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SENATE

Senate Bill No. 2231

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Prepared by the Committees on Banks, Financial Institutions and
Currencies; and Ways and Means, with Senators Aquino and Escudero as
authors thereof

AN ACT
STRENGTHENING THE AL-AMANAH ISLAMIC BANK

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

Section 1. Title. – This Act shall be known and cited as the Al-Amanah Islamic
Bank of the Philippines Act.

Section 2. Declaration of Policy. – The State, in *Section 20, Article II* of the
Constitution, encourages private enterprise and provides incentives to needed
investments. Further, the Constitution demands that the use of property bears a
social function so that the consequences in law must also be defined by policy
objectives related to property rights in productive enterprises.

Toward this end, the Government, recognizing the role of Filipino-Muslim
communities in nation building by allowing them to freely participate in financing and
investments in accordance with the requirements of their religion, has committed
itself to the establishment of an Islamic bank which shall operate within a legal
framework that will permit its investors or participants the rights to equitable and
beneficial share in the fruits realized from financing productive activities and other
operations.

Section 3. Name, Domicile, and Place of Business. - There is hereby created
the Al-Amanah Islamic Investment Bank of the Philippines, which shall also be
known and called as the Al-Amanah Islamic Bank or the "AIB". Its principal domicile
and place of business shall be in Zamboanga City, Philippines.

Section 4. Definition of Terms. – For the purposes of this Act, the following
terms shall be defined as follows:

- 1 (a) **AIB** means the Al-Amanah Islamic Bank created under this Act and
2 referred to as either "the AIB" or "the Bank";
- 3 (b) **Islamic banking business** means banking business which conducts its
4 transactions in accordance with the principles of Shari'ah, and whose aims
5 and operations do not involve interest (*riba*), uncertainty in subject matter
6 and contractual term (*gharar*), and gambling (*maysir*) which are
7 prohibited by the Islamic Shari'ah principle;
- 8 (c) **Shari'ah** pertains to the meaning assigned to it by Islamic law and
9 jurisprudence as expounded by authoritative sources. In the context of
10 this Act, it is construed by reference to pertinent Quranic ordinances and
11 applicable rules in Islamic jurisprudence on business transactions;
- 12 (d) **Riba** refers to the meaning assigned to it by Islamic law and
13 jurisprudence as expounded by authoritative sources. In the context of
14 banking activities, the term includes the receipt and payment of interest
15 in the various types of lending and borrowing and in the exchange of
16 currencies on forward basis;
- 17 (e) **Zakat** relates to the meaning assigned to it by Islamic law and
18 jurisprudence as expounded by authoritative sources. In the context of
19 this Act, it represents an annual "*ithe*" payable by the Bank on behalf of
20 its shareholders and investors in compliance with Islamic Shari'ah's
21 principles;
- 22 (f) **Current account liabilities**, in relation to Islamic banking services,
23 means the total deposits at the bank which are repayable on demand;
- 24 (g) **Savings account liabilities**, in relation to Islamic banking services,
25 means the total deposits at the Islamic Bank which normally require the
26 presentation of passbooks or such other legally acceptable documents in lieu
27 of passbooks as approved by the Bangko Sentral ng Pilipinas for deposit or
28 withdrawal of money;
- 29 (h) **Investment account liabilities**, in relation to Islamic banking services,
30 means the total deposit liabilities of the AIB relative to funds placed by a
31 depositor in the bank for a fixed period of time under an agreement to share
32 the profits and losses of the bank in the investment of such funds;
- 33 (i) **Other deposit liabilities** means the deposit liabilities at that bank other
34 than savings account, investment account, current account liabilities and
35 deposit liabilities from any other licensed bank;
- 36 (j) **Participation**, in relation to Islamic banking and commercial operations,
37 means any agreement or arrangement under which the mode of joint
38 investments or specific transactions shall not involve the element of interest
39 charge other than as percentage share in profits and losses of business;

(k) **Share** means share in the capital of the Bank and includes a stock, except where a distinction between stock and share is expressed or implied;

