FURTHER QUESTIONS RELATING TO THE? CONSUMER CREDIT CARD

Q: 20- I received your answer to the question on the consumer credit scheme for which I thank you.

I have, as a humble student reservations on the correctness of your conclusion: I would be obliged if you would urgently respond to the following:

1. It is correct that on the basis of written documentation the relationship between the company and the customer is shown as one of the lender and borrower. The amount of the loan which is inserted by the merchant on the 'Acceptance note" (Form 2), designated as the Invoice amount" is the price of the goods. If for example, a customer purchases goods for Rs. 10,000 then the amount of the loan purportedly advanced by the company to him is reflected as Rs. 10,000 which is paid in 6 monthly instalments together with interest thereon at the present rate of 9.5%. In fact, the amount lent is not the price of the goods (Rs. 10,000) but the price less the agreed discount of 20% to the merchant (Rs. 8,000). If the transaction between the Company and the customer was one of pure loan, then the principal amount of the loan should equal the actual payment by the Company to the merchant and not the price of the goods. On your view, the difference between the price of the goods and the actual amount paid to the merchant (Rs. 10,000 less Rs. 8,000) must be ascribed to additional interest but this does not accord with the terms of the written documentation on which your opinion is based.

Furthermore, in some cases, the customer as "the borrower" is required to pay a deposit of 30% to the Company upon conclusion of the transaction and this payment also is contrary to the essence of a pure loan transaction. Hence, your statement that "the Company pays to the merchant the price owed by the customer / consumer" is not strictly correct because what is paid is the price less the agreed discount (presently 18%).

2. On the assumption that the transaction between the company and the customer is a loan, that transaction is separate from the sale between the merchant and the customer. On your view the merchant has sold goods to the customer at the marked selling price. The sale viewed separately is valid according to Shari'ah and the principle does not appear to apply here. The fact that as agent the merchant is obliged to pay interest in case of default in accounting to the company does not affect the customer, (non-Muslim), just as the payment of interest by the (non-Muslim) customer to the company does not affect the merchant. In South Africa, in any event a debtor who fails to pay a debt timeously is automatically by law under the prescribed Rate of Interest Act 1975 obliged to pay interest thereon at a rate prescribed by the minister in the official gazette from time to time.

3. As regards the agreement between the company and the merchant, you are of the view that agreement amounts to a "complex relationship which is totally against the parameters of the Shari'ah". The provision relating to payment of interest in case of late payment operates as deterrent. In the absence of such a provision, some merchants would deliberately use the company's money in their own business as working capital for periods of time to the financial

prejudice of the company. In any event the company will agree to delete that provision (clause 4) in the case of Muslim merchants, but the provisions of the prescribed Rate of Interest Act 1975 would in any event apply by operation of law. Consideration should also be given to the question as to whether that provision (clause 4) is void in itself and therefore severable from the rest of the contract because it does not appear to be contrary to the essence of the contract as to render the whole contract void.

Consideration should be given to the real nature of the transactions concerned without placing undue emphasis on the literal wording of the documents. On this view the transactions are analogous to Murabahah on the basis set out in the initial question, although not satisfying all the requirements of Murabahah, such as possession in the light of the foregoing, then please give us your suggestions as to how to validate the transactions concerned according to Shariah. The majority of black people in South Africa, being the underprivileged, purchase their goods in instalments over 6 months. The overwhelming majority of Muslim merchants do not have the financial resources to sell goods on credit over 6 months. The effect of your opinion would be that Muslim business, which funds the religious and educational institutions of the community would be even further weakened, and Muslims would continue to be dominated by white conglomerates. In an endeavor to avoid interest some Muslim merchants have agreed to grant the company a bigger discount (e.g. from 18% to 25%), so that the company in turn has agreed not to charge the customer any interest.

6. Your statement that American Express does not charge interest in its cards is incorrect. All companies throughout the world charge interest to card holders in case of late payment. Hence, applying the interest principle which appears to be the basis of your FATWA, most transactions would be rendered null and void causing great hardship to Muslims living

You have laid much emphasis on the discount the CCC charges from the Mei-chant. You insist that this discount indicates that the CCC has purchased the commodity from the Merchant on a discounted rate, then has sold it to the customer for its full price on which the CCC charges interest. But, I am afraid, this is not the intention of the parties. The discount is not charged by the CCC because the CCC has purchased the commodity. Rather this discount may be interpreted in two different ways:

(a) This is a discount analogous to the discount normally charged by a bank while accepting a bill of exchange. However, it is an extra-ordinary situation where the CCC charges interest from two different persons for the same amount of money and the same period of time, because it charges discount from the Merchant and at the same time it charges interest from the Customer.

(b) There may be another interpretation of this discount. It is possible that it is similar to the commission normally charged by the brokers from the merchants. This brokerage may be justified on the ground that the facility provided by the CCC to the card-holders attracts them to those merchants only who accept such cards. In this way the CCC works for increasing the number of customers dealing with the Merchant, and thus claims a discount / commission from him.

