# SHARĪʿAH COMPLIANCE OF ISLAMIC CREDIT CARDS RECONSIDERED: A CASE STUDY OF MALAYSIA

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***Abstract***

*Many structures have been proposed by Islamic banks in Malaysia for Islamic credit cards including murābaḥah (sale with mark-up), bayʿ al-ʿīnah (sale and immediate buy-back) and tawarruq (tripartite sale). However, recently, some Islamic financial institutions have employed the contracts of ijārah (leasing), ujrah (fee) and mushārakah mutanāqiṣah (diminishing partnership) as an alternative for structuring Islamic credit cards. This paper aims to examine a new structure for an Islamic credit card offered by an Islamic bank in Malaysia using the contract of ujrah and kafālah bi al-ujr (guarantee with fee). This paper is qualitative in nature and employs a case study to examine the Sharīʿah issues arising from this structure. Based on the case study presented, the paper finds that the structure combines three contracts—namely, qarḍ (loan), kafālah (guarantee) and ujr (fee). The Sharīʿah issues relate to the monthly management charges, cash withdrawal management charges and the combination of sale and loan contracts. It is observed that the actual monthly management charges (AMMCs) and actual cash withdrawal management charges (ACWMCs) are comparable to ribā al-qarḍ since the bank imposes fees tied to the amount of outstanding balance. Meanwhile, the issue of combination of contracts arises as the product combines qarḍ (non-exchange contract) with kafālah bi al-ujr (exchange contract) in one deal. This combination was prohibited by the Prophet (SAW) as it has been used as a method for circumventing the prohibibion of ribā (interest). This study proposes that the bank may retain the*

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*fixed monthly management charges (FMMCs) and fixed monthly cash withdrawal charges (FMCWCs), but it has to eliminate the AMMCs and ACWMCs as they amount to ribā. In order to resolve the controversial issue of combining exchange and non-exchange contracts, it is proposed that the contract of kafālah bi al-ujr be replaced with the concept of takāful (Islamic insurance). Thus, with some improvements and modifications required in the structure of the Islamic credit card examined, this paper looks into ways of maintaining the Sharīʿah compliance of the product.*

**Keywords:** Sharīʿah, Islamic Credit Card, Islamic Bank, *Ujrah*, *Kafālah*, Charges.

## I. INTRODUCTION

A credit card is a payment card that allows the cardholder to pay for goods and services on credit. Generally, credit cards are known as plastic money and are issued by banks, retail stores, savings and loans institutions and other business entities (Investorswords, 2013). The first credit card was introduced in 1920 in the United States and was aimed to sell fuel to a growing number of automobile owners. It was Ralph Schneider and Frank McNamara, the founders of Diners Club in the 1950s, who made credit cards popular in the market by introducing the first general purpose charge card. Since then, credit cards have expanded to serve as a payment system to pay for various products and services (Britannica, 2013). According to Zywicki (2000), the primary usage of credit cards today is as a transactional medium, not as a source of credit. Over half and probably as much as 68% of credit card users should be considered convenience users who use credit cards primarily as a medium for conducting transactions and who pay off their balances in full every month. A number of reasons explain this behaviour. First, credit cards enable individuals to maximise their cash balances, thereby allowing them to shift their assets into higher return investments. Second, credit cards are convenient to use as a medium of effecting payment (Zywicki, 2000). They are easier to carry in a wallet compared to cash and are acceptable worldwide (Paxson & Wood, 1998).

The credit card is a variable repayment card, which offers a line of credit to the cardholder who can spend up to a prearranged ceiling level. The extended credit must be settled within a given grace period, otherwise interest will be charged on the outstanding balance. The cardholder is given a limited credit facility by the issuer and the payment of the outstanding amounts can be rolled over within the credit limit and credit period determined by the issuer, if the cardholder is unable to pay the full amount owed. Furthermore, the cardholder is able to withdraw cash, without being charged any interest, within the approved limit and for a given credit period, during which the amount due should be paid. However, once the cardholder delays payment, the outstanding amount will be charged interest for the duration of the credit. On the other hand, the issuer of the card is obliged to pay the party accepting the card (i.e. the merchant) the amount owed by the cardholder within a specified transaction credit limit. The relationship between the issuer and the merchant is considered independent. Meanwhile, the nexus between the issuer and the cardholder is dependent, where the issuer will reimburse the merchant for any payments made by the cardholder from the account that he/she opened with the issuer. Besides, the issuer may also demand the payment of the credit directly from the cardholder through monthly statements. In this respect, Islamic banks have also been issuing credit cards structured on a Sharīʿah-compliant basis. Various contracts have been used for this purpose, including *bayʿ al-ʿīnah* (sale and immediate buy-back), *ijārah* (leasing), *tawarruq* (tripartite sale), *ujrah* (fee), hybrid contracts of *ujrah* and *kafālah* (guarantee) as well as *murābaḥah* (sale with mark-up).

