supervision of the Bangko Sentral. The provisions of other banking laws, MRBOFI, as well as the existing Rules and Regulations of the Bangko Sentral, particularly those enumerated under Annex "B", and other pertinent laws insofar as they are not in conflict with the provisions of R.A. No. 6848 and these Rules and Regulations shall be applicable to the Islamic Bank.

It can be seen very clearly that there is an amount of cover up in the IRR to frustrate the nature of the Islamic Bank as well defined under its charter and to defeat the very essence of Islamic banking.

Chapter 5

Bangko Sentral Circular 105

**Bangko Sentral Ng Pilipinas
(Formerly Central Bank of the Philippines)**

SPECIAL RULES AND REGULATIONS ON ISLAMIC BANKING

Central Bank Circular No. 105, Series of 1996

Implementing Rules and Regulations of

Republic Act No. 6848 (The Islamic Bank Charter)

Pursuant to Section 43 of R.A. 6848, otherwise known as "The Charter of the Al Amanah Islamic Investment Bank of the Philippines", the Monetary Board, in its Resolution Nos. 161 and 244 dated February 14 and March 6, 1996, respectively, approved the following Implementing Rules and Regulations:

Sec.1. Domicile and Place of Business

The principal domicile and place of business of the Al-Amanah Islamic Investment Bank of the Philippines, hereinafter called the Islamic Bank, shall be in Zamboanga City. It may establish branches, agencies or other offices at such places in the Philippines or abroad subject to applicable laws, rules and regulation of the Bangko Sentral ng Pilipinas.

Sec. 2 Purpose and Basis

The primary purpose of the Islamic Bank should be to promote and accelerate the socioeconomic development of the Autonomous Region by performing banking, financing and investment operations and to establish and participate in agricultural, commercial and industrial ventures based on the Islamic concept of banking.

All business dealings and activities of the Islamic Bank shall be subject to the basic principles and rulings of Islamic Shari'ah within the purview of the aforementioned declared policy.

Any zakat or "tithe" paid by the Islamic bank on behalf of its shareholders and depositors shall be considered as part of compliance by the Islamic Bank with its obligations to appropriate said zakat fund and to disburse it in legitimate channels to be ascertained first by the Shari'ah Advisory Council.

Sec. 3 Shari'a Advisory Council

Amanah Islamic Bank Rules and Regulations

The Shari'a Advisory Council of the Islamic Bank shall be composed of at least three (3) but not more than five (5) members, selected from among Islamic scholars and jurists of comparative law.

The members shall be elected at a general shareholders meeting of the Islamic bank every three (3) years from a list of nominees prepared by the Board of Directors of the Islamic Bank. The Board is hereby authorized to select the first Shari'a Advisory Council and to determine their remuneration.

[For commentaries on this section, please read a related booklet: The Islamic Bank Charter, Annotated, by this same author]

Sec. 4. Functions of the Shari'a Advisory Council

[This is a verbatim copy of Section 5 of the charter]

The functions of the Shari'a Advisory Council shall be to offer advice and undertake reviews pertaining to the application of the principles and rulings of the Islamic Shari'ah to the Islamic Bank transactions, but it shall not directly involve itself in the operation of the Bank.

Any member of the Shari'a Advisory Council may be invited to sit in the regular or special meetings of the Board of Directors of the Islamic Bank to expound his views on matters of the Islamic Shari'a affecting a particular transaction but he shall not be entitled to vote on the question presented before the board meetings.

Sec. 5. Islamic Bank's Powers

[This is a verbatim copy of Section 6 of the charter]

The Al-Amanah Islamic Investment Bank of the Philippines, upon its organization, shall be a body corporate and shall have the power:

- 1) To prescribe its by-laws and its operating policies;
- 2) To adopt, alter and use a corporate seal;
- 3) To make contracts, to sue and to be sued;
- 4) To borrow money; to own real or personal property and to introduce improvements thereon, and to sale mortgage or otherwise dispose of the same;
- 5) To employ such officers and personnel, preferably from the qualified Muslim sector, as may be necessary to carry Islamic banking business;
- 6) To establish branches, agencies and correspondent offices in provinces and

Amanah Islamic Bank Rules and Regulations

cities in the Philippines, particularly where Muslims are predominantly located, or in any other areas in the country or abroad as may be necessary to carry on its Islamic banking business, subject to the rules and regulations of the Bangko Sentral;

7) To perform the following banking services:

- a) Open current or checking accounts;
- b) Open saving accounts for safekeeping or custody with no participation in profit and losses unless otherwise authorized by the account holders to be invested;
- c) Accept investment account placements and invest the same for the term with the Islamic Bank's funds in Islamically permissible transactions on participation basis;
- d) Accept foreign currency deposits from banks, companies, organization and individuals, including foreign governments;
- e) Buy and sell foreign exchange;
- f) Act as correspondent of banks and institutions to handle remittances or any fund transfers;
- g) Accept drafts and issue letters of credit or letters of guarantee, negotiate notes and bills of exchange and other evidences of indebtedness under the universally accepted Islamic financial Instruments;
- h) Act as collection agent insofar as the payment orders, bills of exchange or other commercial documents are exclusive of riba or interest prohibitions;
- i) Provide financing with or without collateral by way of Al-Ijarah (leasing), Al-Bait ul Takjiri (sale and leaseback), or Al-Murabaha (cost-plus profit sales arrangement);
- j) Handle storage operations for goods or commodity financing secured by warehouse receipts presented to the bank;
- k) Issue shares for the account of the institutions and companies assisted by the bank in meeting subscription calls or augmenting their capital and/or fund requirements as may be allowed by law;
- l) Undertake various investments in all transactions allowed by the Islamic Shari'a in such a way that shall not permit the haram (forbidden), not forbid the halal (permissible);

8) To act as an official depository of the government or its branches, subdivisions and instrumentalities and of government-owned or controlled corporations, particularly those doing business in the Autonomous Region;

9) To issue investment participation certificates, muquaradah (non-interest-bearing bonds), debentures, collaterals and/or the renewal of financing of the same, with the approval of the Monetary Board of the Bangko Sentral, to be issued by the Bank in its financing operations for projects that will promote the economic development primarily of the Autonomous Region;

10) To carry out financing and joint investment operations by way of mudarabah

Amanah Islamic Bank Rules and Regulations

partnership, musharaka joint venture or by decreasing participation, murabaha purchasing for others on a cost-plus financing arrangement, 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;

11) To invest in the equity of allied undertakings, financial or non-financial, as well as the equity of enterprises engaged in non-allied activities, as the Monetary Board has declared or may declares appropriate from time to time, subject to the limitations and conditions provided for under the Manual of Regulations for Banks and Other Financial Intermediaries - Book I (MRBOFI); and

(Authors Note: Under the new General Banking Law of 2000, the Islamic Bank is not covered by the Manual of Regulations for Banks and Other Financial Intermediaries - Book I (MRBOFI). This Manual of Regulations was formulated under the General Banking Act which is already a non-existing law. This Manual of Regulations is also inconsistent with the new GBL of 2000.)

12) To the exercise the powers granted under R.A. No 6848 and such incidental powers as may be necessary to carry on its business, and to exercise further the general powers mentioned in the Corporation Law and the General Banking Act, insofar as they are not inconsistent or incompatible with the provisions of R.A. 6848.

SEC. 6. Authorized Capital Stock

[This is a verbatim copy of Section 7 of the charter]

The authorized capital stock of the Islamic Bank shall be One billion pesos (P1,000,000,000) divided into ten million (10,000,000) common shares with par value of One hundred pesos each. All shares are nominative and indivisible. The subscription to and ownership of such shares, including the transfer thereof to third parties, shall be limited to persons and entities who subscribe to the concept of Islamic banking.

