

ISLAMIC LAW OVERVIEW OF THE OPERATIONAL WORK OF CREDIT CARDS

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1.0 INTRODUCTION

Transactions on credit card involve various *Shari'ah* issues and rulings. As a result of it, this chapter will endeavor to explain the *Shari'ah* issues and rulings pertaining to conditions, validity of credit cards conditions, adaptation (*takyif*) and Islamic legal rulings on credit cards.

The most important aspect of credit card transactions is pertaining to terms and conditions of the agreement. This is because the terms and conditions are often considered to touch the heart and soul of the credit card transactions. The Prophet (SAW) was reported to have said to the effect that: "Muslims are bound by their conditions".¹

The whole of the credit card scheme is based on the conditions between the contracting parties (i.e. the card issuer, card holder and the merchant). It should be noted that the absence of conditions in a credit card transaction may be tantamount to the absence of the contract itself. Hence, terms and conditions are very essential factor to be considered in a credit card transaction. In the forthcoming discussion we will be looking at the general concept of condition and conditions in a contract, the possibility of admitting new conditions in a contract, the effect of conditions in a contract and lastly, the classification of contracts from the view point of their amenability or otherwise to conditions.

Condition (*shart*) generally means: "an evident and constant attribute whose absence necessitates the absence of *hukm* (*Shari'ah* rulings) but whose presence does not automatically bring about its object (*mashrut*)". An instance of this is, the presence of a valid marriage is a precondition of divorce, but it does not mean that when there is a valid marriage, it lead to divorce.² It is under this condition that this chapter intends to discuss valid condition (*shart sahih*) and invalid or void condition (*shart batil*) and juristic opinion on the two transactions

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¹ *Sunan al-Tirmidhi*, Kitab al-Ahkam, Bab ma dhukira 'an al-Rasul *Allah* fi al-Sulh bayna al-Nas, *Hadith* no. 1356, Dar Ibn Hazam, 1422AH/2002AD

² Kamali, M. H, *Principles of Islamic Jurisprudence*, (Second revised edition), Ilmiah Publishers, Kuala Lumpur, 2000, p.337

However, a condition in a contract refers to “an additional reservation or exception in the contract stipulated by the *Shari’ah*, custom, two contracting parties, or either one of them in order to realize a benefit for the contract itself, contracting parties or one of them and that additional stipulation is meant to be binding on the parties”.³

This study further elaborates on the adaptation of credit cards and the summary of scholars views in respect of the adaptation. The aftermath of the adaptation which could be *hawalah/wakalah* agency/assignment of debt transaction or *kafalah/damann* guarantee or *qard hasan* benevolent loan or a combination of the three are discussed.

Shari’ah rulings on special credit card transactions are also considered here. Some of these transactions include affiliation of financial institutions to International Card Regulatory Organizations, cash withdrawal charges, special privileges granted by card issuers, buying gold, silver or currency notes using credit cards, fines and penalties for delayed payments and foreign exchange using credit cards.

1.2 CONDITIONS AND ITS EFFECT IN CONTRACTS GENERALLY

Generally Islamic law explains and assesses the legal acts and omissions incurred by the *mukallaf* (legally competent person). When evaluating one’s act or omission in accordance to these criteria, it depends on whether or not the act or omission in question fulfills the essential requirements and conditions that the *Shari’ah* has laid down for it as well as to ensure that there exist no obstacles to estoppe its proper execution. Concerning the freedom of contracting parties, I am of the view that parties to a contract are free to stipulate any condition they deem fit in their agreement in so far as such conditions do not violate the principles of Islamic law. In respect of the effect of conditions on contracting parties from the Islamic legal perspective, it should specify whether the conditions are *Wajib* (compulsory), *Mandub* (recommended), *Makruh* (detested), *Haram* (prohibited) or *Mubah* (allowed) on the parties. At this juncture, it is essential to make some reference to some *Qur’anic* verses and Prophetic traditions relating to conditions in contract. In addition to the two verses quoted earlier in *Surah al Ma’idah*: 5:1⁴ and *Surah al Nisah*’: 4:29,⁵ Allah says in *Surah al-Nahal*: 16:91 “Fulfill the covenant of Allah when ye have entered into it, and break not your oaths after you have confirmed them; indeed

³ Sano, K. M, “The Provisions in the Contracts: A critical reading paper presenting at the Accounting and Auditing Organisation for Islamic Financial Institutions, Manama, Bahrain, March 2003, p.7

⁴ Ali, A. Y., *The Holy Qur’an Translation*, p.109

⁵ Ibid., p.87

ye have made Allah your surety; for *Allah* knoweth all that ye do.”⁶ In *Surah al-Isra’*: 17:34 *Allah* also says: “And fulfill (every) promise, for (every) promise will be enquired into (on the Day of Reckoning).”⁷ The Prophet (SAW) was also reported to have said: “The conditions most deserving of fulfillment are those whereby you make a woman lawful to you.”⁸ In other words, Islamic scholars considered that all conditions deserve to be fulfilled, but those mentioned in the context of marriage are most deserving of fulfillment.

