

The Gambia

No. 8 of 1994

Assented to by The President,

This 23rd day of February 1994

**Dr. K. Jawara.
President**

An ACT to amend the Financial Institution Act, 1992 so as to make provision for the regulation of Islamic Banking in the Gambia and for matters connected therewith.

11th March, 1994

ENACTED by the Parliament of The Gambia

1. This act may be cited as the Financial Institutions (Amendment) Act, 1993

Interpretation

In this Act unless the context otherwise requires. “Islamic banking business” means the practice of all banking activities in conformity with Sharia and mainly avoiding all types of interest deals (usuary or riba) as a lender or a borrower. “Mudarabah” means any amounts given by or to the financial institution for the purpose of doing business on the basis of sharing of the profits and losses.

Financial
Institutions
Act
Amended

- 3 The Financial Institution Act, 1992 is hereby amended by adding a new Part IIA immediately after Part II as Follows:

“PART IIA ISLAMIC FINANCIAL
INSTITUTION

Islamic
Banking
License

- 11 A. No local financial institution shall do any Islamic banking business in The Gambia or abroad nor shall a foreign financial institution carry on any Islamic banking business in The Gambia without a license issued by the Bank authorizing the license to carry on such business.
- 11 B. Notwithstanding the provisions of section 4 of this Act, the Bank shall not issue a license to any financial institution proposing to carry on any Islamic banking business unless the following conditions are contained in the proposed memorandum and articles of association of the financial institution.
- (a) That the financial institution shall, as a joint venture with the depositors, bear any losses resulting from any cause for which it is legally liable, including any case where authority is exceeded or insufficient care or caution is exercised by members of its Board of Directors, or its manager or employees
Provided that if the loss arose through no fault of the Financial institution, the liability shall be jointly shared by the depositors and the Financial institution.
- (b) That the financial institution shall at the end of each financial year announce by public notice the general percentage of profit to be allocated to the general Funds participating in joint investment,
- (c) That the financial institution shall not carry on any business which involves usury or which is

not approved by Sharia;

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| Distribution of profit | 11C (1) | A financial Institution carrying on Islamic banking business is entitled to the remaining percentage of profits after the deduction of the amount allocated to investors. |
| | (2) | A financial Institution carrying on Islamic banking Business is entitled to participate in the profits of joint investments in proportion to the amount of its own funds or the funds which it is authorized to risk in joint investment. |
| | (3) | A financial Institution carrying on Islamic banking business shall not be a participant in financing its own funds save to the extent of the excess of the amount utilized in financing over the total balance of the investors. |
| Transactions with conventional bank | 11 D (1) | No financial Institution carrying on Islamic banking business shall in its dealings with banks involve in conventional banking engage in banking operations which involve usury. |
| | (2) | A financial Institution which contravenes subsection (1) commits an offence and is liable on conviction to a fine of one hundred thousand dalasis. |
| Commissions and fees | 11 E (1) | A Financial Institution carrying on Islamic banking business may in carrying out some of its functions charge such commissions or fees as may necessary. |
| | (2) | The funds received as commissions and fees shall constitute the banks income and shall not be divided among the depositors. |

Profits realized from investments

11 F (1) Profits and losses relating to financing and joint investment activities shall-

(a) be separated in the accounts from the other income and expenditure relating to other activities and services offered by the Financial Institution, and

(b) to the income and expenditure of investments for specific purposes, in respect of which a separate account must be kept for each particular project.

(2) In accounting for the profit incomes connected with its financing and investment activities, the financial Institution may not adopt a method of accounting which takes into account estimated or expected profits, but it shall confine itself to the profits realized in accordance with the nature of the operations which the Financial Institution finances, and in accordance with the following rules.

(a) In the case of individual Mudarabah the profits shall be realized on the basis of a final settlement of accounts carried out between the financial institution and the party utilizing the funds:

Provided that such settlement shall be based on actual receipt of the cash and realization of the income and should be duly approved and accepted and the profits of each year shall be entered in the accounts of the year in which such settlement is carried out whether in respect of the complete project or a part of it.

(b) In the case of decreasing participation, the profit or income shall be realized on the basis of the

net income derived from the project concerned until the end of the financial year, even if such income is not in fact received in cash, as in such event, the income realized shall be treated as money due but not received.

- (c) In the case of purchasing for others on a pre-agreed profit basis, the profit shall be realized upon the conclusion of the subsequent contract and on the basis of the difference between the actual cost and the price agreed upon with the party who ordered the purchase.
- (d) The various financing operations shall be charged with all the direct expenses and costs arising therefrom, and should not be charged with any part of the general overhead expenses of the Financial Institution.

Islamic
financial
instruments

11G No company registered to carry on Islamic banking business shall use any Islamic Financial instrument without the written consent by the Bank.