SEC. 7. Classification of Shares: Its Features.

[This is a verbatim copy of Section 8, of the charter]

The Islamic Bank's authorized capital stock shall have the following classifications and features in relation to its Islamic banking operation:

- (1) Series "A" shares shall comprise five million one hundred thousand (5,100,000) shares equivalent to Five hundred ten million pesos (P510,000,000) to be made available for subscription by the present stockholders

Amanah Islamic Bank Rules and Regulations

of the Philippine Amanah Bank namely: the National Government, and such other financial entities as it may designate.
(2) Series "B" shares shall comprise nine hundred thousand (900,000) shares equivalent to Ninety million pesos (P90, 000,000) to be made available for subscription by the Filipino individuals and institutions.
(3) Series "C" shares shall comprise four million (4,000,000) shares equivalent to Four hundred million pesos (P400, 000,000) to be made available for subscription by Filipino and foreign individuals and/or institutions or entities.

Any shareholder may exercise its preemptive right to consolidate ownership of the outstanding shares as hereinafter increased: Provided, That the common shares of the Philippine Amanah Bank which have been issued and outstanding shall form part of the increased capitalization of the Islamic Bank, subject to the concurrence of the existing shareholders of the Philippine Amanah Bank.

The Islamic Bank is authorized to reacquire its common shares that are held privately, provided it has sufficient surplus and/or accumulated earnings for the purpose.

The Islamic Bank may take the necessary steps to have its series "B" shares listed in any duly registered stock exchange.

Sec. 8. Sale or Transfer of Shares

[This is part of Section 24, of the charter, entitled Periodic Reports]

The Islamic Bank shall make a report to the Bangko Sentral whenever a change is about to take place in relation to the ownership or control of the Bank. The approval of the Monetary Board shall be required in the following changes:

- 1) Any proposal for the sale or disposal of its share or business, or other matters related thereto, which will result in a change of the control of management of the Islamic Bank in the following cases:
 - a) Any sale or transfer of ownership or control of more than twenty percent (20%) of the voting stock of the Bank to any person whether natural or juridical; and
 - b) Any sale or transfer or a series of sales or transfers which will effect a change in the majority ownership or control of the voting stock of the Bank from one group of persons to another group.
- 2) Any scheme for reconstruction or for consolidation or merger, or otherwise, between the Islamic Bank and any other company wherein the whole or any part of the undertaking of the property of the Islamic Bank is to be transferred to another corporation.

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3) Acquisition by foreign banking institutions, including their wholly or majority-owned subsidiaries and their holding companies having majority holdings in such foreign banking institutions.

Sec. 9 Privatization

[This is the BSP version of Section 47 of the charter]

The Islamic Bank may privatize its ownership. For this purpose, any limitation on the transfer of shares shall not be applicable with respect to the shareholdings of the National Government, Social Security System, Government Service Insurance System, Philippine National Bank and Development Bank of the Philippines.

(Author's note :)

Note 9-1. Even before the creation of the Islamic Bank under Republic Act 6848, the shareholdings of the Philippine National Bank in the defunct Philippine Amanah Bank (PNB) were already transferred to the Asset Privatization Trust (APT). The Philippine National Bank was never a stockholder of the Al Amanah Islamic Investment Bank of the Philippines. It was rather a stockholder of the defunct Philippine Amanah Bank.

Note- 9-2. As of this writing, the Social Security System (SSS) is no longer a stockholder of the Al Amanah Islamic Investment Bank of the Philippines. The SSS transferred its interests to the Committee on Privatization.

Note 9-3. As of this writing, the Government Service Insurance System (GSIS) is no longer a stockholder of the Al Amanah Islamic Investment Bank of the Philippines, its interest having been transferred to the Committee on Privatization.

Note 9-4 As of this writing, the Development Bank of the Philippines is no longer a stockholder of the Al Amanah Islamic Investment Bank of the Philippines, its interest having been transferred to the Committee on Privatization.

Transactions affecting the shares of stocks of the Islamic Bank shall be subject to existing rules and regulations governing transfer of shares and ceilings on stockholdings, insofar as they are not in conflict with any provisions of R.A. No. 6848 and other pertinent laws, rules and regulations.

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(Author's Notes)

Note 9-5. With the passage of the New General Banking Law of 2000, Republic Act No. 8791, transactions affecting the shares of stocks of the Islamic Bank are not subject to all rules and regulations but only to Rules and Regulations under Bangko Sentral Circular 105, Series 1996, and BSP Circular 271 that was formulated pursuant to RA 8791. The Other rules and regulations on conventional banking are inconsistent with Section 71 of the New General Banking Law of 2000.

SEC. 10. Board of Arbitration.

[This is a verbatim copy of Section 9 of the charter]

The Board of Directors of the Islamic Bank, acting as an arbitrator, shall settle by the majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. The Board shall not be bound in this respect to the procedures of laws on civil and commercial pleadings, except in regard to the basic principles of due process. If the dispute is between the Islamic Bank and any of the investors or the shareholders, a Board of Arbitration shall settle such dispute. In this case, the Board of Arbitration, consisting of three (3) members, shall be formed by two (2) parties to the dispute within forty-five (45) days from receipt of written notice by either party to the dispute. The three (3) members shall be selected as follows: one (1) arbitrator from each party who shall then select a casting arbitrator as the third member of the board. The three (3) shall select one of them to preside over the Board of Arbitration. The selection by each party of its arbitrator shall be deemed as an acceptance of the arbitrator's decision and of its finality. In the event that one of the two parties shall fail to select its arbitrator or in the case of no agreement on the selection of the casting arbitrator or the presiding member of the Board of Arbitration within the period specified in the preceding paragraph, the matter shall be submitted to the Shari'a Advisory Council to select the Arbitrator, the casting arbitrator or the presiding member, as the case may be.

The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration which it shall follow in hearing and deciding the dispute. The decision shall include the method of its execution and the party that shall incur the costs of arbitration. The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission.

The Board of Arbitration's decision, shall in all cases, be final and executory. It shall be valid for execution in the same manner as final judgments are effected under Republic Act No. 876 otherwise known as the Arbitration Law.

SEC. 11. Incentives to Islamic Banking.

[This is a verbatim copy of Section 10 of the charter]

Subject to the provisions of Section 74 of the New Central Bank Act, the provisions of the Omnibus Investment Code on the basic rights and guarantees of investors are made applicable to the commercial operations of the Islamic Bank in respect to repatriation or remittance of profits from investments, and to protection against nationalization, sequestrations, or expropriation proceedings. Any proceedings of judicial or administrative seizure may not be taken against the said property or investment except upon a final court judgment.

SEC. 12. Grants and Donations. -

[This is almost a verbatim copy of Section 11 of the charter]

The Islamic Bank shall accept grants and donations, endowments, and subsidies, or funds and or property offered by individuals and organizations, who may earmark such grants for a specific purpose or for such other purposes beneficial to the Muslim communities, without prejudice to the general objectives of the Islamic Bank.

The financial statement and books of accounts of such funds shall be maintained separately but may be supplemented to the Islamic Bank's balance sheet. Under special circumstances in which the Board of Directors considers it advisable to promote or facilitate Islamic banking business and commercial operations, the Islamic Bank may seek financing from governments, organizations, individuals or banks always without prejudice to the provisions of Section 43 of R.A. 6848.

SEC. 13. Non-Interest Bearing Placements.

[This is the BSP version of Section 12 of the charter]

The Islamic Bank is authorized to accept deposits from governments, banks, and organizations or other entities and individuals from within the Philippines or abroad which shall form under any of the following non-interest bearing placements:

- (1) Savings accounts
- (2) Investment participation accounts
- (3) Current accounts and other deposit liabilities

Any deposit received by the Islamic Bank without authorization to invest shall be treated as current account and savings account, as the case may be, and may be withdrawn wholly or partly at any time, under the principle of Al-Wadiah (Safe Custody). The Islamic Bank shall provide check books for its current account

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depositors and savings passbook for savings account depositors and other usual services connected therewith.

