



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE DEPUTY GOVERNOR
FINANCIAL SUPERVISION SECTOR

MEMORANDUM NO. M-2020- 052

To : **All BSP-Supervised Financial Institutions (BSFIs)**

Subject : **Frequently Asked Questions (FAQs) on Islamic Banking**

To address common questions on the implementation of R.A. No. 11439 or otherwise known as Act Providing for the Regulation and Organization of Islamic Banks¹ and the BSP's preliminary policy issuances² thereon, additional guidance and clarifications are hereby provided in the attached FAQs on Islamic Banking. The said FAQs provide simplified and concise discussions on Islamic banking fundamentals and cover the following major points:

1. Core features of the Islamic banking law;
2. Accessibility of Islamic banking to both Muslims and non-Muslims;
3. Key distinctions between conventional and Islamic banking; and
4. Requirements for establishing Islamic banks or Islamic banking units in the Philippines.

For guidance and information.


CHUCHI G. FONACIER
Deputy Governor

Att.: a/s

18 June 2020

¹ Signed by President Duterte on 22 August 2019.

² BSP Circular Nos. 1069 and 1070 dated 27 December 2019, covering the Guidelines on the Establishment of Islamic Banks and Islamic Banking Units and the Shari'ah Governance Framework, respectively.

CERTIFIED COPY OF
ELECTRONIC RECORD ON FILE


RYA ROSE D. NUNEZ
Manager, RM/D
Administrative Services Department



**FREQUENTLY ASKED QUESTIONS (FAQs) ON
REPUBLIC ACT (R.A.) NO. 11439, OTHERWISE
KNOWN AS THE "ACT PROVIDING FOR THE
REGULATION AND ORGANIZATION OF
ISLAMIC BANKS"**

1) When was R.A. No. 11439 or An Act Providing for the Regulation and Organization of Islamic Banks signed into law?

The law was signed by President Rodrigo Roa Duterte on 22 August 2019. It took effect on 15 September 2019 or fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

2) What is Islamic Banking?

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

3) Is Islamic banking and finance only for Muslims?

No. Islamic banking and finance is available to all, whether muslims or non-muslims.

4) What are the expected benefits from the law?

Islamic banking and finance can promote inclusive finance, by making it available to groups which avoid using existing conventional banking facilities due to their faith. Islamic banking and finance can also be attractive to non-Muslims, particularly those investors (within or outside the Philippines) who in their quest for diversifying their portfolios are looking for new asset classes, new instruments and new products. Finally, promoting Islamic banking and finance can attract foreign investments which can in turn be deployed to support critical projects of the Government.

5) In a nutshell, what is the law about?

The law seeks to establish a clear legal and regulatory framework that would best accommodate Islamic banking and finance in the Philippines. Likewise, the law opens the Philippine financial system to new Islamic banking players, whether full-fledged or Islamic banking windows. It aims to establish an expanded Islamic banking system in the Philippines.

6) Was there a legal constraint to establish an Islamic bank prior to R.A. No. 11439?

Yes. Under Section 3 of the General Banking Law, an Islamic bank is a separate classification of banks which made reference to R.A. 6848 or otherwise known as "The Charter of the Al-Amanah Islamic Investment Bank of the Philippines".

Thus, the Al-Amanah Bank has been the sole Islamic bank in the Philippines since its creation in 1973.

7) Did the law effectively amend or revise the Charter of the Al-Amanah Bank?

No. The Charter of the Al-Amanah Bank remains in force. However, R.A. No. 11439 may still apply to Al-Amanah Bank, provided it does not conflict with its Charter.

8) Briefly, what are BSP's main responsibilities under the law?

The Bangko Sentral shall exercise regulatory and supervisory powers over the operations of Islamic banks and shall issue the implementing rules and regulations on Islamic banking.

The BSP aims to create an enabling environment that will allow Islamic banks to

operate alongside the conventional banks under the same regulatory and supervisory approach, taking into consideration the unique features of the Islamic banking operations. The goal is to provide a coherent, consistent, and comprehensive set of regulations and standards to encourage wider investor and consumer participation on Islamic banking and finance without any regulatory arbitrage.

9) What are the other salient features of the law?

The law provides for tax neutrality between Islamic banking transactions and equivalent conventional transactions in order to create a level-playing field for Islamic banking products and services. It also mandates the Government to provide programs for consumer awareness and capacity building required by the expanded Islamic banking system.

