

ISLAMIC BANKING REGULATION 2011

(unofficial English translation)

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ISLAMIC BANKING REGULATION 2011

CHAPTER I PRELIMINARY

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|----------------------------------|---|
| Purpose and Authorization | 1. This Regulation is issued pursuant to the section 11 and section 65 of the Law No. 24/2010, (Maldives Banking Act), in performing Maldives Monetary Authority's duties, to provide for the licensing and regulating Islamic banking business in the Republic of Maldives. |
| Short Title | 2. This regulation may be cited as the 'Islamic Banking Regulation 2011'. |
| Application | 3. This regulation shall apply throughout the Republic of Maldives. |
| Commencement | 4. This Regulation shall come into force with effect from 6 March 2011. |

CHAPTER II GENERAL PROVISIONS

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| General Prohibition | 5. (a) No person shall engage in any Islamic banking business in the Maldives, unless they have a licence or authorization issued by the Authority, authorizing them to engage in such business.

(b) All operations of Islamic banks shall comply with all the requirements of Islamic <i>Shari'ah</i> . |
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CHAPTER III LICENSING

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| Licensing | 6. Subject to the Law No. 24/2010, (Maldives Banking Act), the Authority may grant licences to establish Islamic banks in the Maldives. In addition, the Authority may permit banks not organized as Islamic banks, to engage in Islamic banking through a department of the bank or otherwise. Such banks and departments of banks shall be subject to all the provisions of this Regulation; and supervision controls and examination by the Authority in the same manner as Islamic banks, except as otherwise provided in this Regulation. |
| General licensing requirements | 7. (a) Licence to operate as an Islamic bank, shall be granted only to companies established and registered as corporations in good standing under the Law No. 10/96 (Companies Act of the Maldives), in the case of domestic entities; or to companies established and registered under the Companies Act of the such Countries, in the case of branches or representative offices of foreign banks.

(b) Licences to operate as an Islamic bank will be granted in writing, shall be valid for an indefinite period of time and shall not be transferable. The licence or its |

attachments shall specify the conditions under which it is issued; compliance with all conditions of licensing, unless such conditions are later modified, shall be a continuing requirement applicable to all licensees.

**Licensing
Application**

8. (a) Applications for licence to operate as an Islamic bank shall be made in writing to the Authority and in accordance with the Application Guidelines issued by the Authority and shall contain such information as the Authority may prescribe from time to time.
- (b) In the case of an application requesting licence to operate as an Islamic bank, the information requested shall include, but need not be limited to:
- (1) an authenticated copy of the charter and corporate governance documents of the applicant, and of its audited annual balance sheets and profit and loss statements for the last 3 (three) years, if applicable;
 - (2) a description of the proposed capital funds of the applicant, the sources of such funds and the amount that has been paid in. The Authority may, in its discretion require that the intended capital funds be deposited with the Authority, or with some other depository approved by the Authority together with a certificate that there is no encumbrance on such funds;
 - (3) the premises or addresses at which the applicant proposes to do business, a description of the premises through which business will be conducted, and the name under which the applicant intends to conduct Islamic banking business;
 - (4) the names, places of permanent residence, business and professional backgrounds, and other biographical and financial data to be determined by the Authority, of each proposed major shareholder, administrator and member of the *Shari'ah* Committee;
 - (5) for each major shareholder, administrator and member of the *Shari'ah* Committee, an affidavit duly signed by the individual stating any convictions for crimes, past or present involvement in a managerial function in a body corporate or other undertaking subject to insolvency proceedings or personal bankruptcy filings, if any. The standard text for such affidavit may be determined by the Authority;
 - (6) a business plan describing the objectives and business activities intended for the proposed entity, including a description of its organizational structure and internal controls

including measures appropriate to counter money-laundering and the financing of terrorism, together with projected balance sheets, profit and loss accounts and cash flow statements for the first 3 (three) years of operations; and