The Islamic Bank, as its absolute discretion, may reward the customers for the use of their funds. The Board of Directors shall formulate rules and guidelines which should be consistent with the Shari'a principle, in the giving of rewards to the customers.

All deposits received with authorization to invest for a given period of time shall form part of the general pool of placements allocated for the investment portfolios of the Islamic Bank and may be added to its working capital to be invested in any special projects or in general areas of investments or commercial operations of the Bank. These deposits shall be called as "Investment Participation Accounts" in which under the Principle of Al Mudarabah, the Islamic Bank acts as the "entrepreneur" and the customers as the "Provider of Capital" and both shall agree through negotiation on the ratio of distribution of the profits generated from investment of the funds. In the event of loss, the customers shall bear all the losses.

SEC. 14 . Investment of Funds.

[This is a copy of Section 13 of the charter with the same title]

The Islamic Bank shall have the capacity of agent or attorney and shall act with full authority on behalf of the group of depositors in general in investing their co-mingled deposits without prejudice to the following sections and shall ensure a degree of liquidity to be determined by the Board of Directors to meet the current obligations of the Islamic Bank including drawings from savings accounts and current accounts: Provided, That such degree of liquidity shall be subject to the reserve requirements as may be determined by the Bangko Sentral. The Board of Directors shall determine the period for an investment participation account. Investment of funds shall be undertaken by the Islamic Bank acting on behalf of the group of depositors or investors in selected areas of investment under such terms and conditions as the Board of Directors may determine by way of mudarabah or other forms of joint investment permitted by Islamic Shari'a principle.

SEC. 15. Return on Investment Funds.

[This is almost a verbatim copy of Section 14 of the charter]

The depositors or investors in joint investment participation accounts shall be entitled to a portion of the return on investment according to the deposit balances and its period. The profits on participation account with authorization to invest in specific transaction shall be calculated on the same basis as on the capital funds invested as determined by the Board of Directors pursuant to Section 35 of R.A. 6848.

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SEC. 16. Allocation of Resources.

[This is almost a verbatim copy of Section 15 of the charter with the same title]

The Islamic Bank may allocate part of its own investible funds or of the deposits on hand to finance investment projects and carry on its Islamic banking business directly or indirectly under its own supervision. For this purpose, it may create and finance investment companies or affiliates which shall manage investment projects on behalf of and under the supervision of the Islamic Bank and for its own account.

The Islamic Bank shall ascertain the viability and soundness of investment projects which it may directly supervise and those in which it may participate with part of its own funds, with the general pool of investors' funds with authorization. The Islamic Bank shall have the right to inspect and supervise the projects which it shall finance or in which it is the majority shareholder. The original capital and related profits shall be remitted in the same currency it was originally contributed or in one of the convertible currencies, as the Board of Directors shall determine in accordance with R. A. 6848.

SEC. 17. Authorized Banking Services.

[This is almost a verbatim copy of Section 16 of the charter with the same title]

The Islamic Bank shall exercise all the powers enumerated under Section 6 of R. A. 6848 and perform all the services of a bank, except as otherwise prohibited by R. A. 6848: Provided That transactions with any customer, company, corporation or firm shall be permitted for discounts by the Bangko Sentral.

Sec. 18. Acceptance of Government Funds

[This is the BSP version of Section 6 (8) of the charter]

Pursuant to Sec. 6 (8) of R.A. 6848, the Islamic Bank shall act as an official depository of the Government or its branches, subdivisions and instrumentalities and of government-owned or controlled corporations, particularly those doing business in the autonomous region. Government funds placed with the Islamic Bank shall be limited to working balances. All government deposits in excess of working balances shall be placed with the Bangko Sentral.

Once privatized, acceptance by the Islamic Bank of government funds or deposits shall be subject to existing laws and regulations governing the acceptance of such funds by private commercial banks which include prior Monetary Board approval.

The government deposits held by the Islamic Bank shall be subject to reserve and liquidity floor requirements as the Monetary Board may prescribe.

SEC. 19. Authorized Commercial Operations.

[This is a verbatim copy of Section 17 of the charter]

The Islamic Bank may operate as an Investment House pursuant to Presidential Decree No. 129, as amended, and as a Venture Capital Corporation pursuant to Presidential Decree No. 1668, and by virtue thereof, carry on the following types of commercial operations:

(1) The Islamic Bank may have a direct interest as a shareholder, partner, owner or any other capacity in any commercial, industrial, agricultural, real estate or development project under mudarabah form of partnership or musharaka joint venture agreement or by decreasing participation, or otherwise invest under any of the various contemporary Islamic financing techniques or modes of investment for profit sharing.

(2) The Islamic Bank may carry on commercial operations for the purpose of realizing its investment banking objectives by establishing enterprises or financing existing enterprises, or otherwise by participating in any way with other companies, institution or banks performing activities similar to its own or which may help accomplish its objectives in the Philippines or abroad, under any of the contemporary Islamic financing techniques or modes of investment for profit sharing; and

(3) The Islamic Bank may perform all business ventures and transactions as may be necessary to carry out the objectives of its charter within the framework of the Islamic Bank's financial capabilities and technical considerations prescribed by law and convention: Provided, That these shall not involve any riba or other activities prohibited by the Islamic Shari'a principles.

Author's Notes:

Note 19-1. On October 21, 1997, PD 129 was amended by Republic Act No. 8366, otherwise known as An Act Liberalizing the Philippine Investment House Industry, amending certain sections of Presidential Decree 129, as amended, otherwise known as the Investment House Law. Under Republic Act No. 8366, it was declared a matter of government policy "to expand and strengthen the capital base of the economy in order to ensure sustained economic growth and development". "Toward this end", this law states, "the Philippine investment house industry is hereby liberalized, increasing foreign equity participation..."

Under Section 2 of RA 8366, Section 5 of PD 129, was amended to read as follows:

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"Sec. 5. Citizenship requirements. - At least forty percent (40%) of the voting stock of any Investment House shall be owned by citizens of the Philippines. In determining the percentage of foreign-owned voting stocks in Investment Houses, the basis for the computation shall be the citizenship of each stockholders, and, if the stockholder is a corporation, the citizenship of the individual stockholders holding voting shares in that corporation."

"Foreign nations may", now "become members of board of directors to the extent of the foreign participation in the equity of said enterprise.. So now, it is legally possible for the Islamic Bank to have a board of directors with foreigners in the majority. This would be consistent with Section 38 of the charter which is aimed at achieving” the international and domestic objectives of Islamic banking business”.

Sec. 20. Employee’s Share Schemes

[This is almost a verbatim copy of Section 18 of the charter]

The Board of Directors may adopt an employee profit sharing scheme under any of the following ways:

- (1) Any arrangement under which the directors, officers and employees of the Islamic Bank receive in addition to their salaries and wages a share, fixed beforehand, in the profits realized by the Islamic Bank or by affiliate companies of the Islamic Bank to which the profit sharing scheme relates, and
- (2) Any arrangement under which the Islamic Bank facilitates the acquisition by its directors, officers and employees of common shares of stock either as share- incentives, share-bonus options, or any other share-saving schemes as the Board of Directors may determine.

No scheme shall be approved by the Board of Directors under this section unless it is satisfied that the participant in the profit sharing scheme is bound by a contract with the Islamic Bank by virtue of which an appropriation of shares has been made for the purpose. The shares so purchased or appropriated shall be deposited in escrow with the Bank.