(l) **Mudarabah** refers to the partnership contract between the capital provider and an entrepreneur (*mudarib*) whereby the capital provider would contribute capital to an enterprise or activity that is to be managed by the entrepreneur. Profits generated by that enterprise or activity are shared in accordance with the percentage agreed by the parties in the contract, while losses are to be borne solely by the capital provider unless the losses are due to misconduct, negligence, or breach of contracted terms by the entrepreneur;

(m) **Musharaka** refers to a partnership contract or joint venture agreement in which the partners agree to contribute capital to an enterprise, whether existing or new. Profits generated by that enterprise are shared in accordance with the percentage specified in the *musharakah* contract, while losses are shared in proportion to each partner's share of capital;

(n) **Takaful** refers to a Shari'ah-compliant insurance mechanism employing, among others, mutual guarantee in return for the commitment to donate an amount in the form of a specified contribution to the participants' risk fund, whereby a group of participants agree among themselves to support one another jointly for the losses arising from specified risks;

(o) **Haram** is an Arabic term meaning "forbidden" or anything that is prohibited by the faith;

(p) **Halal** is an Arabic word, opposite of *haram*, meaning lawful or permitted;

(q) **Sukuk** refer to certificates that represent a proportional undivided ownership right in tangible assets, or a pool of tangible assets and other types of assets. These assets could be in a specific project or specific investment activity that is Shari'ah-compliant.

(r) **Itthe** refers to amount payable or to be paid by every Muslim as part of his/her spiritual obligation to share what are excesses or as may be dependent on the amount of money or assets an individual possesses.

Section 5. Purpose and Basis. – The primary purpose of establishing and institutionalizing the AIB shall be to promote and accelerate the socio-economic development of the nation by performing banking, financing, and investment operations and by establishing and participating in agricultural, commercial, and industrial ventures, in accordance with the precepts and principles of Islam.

All business dealings and activities of the AIB shall be subject to the basic principles and rulings of Shari'ah aligned with Section 2 of this Act.

Section 6. The Powers of the AIB. – The AIB, upon its organization, shall be a body corporate and shall have the following powers:

(a) To prescribe its by-laws and operation policies;

(b) To adopt, alter, and use a corporate seal;

(c) To enter into and deliver contracts, and to sue and be sued;

(d) To borrow money, own real or personal property and introduce improvements thereon, and to sell, mortgage, or otherwise dispose of the same;

(e) To employ such officers and personnel, preferably from the Muslim sector, as may be necessary to carry out Islamic banking business;

(f) To establish such branches and agencies in provinces and cities in the Philippines, particularly where Muslims are predominantly located, and such other offices in other areas in the country or abroad as may be necessary to carry out its Islamic banking business;

(g) To perform Islamic banking and finance services;

(h) With the prior approval of the Monetary Board of the Bangko Sentral ng Pilipinas, to issue investment participation certificates, *sukuk*, and other Shari'ah compliant funding instruments to be used by the Bank in its operations or capital notes;

(i) To invest in equities of the following allied undertakings:

(i) Warehousing companies;

(ii) Leasing companies;

(iii) Storage companies;

(iv) Safe deposit box companies;

(v) Companies engaged in the management of mutual funds but not in the mutual funds themselves; and

(vi) Such other similar activities as the Monetary Board of the Bangko Sentral ng Pilipinas has declared or may declare as appropriate from time to time, subject to existing limitations imposed by law.

(j) With the prior approval of the Monetary Board of the Bangko Sentral ng Pilipinas, to invest in equities of the Shari'ah compliant undertakings that directly support the delivery of Islamic banking and financing services;

(k) To act as an official depository of the government, its branches, subdivisions, and instrumentalities, including government owned or controlled corporations, particularly those doing business in the autonomous region;

(l) The AIB shall exercise all the powers and perform all the services of a bank as may be allowed by the Bangko Sentral ng Pilipinas, except as otherwise prohibited by this Act;