- (7) in the case of an application by a foreign bank or bank holding company, or the subsidiary of such foreign bank or bank holding company, a statement from the foreign supervisory authority responsible for the prudential supervision of the foreign entity to the effect that it has no objection to the proposed establishment of operations in the Maldives by the applicant. This statement also shall state that it exercises consolidated supervision over the applicant.
- (c) In the case of an application made by banks not organized as a Islamic bank, requesting for approval under this regulation, to engage in Islamic banking business, the information requested shall include, but need not be limited to:-
- (1) the names, places of permanent residence, business and professional backgrounds, and other biographical and financial data to be determined by the Authority, of each proposed administrator of the Department through which the Islamic banking services are provided and member of the *Shari'ah* Committee to be involved in the operations of the intended activities;
 - (2) for each administrator, of the Department through which the Islamic banking services are offered, and member of the *Shari'ah* Committee, an affidavit duly signed by the individual stating any convictions for crimes, past or present involvement in a managerial function in a body corporate or other undertaking subject to insolvency proceedings or personal bankruptcy filings, if any. The standard text for such affidavit may be determined by the Authority.
 - (3) a business plan describing the objectives and business activities intended for the proposed Islamic Banking Department, including a description of its Islamic Banking Department structure and internal controls including measures appropriate to counter money-laundering and the financing of terrorism, together with projected balance sheets, profit and loss accounts and cash flow statements for the first 3 (three) years of operations;
- (d) The Authority shall be authorized to request such additional information in connection with all applications for a licence or approval as, in its

discretion, it determines to be necessary.

- (e) Applications for licences or approvals shall be accompanied by the application fee specified by the Authority.
- (f) Upon receiving an application the Authority will consider the application and the Authority will either:
 - (1) grant a licence or approval; or
 - (2) inform the applicant that it refuses to grant a licence or approval.
- (g) The Authority will not issue a licence to operate as an Islamic bank unless it is satisfied that the aims and operations of the proposed banking business do not involve any element which is not permissible by the Islamic *Shari'ah*.
- (h) Notwithstanding any provisions contained herein, the Authority is entitled, in its absolute discretion, to refuse any application for licence.

Licence fee

9. Every Islamic bank shall pay to the Authority such annual licence fee prescribed by the Authority.

Conditions of licensing

10. Each licence granted by the Authority to operate as an Islamic bank shall be subject to the following conditions of licensing:-
- (a) the representations and statements made by the applicant, its major shareholders, administrators and any other persons acting on its behalf in connection with the license application are accurate and truthful;
 - (b) Unless, less than 12 (twelve) months are provided to start the business as licence condition, the licensee shall start business for which licence is provided within 12 (twelve) months of granting the licence. If the licensee failed to start business within that period the licence shall automatically be revoked;
 - (c) the licensee shall establish a *Shari'ah* Committee as per this regulation;
 - (d) the licensee shall conduct all of its operations in accordance with the Islamic *Shari'ah*;
 - (e) the licensee shall comply with the capital adequacy and with all other prudential requirements of Law No. 24/2010, (Maldives Banking Act) as well as with all applicable regulations and other guidance adopted by the Authority;
 - (f) the licensee shall maintain appropriate internal controls, audit procedures and other appropriate systems to manage the risks of its business;

- (g) the licensee shall conduct its administration and operations in a safe and sound manner and in compliance with all applicable requirements of law, regulations and other administrative instructions;
- (h) the licensee shall not engage in criminal activities, including fraud, money laundering and the financing of terrorism;
- (i) the licensee shall operate only under a name that has been approved for use by the licensee by the Authority;
- (j) the licensee, at all times during the license period, must have an office established in Maldives at which all of its business activities are conducted. The licensee must have at least two individuals who shall be full-time employees to properly direct all of its business activities. Proper accounts and records of its business must also be maintained at those premises; and
- (k) each person who is or will be a major shareholder, Administrator or member of *Sharī'ah* Committee of the licensee shall at all times be fit and proper for the intended position.