The Board of Directors of the Islamic Bank shall then constitute the trustees of an approved scheme, whose functions with respect to the common shares held by them are regulated by Chapter VII of the General Banking Act and other pertinent laws. The terms of the approved scheme shall be prescribed by the Board of Directors and embodied in a deed of instrument.

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The adoption of and any change in the employee profit sharing scheme shall be reported to the appropriate supervising and examining department of the Bangko Sentral within thirty (30) calendar days from the date of approval.

SEC. 21. Investment Ceilings; Business Limits.

[This is a copy of Section 19 of the charter]

The Islamic Bank shall observe the following investment ceilings and business limits in its operations;

(1) The aggregate credit facilities or any other liabilities of any customer of the Islamic Bank shall not exceed at all times fifteen per centum (15%) of the unimpaired capital and surplus of the Bank.

For purposes of determining compliance with this regulation, credit facilities shall refer to:

- a) Interbank Receivable
 - b) Financing and Investment
 - c) Trade Financing
 - d) Agrarian Reform/Other agricultural Financing - P.D. No. 717
 - e) Bills Purchased
 - f) Customers' Liability on Bills/Drafts under Letters of Credit and/or Trust Receipts
 - g) Customers' Liability for this Bank's Acceptances Outstanding
 - h) Trading Account Securities - Financing
 - I) Underwriting Accounts - Debt Securities
 - j) Stand-by Letters of Credit
 - k) Such other facilities as may be determined by the Monetary Board
- Credit facilities granted by the Islamic Bank to any other bank, as well as deposits maintained by it in any bank, shall be subject to the credit facility limit to any single borrower as herein prescribed.

(2) The aggregate amount of investment portfolios for any single industry (following the major industry groupings in the 1997 Philippine Standard Industrial Classification) shall at no time exceed thirty per centum (30%) of the Islamic Bank's investment capacity. Investment capacity shall mean the total unimpaired capital and surplus deposits and borrowings minus investment in bank premises.

(3) The Islamic Bank shall not grant unsecured loans except qardhasan (benevolent loans). Such outstanding unsecured loans or credit accommodations which the Islamic Bank may extend at any time without security or in respect of any advance, loan or credit facility made with the security wholly or partly

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whenever at any time it exceeds the aggregate market value of the assets constituting the security, shall be limited to fifty thousand pesos (P50, 000.00) to any person, company, corporation or firm.

(4) A credit facility granted to any person for the purpose of financing the acquisition of shares in any company, corporation or firm shall not exceed fifty percent (50%) of the appraised value of the shares at the time the credit facility is granted. Appraised value, in the case of listed shares, shall mean the weighted average price in the stock exchange. For unlisted shares, the appraised value shall mean the book value of the shares.

SEC. 22. Loans and Credit Facilities to Directors, Officers, Employees and Stockholders.

[This is the BSP version of Section 20 of the charter]

1. General Policy. Except as otherwise provided in these regulations, the Islamic Bank shall not directly or indirectly grant an advance, loan or credit facility to any of its directors, officers, employees or stockholders, or to any other person for who any of them is a guarantor, or in any manner be an obligor for money granted by the Islamic Bank.

2. Direct loans to Officers, Employees and Stockholders. Whenever the Islamic Bank is satisfied that special circumstances exist, a loan not exceeding at any one time an amount equivalent to six months remuneration, may be granted to an officer or employee on such terms and conditions as the Islamic Bank deems fit: Provided, however, That loans and advances to officers and employees in the form of fringe benefits granted in accordance with the rules and regulations prescribed under Section 1337 of the MRBOFI shall not be subject to the preceding limitation, nor to the ceiling on unsecured loans prescribed in Section 21.

Sec. 23. Past Due Accounts

Accounts considered past due. The following shall be considered as past due:

[This section is not found in the charter]

- 1) Loans or receivables payable on demand - if not paid on the date indicated on the demand letter, or within six (6) months from date of grant, whichever comes earlier;

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2) Financing and investment accounts not paid at maturity/expiry date or not paid in accordance with the terms of payment stipulated in the agreement/contract;

3) Customers' liability on drafts under LC/TR

a) Sight Bills - if dishonored upon presentment for payment for not paid within thirty (30) days from date of original entry, whichever comes earlier;

b) Usance Bills - if dishonored upon presentment for acceptance or not paid on due date, whichever comes earlier; and

c) Trust Receipts - if not paid on due date;

4) Bills and other negotiable instruments purchased - if dishonored upon presentment for acceptance/payment or not paid on maturity date, whichever comes earlier: Provided, however, That an out-of-town check and a foreign check shall be considered as past due if outstanding for thirty (30) days and forty-five (45) days, respectively, unless earlier dishonored;

5) Credit facilities or receivables payable in installments - the total outstanding balance thereof shall be considered past due in accordance with the following schedule:

Mode of Payment Minimum Number of
Installment in Arrears

Monthly 6

Quarterly 2

Semestrally 1

Annually 1

Provided, however, That when the total amount of arrearages reaches twenty percent (20%) of the total outstanding balance of the credit facility/receivable, the total outstanding balance of the credit facility/receivable shall be considered as past due, notwithstanding the number of installments in arrears: Provided, further, That for modes of payment other than those listed above (e.g., daily, weekly or semi-monthly), the entire outstanding balance of the loan/receivable shall be considered as past due when the total amount of arrearages reaches ten percent (10%) of the total receivable balance;

6) Credit card receivables - if the amount due is not paid within ten (10) days from the deadline indicated in the billing statement; and

7) All items in litigation as defined in the Islamic Bank's Manual of Accounts. For the purpose of determining delinquency in the payment of obligations as a ground for disqualification of bank directors and officers, any due and unpaid

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loan/financing installment or portion thereof, from the time the obligor defaults, shall be considered as past due.

Sec. 24. Equity Investments

1. Financial Allied Undertakings. With prior approval of the Monetary Board, the Islamic Bank may invest in the equity of the following financial allied undertakings:

- a) Leasing companies;
- b) Banks;
- c) Investment houses;
- d) Financing companies;
- e) Credit card operations;
- f) Financial institutions addressed/catering to small and medium-scale industries;
- g) Companies engaged in stock brokerage/security dealership/brokerage;
- h) Foreign exchange dealers/brokers; and
- I) Insurance companies.

Provided, That any such undertaking is the primary purpose for which a particular enterprise was established and the volume of its business indicates that it is principally engaged in such undertaking.

The equity investment of the Islamic Bank in a single financial allied undertaking shall be, in relation to the total subscribed capital stock and in relation to the total voting stock of the allied undertaking, within the following ratios:

Allied Undertaking Limit

Commercial banks Up to 49%

Thrift banks and rural banks Up to 100%

Other financial allied undertakings Up to 100% without prejudice to the limitations prescribed in Subsec. 1378.1 of the MRBOFI

Note 24-1. The MRBOFI is no longer relevant to the Islamic Bank after the passage of the New General Banking Law of 2000. The MRBOFI is applicable only to conventional banks.

Provided, That the equity investment in an insurance company of the Islamic Bank, any of its wholly or majority-owned subsidiaries, its directors, officers and stockholders owning two percent (2%) or more of the bank's subscribed capital stock, shall not exceed fifty-one percent (51%) of the total subscribed capital stock and the total voting stock of such insurance company.

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The equity investment of the Islamic Bank in a bank pursuant to R.A. No. 7721 shall be governed by the rules and regulations implementing said law.