Considering the *Qur’anic* verses and the prophetic traditions mentioned above it can rightly be concluded that complying with stipulated conditions by contracting parties in any transaction is considered *wajib* (compulsory) as long as those conditions are in line with Islamic rules and regulations. Therefore, all terms and conditions of credit card agreements are binding on contracting parties so long as they are in line with teachings of Islamic law.

1.3.0 CATEGORIES OF CONDITIONS IN CONTRACTS

The two types of conditions generally known to Islamic jurisprudence are ‘legal condition’ (*Shart Shar’i*) and improvised condition’ (*Shàrt Ja’li*). Legal condition is defined as “a condition laid down by Allah through the *Qur’an* or *Sunnah* of the Prophet (SAW)”. An example of legal condition (*Shart Shar’i*) is *wudu’* (ablution) for *Salah* (prayer). An improvised condition (*Shàrt Ja’li*) is defined as “a condition stipulated by competent individuals or *mukallafin* in their transactions and contracts.”⁹

It should be noted that there are some disagreements among the Muslim jurists on the classification of conditions in contracts. There are basically two schools of jurisprudence with regard to this issue and they are the Hanafi School and the *Jumhur* Shools (Maliki, Shafi’i and Hanbali).¹⁰

Hanafi School’s View

According to the Abu Hanifa’s School of jurisprudence, there are three classes of conditions, namely:

- i) *Shart Sahih* (valid condition),

⁶Ibid., p.269

⁷ Ibid., p.278

⁸ Al-Bukhari, *Sahih*, Kitab al-Shurut fi al-Mahr ‘inda al-Nikah, Hadith no.2721 and 5151

⁹ Kamali, *Principles of Islamic Jurisprudence*, p.338

¹⁰ Al-Zuhayli, W., *Usul al-Fiqh al-Islami*, (Second edition), Dar al-Fikhr, Damascus, 1422H/2001, Vol.1, p.607

ii) *Shart Fasid* (invalid condition) and

ii) *Shart Batil* (void condition).¹¹

Shart Sahih (valid condition) is a condition that endorses the legal nature of the contract, reinforces it, and it is permitted by the *Shari'ah* or accepted in customary practice that are not in conflict with *Shari'ah* injunctions.. This mean that in order to be valid a condition must satisfy one of these four prerequisites otherwise it will not be valid.¹²

Shart Fasid (invalid condition) is one which does not possess any of the qualities of *Shart Sahih* (valid condition) but which gives a certain benefit to either of the contracting parties or to someone else. An instance of this is when a person sells his radio to someone and stipulates that the purchaser should allow him to use it for a week after the sale transaction.

Shart Bātil (void condition) is a condition which does not satisfy any of the requirements of the valid condition and which entails no benefit to anyone such conditions often goes against the essence of contracts. For instance, a person sells a house to somebody and stipulates that he will not stay in the house for a certain period, or a car on condition that the buyer should not use the car on a certain day .of the week. Such conditions are void and have no legal value and therefore, *Shari'ah* ignored the condition but maintain the contract as lawful.¹³

Jumhur's Views

According to the *Jumhur* Schools of jurisprudence (Maliki, shafi'i and Hanbali), there are only two types of conditions namely:

i) *Shart Sahih* (valid condition) and

ii) *Shart Batil* (invalid or bad condition).¹⁴

Shart Sahih (valid condition) means a condition which fulfills all the requirements with regard to the essential elements (*arkān*), of a valid contract and it is clear of all obstacles. That means a transaction is valid when it is complete in all respects. Therefore, a valid contract of sale can

¹¹ Al-Jassas, A. B., *Al-Fusul fi al-Usul*, (Second edition), Wazarat al-Awqaf wa ala Shu'aun al-Islamiyyah, Kuwiat, 1992, p.171

¹² Al-Kasani, *Bada'i' al-Sana'I'*, Vol.5, p.171

¹³ Al-Jassas, *al-Fusul fi al-Usul*, p.171

¹⁴ Al-Zuhayli, *Usul al-Fiqh al-Islami*, Vol.1, p.101

give rise to its legal consequences, such as, to transfer ownership of the object of sale to the buyer and to establish the vendor's right of ownership of the price.

