DECREASING PARTNERSHIP AND HOUSE FINANCING

Q: 9- (1) The bank would purchase the land or property from the vendor and sell it to the would be buyer on an instalment basis. Each instalment would act as an increasing participation by the tenant in the property until such time as all the instalments have been paid. At that time the tenant would contractually be given ownership of the property. The bank would profit from the sale of the land or property together with an arrangement fee part of which would be rebateable conditional on the buyer making the instalment of the purchase in accordance with the terms of the contract.

Family security (Aman al-Osra) would form an integral part of this product possibly on the basis of a group policy with collective participation. This facility may also be used for the construction of new houses.

We have submitted that the type of product we have described affords a strong social benefit to elements of society and at the same time is consistent with the provisions of Islam. How does it seem to you?

For the bank to be able to undertake such a scheme it must obtain special dispensation from the central bank.

AUTO FINANCE

Q: 10- (2) The auto finance is, I believe fairly simple to do under a forfeiting approach through a third party - the dealer. In this way ownership is retained until all the rental have been paid under Ijara wa Iktina principle.

CREDIT CARDS
Q: 11- (3) We are most interested in your comments about a credit card. If you have any more information we would be pleased to have it". (Ali Hasan Ali, Director General Institute of Mamie Banking and Insurance, London)

A: At first place you have asked for the instrument of? decreasing partnership and its use in house financing.

Generally speaking the concept of decreasing partnership is acceptable in Shari'ah subject to certain conditions. The general framework of this arrangement should be on the following lines:

The land or property should be purchased jointly by the financier and the ultimate beneficiary who may contribute to its price on whatever minimum ratio. For example, he can contribute 10 per cent of the price. The rest of 90 per cent shall be contributed by the financier and the property will be owned jointly by the two parties, then the property should be divided into different units e.g. each unit may be 5 per cent or 10 per cent of the whole property. The ultimate beneficiary may use the 90 per cent of the property owned by the financier for a

specific rent charged by him. At the same time the beneficiary can purchase the units owned by the financier gradually within the agreed period. Whenever the beneficiary purchases a unit from the financier, the rent is reduced to that extent. For example, if he has purchased 5 units, the ownership of the financier will be reduced to 85 per cent and he will pay a rent for this 85 per cent units only and so on. In this way the ultimate beneficiary will be purchasing the units owned by the financier gradually until all the units are purchased and owned by him, and the whole property becomes exclusively owned by the ultimate beneficiary.

This arrangement is allowed in Shariah and can be usefully utilised not in house financing only, but also in financing to acquire any other fixed assets or vehicles. If you wish to know the detail? of this arrangement, as well as the Shariah justification of such an instrument, you can consult my Arabic Book: 'Discussions on Contemporary Juristic Issues" in which I have dealt with this instrument in detail.'

Your second question relates to the issue of Auto Finance. You have suggested that it should be on the basis of hire purchase. The concept of hire purchase is not fully in accordance with Shari'ah. The acceptable form of such a finance should be either on the basis of leasing where at the end of the period of lease the lessor would be at liberty either to repossess the asset or sell it to the lessee himself or to any other party. The price of the sale can be determined at that stage by mutual consent. It may be its depreciated value or a nominal value or whatever price they may agree upon. The second acceptable form of Auto Finance may be on the principle of decreasing partnership as explained in my reply to your first question. Your third question is about the Shariah ruling about the credit cards. The credit cards prevalent in the market today are of different kinds. If the card holder has an account in the bank, which has issued the card and the bills of his purchases are directly debited to his account, there is no problem with such an arrangement, because there is no possibility of the charge of interest because the bank charges interest only in a case where the card holder defaults in the payment of bills. In the case of direct debit there is delay but if the card is not obtained on the basis of direct debit system, some contemporary scholars are of the view that this type of card should not be used by a Muslim for the reason that it may happen that the card holder delays in the payment of the bill of the issuer of the card (the financial institution) whereby he will be liable to pay interest. But in my personal view as well as in the view of some other Scholars, if a card holder is confident that he will pay the bills within the specified period without fail he can avail of this credit card and should always be cautious to pay the bill promptly before any interest is due thereon.

As for the initial fee or the annual fee charged by the issuer of the card, it cannot be taken as interest because it has no relation with the amounts of the bills actually paid by the bank. It is a service charge for undertaking certain service facilities to the card holders, hence they are permissible in Shariah. The third aspect of the credit card is that the issuer of the card charges a certain discount from the merchant who accepts a credit card. Some contemporary Scholars are of the view that it is analogous to discounting of the bills of exchange but my view is different, which is also supported by the view of many contemporary Scholars.

I feel that this discount or commission charged by the issuer of the credit card is analogous to commission charged by a broker. It is evident that the card facility brings a large number of customers to the merchants. Had he not entered into such an arrangement with the issuer of

the card, those customers would have not come to him, therefore, the issuer of the card is the basic cause for securing good customers for the merchant and he can rightfully charge a commission on this service rendered to the merchant.

This is my view about the general credit cards i.e. American Express, Master Card etc.

I hope these explanations will answer your questions.

Contemporary fatawaa