2. Non-Financial Allied Undertakings.

The Islamic Bank may invest in the equity of the following non-financial allied undertakings:

- a) Warehouse companies;
- b) Storage companies;
- c) Safe deposit boxes;
- d) Companies engaged in the management of mutual funds but not in the mutual funds themselves;
- e) Management corporations engaged or to be engaged in activity similar to the management of mutual funds;
- f) Companies engaged in the provision of computer services;
- g) Insurance agencies: Provided, That no director, officer or stockholder of the Bank and their related interests hold/own more than twenty percent (20%) of the subscribed capital stock or equity of the insurance company for which the affiliate insurance acts as agent;
- h) Companies engaged in home building and home development;
- I) Companies providing drying and/or milling facilities for agricultural crops such as rice and corn;
- j) Companies engaged in insurance brokerage: Provided, That no director, officer, stockholder of the Islamic Bank or its related interests shall have financial interests in the insurance company/companies for which the affiliate insurance brokerage company acts as broker;
- k) Bank service corporations all of the capital of which is owned by one or more banks and organized to perform for and in behalf of banks the following services:
 - i) data processing systems development and maintenance;
 - ii) deposit and withdrawal recording;
 - iii) computation and recording of interests, service charges, penalties and other fees;
 - iv) check-clearing processing, such as the transmission and receipt of check-clearing items/tapes to and from the Bangko Sentral, collection and delivery of checks not included in the Philippine Clearing House System, as well as the recording of the same; and
 - v) printing and delivery of bank statements.
- l) Clearing house companies such as the Philippine Clearing House Corporation and the Philippine Central Depository, Inc.

Provided further, That any such undertaking is the primary purpose for which a particular enterprise was established and the volume of its business indicates that it is principally engaged in such undertaking.

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The Islamic Bank may acquire up to one hundred percent (100%) of the equity of non-financial allied undertaking. However, prior Monetary Board approval is required if the investment is in excess of forty percent (40%) of the total subscribed capital stock or forty percent (40%) of the total voting stock of such allied undertaking.

3. Investments in Non-Allied or Non-Related Enterprises. The broad category of undertakings in which the Islamic Bank may invest in directly or through its wholly or majority-owned subsidiary shall be subject to prior approval of the Monetary Board. Investments shall be allowed in enterprises engaged in certain activities in agriculture, mining and quarrying, manufacturing, public utilities, construction, wholesale trade and community and social services following the industrial groupings in the 1977 Philippine Standard Industrial Classification (PSIC) as enumerated in Annex I of Subsection 1380.1 of the MRBOFI, as amended. Individual equity investment in undertakings within these enumerated activities shall not require prior approval:

Provided, however, That within thirty (30) days after the investment, the Bank shall furnish the appropriate supervising and examining department of the Bangko Sentral such relevant information which may be required: Provided, further, That said investment is within the limits and restrictions set forth in the succeeding paragraphs of this section.

The equity investment of the Islamic Bank or of its wholly or majority-owned subsidiary, in any single non-allied enterprise shall not exceed thirty-five percent (35%) of the total subscribed capital stock nor shall it exceed thirty-five percent (35%) of the voting stock in the enterprise.

For the purpose of determining compliance with the ceiling prescribed in the preceding paragraph, (I) the equity investment of the Bank; (ii) the equity investment of the Bank's wholly or majority-owned subsidiaries; and (iii) the equity investment of directors, officers, and stockholders owning two percent (2%) or more of the subscribed capital stock of the Bank or of the Bank's wholly or majority-owned subsidiaries, shall be combined. In no case shall the total equity investments in a single non-allied enterprise of the Islamic Bank, together with the investments of other expanded commercial banks, non-bank financial intermediaries performing quasi-banks, non-bank financial intermediaries have equity investments in the enterprise, amount to fifty percent (50%) or more of the voting stock of that enterprise.

4. Other Limitations and Restrictions on Equity Investments. The following limitations and restrictions shall also apply regarding equity investments of the Islamic Bank:

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- a) The total equity investments of the Islamic Bank in any single enterprise, whether allied or non-allied, shall not at any time exceed fifteen percent (15%) of the Bank's net worth.
- b) The total amount of investment in equities made by the Islamic Bank in all enterprises, whether allied or non-allied, shall not exceed fifty percent (50%) of its net worth.

5. Investments Abroad. The ceiling provided for in the preceding paragraph shall apply to equity investments in and/or credit facilities to any enterprise abroad.

For purposes hereof, the phrase "equity investments in and/or credit facilities to" shall include any accommodation that gives rise to a creditor/debtor relationship such as deposits, money market placements, loans or any advances or any amount of funds granted or remitted by the Islamic Bank to its subsidiary/affiliate abroad including letters of comfort and deposits/placements abroad of the Bank which are hypothecated.

6. Exclusion of Underwriting Exposure from Ceiling. The exposure of the Islamic Bank arising from the firm underwriting of equity securities or enterprises shall not be counted in determining compliance with the ceilings prescribed for equity investments for a period of two (2) years from acquisition of such equity securities.

SEC. 25. Special Cash Account.

[This is a copy of Section 21 of the charter]

The Islamic Bank shall open a special cash account with the Bangko Sentral in which its liquid funds shall be deposited. Any transfer of funds from this account to other accounts shall be made only upon prior consultation with the Islamic Bank.

SEC. 26. Capital Funds Requirements.

The Islamic Bank shall maintain its combined capital accounts in proportion to its assets as prescribed by the General Banking Act and subject to the Rules and Regulations of the Bangko Sentral.

[This is a copy of Section 22 of the charter]

SEC. 27. Investment Risk Fund.

1. Creation. A reserve account, known as the Investment Risk Fund, shall be created in the books of the Islamic Bank, by annually setting aside an amount

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equal to ten percent (10%) of the profits realized during the financial year from the investment of the customer's deposits in the following operations:

- a) Financing & Investment
- b) Foreign Exchange Transactions
- c) Investment in Bonds & Other Islamic Financial Instruments
- d) Trading Account Securities
- e) Investments in Stocks
- f) Equity Investments
- g) Placements with Treasury Department
- h) Others

Should the accumulated reserves equal the authorized capital of the Islamic Bank, the Board of Directors may reduce the amount of the annual deduction to a minimal percentage until the aggregate reserves become double the amount of the capital, after which the herein authorized deduction shall cease to accrue to the reserve account.

2. Determination of Profits and Losses.

[Author's Note: This is the BSP version of Section 35 of the charter with this same title]

At the close of each financial year, the Islamic Bank shall determine the results of its operations. The Board of Directors shall, after deducting the general and administrative expenses, including remunerations of the Board of Directors and the Shari'a Advisory Council, determine annually what part of the income shall be appropriated to reserves, investors and shareholders. All accounts relating to financing and joint investment operations shall be kept separate from the separate accounts of the other banking activities and services offered by the Islamic Bank. The same rule with respect to the accounts of specific investments shall apply where such specific projects may have a separate account.

Losses incurred, if any, shall be deducted from the total profits realized for the financial year in which such losses are incurred, but any excess of losses over the profits which have been actually realized during that year may be deducted from the Investment Risk Fund opened for covering the risks of investment: Provided, That should the total profits realized in the year be insufficient to cover the losses incurred, the Islamic Bank shall carry out a comprehensive assessment to arrive at estimated profit and loss based on the market rates, from operations which are financed by the mudarabah funds and which have not reached the stage of final settlement by the end of the financial year.

3. Utilization. The Investment Risk Fund shall be invested for the benefit of the Islamic Bank in safe non-interest bearing transactions only, as authorized by the Board of Directors.

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The Board of Directors shall adopt policies on the creation and utilization of the Investment Risk Fund and the determination of profits and losses, within one (1) year from the date of this Circular.

SEC. 28. Periodic Reports

The Islamic Bank shall submit to the appropriate department/office of the Bangko Sentral the periodic reports enumerated under Annex "A" and such other reports as may be prescribed by the Monetary Board.