Shart Batil (invalid or bad condition) is any condition that does not fulfill the requirements mentioned in the *Shart Sahih* (valid condition). Hence, a contract is said to be void when it is short of its requirements, like stipulation contrary to the root of the contract. For instance, transfer of ownership is one of the essential elements of the contract of sale. Therefore, any condition which imposes a restraint upon the buyer's right of disposal of the property, preventing him from giving it or leasing it to any other person or certain group of persons is null and void and of no legal effect.¹⁵

From the *Jumhur's* point of view, invalid (*fasid*) and void (*batil*) conditions are used interchangeably to demonstrate the legal act which is not valid in the eyes of the *Shari'ah* law.¹⁶ We are of the view that the classification by the *Jumhur* is more preferable than that expressed by the Hanafi School. Therefore, henceforth, expression on the credit card conditions will be on the basis of the *Jumhur's* classification, that is, *Shart Sahih* (valid condition) and *Shart Batil* (invalid or bad condition).

1.4 CONDITIONS IN CREDIT CARD CONTRACTS

Reference to our earlier stand, there are two types of conditions in credit card contracts, namely, *Shart Sahih* (valid condition) and *Shart Batil* (invalid or bad condition).

Shart Sahih (Valid Condition)

Shart Sahih (valid condition) in the context of credit card contract covers

- i) conditions pertaining to the responsibilities,
- ii) conditions relating to the opening of an account with the card issuer,
- iii) conditions concerning the payment of fees
- iv) conditions regarding commission on merchant and
- v) conditions relating to the card issuer's unilateral termination of the contract.

¹⁵ Al-Zuhayli, *Usul al-Fiqh al-Islami*, Vol.1, p.101

¹⁶ Al-Zarkashi, *al-Bahr al-Muhit*, Vol.1, pp.320-321

Let us now consider each of these conditions in order to ascertain whether they fall under *shart sahih* (valid condition) or *shart batil* (invalid or bad condition).

1.4 CONDITIONS PERTAINING TO THE RESPONSIBILITIES

Normally the card issuer being one of the parties in the credit card transaction imposes some conditions and responsibilities either on himself or the card holder. These conditions include the following:

- a. The card issuer has to comply with the financial responsibilities of the credit card transactions.
- b. The card issuer has to continue to provide credit card facilities as agreed in the agreement.
- c. The card issuer has the right to repossess the card at any time within the duration of the credit card agreement if he violates one of the conditions for the usage of the card.
- d. The card holder has to be responsible for his agent's act.
- e. The card holder has to repay all the debts or loans resulting from his use of the credit card.
- f. The card holder may obtain goods and services on credit upon issuance of a credit card.¹⁷

The conditions mentioned above are, in reality planned to enhance the execution of the agreement and they are not contradicting any principles of Islamic law, as such they are considered to be in line with the *Shari'ah* principles and therefore, they are binding on contracting parties if they did not contradict the provisions of any *Shar'ah* law.

1.4.2 CONDITIONS RELATING TO OPENING AN ACCOUNT WITH THE CARD ISSUER

Most card issuers require the customer who applies for credit card services to open an account or to deposit some money in the bank as a collateral and security for the card issuer against its payments made to the merchants on behalf of the card holder. If the card issuer stipulates such kind of condition and the said amount is not available for the use of the card holder then it must

¹⁷ Abu Sulayman, *al-Bitaqat al-Bankiyyah*, p.144

be made clear that the card issuer will invest the money for the benefit of the card holder on the basis of *mudārabah* and that any profit accruing on this amount will be shared between the card holder and the card issuer according to an agreed ratio.¹⁸

This type of condition is allowed in Islamic law as it is considered as collateral (*al-rahn*). Under Islamic Law moreover, anything that the debt can be settled with, like cash or property that can become the subject matter of sale may be used as collateral. Likewise, *al-rahn* is allowed before the subject matter of pledge is established under the Hanafi¹⁹ and Maliki²⁰ Schools of thought, as well as Abu al-Khattāb²¹ from the Hanbali School. This is due to the fact that *al-rahn* is a document and a commitment which affirms a right that already exist. Therefore, a right can be subjected to the contract even before the existence of *al-rahn*,²² but it must be available immediately the subject matter has been transferred to the second party. That is also applicable to credit card transactions as the agreement takes place before existence of the debt arising from the usage of the card.

1.4.3 CONDITIONS CONCERNING THE PAYMENT OF FEES

Those banks and financial institutions that are responsible for the issuance of various types of credit cards may impose some fees on the issuance and acquisition of credit cards. Therefore, payment of such fees from the new applicant is considered as the main condition to acquire cards. These fees are an expression of the actual services provided by the banks and the financial institutions to their customers. That is why it varies with the type of card customer wishes to acquire. For instance, fees paid for a gold card and debit card are higher than a silver card, credit card and charge card respectively as it has been explained earlier in chapter two of this research.²³

There are various types of fees which are considered by the card holders as service charge. It should be noted that these fees are merely service charge and there is no relationship between them and the credit limit offered to the card holder. Below are some of the fees and their function:

¹⁸ Accounting and Auditing Organisation for Islamic Financial Institutions, (AAOIFI), *Shari'ah Standards* 1423H/2002, Manama, Bahrain, p.22

¹⁹ Al-Kasani, *Bada'ī' al-Sana'ī'*, Vol.5, p.208

²⁰ Khalid, A. R., *Mawsitat al-Fiqh al-Maliki*, Dar al-Hikmah, Damascus, 1413H/1993, Vol.1, p.300

²¹ Ibn Qudama, A. M. A., *Al-Mughni*, Maktabat Riyadh al-Haditha, Riyadh, 1401H/1981, Vol.4, p.363

²² Kamal, *Bitaqat al-I'timan*, p.515

²³ This issue has been thoroughly discussed in Chapter Two of this in page 10

- a. **Membership fee** is when a customer applies for a credit card, and the card issuer agrees to offer him credit card facilities, he will be asked for the membership fees once.
- b. **Renewal fee** is the fees paid to renew the credit card validity after its expiration which is paid by the card holder once a year or two years depending on their agreement.
- c. **Replacement fee** is paid when the card holder may apply for a replacement when the card is lost either because of theft or any other reasons. Then the replacement fees will be imposed on him.
- d. **Earlier renewal fee** is charged on the card holder when he requests the renewal of his card before the actual expiration date of the card either because the card will expire when he is abroad or for any other reasons then the fee will be considered as a renewal fee.²⁴

These fees charged on the credit cards vary from one bank to another and also from the types of card issued to the card holder. These fees are also charged on other cards other than credit cards issued by the banks and this also vary from one bank to another depending on the bank and the nature of the card issued.

These fees are allowed from *Shari'ah* point of view due to the fact that they are for actual services provided by the card issuer for the issuance of the card, advertisement and other related matters. They are, therefore, regulated by the *Shari'ah* ruling on rental of the service. Moreover, the connection of these fees with the card issuer's guarantee to pay on behalf of the card holder makes them free from suspicion of *riba*, because it makes no difference whether the card holder uses the card for a huge amount of money or little or even if he does not use it.²⁵

1.4.4 CONDITIONS REGARDING COMMISSION ON THE MERCHANT

One of the most important clauses in the card issuer and merchant agreement is the payment of commission which ranges from 1% to 5% of the face value of credit card transactions.²⁶ It is permissible for the card issuer to charge commission on the merchant as a percentage of the cost of the goods and services. The commission charged by the card issuer is considered to be brokerage or agency charges as well as service charge for collecting debt payments from the

²⁴ Abu Sulayman, *al-Bitaqat al-Bankiyyah*, pp.145-146

²⁵ Ibid.,

²⁶ Jones, *The Relating to Credit Cards*, p.276.

card holder.²⁷ This depends upon from the perspective the reader looks at. If you look at it from the card holder's point of view, the commission charge by the card issuer is that agency. But if you look at it from the merchant point of view it is a service charge for collecting debt payments from the card holder.

1.4.5 CONDITIONS REGARDING UNILATERAL TERMINATION OF THE CONTRACT BY THE CARD ISSUER

Among the conditions of card issuance is the unilateral right of the card issuer to terminate (invalidate) the card either absolutely or temporarily in the event of the card holder's failure to comply with issuance conditions. The failure referred to above includes default of payment and breach of the agreed conditions. In such cases, the card issuer will list such customer's card among the void list and he will inform the merchant about that decision in order to avoid any future transaction with the card after its termination (cancellation). In case the merchant went ahead and deals with such card after being informed, the card issuer will not be held responsible for that transaction.

The *Shari'ah* law accepted such type of condition because Muslim jurists allowed withdrawal from guarantee contract before the reliability or trustworthiness of the right. This is based on the saying that, "it is permissible for the guarantor to withdraw his guarantee before a future transaction is actually executed, after notifying the person having interest in the guarantee, and therefore, the guarantor will not be held liable if the merchant enters into any transaction after that notification."²⁸ This principle was emphasized in the *Shari'ah* Standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions(AAOIFI). It states that it is permissible for the guarantor to withdraw such a guarantee before a future debt is actually created, after notifying the person having interest in the guarantee. This is called a "market (business) guarantee" or a "guarantee of contractual obligation." An example of this type is a third party's guarantee to refund the price to the buyer if it appears that the sold commodity belongs to a person other than the seller and this guarantee is known as *daman al-dark* (dealers/business misrepresentation guarantee).²⁹

²⁷ AAOIFI, *Shari'ah Standards*, 1423H/2002, P.22. See also al-Zuhayli, *Bitaqat al-I'timan*, p.10

²⁸ Kamal Hamad, *Bitaqat al-I'timan*, p.521

²⁹ AAOIFI, *Shari'ah Standard*, 1423H/2002, P.59

Shart Batil (Invalid Condition)

After explaining valid condition in credit card transaction from the Islamic legal perspective we now address the invalid ones. Credit card transactions involve many types of *Shart Batil* from the *Shari'ah* point of view. They include the following:

- a) Interest payment on every single transaction that is executed through the credit card which is to be charged on the card holder ranging from 1% to 2.50% on the price of goods.
- b) Charge of an extra 10% to the card holder for withdrawing a certain amount of money the percentage of which will be increased whenever the withdrawn amount is increased.
- c) Interest charge on currency transfer.
- d) Extra charges which may be charged on the card holder automatically, even sometimes without any acknowledgement.