In this respect, the main purpose of this paper is examining Islamic credit cards in Malaysia, particularly the structure which combines the contracts of *ujrah* and *kafālah bi al-ujr* and discussing the arising Sharīʿah issues associated with the product. In this regard, the paper is organised as follows: Section II discusses Islamic credit cards in Malaysia; Section III elaborates on the Sharīʿah rulings on Islamic credit cards; Section IV provides a case study of an Islamic credit card in Malaysia which is issued based on the concepts of *ujrah* and *kafālah bi al-ujr*; Section V deliberates on the Sharīʿah issues that arise with this structure; and Section VI concludes the discussion.

## II. ISLAMIC CREDIT CARDS IN MALAYSIA

Conventional credit cards in Malaysia are relatively new; the first credit card was only introduced in the 1970s (Husein, 2011). As of January 2013, there were 26 financial institutions issuing credit cards including four non-bank financial institutions (Bank Negara Malaysia, 2013a). In the early phases, they were dominantly used for large ticket transactions and mainly accessible to the rich. However, starting from the 1990s, they became more accessible to a wider group and any person could have a card whose income level was over RM24,000 per year and who was able to prove his active employment for at least three months. However, the income requirement was reduced to RM18,000 in 1997 in response to the Asian financial crisis. The intention was to ease the problem of liquidity and to increase the spending habit among Malaysians to buy domestic products and services (Loke, 2007). This effort was taken in order to give a boost to the domestic industry, particularly manufacturing and small-scale and medium industries. This requirement remained in effect until 18 March 2010, when the amount was raised back to the former sum of RM24,000 by the government (Bank Negara Malaysia, 2013b). This was purposely done to tighten consumers' spending habits and to curb the acceleration of debt among Malaysians who are unable to pay their liabilities (The Sundaily, 2013).

Furthermore, another restriction was introduced by the Malaysian government regarding the number of credit cards that holders can avail of. Cardholders whose annual incomes are equivalent to or below RM36,000 can hold at the most only two credit cards from different issuers or financial institutions. The credit limit approved should also not exceed more than twice the cardholder's monthly income (The Sundaily, 2013). The eligible applicants must be above 21 years of age, while those who apply for a supplementary card must be at least 18 years old. In an additional effort to control credit card debt among Malaysians, the government introduced a credit card service tax—effective 1 July 2010—of RM50 on the principal card and RM25 on each supplementary card. Most of the credit cards in Malaysia employ the services of leading international credit card associations—notably, Visa, Mastercard or American Express—that provide worldwide methods of payment (Abdul Razak, 2010; CIMB, 2013a; Husein, 2011).

In a typical credit card transaction, four parties are involved—namely, the credit cardholder, the issuer, the merchant (also known as the vendor) and the clearinghouses such as Mastercard and Visa that process the merchants' claims, to transfer the payments made by the issuer. The nexus between the cardholder and the issuer in a conventional credit card is that of lender and debtor. In this respect, as a lender, the issuer provides a credit limit to the cardholder (i.e. debtor) and offers an option, either to settle the full amount of the debt or pay only the minimum amount and revolve the outstanding balance. If the cardholder chooses the latter, the issuer will charge interest as compensation for the delay (Kenjebaev, 2012).

The issuer of credit cards makes profit in three ways. First, an annual fee is charged to the cardholders—although, as a marketing strategy to attract cardholders, the fee may sometimes be waived for the first year. The cardholders can use the card up to the credit limit approved by the issuer. Second, profit accrues in the form of discounts taken by the issuer from merchants' invoices. When a merchant sells an item, for example, costing RM100 to a cardholder, the merchant only obtains RM98 from the bank, and the difference is taken by the bank as a profit. Third, the bank charges interest on the outstanding amount on a periodic basis after the expiry of the grace period—which is normally 33-45 days or a month—if the cardholder chooses to rollover the outstanding balance due (Kenjebaev, 2012).