(m) Notwithstanding any provisions of law to the contrary, the AIB is hereby authorized to operate an Investment House pursuant to Presidential Decree (PD) No. 129, as amended, and as a Venture Capital Corporation, pursuant to Presidential Decree (PD) No. 1688 and, by virtue thereof, carry on the following types of commercial operations:

(i) The AIB may have a direct interest as a shareholder, partner, owner or in any other capacity as may be allowed by law in any commercial, industrial, agricultural, real estate, or development project under a *mudharabah* form of partnership or a *musharaka* joint venture agreement, or otherwise invest or divest under any of the various contemporary Islamic financing techniques or modes of investment for profit sharing;

(ii) The AIB 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, institutions 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

(iii) The AIB may perform all business ventures and transactions as may be necessary to carry out the objectives of its mandate within the framework of the Bank's financial capabilities and technical considerations prescribed by law, customs or practice: *Provided*, that these shall not involve any *riba* or other activities prohibited by the Islamic Shari'ah principles.

(n) To exercise all the necessary and incidental powers pursuant to this Act, as well as such powers mentioned in the Corporation Code of the Philippines and the General Banking Law insofar as they are not inconsistent or incompatible with the provisions of this Act.

Section 7. Authorized Capital Stock. - The authorized capital stock of the AIB shall be *Ten Billion Pesos* (Php10,000,000,000.00) divided into one hundred million shares with a par value of one hundred pesos each. *Provided*, that sixty million shares thereof shall be subscribed and paid by the National Government through the Bangsamoro Autonomous Region pursuant to Section 6, paragraphs c) and k), Article XII of Republic Act (RA) No. 11054. *Provided* further that, such paid up capital shall be automatically infused to the Bank immediately after the effectivity of this Act.

Section 8. Classification of Shares. – The Bank's authorized capital stock shall have the following classifications and features in relation to its Islamic banking operations:

(a) *Series "A"* shares shall be comprised of sixty million shares equivalent to six billion pesos to be subscribed and paid by the National Government through the Bangsamoro Autonomous Region.

(b) *Series "B"* shall be comprised of ten million shares equivalent to one billion pesos to be made available for subscription by Filipino individuals and institutions.

(c) *Series "C"* shares shall be comprised of thirty million shares equivalent to three billion pesos to be made available for subscription by Filipino and foreign individuals and/or institutions or entities.

Anyone of the shareholders may exercise the pre-emptive right to consolidate ownership of the outstanding shares as hereinafter increased: *Provided*, that the common shares of the AIB which have been issued and outstanding shall form part of its increased capitalization, subject to the concurrence of its existing shareholders. The AIB is authorized to reacquire its common shares that are held privately. The AIB may take the necessary steps to have its *Series "B"* and *Series "C"* shares listed in any duly registered stock exchange.

Section 9. Board of Directors. Subject to Section 13 of this Act, the Board of Directors composed of nine (9) members duly elected by the shareholders at the General Shareholders Meeting, as provided for in Section 12 of this Act, shall convene at the principal office at least once every three (3) months upon due 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 Islamic Bank.

Section 10. Powers of the Board. - The Board of Directors shall be the governing body of AIB, except on such matters expressly reserved by the shareholders at the general shareholders meeting.

The Board shall adopt policy guidelines for the management and operations of the AIB. It shall likewise formulate the internal rules and regulations necessary and incidental to the conduct of the bank's business, expenditures, and all administrative matters such as office duties and functions, personnel organization, salaries, and other incentives and emoluments as authorized and prescribed by applicable laws.

The Board of Directors shall have the power to appoint or delegate the appointment of the AIB's officers and personnel, hire and authorize agents, legal representatives and technical consultants, subject to prevailing laws and rules and regulations as may be prescribed by the Commission on Audit and the Civil Service Commission.

1 The Board shall cause the preparation of the AIB's financial statements according to
2 generally accepted accounting principles established and appropriate for Islamic
3 banking. Copies of the audited financial statements shall be provided to the
4 shareholders before the date of the general meeting.