These types of conditions are prohibited by the *Shari'ah* on two grounds. Firstly, they are considered as *riba* charges on the amount of the money withdrawn against the deferred payment that is known as *riba al-nasi'ah* which is prohibited unanimously by the Muslim *Ummah*. Secondly, they tend to fall under the principles laid down by the Hadith, "Any credit that draws interest is *riba*."³⁰

1.5.0 ADAPTATION OF CREDIT CARD TRANSACTIONS

What we mean by adaptation is rationalization of *Shari'ah* regulations on a particular transaction whether it is allowed or forbidden.³¹ It will normally be required in the event of new transactions which have no similarity in nominated Islamic contracts and transactions.³² Adaptation of credit cards from the *Shari'ah* perspective means illustration of the nature of the relationship between the contracting parties in credit card transactions and the consequences of that relationship. This would also mean that one needs to specify the type of the Islamic nominated contract that in principle can be applicable to credit cards. The adaptation can also

³⁰ Ahmad ibn Hajar al-'Asqalani, *Bulugh al-Maram*, Matba'at al-Istiqamah, Egypt (n.d.), p.55 see also Abu Sulayman, *Bitaqat al-Bankiyyah*, pp.156-159

³¹ Abd al-Halim 'Umar, *al-Jawanih al-Shar'iyyah*, p.51

³² Ibid.

be done by considering the credit card transaction as a new contract which may have no synonyms in *Shari'ah* nominated contracts.³³

There are many views among Muslim jurists pertaining to *Shari'ah* nominated contracts whose principles are applicable to the credit card transactions. Some of these views are hereby discussed below. It may either fall under:

- i) *Wakalah* (Agency contract),
- ii) *Hawalah* (Debt contract),
- iii) *Ijarah* (Hire contract),
- vi) *kafalah/daman* contract, (agency, assignment of debt, leasing, and guarantee respectively) or
- v) the combination of two or three of these contracts.

Since the views are varied, it is difficult to adapt the entire credit card transaction to a single contract or a combination of two or more contracts as it was discussed by the scholars and specialists of the Fiqh Academy of the Organization of Islamic Conference in Jeddah.³⁴

Furthermore, every party to a credit card transaction has his own independent judicial personality, which depends on the adaptation of the contract and the position of the parties in that adaptation. This is because there is nothing in Islamic jurisprudence which prevents the existence of multiplicity of contracts in concerning one person in a particular agreement. For instance, the card issuer has an independent juristical relationship with the card holder for being the creditor, on one hand, if the contract were to be considered as a credit contract, and a guarantor on the other if he (the card issuer) guarantees the merchant's right from the card holder. In addition, the card issuer can also be the agent of the debtor (card holder), authorizing him to pay any debt arising from his utilization of the card.³⁵

The contractual relationship that exists between the parties to credit card transaction as explained above will only be practicable if the card issuer is also the banker that settles the

³³ Ibid.

³⁴ Fiqh Academy of the Organisation of the Islamic Conference, Seventh Session, Jeddah, Saudi Arabia, pp.359382

³⁵ Abu Sulayman, *al-Bitaqat al-Bankiyyah*, p.134

merchant. Where the card issuer and the banker are two different institutions then the scenario will be different from our earlier explanation.

1.6.0 SHARI'AH RULINGS ON SOME SPECIAL CREDIT CARD TRANSACTIONS

The research will look into various legal rulings on credit cards transactions, some of which might be summarized as rulings pertaining to the affiliation of the financial institution to international card regulatory organizations, cash withdrawal charges, special privileges granted by the card issuer, buying gold, silver or currency notes using the cards, fines and penalties for the delay of payment and foreign exchange using cards.