CHAPTER IV

ISLAMIC BANKING BUSINESS

**Islamic banking
business and Islamic
banking services**

11. An Islamic bank or a bank engaging in Islamic banking business, may engage in any of the following;
- (a) mobilize funds in the form of deposits such as demand deposit, savings or other compatible forms based on contracts acceptable in Islamic *Sharī'ah*;
 - (b) Investment products based on contracts acceptable in Islamic *Sharī'ah*;
 - (c) Distribute financing of leasing moveable or immovable goods to customers based on the contract *ijarah* and/or lease purchase in the form of *ijarah* or other contract not contradictory to the Islamic *Sharī'ah*;
 - (d) Grant loan or debt based on contracts acceptable in Islamic *Sharī'ah*;
 - (e) Debit or credit card business based on contracts acceptable in Islamic *Sharī'ah*;
 - (f) Conduct custody for the interest of other parties, such as providing safety deposit boxes, based on contracts acceptable in Islamic *Sharī'ah*;
 - (g) Transfer money, both for own interest and interest of the customers based on contracts acceptable in Islamic

Sharī'ah;

- (h) Function as Trustees based on contract of *wakalah*;
 - (i) Provide letter of credit facilities and bank guarantees based on contracts acceptable in Islamic *Sharī'ah*; and
 - (j) Engage in any other Islamic banking business authorised by the Authority as being appropriate to be carried by Islamic banks.
- Opening of new branches** 12. Except with prior approval of the Authority, no Islamic bank may open a new branch, agency or office in any part of Maldives or outside Maldives.

CHAPTER V

SHARIAH COMMITTEE

- Establishment of a *Sharī'ah* Committee** 13. (a) Each Islamic bank or bank engaging in Islamic banking business, shall establish a *Sharī'ah* Committee of no less than 3 (three) members from among Islamic doctrinal specialists, who have previous experience in the area of Islamic financing.
- (b) The Board of Directors of an Islamic bank or bank engaging in Islamic banking business shall appoint the members of the *Sharī'ah* Committee. Islamic bank or bank engaging in Islamic banking business shall provide written notice to the Authority not less than 30 (thirty) days before appointing or electing a person as *Sharī'ah* Committee Member.
- (c) The Authority may object in writing within 30 (thirty) days to any person being nominated as a members of the *Sharī'ah* Committee or continuing an appointment, if such person is not fit and proper as determined by the Authority.
- Qualification** 14. The members appointed to the *Sharī'ah* Committee shall be natural persons and shall possess the following qualifications.
- (a) a formal qualification; or possess necessary knowledge, expertise or experience; in the area of Islamic jurisprudence (*usūl al-fiqh*) or Islamic transaction/commercial law (*fiqh al-mu'amalāt*);
 - (b) must not be a person convicted for theft, misappropriation, extortion, fraud, criminal breach of trust, corruption or negligence or be a person against whom a breach of trust case has been filed and proved at any government agency;
 - (c) be fit and proper as defined in the Prudential Regulation No: 9-2009 (Fit and Proper Requirements).

Duties and Responsibilities of Sharī'ah Committee

15. All *Sharī'ah* Committee members are expected to participate and engage themselves actively in deliberating *Sharī'ah* issues put before them. The duties and the responsibilities of the *Sharī'ah* Committee shall include, but need not be limited to, the following:-
- (a) advise the Board of Directors of the bank on *Sharī'ah* related matters in order to ensure that the Islamic banking operations of the bank comply with *Sharī'ah* principles at all times;
 - (b) endorse a *Sharī'ah* compliance manual which specifies the manner in which a submission or request for advice must be made to the *Sharī'ah* Committee, the conduct of the *Sharī'ah* Committee's meeting and the manner of compliance with any *Sharī'ah* Committee decision;
 - (c) ensure that the products of the Islamic bank comply with *Sharī'ah* principles in all aspects, the *Sharī'ah* Committee must endorse the following:
 - (1) the terms and conditions contained in the proposal form, contract, agreement or other legal documentation used in executing the transactions; and
 - (2) the product manual, marketing advertisements, sales illustrations and brochures used to describe the product.
 - (d) advise on *Sharī'ah* matters to related parties of the bank such as its legal counsel, auditor or consultant, upon request, in relation to their work at the bank;
 - (e) advise the bank to consult the Authority on any *Sharī'ah* matters which have not been resolved or endorsed by the Authority;
 - (f) shall record any opinion given, in particular, the Committee shall prepare written *Sharī'ah* opinions in the following circumstances
 - (1) where the bank make reference to the Authority for advice; or
 - (2) where the bank submits applications to Authority for a new product.
 - (g) assist the Authority on reference for advice the *Sharī'ah* Committee must explain the *Sharī'ah* issues involved