In my humble view, no other interpretation can be ascribed to this discount, and I am sure that no court would interpret it to mean that the CCC has purchased the commodity on a discounted rate.

There is another reason for not treating this transaction a Murabahah. The agreements clearly prove that they are not restricted to the purchase of goods only. They are used for the services rendered by the Merchants as well. How can a Murabahah work in the case of services?

Now, there are three parties involved in this transaction:

(i) The CCC (the company who issues the card)

(ii) The Customer (the person who holds the card)

(iii) The Merchant (who accepts the card and sells the goods and services to the customer)

As for the relationship between the CCC and the customer, it is clearly a relationship of borrowing on the basis of interest. Hence, it is not allowed for a Muslim to become a party to this relationship.

But the case of the third party i.e. the Merchant is different. When a Merchant accepts this card, it means that he has accepted the hawalah (transfer) of the debt of his customer which the customer has owed to him by virtue of the sale concluded between them. The price of the goods will now be paid to him by the CCC. There is no violence of any principle of Shariah so far. The discount allowed by him to the CCC can also be treated as a commission to the broker, as explained earlier. Therefore, the discount can also be justified on this ground, just as it has been justified in that case of ordinary credit-cards issued by the American Express etc. But the problem arises when the merchant agrees to become an agent of the CCC for the collection of all the amounts owed by the customer to the CCC, including the amount of interest. It is established in Shariah that agency in a transaction of interest is also not allowed. This is the sole reason, in my humble opinion, for which it does not seem permissible for a Muslim Merchant to sign this agreement with the .CCC. However, if the Muslim merchants can avoid the element of agency through a special arrangement with the CCC, it seems to be lawful for them to accept such cards, and to sell the commodities to such card-holders, because the Merchant is not a party to the agreement between the card-holder and the CCC.

You have also asked as to what measures can be adopted in order to bring this transaction within the parameters of Shariah. Coming to this question I would suggest two alternatives:

Firstly, the contract can be modified so as to make it a clear Murabahah transaction with all its implications. This will require radical changes in all the forms and agreements, but, at the same time it will validate the whole transaction and the Muslim will be at liberty to issue such cards, to use them and to accept them However, it seems difficult that the CCC will accept the implications of Murabahah.

Secondly, the element of agency for the collection of the dues from the Customer may be

eliminated from the agreement signed by the Merchant. It may, however, be provided in the agreement that the Customer either pays his dues directly to the CCC, in which case the Merchant will not be involved in the payment, or he deposits the amount with the Merchant wherefrom the CCC will arrange to collect it. In this case the Merchant will act as a trustee for the Customer, and not as an agent of the CCC.

Another alternative may be that the Merchant sells the goods to the Customer at a higher rate which may be equal to the amount he has to pay to the CCC over a period of six months. But it should be a fixed amount finally settled at the time of sale and should not be increased later on. Then the CCC may also claim a brokerage commission from the Merchant on the increased price at a higher rate. In this case the CCC advances a loan to the Customer which is free of interest, and a Muslim Merchant can work as an agent for the CCC to collect the amount of loan.

I think that if the CCC is not agreeable to the first alternatives, this method can be adopted as a last resort. But before applying this method other Ulama should also be consulted because I am not fully confident about it.

Before concluding this discussion, I would like to clarify another point you have raised in the last paragraph of your question. You say,

"Your statement that American Express does not charge interest on its cards is incorrect. All companies throughout the world charge interest to card-holders in case of late payment..."

Actually, I was aware that the Credit Card Companies do charge interest in the case of late payment, but the major difference between normal credit-cards (like American Express etc.) and the Consummer Credit Card (under question) is that the former ones do not charge any interest for the initial period which extends in some cases to three or four months. It is only in case of default after the prescribed period that they charge a penalty interest. Therefore, their basic transaction per se does not have an element of interest. The penalty-interest is an additional condition imposed by them which does not render the whole transaction invalid. Therefore, if a Muslim subscribes to such credit cards with a clear intention that he will always pay the bills of the company promptly and he has good reason to believe that he will never become a defaulter, and will never have to pay interest, it will be permissible for him
to use such Cards.

The case of Consumers Credit Card is totally different. Here every card-holder is bound to pay interest from the very beginning. He has to pay interest for each and every day. So, the whole transaction is based on interest. It was this major difference for which I had distinguished the case of normal-credit cards from the Consumer Credit Card under discussion.

This will clarify another misconception also. It was not the clause of penalty-interest that formed the basis of my opinion. In fact, the nature of the transaction is such that it cannot be distinguished from an interest-bearing loan, and I? have already elaborated the basic reasons for its? impermissibility for each one of the three parties.

Contemporary fatawaa