1.6.1 THE AFFILIATION OF THE FINANCIAL INSTITUTION TO INTERNATIONAL CARD REGULATORY ORGANIZATIONS.

There are international organizations providing credit card services around the globe such as Visa and MasterCard. Membership eligibility of these organizations requires certain criteria which banks and other financial institutions have to fulfill, among others payment of membership fees etc. Generally speaking, there is no *Shari'ah* prohibition for Islamic banks to have membership in these organizations and fulfill their required conditions so long as these conditions do not include interest payments, even in an indirect way, such as by increasing the service charge to cater for the granted credit if they can make arrangement to that effect.³⁶

1.6.2 CASH WITHDRAWAL CHARGES

Cash withdrawal from the Automated Teller Machines (ATM) is one of the most important features of credit cards. As such, the card holder is entitled to withdraw up to his credit limit via the card, or even more with the approval of the card issuer either from the card issuer's ATMs or that of other participating banks around the globe. However, banks issuing Islamic Credit Cards are entitled to charge cash withdrawal fees as appropriate and as other conventional banks do if:

(a) these fees are fixed amounts, (for the provision of the cash withdrawal services) in accordance with cash withdrawal services provided by the bank and without being related to the withdrawn amount or a fixed ratio thereof. In other words, the fees should be fixed and there shall be no connection between them and the withdrawn amount,³⁷ and

³⁶ AAOIFI, *Shari'ah Standards*, 1423AH/2002, P.22. See also al-Zuhayli, *Bitaqat al-I'timan*, p.10

³⁷ Ibid p.25

(b) these fees are not fixed percentages calculated from the withdrawn amount.

Breach of any of these conditions will render the charges as *riba* for the reason that, the card holder's cash withdrawal is a loan from the card issuer to him.³⁸ Therefore, an extra charge on the principal of that loan will be considered as *riba* known as (*riba* of loan).³⁹

1.6.3 SPECIAL PRIVILEGES GRANTED BY CARD ISSUERS

Most of the credit card issuers provide special advantages to their existing card holders in order to retain them and attract new customers to the scheme. As a result that the card issuers offered such special advantages which include priority right in obtaining service, reduction of hotel rates, restaurants, air-travel agencies and the likes. This type of packages has to be arranged with the merchant by the card issuers.

It is permissible for the card issuer, from the Islamic legal perspective, to provide such preferences to the card holder if these preferences are not forbidden in their nature by *Shari'ah*. Therefore, preferences to a conventional life insurance or allowance to enter prohibited places like pubs, taverns, gambling, gaming or prostitution houses is prohibited as they are originally not in line with *Shar'ah* teachings.⁴⁰

1.6.4 BUYING GOLD, SILVER OR CURRENCY NOTES USING THE CREDIT CARDS

Using credit cards as means of payment for goods and services is one of their most important features. However, due to the fact that buying through credit cards is considered as debt as there is no cash involved in the transaction and since the gold and silver are considered as usurious (*ribawi*) items which must be bought on cash, the question arises as to whether or not credit cards can be used to buy these types of items. The answer is that it is permissible under the *Shari'ah* to buy gold, silver or other money notes (the exchange of different types of denomination of currencies) using debit cards, as buying currencies using them involves constructive reciprocal taking of possession (*taqabud hukmi*) that is recognized by *Shari'ah*, by assigning the payment bill to the issuer. Such purchases are also permissible by using

³⁸ This is in case the card holder has no available funds in his account with the card issuer. Should the card holder has available funds the fee will then be for the usage of ATM facilities and the transmission of money to card holder all over the world.

³⁹ Al-Zuhayli, *Bitaqat al-I'timan*, p.11. see also Kamal Hammad, *Bitaqat al-I'timan*, p.520

⁴⁰ AAOIFI, *Shari'ah Standards*, 1423H/2002, P.23. See also al-Zuhayli, *Bitaqat al-I'timan*, p.11

charge- cards provided the card issuer pays the sum due to the party accepting payment by the cards without delay or deferment promptly as an agent of the buyer.⁴¹

1.6.5 FINES AND PENALTIES FOR DELAYED PAYMENT

Charge cards or short-term credit card issuance agreements contain provision for the payment of interest if the payment of the whole of outstanding balance is delayed by the card holder after the billing period which is considered as a grace period. This type of penalty is prohibited under *Shari'ah* as it is considered *riba* by virtue of deferment in the time of exchange known as *riba al-nasi'ah* (*riba* of deferment).⁴²

The *Shari'ah* ruling on this type of card in terms of issuance and subscription is permissibility if it is not conditional on interest payment by its holder. However, due to the weakness of religious consciousness of the people nowadays and reluctance of most of the card holders to pay during the grace period, some Muslim jurists viewed that as a preventive means against delinquency the financial penalty should be allowed if it is fixed or a precise ratio on the outstanding balance and the time of delinquency should the card holder delay the payment without any legal excuse. Such a penalty should be posted under charity fund which the financial institutions should not benefit from.⁴³ This view is not acceptable to many jurists but nevertheless, they suggested that if the card holder is in difficulties', he should be given an extension until the repayment is easy for him.⁴⁴ Allah says in the Holy Qur'an *Surat al-Baqarah* 2:274 "if the debtor is in difficulty, grant him time till it is easy for him to repay".⁴⁵

On the other hand, the agreement of issuance of the revolving credit card or extended credit card usually contain conditions of interest payment on the card holder should he default on the repayment of any part of the outstanding balance. In other words, the card holder's failure to repay the whole outstanding balance or any part thereof after the grace period would trigger

⁴¹ Kamal Hamad, *Bitaqat al-I'timan*, p.515. see also al-Zuhayli, *Bitaqat al-I'timan*, p.12

⁴² Ibid., p512

⁴³ Ibid., p.513

⁴⁴ For further details on "The Penalty Clause and the Permissible ways of Securing Repayment from a solvent debtor to compensate the damage of delinquency", see Mohmood Sanusi, *The International Islamic University Malaysia Law Journal*, Vol.6, No.1&2, 1998, pp.129-142.