Muslims are prohibited from holding conventional credit cards as they would involve interest payments. Since the modern lifestyle requires credit cards as a facilitative mode of payment and since market demand for the product is promising, Islamic banks have been offering Islamic credit cards based on different Sharīʿah-compliant structures. These banks have been seeking alternative and viable methods to formulate and structure Sharīʿah-compliant credit cards that would have features similar to conventional credit cards in terms of their functions. In 1992, AmBank Islamic was the first bank to issue an Islamic credit card known as *al-Taslif* Islamic credit card. However, this credit card was unpopular among Malaysians, probably due to the Muslims' skepticism of its validity from the Sharīʿah perspective. The marketing strategy prepared by the bank was also not successful. Then, in 2002, Bank Islam Malaysia Berhad (BIMB) introduced its Islamic credit card, which became more

popular among Muslim cardholders (Billah, 2007). Thereafter, many other Islamic banks followed in the steps of BIMB, such as Maybank Islamic, CIMB Islamic and RHB Islamic.

Different structures have been proposed by Islamic banks for offering Islamic credit cards. Based on details published on banks' websites until February 2015, eight Islamic banks in Malaysia are observed offering the Islamic credit card facility, and the Sharīʿah contracts used are as delineated in Table 1. Two contracts appear to be widely utilised by Islamic banks, namely *tawarruq* and *ujrah.* Other Islamic banks do not offer Islamic credit cards probably because of the difficulty faced in finding appropriate and viable structures that would be in line with the contractual principles of the Sharīʿah (Obaidulla, 2005).

***Table 1: The Applied Contracts in Islamic Credit Cards***

| No. | Bank | Contracts |
|---|---|---|
| 1. | AmBank Islamic | *Ujrah* |
| 2. | Bank Islam Malaysia Berhad | *Tawarruq* |
| 3. | Bank Kerjasama Rakyat Malaysia Berhad | *Tawarruq* |
| 4. | Bank Simpanan Nasional | *Ujrah* |
| 5. | CIMB Islamic Bank Berhad | *Ujrah* |
| 6. | HSBC Amanah Berhad | *Ujrah* |
| 7. | Maybank Islamic Berhad | *Ujrah* and *Qarḍ* |
| 8. | RHB Islamic Bank Berhad | *Ujrah* |

*Source: Banks' Websites*

## III. SHARĪʿAH RULINGS ON ISLAMIC CREDIT CARDS

Generally, Islamic credit cards are permitted by most Sharīʿah boards, such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the International Islamic Fiqh Academy of the Organisation of Islamic Cooperation (IIFA-OIC), and the Shariah Advisory Council of Bank Negara Malaysia (SAC-BNM). AAOIFI, for example, permits Islamic financial institutions to offer Islamic credit cards, provided there is no interest imposed on the cardholders. Furthermore, the usage of the card should not contravene the principles of the Sharīʿah such as to purchase

alcoholic beverages, pornographic materials or to involve in gambling activities. AAOIFI also allows the issuer of the Islamic credit card to have affiliations with international credit card organisations, such as Mastercard, Visa, or American Express, provided the issuer avoids any elements of violations of Sharīʿah principles. It also allows the issuer to pay fees charged by the organisations but not to engage in any payment of interest, for example, in the case of increasing the service of credit, the bank also increases its charges based on the credit granted (AAOIFI, 2010).

In addition, AAOIFI approves the issuer charging a commission fee to merchants on every purchase made by the cardholders, as well as charging membership, renewal and replacement fees of the cardholders. This is pertinent to the concept of *ujrah* as charges that are imposed should be based on the services rendered and not on the credit granted by the issuer of the credit card. It is also permitted for the cardholder to purchase gold and silver provided the Islamic banks are able to pay the amount due to the merchants (i.e. the seller of the gold/silver) without any delay in order to avoid the transaction falling into *ribā al-fadl* (*ribā* of sale) (AAOIFI, 2010; Khalil, 2006). The cardholder is also permitted to withdraw cash within his credit limit provided there is no interest involved. It is also permitted to impose a flat fee—not a variable fee based on the withdrawal amount—as a charge imposed for the service rendered. Moreover, the cardholder should not use the facility to buy prohibited goods that are not in line with Sharīah principles (AAOIFI, 2010; Khalil, 2006).

