

THE CONSUMER CREDIT SCHEME

Q: 21- It is becoming common for Muslim retail businessmen in South Africa to enter into the so-called consumer credit scheme. The retailer concerned concludes a written agreement with a third party Company ("the Company). A copy of the specimen agreement is enclosed herewith. In terms of the scheme:

- a) the customer wishes to purchase such goods on credit over 6 months;
- b) the customer wishes to purchase such goods on credit over 6 months;
- c) the customer is informed that the Company may sell him such goods on credit and, for that purpose, the customer fills in a prescribed application containing details relating to his credit-worthiness;
- d) that application form is immediately faxed by the retailer to the Company for approval;
- e) the Company responds very shortly thereafter (within half hour);
- f) if the Company approves such application, it authorises the retailer to supply the goods so selected to the customer on credit;
- g) the customer then signs an agreement in the form prescribed by the company in terms of which he undertakes to pay the Company for the price of such good in 6 monthly installments plus agreed interest. The installments may be paid directly to the Company or to the retailer concerned who as the agent of the Company pays the money so collected directly to the Company;
- h) the goods so selected are then handed over to the customer and the relevant completed documentation is then delivered to the Company;
- i) the company thereafter within a week or the agreed time period pays the retailer the invoiced price of the goods less the agreed discount as set out in the specimen agreement between the Company and the retailer which is binding in law. The agreed discount presently is 17 1/2%. It is apparent from the scheme that two separate contracts are concluded, namely:
 - (i) a contract of sale between the retailer and the Company in terms of which the company purchases the goods selected by the customer at an agreed price (invoice price less discount) which is paid effectively in cash;
 - (ii) a contract of sale between the Company and the customer in terms of which the Company resells such goods to the customer at the invoice price plus interest in 6 monthly installments.

In the conclusion of both contracts, the retailer acts as an agent and a principal. The retailer

acts as a principal in concluding his separate contract of sale with the Company in terms of the overriding specimen agreement which governs his relationship with the Company; and he acts as an agent in delivering the goods selected by the customer who is liable to the Company only for the agreed price plus interest which is payable in 6 monthly instalments as aforesaid.

In the result; the retailer benefits in that:

- a) he does not have to carry the financial risk of granting credit to the ordinary consumer;
- b) he makes a profit although at a lower margin;
- c) he does not have to borrow money on overdraft to fund the granting of credit.

The Company which is wholly non-Muslim and financially sound, benefits by making a profit in terms of its instalment sale with the customer concerned.

The scheme appear to be an application of the Murabahah principles and your considered fatwa is urgently appreciated by the Jamiatul Ulema, Natal. (MS. Omar, South Africa)

A: I carefully studied the question concerning the consumer credit card and the annexed documents.

The question you have formed does not reflect the correct position as emerges from the agreement forms annexed to the question. A careful study of the agreement forms reveals that this transaction is totally different from the Murabahah transactions of the Islamic banks. In case of Murabahah, the financier purchases a commodity, and after having its constructive or physical possession, sells it to his customer on deferred payment basis.

On the contrary, the 'Company' in the case of consumer credit card, does not purchase the commodity. It simply gives a loan to the customer / consumer on interest, but instead of giving the loan to the customer himself, it settles the invoice value of the commodities purchased by him from the merchant, the retailer. In other words, the company pays to the merchant the price owed by the customer/consumer. This is clear from the very first sentence found in the "merchant agreement" form which reads as follows:

"Consumer Credit Corporation Ltd. (CCC) undertakes to provide finance to the merchant's customers and settle the Merchant's invoice value less the discount due to CCC directly to the Merchant..

Thus the relationship between the Company and the customer / consumer is one of creditor and borrower. There is no sale affected between them. That is why the customer has been named a "borrower" in form I side B, which is a form of agreement between the company and the customer. It is then evident from both of the forms that the company advances a loan to the customer and charges interest thereon (see clause 5 of form I side B). However, the company has made the retailer liable for collecting the installments of repayment from the customer and for paying the same to the company within twenty four hours. The retailer has also been made liable for interest if he delays in payment after receiving the amount from the customer. But all

these conditions do not change the relationship of a borrower and lender between the company and the customer.

As for the relationship between the Company and the merchant, it is a complex relationship according to the agreement which includes the relationship of agency indemnity and, in certain situations, of money lending on the basis of fixed interest. Such a complex relationship is totally against the parameters of Shariah. Moreover, the provision of interest in case of late payment renders the whole transaction invalid according to Shariah.

Therefore, the scheme of the Consumer Credit Card, as envisaged in the annexed agreement forms in undoubtedly an interest bearing scheme which cannot be held as valid according to Shariah, nor can it be validated on the analogy of the Murabahah transaction, because there are a number of basic differences between the two transaction. So, I have no doubt in my mind that it is not permissible in Shariah to become a party to this transaction.

This "Consumer Credit Card" is substantially different from the general credit cards issued by several companies like American Express, Visa etc, where no interest is charged by the company from the card - holder. So, the "Consumer Credit Card" in question should not be confused with the general credit cards issued by American Express etc. which can be permissible subject to certain condition.

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