and the recommendations for a decision. It shall be supported by relevant *Sharī'ah* jurisprudential literature from the established sources. Upon obtaining any advice of the Authority, the *Sharī'ah* Committee shall ensure that all Authority's decisions are properly implemented by the bank; and

- (h) Overseeing the computation and distribution of *zakā* and any other fund to be channelled to the charity.

For the purpose of this section, "bank" means Islamic bank and banks engaging in Islamic banking business.

**Relations with the
Sharī'ah
Committee**

- 16.** To ensure the smooth running of the *Sharī'ah* Committee, each bank:-

- (a) shall refer all *Sharī'ah* issues in its Islamic banking services to the *Sharī'ah* Committee for advice. The submission for an advice or a decision must be made in a comprehensive manner for an effective deliberation by the *Sharī'ah* Committee. This shall include explaining the process involved, documents to be used and other necessary information;
- (b) is required to adopt and take necessary measures for implementation of *Sharī'ah* Committee's advice;
- (c) shall obtain validation of the *Sharī'ah* Committee relating to *Sharī'ah* issues in all product documentations;
- (d) shall ensure that the *Sharī'ah* Compliance Manual referred 15 (b) is endorsed by the *Sharī'ah* Committee;
- (e) must provide necessary assistance to the *Sharī'ah* Committee. The *Sharī'ah* Committee must be given access to relevant records, transactions, manuals or other relevant information, as required by them to perform their duties; and
- (f) must provide the *Sharī'ah* Committee with sufficient resources, such as budget allocation, independent expert consultation, reference materials and trainings.
- (g) The decisions of the *Sharī'ah* Committee of the bank shall be binding on the bank.

CHAPTER VI FINANCIAL REQUIREMENTS

- Reserve Account** 17. (a) Every Islamic bank shall allocate, from the distributable profits, after taxes and *zakā*, for the formation of a capital reserve:-
- (1) at least 50 (fifty) percent of its net distributable profits until the reserve totals to 50 (fifty) percent of its paid-up capital; after which
 - (2) not less than 25 (twenty five) percent of the bank's net distributable profit until the reserve totals 100 (one hundred) percent of the bank's paid-up capital.
- (b) A bank may not reduce its capital and the reserve accumulated in this manner or in any other manner without the Authority's prior approval.
- Percentage of Liquid Assets** 18. (a) The Authority may from time to time prescribe by notice in writing to each Islamic bank a minimum amount or amounts of liquid assets to be held by the bank at all times.
- (b) Whenever the Authority issues a notice under subparagraph (a) above each Islamic bank shall be allowed such uniform period of grace, being not less than 1 (one) week, as may be specified in that notice in which to comply with the provisions thereof.
- (c) An Islamic bank shall not, during any period in which it has failed to comply with any notice under subparagraph (a) above, without the approval of the Authority, provide financing or advance any money to any person.
- (d) For the purpose of computing the minimum amount of liquid assets under this section, and the Islamic deposit of an Islamic bank carrying on business in Maldives and elsewhere, and such other liabilities of such bank, may be determined by the Authority;
- Reporting** 19. (a) Each Islamic bank and bank engaging in Islamic banking business shall furnish to the Authority, in such forms and at intervals specified by the Authority the followings:-
- (1) statements showing its assets and liabilities in relation to the its Islamic banking business;
 - (2) a statement giving an analysis of loans, advances

and investment;

- (3) not later than four months after the close of its financial year, a statement showing the income and expenditure in respect of its business in Maldives;
 - (4) supplementary schedules or information concerning its various accounts and activities, including information on assets, liabilities, capital accounts, and contingent liabilities granted to the bank's customers;
 - (5) credit information of its customers as is required for the purposes of the Credit Information Bureau established by the Authority at such intervals and within such period as may be prescribed by notice in writing from time to time by the Authority; and
 - (6) such information as may be requested by the Authority.
- (b) Each bank shall submit to the Authority within 4 (four) months after end of the financial year, the audited financial statements of its Islamic banking business, including the accompanying letter from the auditors to the bank management addressing issues or weaknesses identified during the course of the audit.