Sec. 29. Manual of Accounts

The Islamic Bank shall adopt/implement the Manual of Accounts for Al Amanah Islamic Investment Bank of the Philippines as approved by the Monetary Board in its Resolution No. 335 dated March 15, 1991.

SEC. 30. Board of Directors

The Board of Directors shall be composed of nine (9) members duly elected by the shareholders. The Board of Directors shall choose from among themselves the Chairman. The Board shall convene at the principal office once every three (3) months at the most upon notice by the Chairman or, whenever the need arises, upon the request of three (3) members of the Board of Directors. The Board may convene outside the Islamic Bank's principal office as the members shall determine in the by-laws of the Bank.

SEC. 31. Powers of the Board

The Board of Directors shall have the broadest powers to manage the Islamic Bank except such matters as are explicitly reserved for the shareholders. The Board shall adopt policy guidelines necessary to carry out effectively the provisions of R.A. 6848, as well as internal rules and regulations necessary for the conduct of its Islamic banking business and all matters related to:

- 1) credit and investments;
- 2) discretionary and delegated authorities;
- 3) risk management;
- 4) investment risk fund;
- 5) qardhasan (benevolent loans); and
- 6) personnel policies.

The Board of Directors shall have the power to appoint managers, authorized agents or legal representatives and shall vest them with signing authority on behalf of the Bank either severally or jointly in accordance with the operational procedures of the Bank.

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The Board shall cause the preparation of the Islamic Bank's balance sheet for each financial year within three (3) months at the latest from the end of each accounting period as well as the profit and loss statement according to accounting rules established and based on Islamic criteria. Copies of the audited annual balance sheet, profit and loss account, together with any note thereon, and the report of the auditor and the directors own report shall be provided to the shareholders before the date of the general meeting.

SEC. 32. Chief Executive Officer, Other Officers and Employees.

The Chairman of the Board of the Islamic Bank shall be the Chief Executive Officer of the Bank. He must have experience and training in Islamic banking. All other officers and employees of the Islamic Bank shall, upon the recommendation of the Chief Executive Officer, be appointed and removed by the Board which shall not be subject to Civil Service Law.

The Chief Executive Officer of the Islamic Bank shall, among others, execute and administer the policies, measures, orders and resolutions approved by the Board of Directors. In particular, he shall have the power and duty to execute all contracts in behalf of the Islamic Bank, to enter into all necessary obligations required or permitted under R.A. 6848, to report weekly to the Board of Directors the main facts concerning the operations of the Islamic Bank during the preceding week, and suggest changes in policy or policies which will serve the best interest of the Bank.

Sec. 33 Qualifications and Disqualification of Directors and Officers

The provisions of the MRBOFI - Book I regarding the qualifications and disqualifications of directors and officers shall be applicable to the directors and officers of the Islamic Bank.

[Note 33- 1: This is already removed by the new GBL of 2000]

SEC. 34 Business Development Office

The Islamic Bank shall have a Business Development Office which shall be responsible for the following:

- (1) To conduct periodic economic surveys and studies of the investment climate and opportunities in the Islamic Bank's sphere of operations and identify the viable projects which may be sponsored by the people of the Autonomous Region;
- (2) (2) To offer technical consultancy services in the preparation of project studies and in meeting other technical credit requirements of the

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Islamic Bank, including the provision of the management consultants at rates to be determined by the Board of Directors to projects financially assisted by the Islamic Bank; and

- (3) (3) To perform other functions as may be directed by the Board of Directors.

Sec. 35 General Shareholders' Meeting

The shareholders shall convene in a general meeting annually at the latest within six (6) months following the end of the financial year of the Bank at the place, date and time fixed in the notice. The attendance of shareholders representing at least sixty percent (60%) of the capital of the Islamic Bank shall constitute a quorum to do business and voting shall be by shares of stocks. For purposes of this section, "capital" shall refer to the Total Subscribed Capital, whether paid or unpaid.

No delinquent stock shall be voted for or be entitled to vote or to representation at any stockholders' meeting, nor shall the holder thereof be entitled to any of the rights of a stockholder except the right to dividends until and unless he pays the amount due on his subscription, including the cost and expenses incurred thereon, if any. Holders, of subscribed shares not fully paid which are not delinquent shall have all the rights of a stockholder.

Sec. 36. Purpose of General Meeting.

The general shareholders' meeting shall be convened purposely to hear the Board of Directors' report on the activities of the Islamic Bank, its financial condition, the auditor's report and to approve the balance sheet for the financial year ended and the profit and loss statement, to determine the portion of dividends to be distributed to the shareholders and the method of distribution, to appoint the auditors, and to elect the members of the Board of Directors and the Shari'a Advisory Council.

Sec. 37. Ordinary and Extraordinary Sessions

The general shareholders' meeting shall be presided over by the Chairman of the Board of Directors. All resolutions adopted by the general meeting in ordinary session assembled shall be taken by a vote of majority of the shareholders represented therein and in case of votes being equal; the Chairman shall cast his vote to break the tie. The resolutions of the general meeting adopted in accordance therewith shall be binding on all shareholders including those not in attendance or opposing the resolution.

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An extraordinary general meeting shall be required to pass resolutions related to the increase or decrease of capital of the Bank, the extension of its legal existence or matters affecting amendment of R.A. 6848. Resolutions of the extraordinary general meeting shall be deemed adopted when a majority vote of at least sixty-six and two-thirds plus one percent ($66 \frac{2}{3} + 1\%$) of the capital shares shall have been cast.

In no case shall the general meeting resolve to modify the object of the Bank as an Islamic Investment Bank.

Sec. 38. Bank Auditor; Reports

Subject to the approval by the shareholders, the Islamic Bank shall appoint an external auditor, whose qualifications and remunerations shall be fixed by the Board of Directors. The external auditor shall assume his functions from the date of his appointment until the date of the next general shareholders meeting. In case a vacancy occurs at any time during the year for any reason, the Board of Directors shall immediately appoint a replacement who shall serve until the next general shareholders' meeting.

The external auditor shall conduct an annual financial audit not later than thirty days after the close of the calendar year. Reports on such audit shall be made and submitted to the Board of Directors and the appropriate supervising and examining department of the Bangko Sentral not later than ninety days after the start of the audit.

For purposes hereof, an independent external auditor who may be engaged by the Bank shall refer to one who does not hold or own two percent (2%) or more of equity in the Bank. The Board of Directors, in a regular or special meeting, shall consider and act on the financial audit report and shall submit, within thirty (30) days after receipt of the report, a copy of its resolution to the appropriate supervising and examining department of the Bangko Sentral. The resolution shall show, among other things, the names of the directors present and absent, and the action(s) taken on the findings and recommendations.

In the exercise of his auditing functions, all books, accounts and documents of the Bank shall be made available to the auditor for inspection to ascertain its assets and liabilities.

Sec. 39. Confidential Information

Banking transactions of the Islamic Bank relating to all deposits of whatever nature are confidential and may not be examined, inquired or looked into by any person, government official, bureau or office except as provided in Sec. 38, or

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upon written permission by the depositor, or in cases where the money deposited or the transaction concerned is the subject of a court order.

It shall be unlawful for any official or employee of the Islamic Bank or any person as may be designated by the Board of Directors to examine or audit the books of the Bank to disclose or reveal to any person any confidential information except under the circumstances mentioned in the preceding paragraph.

Sec. 40. Accounting Period.

The financial year of the Islamic Bank shall be based on the Gregorian calendar, but the corresponding Islamic Hijra date shall be mentioned on all correspondences, contracts, printed materials, forms and records of the Islamic Bank. The accounting period shall commence from the first day of January and close on the last day of December each year.