Meanwhile, the IIFA-OIC (2000a) also issued four resolutions regarding Islamic credit cards. First, it is prohibited to issue a credit card that imposes interest. Second, it is permissible to charge the cardholder a specific fee at the time of issuance and renewal of the card and a commission on the goods or services purchased by the cardholder provided such goods are sold at the same price, either cash or credit. Third, it is permissible for the cardholder to withdraw cash, as long as it does not entail any interest. It is allowed for the bank to charge a fixed fee for its actual services, which cannot be not linked to the debt amount. Finally, it is allowed to use a credit card to purchase gold, silver and currencies (IIFA-OIC, 2000b). In addition, the IIFA-OIC (2004) also issued another resolution on unsecured credit cards in which it emphasised that the issuer of the card is required to observe strict Sharīʿah rulings and abstain from *ribā* (ISRA, 2013).

The SAC-BNM (2010) has issued five resolutions concerning credit cards. First, *bayʿ al-ʿīnah* and *wadīʿah* (safekeeping) contracts were approved for use as the underlying concepts for structuring Islamic credit cards (BNM, 2010). Second, the SAC-BNM approved the application of the concept of *ujrah* in Islamic credit cards. *Ujrah* is regarded as a consideration for the provision of actual benefits and privileges of services rendered by the banks. The banks are allowed to impose different amounts of *ujrah* on various types of credit cards that offer different kind of services, benefits and privileges as long as the charges imposed are not related to the element of *qarḍ* (loan). Furthermore, the Council also allowed the banks to impose charges on cardholders on the actual management cost, which must not be based on the credit granted but, rather, on the services rendered (BNM, 2010). Third, the SAC-BNM approved *takāful* (Islamic insurance) protection to be offered to the cardholder on condition that it is offered as *hibah* (gift) not as part of the *ujrah* paid to the bank. This requirement is because it is feared that the transaction will fall under the rubric of *ribā al-fadl,* as cash in the form of *ujrah* exchanged with cash at different value (as the compensation of *takāful* is also in the form of cash) is tantamount to *ribā* (BNM, 2010; al-Mawsūʿah al-Fiqhīyah*,* 1983). Moreover, the cardholder should not be a direct participant in the *takāful* scheme; the payment of *ujrah* is imposed on the cardholders as a consideration for the services rendered and not for the *takāful* coverage (BNM, 2010; al-Mawsūʿah al-Fiqhīyah*,* 1983). Fourth, it is not allowed for the issuer of *ujrah*-based credit cards to offer a cash rebate on the credit card's annual fee if the cardholder has utilised the card at least twice a month. However, a cash rebate can be offered in the form of *hibah* without any imposition of *ujrah.* The condition of utilising the credit card twice a month combined with *ujrah* charges is observed as *ribā* which is equivalent to an exchange of cash with cash at different counter values. However, if the cash rebate is given as *hibah,* then the rule is different as *hibah* is made unilaterally by a party that volunteers to give the *hibah* without expecting any return or monetary compensation. Fifth, the Council decided not to allow Islamic credit cards to be based on the combination of *wakālah, ujrah* and *kafālah.* One of the reasons for the prohibition is that the *ujrah* should be a fixed amount without being tied to a credit limit to avoid the element of *ribā* (BNM, 2010).

Meanwhile, the SAC-BNM (2010) also approved the contract of *kafālah bi al-ujr* as permissible for use in Islamic financial transactions based on the justification provided by Ḥammād (1997). The latter argued that the contract is permissible on the ground of *maṣlaḥah* (public interest) since it is difficult and impractical to obtain a free-of-charge guarantee. Furthermore, the Council explained that the contract is similar to the concept of charging a fee for someone's reputation and for charging a fee when someone provides treatment by using Qur'ānic verses. Both concepts seem to have similarities in terms of the services provided by the guarantor in the arrangement of Islamic credit cards (BNM, 2010). According to Ḥammād (1997), three juristic opinions have been given on *kafālah bi al-ujr*. The first opinion views the charging of a fee or commission to provide a guarantee as illegal by virtue of the nature of the contract, as it is grouped under charitable deeds. The second opinion regards charging a fee on *kafālah* as permissible since there are no verses in the Qur'ān and the Sunnah that prohibit it (Ḥammād, 1997; IIFA-OIC, 1986). Finally, the third opinion views charging a fee as permissible on the condition that the fee is returned to the guaranteed in case the guarantor pays the debt and then demands reimbursement from the debtor. This is to avoid any suspicion of *ribā.* Apart from charging a fee for the services, since the bank guarantees the payment obligations of the cardholder, the bank may justify the fee charged, which may become part of the *ujrah* (Elgari, 2009). Furthermore, Ḥammād (1997) argued that a contract of *tabarruʿ* (non-exchange contract) is permissible to be converted to a *muʿawadah* (exchange contract) provided the contracting parties give the consent (Ḥammād, 1997; Noor & Haron, 2011). In this case, a guarantor deserves a good compensation for his commitment to the guaranteed person to settle his debt. This is equivalent to the conversion of *hibat al-thawāb* (gift with reward) from *hibah* (gift). Similarly, a lending contract (*ʿariyyah*) associated with a consideration can be converted to *ijārah,* and *wakālah* associated with a consideration can be converted to *wakālah bi al-ujr* (Ḥammād, 1997).