CHAPTER VII SPECIFIC REQUIREMENTS

Systems Controls Requirements

- and 20. Each Islamic bank and bank engaging in Islamic banking business must comply with the following requirements:-
- (a) Implement systems and controls to manage the affairs of the business efficiently, compliantly and prudently;
 - (b) Implement an adequate governance structure;
 - (c) Appoint relevant senior personnel to key positions to coordinate the operation and business of the applicant;
 - (d) Implement specific internal controls to ensure that the all its Islamic banking business are *Sharī'ah* compliant;
 - (e) Implement specific internal controls to manage risks associated with Money Laundering and Terrorist Financing in line with international standards and such other standards prescribed by the Authority.

Internal Controls

Shari'ah

21.

(f) Appropriate policies and procedures must be in place which evidences how the bank will manage the associated risks in the operation of Islamic banking business, including the specific issue of *Shari'ah* risks.

(a) Islamic bank and bank engaging in Islamic banking business:-

(1) shall establish an internal *Shari'ah* control function which is responsible for monitoring ongoing compliance with *Shari'ah* in the implementation and execution of the financial services.

(2) shall maintain a *Shari'ah* Compliance Manual which sets out how the internal *Shari'ah* review and audit process will be coordinated on an ongoing basis.

(3) shall ensure that the internal reviews are conducted in accordance with the provisions of accounting, auditing, governance, ethics and *Shari'ah* standards endorsed by the Authority.

(b) The *Shari'ah* Compliance Manual must cover the following:-

(1) who is responsible for overseeing the internal *Shari'ah* control function;

(2) how such reviews will be conducted;

(3) how any disputes relating to *Shari'ah* will be resolved;

(c) The internal *Shari'ah* control function must conduct a review as frequently as necessary to improve the weaknesses identified in such review; however the following must be addressed at least on a quarterly basis, and

(1) The degree of compliance with *Shari'ah*;

(2) Any instances of *Shari'ah* breaches and how these were resolved;

(3) Any recommendations or reports from the *Shari'ah* Committee;

CHAPTER VIII
OWNERSHIP, CONTROL AND MANAGEMENT OF ISLAMIC BANK

Information on change in ownership and control or management of Islamic banks **22.** Whenever a change is about to occur in the ownership, control or Administrator of any Islamic bank, the bank shall report the proposed change to the Authority.

Sanction for, reconstruction, etc., of bank required **23.** Every Islamic bank shall obtain the approval of the Authority of any proposed:-

- (a) arrangement or agreement:-
 - (1) for the sale or disposal of its shares or business; or
 - (2) affecting voting power, management or other matters, which will result in a change in the control or management of the Islamic bank; and
- (b) Scheme:-
 - (1) for reconstruction of the Islamic bank; or
 - (2) for amalgamation, merger or otherwise between the Islamic bank and any other corporation,

wherein the whole or any part of the undertaking or the property of the Islamic bank is to be transferred to another corporation.

CHAPTER IX
ENFORCEMENT MEASURES

Corrective Measures **24.** If an Islamic bank or bank engaging in Islamic banking business, violates or fails to comply with any provision of this regulation or any other regulations issued by the Authority, or conditions of licensing, instruction, or order issued by the Authority; the Authority may take any one or more of the following corrective measures.