5 The Board is authorized to establish a personnel welfare fund for the benefit of all
6 officers and permanent employees of the Bank. Members of the Board may likewise
7 enroll in said welfare fund; *Provided*, that they are not appointed to the governing
8 board or become officers or personnel of the Personnel Provident Fund ("PPF") and
9 that they may avail of the benefits or product under the PPF only proportionate to
10 their enrollment and contribution; *Provided* further, that the AIB does not share in
11 their monthly contributions.

12 The Board is likewise authorized to adopt policies for the training and development
13 of the AIB's human resource by granting, among others, incentives to defray the
14 costs of study and training at home or abroad of outstanding employees of the AIB..

15 **Section 11. Shari'ah Advisory Council (SAC); Creation, Composition,**
16 **Qualification, Election, Term, Functions, and Limitations.** - To ensure its
17 compliance with Shari'ah principles, the AIB shall constitute a Shari'ah Advisory
18 Council ("SAC") composed of not more than five (5) but not less than three (3)
19 members.

20 As minimum qualification requirements, all persons to be appointed as members of
21 the SAC must be Islamic scholars and jurists of Islamic comparative law and majority
22 of whom must be degree holders or have at least a three (3) year work experience
23 in Islamic banking and finance.

24 The members shall be elected for a term of not more than three (3) years at a
25 general shareholders meeting from the list of nominees submitted by the Board. The
26 AIB shall include in its by-laws the internal procedures, limitations, detailed
27 functions, and relevant framework for the SAC.

28 The SAC shall give advice and undertake reviews pertaining to the application of
29 Islamic principles and Shari'ah rulings on the AIB's mandate, and operations and
30 management as an Islamic bank.

31 Any or all of the members of the SAC may be invited by the Board in any of its
32 meetings for opinion and advisory.

33 **Section 12. Meetings.** -The general shareholders meeting shall convene annually
34 and within six (6) months following the end of the financial year of the AIB at the
35 place, date, and time fixed in the notice of meeting. The attendance of shareholders
36 representing at least sixty per centum (60%) of the capital of the AIB shall constitute
37 a quorum to do business. The purpose, date, place, the manner of giving notice, and
38 other matters relating to the holding of the general shareholders meeting shall be
39 provided for in the by-laws of the AIB in conformity with the provisions this Act,
40 subject to the applicable provisions of the Corporation Code of the Philippines.

Section 13. – *The Chairman, President, other Officers and Employees.* - The Chairman of the Board and the President, who shall be the chief executive officer of the AIB and Vice Chairman of the Board, shall be appointed by the President of the Republic of the Philippines from among the elected Directors of the Board pursuant to Section 9 of this Act. Both can only be replaced upon assumption of their respective successors duly qualified and appointed. All other officers and employees of the Islamic Bank shall be appointed by the Board of Directors and shall be subject to prevailing Civil Service Rules.

The AIB President shall, among others, execute and administer the policies, measures, orders, and resolutions approved by the Board of Directors. In particular, he or she shall have the power and duty: to execute all contracts on behalf of the AIB and to enter into all necessary obligations as required or permitted by this Act; and to report to the Board the operations of the AIB during regular meetings. He may also call for special board meetings on matters affecting the operations of the Bank or its business which require immediate action which the Board can only decide.

Section 14. *Employee Share Schemes.* – The Board of Directors, subject to the approval of the Bangko Sentral ng Pilipinas and applicable laws, may adopt an employee profit sharing scheme relative to profits realized by the AIB or any of its affiliates, or the acquisition of shares of stock through share incentives, share bonus options or any other share saving schemes that the Board may determine.

Section 15. *Investment of Funds.* - The AIB shall have the capacity of agent or attorney and shall act with full authority on behalf of its depositors in investing their deposits. It shall ensure a degree of liquidity to be determined by the Board to meet the current obligations of the AIB, including drawings from savings accounts and current accounts: *Provided*, that such degree of liquidity shall be subject to the reserve requirements of the Bangko Sentral ng Pilipinas. The Board shall determine the period for an investment participation account. Investment of funds shall be undertaken by the AIB acting on behalf of a group of depositors or investors in selected areas of investment under such terms and conditions as the Board may determine by way of *mudarabah* or other forms of joint investment permitted by Islamic Shari'ah principle.