SEC. 41. Sharing Between the Bank and the Investors

Not later than the 31st day of January of each financial year, the Board of Directors shall determine and publish the general percentages of profit to be allocated to the total funds participating in joint investments of the Islamic Bank. The Islamic Bank as a joint venturer (Mudarib) shall be entitled to certain percentage after deducting the amount allocated to investors. The Bank shall likewise be entitled to a share in the profits of joint investments in proportion to its own invested funds.

For the purpose of calculating funds employed in financing operations, priority shall be given to joint investment accounts and the holders of muquaradah (interest free) bonds.

All zakat due on the shareholder's capital and reserves represented by the pecuniary value of shares and the zakat due on the investor's funds or profits accruing to every depositor shall be paid to the zakat fund, subject to their instructions.

The Board of Directors shall adopt a policy on the sharing between the Bank and its investors which should be consistent with the Shari'a principle.

Sec. 42. Training of Technical Personnel.

The Islamic Bank shall promote and sponsor the training of technical personnel in the field of Islamic banking, finance and insurance. Towards this end, the Islamic

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Bank is hereby authorized to defray the costs of study, at home or abroad, of outstanding employees of the Islamic Bank, of promising university graduates or of any other qualified persons who shall be determined by proper competitive examinations. The Board of Directors shall prescribe rules and regulations to govern the training program of the Islamic Bank.

Sec. 43. Definition of Terms

For purposes of these Rules and Regulations, the following definition of terms shall apply:

- 1) Islamic banking business means banking business whose aims and operations do not involve interest (riba) which is prohibited by the Islamic Shari'a principles.
- (2) Shari'a has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of R.A. 6848, it is construed by reference to pertinent Qur'anic ordinances and applicable rules in Islamic jurisprudence on business transactions.
- 3) Riba has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of banking activities, the term include the receipt and payment of interest in the various types of lending and borrowing and in the exchange of currencies on forward basis.
- 4) Zakat has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of R.A. 6848, it represents and annual "tithe" payable by the Bank on behalf of its shareholders and investors in compliance with Islamic Shari'a principles;
- 5) Depositor means a person or entity who has an account at an Islamic Bank, whether the account is a current account, a savings account, an investment account or any other deposit account; unless the context requires another meaning, a depositor corresponds to an investor in joint investment of the Islamic Bank.
- 6) Current account liabilities in relation to Islamic banking services means the total deposits at the bank which are repayable on demand;
- 7) Savings account liabilities in relation to Islamic banking services means the total deposits at the Islamic Bank which normally require the presentation of passbooks or such other legally acceptable documents in lieu of passbooks as approved by the Bangko Sentral for the deposit or withdrawal of money;
- 8) Investment account liabilities in relation to Islamic banking services means the total deposit liabilities at the Islamic Bank in respect of funds placed by a depositor with that bank for a fixed period of time under an agreement to share the profits and losses of that bank on the investment of such funds.
- 9) Other deposit liabilities in relation to an Islamic Bank mean the deposit liabilities at that bank other than savings account, investment account,

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current account liabilities and deposit liabilities from any Islamic Bank or any other licensed bank;

10) Participation in relation to Islamic banking and commercial operations means 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;

11) Share means share in the capital of the Bank or a corporation and includes a stock, except where a distinction between stock and share is expressed or implied.

12) Muquaradah Bonds represent long term non-interest bearing bonds of definite denomination issued and floated by the Bank on the basis of participation under the Mudarabah principle to be used in financing projects for economic development.

Sec. 44. Statement of Principles

For the purpose of implementing these Rules and Regulations, the following Shari'ah principles shall be observed:

1) Al- Bai Bithaman Ajil (Deferred Payment Sale) - principle under which one sells to another by passing the ownership and delivery immediately but collects the payment later, usually by installments. This principle is applied in financing fixed assets acquisition, such as buying of houses, properties, plant and machinery, etc.

2) Al Bai ul Takjiri (Leasing ending with ownership) - principle under which the fund-owner may purchase the asset required by the fund-user with the right to use the services of the asset, but subsequently lease the asset to the fund-user with the stipulation that at a point in time the fund-user will purchase from the fund-owner the asset concerned at an agreed price with all the lease rental previously paid constituting part of the purchase price.

3) Al Ijarah (Leasing) - principle under which the fund-owner purchases the asset required by the fund-user who acquires the right to use the services of said asset. The transaction is covered by a contract whereby the fund-owner first purchases the asset and subsequently leases the same to the beneficiary (fund-user) for a fixed, obligatory period, subject to lease rentals and other terms and conditions as may be agreed by both parties.

4) Al Kafalah (Guarantee) - principle under which one can provide guarantee to another on behalf of a third person. This principle is applied by Islamic banks to issue Letters of Guarantee in respect of the performance of a task, or the settlement of a loan, etc. Where a security deposit is required, it is taken under the principle of Al Wadiah. This principle also enables the Islamic banks to take guarantees from others for the credit facilities granted.

5) Al Mudarabah (Trust Financing) - principle under which a fund-owner

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provides full financing to the fund-user who provides only entrepreneurship and labor. The fund-owner is not involved in the management of the funds at all. The return to the fund-owner and the fund-user is a share of profit at a rate or ratio agreed in advance. In case of a failure, the fund-owner bears the financial losses. This principle is applied by the Islamic banks in both deposit taking and financing. It is mostly applied to support the investment (fixed) deposit accounts.

6) Al Murabaha (Purchase and Sale or Cost-plus) - principle under which the fund-owner purchases the goods or assets required by the fund-user and sells at an agreed markup to the fund-user. This principle is applied in Bills Receivable financing. If full financing is not to be given, the fund-user would be requested to place a margin deposit which will be used to pay for a portion of the cost of the goods or assets.

7) Al Musharaka (Partnership Profit Sharing) - principle under which a fund-owner and an entrepreneur can jointly contribute to the finance and management of a business. Profits or losses from the joint venture are shared between them in the rate or ratio agreed in advance. This principle is applicable in both the areas of funding and financing. It is mostly applied by Islamic banks to raise capital, to finance projects on a joint venture basis, and in Trust Receipt financing.

8) Al Qardhasan (Benevolent Loan) - principle under which one provides a direct loan, free of any charges, to another in need. Payment of dividend for the use of the loan is at the discretion of the user of the funds. Financing economic and business activities of the poor is sometimes extended under this principle.

9) Al Rahan (Security) - principle under which security can be given and taken for an outstanding obligation. Although Islamic banks extend financing through partnership and trading assets, security is also taken as a precaution under this principle.

10) Al Wadiah (Safe Custody) - principle under which a trustee will safeguard the funds entrusted without any obligation to pay any dividend to the owners of the fund (depositors) as long as a guarantee is given to ensure the full refund of the money upon request of withdrawal. The trustee can have full discretion over the use of the funds.

11) Al Wakalah (Agency) - principle under which one acts as an agent for another for a fee. This principle is applied in the Letters of Credit (Lcs) operations in which the Islamic banks issue Lcs on behalf of their importing customers when only LC service is required. A 100% margin deposit is collected under the principle of Al Wadiah. The deposit will be used ultimately to meet the full value of the inward bills.

Sec. 45. Sanctions

Any director, officer, employee, auditor or agent of the Islamic Bank who violates or permits the violation of any provision of these Rules and Regulations shall be subject to the criminal and administrative sanctions provided under Section 36 and 37 of R.A. 7653 (The New Central Bank Act).

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Sec. 46. Supervision; Applicability of Banking Laws, Rules and Regulations

The Islamic Bank shall be under the supervision of the Bangko Sentral. The provisions of other banking laws, MRBOFI, as well as the existing Rules and Regulations of the Bangko Sentral, particularly those enumerated under Annex "B", and other pertinent laws insofar as they are not in conflict with the provisions of R.A. No. 6848 and these Rules and Regulations shall be applicable to the Islamic Bank.