In this respect, the majority of Sharīʿah scholars observed *kafālah* is *tabarruʿ* (a non-exchange contract), while *ujrah* is *muʿawadah* (an exchange contract) (Ibn Ḥajar al-ʿAsqalānī, 1928). According to Zuhayli (2013), when *ujrah* is combined with *kafālah,* the

combination of the two contracts is regarded as an exchange contract. He classified the contract under the *juʿalah* (reward) or *ijārah* contract. Under *ijārah*, it can be known as *ijārah ʿalā al-ʿamal,* i.e., providing a service for a fee (Yanagihashi, 1997; Baghdadi, 2004; Abū Ghuddah, 2013; Zuhayli, 2013). According to Engku Ali (2008), when the guarantor charges a fee for advancing money or giving a loan (*qarḍ*), it is considered *ribā.* This is due to the maxim that every loan which brings benefit to the creditor (at the borrower's expense) is considered *ribā*. The fee is deemed as the benefit or compensation given by the borrower to the creditor (Engku Ali, 2010). According to al-Zuhayli, the lender may impose some fees if he/she has used some space to keep the item, which incurred some operational cost based on the actual cost incurred; however he/she is still not allowed to consider it as a commercial or business transaction (Zuhayli, 2013).

According to Noor and Haron (2011), classical scholars, such as Ibn ʿĀbidīn, Ibn Qudāmah, al-Dusuqi and al-Māwardī, objected to the contract of *kafālah* being associated with a fee. In the same vein, contemporary scholars such as Sallami (2000) and al-Ḍarīr (1999) refute the claim that the contract of *kafālah bi al-ujr* is permitted in the Sharīʿah. Sallami (2000) argues that those contracts associated with considerations have different legal natures and consequences. To refute the arguments provided by Ḥammād (1997) regarding the status of *hibat al-thawāb*, he contends that the contract is not a real *hibah* but a *muʿawadah* contract; it is a new contract that is different from the concept of *tabarruʿ*. Therefore, the analogy between *kafālah bi al-ujr* and *hibat al-thawāb* is not warranted. Furthermore, *ijārah* that is converted from *ʿariyyah* associated with a consideration is regarded as a lease from the very beginning and not as a new contract. This is also applied to *wakālah bi al-ujr,* which is converted from a *wakālah* contract. It should not be regarded as a conversion in the first instance. In this regard, al-Ḍarīr (1999) contended that the conversion of the contracts from *tabarruʿ* to *muʿawadah* is recognised by the Sharīʿah and this is not applied to *kafālah bi al-ujr*. This is because the conversion of a guarantee to a debt with a fee is prohibited because it is similar to lending with charging of a fee, which is equivalent to *ribā* (Noor & Haron, 2011).