Section 16. *Incentives to Islamic Banking.* - The provisions of *Section 72* of Republic Act (RA) No. 7653 or the New Central Bank Act covering Emergency Restrictions on Exchange Operations and Article 38, Title II of Executive Order (EO) No. 226 or 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 proceeding of judicial or administrative seizure may not be taken against the said property or investment except upon a final court judgment.

Section 17. *Current Accounts of Islamic Banks.* – The Bangko Sentral ng Pilipinas is authorized to open current accounts for Islamic banks for settlement and

1 other purposes under such rules and regulations as the Monetary Board of the
2 Bangko Sentral ng Pilipinas may prescribe: *Provided*, that the BSP may charge
3 administrative and other fees for the maintenance of such facilities as may be
4 allowed under Shari'ah principles.

5 **Section 18. Capital Funds Requirement.** – The AIB shall maintain its combined
6 capital accounts in proportion to its assets as prescribed by the General Banking Law
7 and subject to the rules and regulations, as well as compliance and monitoring
8 requirements of the Bangko Sentral ng Pilipinas.

9 **Section 19. Grants and Donations.** – The AIB shall accept grants, donations,
10 endowments, and subsidies, or funds and/or property offered by individuals and
11 organizations, who may earmark such grants for a specific purpose or for such other
12 purposes beneficial to the Muslim communities, without prejudice to the general
13 objectives of the AIB.

14 The financial statement and books of accounts of such funds shall be maintained
15 separately but may be supplemented and identified as such in the AIB's balance
16 sheet.

17 Under special circumstances in which the Board considers it advisable to promote or
18 facilitate Islamic banking business and commercial operations, the AIB may seek
19 financing from governments, organizations, individuals, or banks always without
20 prejudice to the provisions of this Act.

21 The AIB may also become a depository of institutions who are allowed and
22 authorized to receive *zakat* or *ithe*. Subject to the requirements of Republic Act No.
23 9160, or the Anti-Money Laundering Act of 2001 (AMLA), as amended, the AIB,
24 before allowing such institution to open an account, shall refer to its own SAC to
25 determine the competence, qualification and reputation of the institution.
26 Independent of the AIB's compliance with the AMLA, the AIB, to ensure its Shari'ah
27 compliance, may also conduct a regular background information check on the
28 institution at any time during the life of the depository and may submit the result
29 thereof to the SAC for its review and recommendation.

30 **Section 20. Accounting Period.** - The Financial Year of the AIB shall be based on
31 the Gregorian calendar, but the corresponding Islamic Hijra date shall be mentioned
32 on all correspondences, contracts, printed materials, forms, and records of the AIB.
33 The accounting period shall commence from the first day of January and close at the
34 end of December of each year.

35 **Section 21. Tax Neutrality.** – The Government shall adopt and implement a
36 neutral tax treatment between Islamic banking transactions and equivalent
37 conventional banking transactions. The Secretary of Finance, upon the
38 recommendation of the Commissioner of the Bureau of Internal Revenue, shall issue
39 policies and guidelines to implement tax neutrality conducive to the growth of
40 Islamic banking and finance in the country.

Section 22. Exemption from Customs Duties. – Following the effectivity of this Act, all importations by the Bank of machinery, equipment, and computers, and accompanying spare parts, as may be necessary or incidental to its operation, shall be exempt from customs duties and compensating taxes payable thereon: *Provided*, however, that the same shall not be disposed of domestically unless payment is made of all duties thereof at the tariff rates and according to their condition at the time of disposal and upon compliance with all import and exchange procedures.

Section 23. Non-Applicability of Selected Acts. - 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 AIB to the extent as herein rendered inoperative:

(a) The provisions of the Banko Sentral ng Pilipinas 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 Bangko Sentral ng Pilipinas to supervise and regulate the activities of the AIB; and

(b) The provision of Republic Act (RA) No. 3591, as amended, and all laws, regulating insurance companies: *Provided*, however, that nothing contained herein shall preclude the AIB from the establishment of contemporary Islamic *tafakul* (solidarity services) free of *riba* premiums or interests.