⁴⁵ Abdullah Yusuf Ali, *The Holy Qur'an Translation*, p.49

the charge of *riba* known as financial charge⁴⁶ or carrying charges.⁴⁷ Thus, in the agreement the card holder has either to pay the outstanding balance or to pay interest as carrying charges.

This type of condition is a *ribawi* condition (usurious condition) and therefore, it is forbidden in Islam to either stipulate or comply with it as it is a condition which allows what is forbidden. Since this type of credit card is originally based on interest payment by holder it is forbidden for Islamic financial institutions to issue it. It is also not allowed for Muslim to subscribe to financial institutions which stipulate such kind of conditions.

Initially entering into this type of transaction is forbidden and so is the condition unless there is a situation of necessity involved. However, some contemporary Muslim jurists are of the view that if the card holder has taken precautions in order to avoid the occurrence of such a condition there will be no harm in entering in to the agreement with the card issuer and benefiting from the card facilities notwithstanding the existence of the *ribawi* condition as it will be with no effect.⁴⁸ This view is unacceptable because one may argue that drinking wine is permissible if a person take all precautions not to be drunk.

1.6.6 FOREIGN EXCHANGE USING CREDIT CARDS

The card holder can use his card, in most countries, and in many financial activities involving foreign currency such as to purchase goods and to pay for services. The card issuer immediately settles the amount due to the card holder in the currency of the country of transaction, but the card holder will be charged by the card issuer in his local currency (by using the daily currency exchange rate or as it is mentioned in the terms and conditions of their agreement). This process involved foreign exchange as the card holder purchases in foreign currency, and the card issuer settles the cost in that particular currency and then charges the card holder in his own local currency.⁴⁹

Foreign exchange in credit card transactions is allowed provided that there is a real or constructive reciprocal taking of possession immediately and with no delay to the extent that the rights of both parties have to be fully executed immediately. This is based on the *Hadith* narrated by Ibn Umar: I was selling camel in *Dinar* and take instead of *Dirham*, sell it in

⁴⁶ Mohd Daud Bakar, "Shariah Approaches to Product Development and Product Enhancement in Islamic Banking and Finance: An Appraisal," paper presented at the International Seminar on Business in the Era of Globalisation, organized by University of Brunei Darussalam, Brunei, 18-20 June, 2002, p.20

⁴⁷ See <http://money.howstuffworks.com/credit-card.htm/printable>, accessed on 25/11/2015

⁴⁸ Kamal Hamad, *Bitaqat al-I'timan*, pp.513-514.

⁴⁹ *Ibid.*, pp.518-519

Dirham and take *Dinār*. I then asked the Prophet (SAW) about that, He replied: “there is no harm if you separate buyer and seller, while the right of both parties has been fully executed”.⁵⁰ However, delay in collecting or receiving the card issuer’s exchange repayment from the card holder is obvious in credit card transactions because the card issuer will normally settle the amount immediately after the transaction and later seeks repayment from the card holder which may take up to two or more weeks.

The *Shari’ah* law does not allow such manner of delay according to the majority of jurists, purely because it is a form of *riba al-nasa’* (*riba al-buyu’*) which is a means or pretext to *riba al-nasi’ah* (*riba al-duyun*) the essence of *riba* and its backbone.

Nonetheless, the case of necessity and predominant interest are excluded from that prohibition i.e. where the person may be in difficulty if that particular transaction were to be denied to him some considerable lawful benefit will not be realized based on Ibn Qayyim’s division of *riba* into two categories: manifest and invisible; the manifest *riba* which is also called *riba al-nasi’ah* or *riba al-duyun* respectively is vehemently prohibited in Islam while *riba al-buyu’*, the invisible *riba*, is prohibited as a blocking means to the occurrence of the former (manifest *riba*).⁵¹

1.7 BENEFITS OF SHARI’AH COMPLIANT CREDIT CARDS

There has been a significant revolution in the way in which payments are made in the last thirty years. The transaction of credit cards has become an essential means of exchange in the economy of most countries because they provide consumers and merchants considerable advantages over cash and cheques. There are a lot of security risks involved in carrying cash. Consequently, cash is easier to steal and harder to trace once lost or stolen. Perhaps this is why most people do not want carrying too much cash on them. Cheques too have their own disadvantages. To start with, chequebooks are inconvenient to carry. The traditional chequebook weighs fourteen times more than a credit card. They are often difficult to use outside one’s local community because of the risk of bad cheques.⁵²