Sec. 47. Transformation to Islamic Banking Business

The Islamic Bank shall transform its investment portfolios, accounts or assets for the conduct of full Islamic banking business within two years from date of this Circular. The Monetary Board may allow extension of the period as circumstances may warrant. If for any reason, such portfolios, accounts or assets granted under the authority of the Philippine Amanah Bank Charter are not eligible for this purpose, the same may be transferred, swapped, sold or otherwise disposed of in any manner deemed feasible.

The Board of Directors of the Islamic Bank shall formulate policies to transform the business of the Bank into an Islamic concept, and shall submit the same to the appropriate department of the Bangko Sentral within six (6) months from date of this Circular.

During the transformation period, the Bank may continue to perform conventional banking activities under R.A. 337, as amended, insofar as they are not in conflict with R.A. 6848, and the applicable rules and regulations of the Bangko Sentral.

Note 47-1. There was a clear conflict between R.A. 337 and R.A. 6848. The former was the old General Banking Law which allows the payment and receipt of interests. On the other hand, R A 6848 is the charter of the Al Amanah Islamic Investment Bank of the Philippines which prohibit, made illegal and punishable the payment and receipt of interest.

Note 47-2. Republic Act 337 was the old General Banking law. This was repealed by R.A. 8791, otherwise known as the New General Banking Law of 2000.

This Circular shall take effect immediately.

FOR THE MONETARY BOARD

(SGD) ALBERTO V. REYES
Officer-in-Charge
April 24, 1996

Chapter 6

BANGKO SENTRAL NG PILIPINAS

CIRCULAR NO. 271, Series of 2001

The Monetary Board, in its Resolution No. 2154 dated December 15, 2000, approved the following regulations implementing Section 3 and other related sections of R.A. No. 8791 or the General Banking Law of 2000:

Section 1. Definition, Classification, Powers and Scope of Authorities of Banks. The following are the definitions, classifications, powers and scope of authority of banks, as well as the prerequisites for the grant of banking authorities.

1.1 Definition and Classification of Banks. Subject to the power of the Monetary Board to create other classes or kind of banks, they shall be classified into:

- a. Universal banks (UBs);
- b. Commercial banks (KBs);
- c. Thrift banks (TBs), as defined in Republic Act (R.A.) No. 7906, which shall be composed of: (i) Savings and mortgage banks, (ii) Stock savings and loan associations, and (iii) Private development banks;
- d. Rural banks (RBs), as defined in R. A. No. 7353;
- e. Cooperative banks (Coop Banks), as defined in R. A. No. 6938; and
- f. Islamic banks (IBs), as defined in R. A. No. 6848.

1.2 Powers and Scope of Authority. The following are the powers and scope of authority of banks.

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- f. IBs. In addition to the general powers incident to corporations and those provided in other laws, as well as in Circular No. 105, insofar as they are not inconsistent or incompatible with the provisions of R.A. No. 6848, an IB may perform any or all of the following services:

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- (1) open savings accounts for safekeeping or custody with no participation in profit and losses except unless otherwise authorized by the account holders to be invested;
- (2) accept investment account placements and invest the same for a term with the IBM's funds in Islamically permissible transactions on participation basis;
- (3) accept foreign currency deposits from banks, companies, organizations and individuals, including foreign governments;
- (4) buy and sell foreign exchange;
- (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 under the universally accepted Islamic financial instruments;
- (7) act as collection agent insofar as the payment orders, bills of exchange or other commercial documents are exclusive of *riba* or interest prohibitions;
- (8) provide financing with or without collateral by way of leasing, sale and leaseback, or cost plus profit sales arrangement;
- (9) handle storage operations for goods or commodity financing secured by warehouse receipts presented to the Bank;
- (10) Issue shares for the account of institutions and companies assisted by the 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 the Islamic Shari'a in such a way that shall not permit the *haram* (forbidden), nor forbid the *halal* (permissible);
- (12) Act as an official government depository, or its branches, subdivisions and instrumentalities and of government-owned or controlled corporations, particularly those doing business in the autonomous region;

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- (13) Issue investment participation certificates, *muqaradah* (non-interest-bearing bonds), debentures, collaterals and/or the renewal and refinancing of the same, with the approval of the Monetary Board to be used by the IB in its financing operations for projects that will promote the economic development primarily of the Autonomous Region;
- (14) carry out financing and joint investment operations by way of *mudarabah* purchasing for others on a cost-plus financing arrangement, and invest funds directly in various projects or through the use of funds whose owners desire to invest jointly with other resources available to the IB on a joint *mudarabah* basis; and
- (15) Invest in equities of the following allied undertakings.
- (a) Warehousing companies;
 - (b) Leasing companies;
 - (c) Storage companies;
 - (d) Companies engaged in the management of mutual funds but not in the mutual funds themselves; and
 - (e) Such other similar activities as the Monetary Board has declared or may declare as appropriate from time to time, subject to existing limitations imposed by law.

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Section 3. **Repealing clause.** This Circular supersedes Section X101 and Subsections X101.1 and X101.2 of the Manual of Regulations for Banks.

Section 4. Effectivity. This Circular shall take effect immediately.

FOR THE MONETARY BOARD:

RAFAEL B.BUENAVENTURA

Governor

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References

1. The Holy Qur'an
2. Republic Act No. 6848, The Charter of the Al Amanah Islamic Investment bank of the Philippines.
3. Bangko Sentral Circular 105
4. Bangko Sentral Circular 271
5. The Investment House Law, P.D. 129
6. The old Central Bank Act, R.A. 267
7. The Law on Venture Capital Corporation, P.D. 1688
8. The new Central Bank Act, RA 7653
9. The old General Banking Act, RA 337
10. The new General Banking Act of 2000, RA 8791
11. The Securities and Exchange Commission, P. D. No. 902-A
12. The Revised Securities Act
13. The Securities Regulation Code, RA 8799
14. Opinion No. 42, Opinion of the Secretary of Justice 2001. Confirmation that RA No. 6848, the Charter of Al-Amanah Islamic Investment Bank of the Philippines (Islamic Bank), remains in effect if the bank is privatized, unless said law is repealed by Congress.
15. Securities and Exchange Commission v. Court of Appeals, 201, SCRA 124, 136
16. Del Monte Corporation-USA vs. Court of Appeals, Judge Bienvenido L. Reyes, et. al. (G.R. No. 136154, February 7, 2001)
17. Regulation and Supervision of Islamic Banking in the United States, William L. Rutledge, Executive Vice President Federal Reserve Bank of New York. Remarks at the 2005 Arab Bankers Association of North America (ABANA) Conference on Islamic Finance: Players, Products & Innovations in New York City

Appendix "A"

CASE 1. Al Amanah Islamic Investment Bank of the Philippines vs. Abdel Aziz Dimapunong
Case No. IS No. 95-012 MKT, for usurpation of authority
Or official function.
(Case DISMISSED, July 4, 1995)

Case 2. Al Amanah Islamic Investment Bank of the Philippines
vs. Abdel Aziz Dimapunong, et. al.
Case No. IS No. 92-8557 (1992) for Usurpation of Authority or Official
Functions in violation of Article 177 of the
Revised Penal Code.
(Case DISMISSED, August 4, 1993)

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- Case 3. Abdel Aziz Dimapunong, et al v. Hon Judge Zosimo Angles, et al. Case No. CA GR SP No. 28445, Petition for Review and Certiorari in the Hon. Court of Appeals (Case DISMISSED, January 13, 1993)
- Case 4. Al Amanah Islamic Investment Bank of the Philippines vs. Abdel Aziz Dimapunong, et al. Civil Case No. 92-1487. Makati Regional Trial Court Branch 58, for injunction with damages. (Case DISMISSED. March 13. 1993)

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