Section 24. Terms of Legal Existence. - The legal existence of the AIB shall be for a period of fifty (50) years from the date of the approval of this Act, renewable upon resolution duly passed and approved by a majority of the shareholders at the general shareholders meeting called for the said purpose.

At the expiration of the AIB's corporate existence or in the event of its dissolution before this date, a majority of the shareholders at the general shareholders meeting shall, upon the request of the Board of Directors, define the method of dissolution as provided for in its by-laws.

Section 25. Application of the Islamic Shari'ah. - The Bangko Sentral ng Pilipinas shall promulgate the necessary rules and regulations to carry out the provisions of this Act.

Section 26. Penalties for Violation. - Any person who violates or permits the violation of any provision of this Act shall be punished by a fine not exceeding Two Hundred Thousand pesos (P200,000.00) or an imprisonment of not more than five (5) years, or both at the discretion of the court.

Section 27. Reorganization of the Bank. - The AIB shall commence its reorganization within six (6) months from the date this Act takes effect. The present personnel complement of the Philippine Amanah Bank shall in the interim continue to discharge their respective functions. Officials and personnel whose services may

1 be dispensed with as a result of this reorganization shall be paid the usual gratuities
2 and benefits to which they may be entitled under existing laws and regulations.

3 **Section 28. *Supervision and Regulation by the Bangko Sentral ng Pilipinas.***

4 - The AIB shall be under the supervision and regulation of the Bangko Sentral ng
5 Pilipinas. All the provisions of this Act, subject to the applicability of Islamic Shari'ah
6 principles, shall be subject to all banking and pertinent laws of the Philippines and
7 Bangko Sentral Rules and Regulations which shall include proper safeguards to
8 depositors and investors in the investments, partnerships, agencies and other
9 operations of the bank.

10 **Section 29. *Privatization.*** -Nothing in this Act shall be construed as to preclude
11 the AIB from privatization.

12 In the event of privatization, the Bank shall be registered with the Securities and
13 Exchange Commission ("SEC"), and shall be subject to the applicable provisions of
14 the Corporation Code of the Philippines, in addition to the rules and regulations of
15 the Bangko Sentral ng Pilipinas and other government regulatory agencies.

16 **Section 30. *Statutory Articles of Incorporation.*** - This Act, upon its effectivity,
17 shall be deemed accepted for all legal intents and purposes as the Statutory Articles
18 of Incorporation of the AIB; and that notwithstanding the provisions of any existing
19 law to the contrary, the AIB shall be deemed registered and duly authorized to do
20 business and operate as an Islamic Bank as of the date of approval of this Act.

21 **Section 31. *The By-laws.*** -Within sixty (60) days from the effectivity of this Act,
22 the by-laws of the AIB shall be adopted by a majority vote of all shareholders at the
23 general shareholders meeting, which shall be certified by the Monetary Board of the
24 Bangko Sentral ng Pilipinas pursuant to Section 14 of Republic Act (RA) No. 8791, or
25 the General Banking Law of 2000.

26 The by-laws, duly certified by the Monetary Board as aforesaid, shall be signed by
27 the shareholders voting for them and shall be kept in the principal office of the AIB,
28 subject to the inspection of any shareholder during office hours, and a copy thereof,
29 duly certified by a majority of the directors and countersigned by the Corporate
30 Secretary of the AIB, shall be filed and registered with the SEC.

31 **Section 32. *Separability Clause.*** - If any of the provisions of this Act is declared
32 invalid, the other provisions not affected thereby shall remain in full force and effect.

33 **Section 33. *Repealing Clause.*** - All laws, presidential decrees, executive orders,
34 rules and regulations, and other issuances, or any parts thereof, inconsistent with
35 this Act, are hereby repealed, modified, or amended accordingly.

36 **Section 34. *Effectivity Clause.*** - This Act shall take effect fifteen (15) days after
37 its publication in the Official Gazette or in at least two (2) newspapers of general
38 circulation.