10) What is the biggest challenge in implementing the Islamic banking law?

The biggest challenge is the low awareness and capacity on Islamic banking and finance not only for the regulators but also for the industry players and other stakeholders. For this reason, the law mandates the Government to provide programs for increased consumer awareness and capacity

building required by the expanded Islamic banking system. Other challenges are the scarcity of Shari'ah scholars and the lack of tax neutrality.

11) What is this Tax Neutrality provision under the law?

Section 14 of R.A. No. 11439 provides that the Government shall endeavour to achieve neutral tax treatment between Islamic banking transactions and equivalent conventional banking transactions within the provisions of the National Internal Revenue Code of 1997 (Republic Act No. 8424), as amended. Tax neutrality means that Islamic finance products have parity of tax treatment with conventional finance products, such that Islamic finance transactions are taxed no more heavily (and no more lightly) than conventional finance transactions. The aim is to create a level-playing field for Islamic banking products and services and foster an open and competitive financial system.

12) What are the forms or categories of Islamic banks?

Islamic banks can be in the form of full-fledge domestic Islamic banks, full-fledge foreign Islamic banks, or Islamic banking units within domestic or foreign conventional banks.

13) What is Shari'ah? Discuss its principles briefly.

Shari'ah refers to the practical divine law deduced from its legitimate sources: the Qur'an, Sunnah, consensus of Muslim scholars, among others. It is a very wide and comprehensive system of values, norms and rules regulating all aspects of life.

Shari'ah is based on the principles of justice, fair dealings and harmony through the equitable distribution of wealth. The main objective is to create a balance in which wealth is not accumulated only by a few while others suffer.

To this end, foundational in Islamic finance is the principle of risk sharing. Risk sharing is the justification for the fundamental requirements of profit and loss sharing. Guarantees or assurances of return of capital and return on capital (i.e. pre-determined rate of interest), rewards without commensurate risk and preferential awards are all not permissible in Islamic finance. Trading and partnership or joint venture arrangements are thus the appropriate risk-reward paradigms.

14) What are the key differences between Islamic banking vis-à-vis conventional banking transactions?

Conventional Banking	Islamic Banking
Depositors are lenders	Depositors are investors rather than lenders
Bank pays fixed interest on deposit liabilities and charges interest on loans	Risk sharing through profit and loss sharing
Bank is exposed to assets and liabilities mismatch risk.	Assets and liabilities are better matched.

15) What is the capital requirement for Islamic banks or conventional banks with Islamic banking units (IBUs)?

The capitalization requirement for universal banks apply to Islamic banks or conventional banks with IBUs.

16) What is the role of the Shari’ah Advisory Council?

Under Circular No. 1070, the Shari’ah Advisory Council or SAC shall be empowered to consider, decide and oversee all Shari’ah related matters of the Islamic Bank or IBU, and all rulings of the SAC on Shari’ah matters shall be final.

- It shall perform the following functions:
- i. Approval and certification for the product structures and all the documentation thereon;
 - ii. Rendering opinions or clarifications on Shari’ah compliance matters; and
 - iii. Leading the Shari’ah compliance verification of IB or IBU’s transactions and operations through an effective internal and/or external Shari’ah audit and issuing an annual Shari’ah Compliance Statement thereon.

17) Are persons appointed as members of the Shari’ah advisory council of an Islamic bank or IBU subject to BSP confirmation?

No, the fitness and propriety of the SAC members endorsed for appointment shall be vetted by the bank’s Board of Directors and subject to the approval by the majority of stockholders. The screening must cover both an Islamic bank or IBU’s qualification criteria and the BSP's prudential requirements. These may include the relevant academic qualifications, and adequate experience and exposure in Islamic banking and finance, given the SAC members’ duty to oversee and review the bank’s application of *Shari’ah* principles.

18) What are requirements for establishing an Islamic bank or IBU?

Refer briefly to Circular 1069. The basic requirements are the following:

1. Capitalization – (see response to question no. 15)
2. Governance - A Shari'ah governance framework must be in place to ensure that the Islamic bank or IBU adheres to Shari’ah principles

19) What are the other laws and regulations relevant to Islamic banking?

The BSP has recently issued Circular Nos. 1069 and 1070 which provide guidance on the establishment of IBs and IBUs and on the *Shari’ah* Governance Framework, respectively. The provisions on the development of the Islamic banking and finance system under R.A. No. 11054 or the *Bangsamoro* Organic Law are also relevant.