## IV. CASE STUDY OF AN ISLAMIC CREDIT CARD

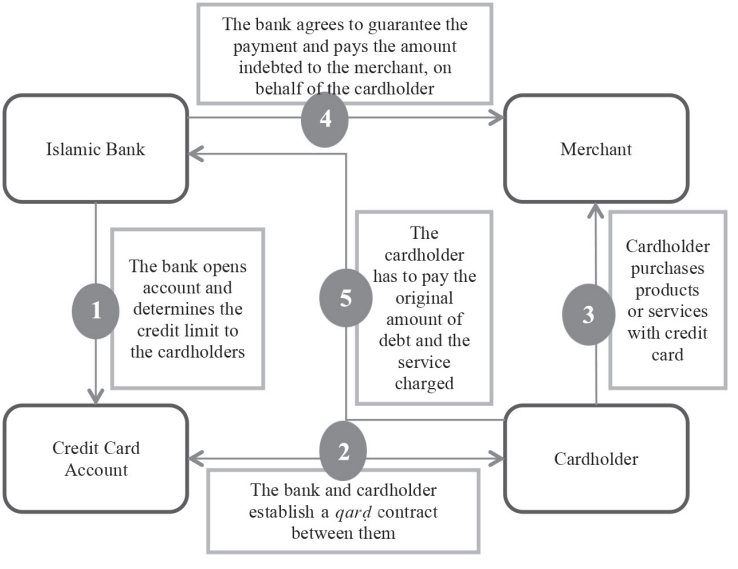
This paper attempts to examine an Islamic credit card which is offered by an Islamic bank in Malaysia. This same bank offers five types of credit cards and the contracts that are used by the bank are *ujrah* and *qarḍ*. Previously, the bank used *bayʿ al-ʿīnah* as the underlying structure for its Islamic credit cards; but at the end of December 2012, the bank changed to the *ujrah* concept. The change was made to avoid the controversial issues surrounding the contract of *bayʿ al-ʿīnah*. In justification of the substitution, the bank stated that the new Sharīʿah concept would incorporate better benefits by simplifying the process of card activation and increasing the card limit. In the product term sheets provided, it is stated that the credit cards of the bank employ a single *ujrah* concept. However, in reality, they represent a combination of multiple contracts comprising *ujrah, kafālah* and *qarḍ. Ujrah* is used as an underlying contract for the bank to manage and maintain the services provided by the bank to the cardholders and to justify the charging of fees for the services provided. Meanwhile, *kafālah* is employed for the bank to provide a guarantee to the merchants on the payments and advancement of money to the cardholder to purchase goods and services. Cardholders are also allowed to withdraw cash, which is considered as *qarḍ* from the bank to the cardholders.

From the five Islamic credit cards offered, the paper has selected one card as a case study. This card may represent other cards offered by the bank, as the structure and concept of the Sharīʿah contracts applied are similar to the other cards. Furthermore, this card is considered a basic Islamic credit card for ordinary clients, whereas the other four cards offered by the bank are tailored to meet the needs of specific clients and segments of the population. There are three types of card: Gold, Platinum and Infinite. The subscription of each card depends on the bank's assessment of the income and credit background of the client. Based on information drawn from the Bank's credit card brochure (2013), it was found that for Gold and Platinum cardholder, the credit limit ranges from RM3,000 onwards, subject to credit limit evaluation or not more than two times the cardholder's monthly income if the income is RM36,000 per annum or less. Meanwhile, for the Infinite cardholder, there is no restriction on the credit card limit.

Figure 1 depicts the product flow of the Islamic credit card which can be described as follows:

1. The client applies for the Islamic credit card and the bank examines his credit background, income and capability to pay back, before it determines the credit limit for the client/cardholder. The cardholder may use the card to the extent of the credit limit approved by the bank.
2. The relationship between the cardholder and the bank is regulated through a loan contract, where the cardholder is the borrower and the bank is the lender. Every transaction made by the cardholder is considered a loan from the bank to the cardholder.
3. The cardholder uses his credit card to purchase goods and services from merchants.
4. The bank then guarantees the payment and pays the amount owed by the cardholder to the merchants.
5. Afterwards, the bank claims back from the cardholder the original amount of debt and charges the guarantee service that the bank provides to the merchants.

***Figure 1: Islamic Credit Card using Ujrah and Kafālah Concept***




*Sources: Engku Ali (2008) and Ramli (2008)*

Since the bank does not provide an illustration of the credit card's structure, the paper has adopted the model introduced by Engku Ali (2008) and Ramli (2008). Based on our observation, the model is similar to the structure of the credit card offered by the bank. The fees imposed are justified through the services provided by the bank based on the *ujrah* concept, which range from managing and maintaining accounts as well as guaranteeing (*kafālah*) payments to merchants. The fees charged comprise a cash advance fee on a flat rate of 5% of the total amount of cash advance (minimum RM10). Furthermore, the bank also charges card replacement fee (RM50 for the first replacement), sales draft retrieval fee (RM15), and additional statement request fee (RM5 per monthly statement). Service tax is also imposed (RM50 annually and RM25 service tax levied on each principal and supplementary card, respectively), which will be deducted from the cardholder's account at the time when the card is issued, on the anniversary date or upon renewal of the card.

The final fee is charged on the outstanding balance, which is also known as Actual Monthly Management Charges (AMMCs) levied on the outstanding retail transaction balances which are not paid after the payment due date. The AMMCs are calculated from the day the transactions are effected until full payment. Retail transactions exclude cash withdrawal balance transfer and any other credit plans. The structure of fees is presented in Table 2.