Credit cards can offer certain advantages to the card holder. The first advantage is to provide easy means of obtaining credit for an interest free credit period from a week to a month

⁵⁰ *Sunan al-Tirmidhi*, Kitab al-Buyu’, Ban ma ja’a fi al-Sarf, *Hadith* no. 1245

⁵¹ Kamal Hamad, *Bitaqat al-Itiman*, pp,518-519

⁵² David, S. E, *Paying with Plastic: The Digital in Buying and Borrowing*, Cambridge, Massachusetts, London, 1999, pp.30-31

defending on the facilities of the bank. Secondly, credit cards can easily be used to withdraw cash over the counter or from an Automated Teller Machine (ATM).⁵³

Additionally, credit cards may offer the card holder an extra protection. Such protection is in the form of insurance for large purchases offered by some credit card companies. As such, in the event of loss, damage or theft of an item bought by the card holder, he may be indemnified under the insurance.⁵⁴ With the development of current technology and the internet revolution, credit cards also allows their holders to purchase goods from around the world over the phone or online-that is sitting behind their computers inside their own houses.

The main benefit to the card holder is convenience. Compared to debit cards and cheques, a credit card allows small short-term loans to be quickly made to a cardholder who need not calculate a balance remaining before every transaction, provided the total charges do not exceed the maximum credit line for the card. Different countries offer different levels of protection. In the UK, for example, the bank is jointly liable with the merchants for purchases of defective products over £100.⁵⁵

Many credit card issuers offer rewards and benefit packages, such as enhanced product warranties at no cost, free loss or damage coverage on new purchases, various insurance protections, for example, car rental insurance, common carrier accident protection, and travel medical insurance.

Credit card issuers can also offer a loyalty program, where each purchase made is rewarded with points, which may be redeemed for cash or products. Federal Reserve Bank of Kansas City in their research conducted has examined whether competition among card networks may potentially make payment reward too generous, causing higher price among merchants, thus actually impacting social welfare and its distribution, a situation potentially warranting public policy interventions.⁵⁶

⁵³ Pheng, *Banking Law*, p.232

⁵⁴ See <http://www.mtstcil.org/skills/budget-12.html>

⁵⁵ "FAQs" (<http://www.theukcardassociation.org.uk/faqs/index.asp>). UK Cards Association. Retrieved on 16-04-2016.

⁵⁶ Federal Reserve Bank of Kansas City, *The Economic of Payment Card Fee Structure: What Drives Payment Card Rewards?* March 2009 ([Http://Www.Kansascityfed.Org/Publicat/Reswkpap/Pdf/Rwp08-07.Pdf](http://www.kansascityfed.org/publicat/reswkpap/Pdf/Rwp08-07.Pdf)). Retrieved on 16-04-2016.

1.8 CONCLUSION

The paper dealt with the network relationship between the contracting parties to the credit card transactions and established that it is allowed to agree on various conditions provided if such conditions are not in conflict with *Shari'ah* principles. Those conditions allowed by parties to agree upon are *shart sahih* (valid conditions). It is the condition that fulfilled all the requirements to the essential requirements (*arqan*) of a contract and it is clear of all hindrances. Only a valid contract can give rise to its legal consequences, namely, to transfer ownership of the object of sale to the buyer and to establish vendor's ownership over the price. In contrast with *shart sahih* (valid condition), *shart batil* (invalid or bad condition) is a condition that fails to fulfill the requirement mentioned in the valid condition.

The chapter further explain on the various adaptation offered to legalize the use of credit cards provided that the formula in question does not fall under the prohibited legal rulings. The various adaptations applied in the credit card transactions are combination of *qard* (loan) contract, *kafalah* (guarantee) and *wakalah* (agency) which will perfectly fit the credit card transactions. This is because the said adaptation reflects the real picture of credit card transaction. This is also in conformity with the recognized practice of all international bodies and financial institutions which have no element of *riba* provide credit card system. Therefore, *Shari'ah* rules on the aforementioned contracts would be applied to credit card transactions.⁵⁷

Finally, the chapter offered *Shari'ah* rulings pertaining to some specific credit card transactions which are not featured in the main body of the chapter. These special transactions include affiliation of financial institutions to international card regulatory organizations, cash withdrawal charges, special privileges granted by the card issuers, buying gold, silver or currency notes using the credit cards, fines and penalties for the delay of payment and finally foreign exchange by using credit cards.

⁵⁷ Al-Zuhayli, al-Bitaqat al-I'timan, p.11