- (a) Issue a warning to the bank;
- (b) Enter into an informal agreement with the bank for correcting violations and any unsafe and unsound practices and conditions;
- (c) Issue an order to the bank requiring it to cease and desist from particular actions and further to take affirmative actions to correct violations and any unsafe & unsound practices and conditions;
- (d) Require the board of directors to inject additional capital funds;

- (e) Restrict the scope of activities of the bank including imposing limitations on any foreign exchange activities, granting of credit, making of investments, acceptance of deposits, borrowing of money, or other activities as the Authority may deem appropriate;
- (f) Suspend access to the credit facilities of the Authority;
- (g) Suspend or require the removal of any directors, executive officers or managers;
- (h) Appoint an advisor or a conservator;
- (i) Impose an administrative penalty on the bank or any of its directors, or managers;
- (j) Hold personally liable and seek restitution from, as the law allows, any directors, executive officers or major shareholders of the bank; or
- (k) Suspend or revoke the bank's licence.

Revocation of licence or approval 25.

- (a) The Authority may revoke a licence or cancel an approval granted to a bank to engage in Islamic banking business, when the Authority determines that:-
 - (1) any of its Islamic banking operations involve any element which is not approved by the Islamic *Shari'ah*;
 - (2) the bank is carrying on its business in a manner detrimental to the interest of depositors and other creditors;
 - (3) has insufficient assets to cover its liabilities to the public;
 - (4) is contravening any provision of this regulation;
 - (5) has ceased to carry on Islamic banking business in Maldives.
- (b) Prior to any such revocation or cancellation, the Authority shall notify its intention to take such actions to the bank concerned and shall give the bank an opportunity to submit, within such period as may be specified in the notification, reasons why the licence or approval should not be revoked or cancelled.
- (c) The bank may, within 30 (thirty) days of the revocation or cancellation, appeal against the decision of the Authority to a Court of law.

Application to the regulations 26.

- (a) Islamic banks shall comply with this Regulation and all other Regulations issued by the Authority.
- (b) In case of inconsistency with a provision of any other regulation, including, Prudential Regulations issued by

the Authority, this regulation shall prevail.

- (c) Where any provision of any prudential regulations issued for banks and financial institutions are silent or do not address the specific *Shari'ah* products or services, the Authority may decide on such issues.

Definitions

27. (a) In this regulation, unless the context otherwise requires:-

“administrator” means a person who is a director, executive officer, or member of the audit committee of a bank, including, in the case of a foreign bank, a designated branch manager;

“Authority” means Maldives Monetary Authority established pursuant to Law no. 6/81 (Maldives Monetary Authority Act 1981);

“bank engaged in Islamic banking business” means any bank licensed by the Authority under Law No. 24/2010, (Maldives Banking Act) to engage in banking business, which is not organized as an Islamic bank, but offering Islamic banking services through a department of the bank or otherwise, with the approval of the Authority;

“Company” means a joint stock company or corporation;

“Executive officer” means a person who is an employee of a bank licensed to conduct Islamic banking business in the Maldives who, regardless of title, participates in policy-making functions, or is responsible for any material portion of the business activities of the bank, or is authorized to commit the bank's funds by making investments. The term includes, but is not limited to, the chairman of the board, the president, the managing director, every vice president, the chief financial officer, the chief executive officer, and the treasurer of a bank;

“Islamic bank” means any Company, licensed under Law No. 24/2010, (Maldives Banking Act) and Law No. 6/81 (Maldives Monetary Authority Act 1981) to engage in banking business carrying out all of its banking business according to the precepts and principles of Islamic *Shari'ah*.

“Islamic banking business” or *“Islamic banking services”* includes Islamic banking services listed in section 11 of this regulation.

“Islamic deposit” means a sum of money or moneys' worth received or paid to any person, under which the receipt and repayment shall be in accordance with the terms of an agreement made

under *Shari'ah* principles on any basis including custody or profit sharing;

“*Shari'ah*” or “*Islamic Shari'ah*” means, the Holy *Qurān* and the ways preferred by the learned people within the community and followers of the *Sunnah* in relation to criminal, civil, personal and other matters found in the *Sunnah*;

“*Licence*” means licence granted by the Authority under Law No. 24/2010, (Maldives Banking Act) including the licences issued by the Authority under Law No. 6/81 (Maldives Monetary Authority Act 1981)

“*Person*” shall include an individual and any entity or body of persons whether incorporated or not.

- (b) In this regulation, unless otherwise the context requires, words in the singular shall include the plural and vice versa.