***Table 2: Actual Monthly Management Charges***

| Conditions | Charges | |
|---|---|---|
| | **Per Month** | **Per Annum** |
| For Prompt Payment 12/12 months | 1.13% | 13.50% |
| For Prompt Payment 10/12 months | 1.33% | 16% |
| For Prompt Payment of less than 10/12 months | 1.46% | 17.50% |

On the other hand, if the cardholder wishes to withdraw cash, different fees are enforced, which are known as Actual Cash Withdrawal Management Charges (ACWMCs) (see Table 3). ACWMCs are imposed on the one-time service fee of 5% charged on the cash amount withdrawn through the use of the card of which the minimum amount withdrawn is RM10. ACWMCs are also charged on the outstanding balance due to the cash withdrawal and other credit plans, which

will be subjected to the ACWMCs of 1.5% per month or effective rate of 18% per annum. The charges are calculated on a daily basis from the date of the cash withdrawal until full payment is received and credited into the card account. However, if the cardholder fails to satisfy his obligation to pay, a late payment penalty (*taʿwid*) will be charged equivalent to 1% of the total amount outstanding subject to a minimum of RM10, with the maximum amount of RM75. The bank also has the right to set off any card facility balance from the cardholder's account, for example savings or investment account, maintained with the bank against any outstanding balance of the cardholder.

***Table 3: Fees for Actual Cash Withdrawal Management Charges***

| Service Fee | Charge |
|---|---|
| One-time fee of 5% on the cash withdrawal amount | 18% per annum on the outstanding balance of cash withdrawal |

Besides, the bank also charges Fixed Monthly Management Charges (FMMCs) for the services provided by the bank and Fixed Monthly Cash Withdrawal Charges (FMCWCs) for cash withdrawal transactions (see Tables 4 and 5). These charges represent the capping amount of AMMCs and ACWMCs, respectively. In the event the AMMCs exceed the FMMCs, the bank shall only charge up to the FMMCs limit. This is equally applied to the FMCWCs whereby the Bank will only charge up to the FMCWCs limit if the ACWMCs exceed the FMCWCs.

***Table 4: Fixed Monthly Management Charges***

| Gold Card | Platinum Card | Infinite Card |
|---|---|---|
| RM900 | RM3,600 | RM30,000 |

***Table 5: Fixed Monthly Cash Withdrawal Charges***

| Gold Card | Platinum Card | Infinite Card |
|---|---|---|
| RM1,300 | RM5,300 | RM44,300 |

The bank may also grant the cardholder a rebate (*ibrāʾ*) at any time or from time to time, which will be determined and calculated at the absolute discretion of the bank. The amount of the rebate (*ibrāʾ*) of

FMMCs will be determined, according to the difference between the FMMCs and the AMMCs at the relevant statement date. The same rebate is also offered to FMCWCs, where it is calculated based on the difference between FMCWCs and ACWMCs at the relevant statement date. Another consideration to actualise the rebate is through AMMCs on the current balance, which must be less than the FMMCs. In the same vein, the rebate will also be offered for cash withdrawal if FMCWCs on the current balance are less than the ACWMCs.

## V. SHARĪʿAH ISSUES

There are two issues that are not consistent with the recommendations and resolutions given by the Sharīʿah councils as discussed previously; namely, the issue of monthly management charges and cash withdrawal management charges and combination of sale and loan in one transaction.

### *a. Monthly Management Charges and Cash Withdrawal Management Charges*

It is observed the AMMCs and the ACWMCs are tied to the outstanding balance of the debt owed. This practice is equivalent to the exchange of money for money, which is *ribā*. This can be seen as the AMMCs and ACWMCs are different in accordance to the outstanding balance of debt owed. The cardholder has to pay an extra rate based on the outstanding amount and the charges are increased if he keeps delaying the payment. This is considered as *ribā al-qarḍ,* since the cardholder has to pay an additional charge to the bank (lender) besides the principal amount if he delays payment. However, there is no Sharīʿah issue for the administrative and management fees, such as replacement card's fee, sales draft retrieval fee, additional statement request fee, FMMCs and FMCWCs which are fixed and are not related to the amount of money owed. In this regard, Kenjebaev (2012) asserted that monthly and withdrawal charges are similar to interest charges. However, he opined that fixed monthly charges, such as loyalty programmes, discounts on credit

card purchases and guaranteeing the payment to the merchants on every purchase on behalf of the cardholder, are not akin to interest but can be justified as compensation for the services provided by the bank to its cardholders. He reinforced that the fixed fees are charged for the services provided rather than for the money advanced to the cardholder. He further explained that the cardholder utilises money advanced by the bank as a debt which has to be repaid. The bank does not charge any additional fees in case of delay of payment by the cardholder. As such, he observed that the payment of the fixed fees should not be considered as interest for the money utilised but as an *ujrah* for the services provided.

Furthermore, the bank did not provide a valid reason for the charges imposed on the cardholder if he partially settles his debt—whether the charges are for late payment or due to the operational cost associated with the delayed payment. If the charges imposed are in the form of a penalty for late payment, the SAC-BNM then stipulates that Islamic banks may impose the charges but they must be based on the actual losses (BNM, 2010). The Council decided that a percentage of 8% could be imposed as a penalty charge. However, the Council was silent on the justification of why a specific penalty rate of 8% is allowed to be charged.

Another question is how Islamic banks would calculate the actual loss. Would it be based on the opportunity cost of the bank or on other means? (Rosly, 2005). Furthermore, if the charges are imposed based on the cost of operation of the delayed payment, then it is considered as a benefit to the loan given, which is *ribā*. The majority of Muslim jurists argued that the practice is equivalent to what is referred to in the statement attributed to the Prophet: *"Every loan which brings benefits (to the creditor) amounts to ribā."* According to Baz (2013), although the attribution to the Prophet (SAW) is weak, the meaning is valid.

### *b. Combination of Sale and Loan*

Combination of sale and loan was prohibited by the Prophet (SAW). This was stated in his famous *hadīth*, *"It is prohibited to combine loan and sale"* (Ṣanʿānī, 1928; Shawkānī, 1983; Ibn ʿArabī, 1934). A standard interpretation of the *hadīth* is that a loan contract is stipulated

in a sale contract or a sale contract is stipulated in a loan contract. If the contract is made in a separate deal, where there is no stipulation between both contracts, then it is permissible (Ibn Qayyim, 1950; Ḥammād, 2005; AAOIFI, 2010). However, it is prohibited if the sale and loan contracts are combined. It has been agreed that the ruling of the prohibition of combination of sale and loan is also extended to other contracts that share similar features of both contracts. *Qarḍ* is categorised as non-exchange contract (e.g. *hibah* and *sadaqah*), while sale is an exchange contract (e.g. *ijārah* and *salam*); therefore, the combination of non-exchange with exchange contracts is also prohibited. The reason for the prohibition is that the combination is used as a legal trick to circumvent the prohibition of *ribā* (Ḥammād, 2005).

In this respect, the combination of sale and loan can be observed in the structuring of the credit card, as it combines *qarḍ* (non-exchange contract) and *kafālah bi al-ujr* (exchange contract). The involvement of the bank and the cardholder in the *qarḍ* contract can be seen in Figure 1 which highlights the lender-borrower relationship between the bank and the cardholder. Although the cardholder never asks or agrees with the bank to enter into such a loan contract, when the bank issues the credit card to the customer, it is considered a facility/loan given to the customer within his approved credit limit. This can be evidenced by the fact that the customer is required to pay the amount spent on the credit card and the bank is obligated to pay back the amount spent by the cardholder to the merchant. This is also applied in the case of cash withdrawal whereby the cardholder inevitably owes the sum withdrawn to the bank and he/she has to pay extra charges if there is delay in the payment.

Meanwhile, the contract of *kafālah bi al-ujr* as an exchange contract is applied in the credit card arrangement when the bank guarantees the purchases made by the cardholder. The power of purchasing goods and services emanates from the credit (*qarḍ*) authorised by the bank, and the cardholder is allowed to delay his payment with extra charges based on his credit period. This indicates that there is a direct relationship between *qarḍ* and *kafālah bi al-ujr,* whereby the presence of *kafālah bi al-ujr* is due to the *qarḍ* given by the bank and without *qard*, the contract of *kafālah bi al-ujr* will not prevail.

In this respect, it appears that the practice of the bank is contradictory to the recommendation made by AAOIFI and the IIFA-OIC which allows the issuer to charge a commission fee to the merchants on every purchase made by the cardholders as a percentage of the purchase price of the items and services bought on the card, as well as to charge membership, renewal and replacement fees to the cardholders or flat fees for cash withdrawal, but not the guarantee element. Therefore, the arrangement is invalid as it is a combination of sale and loan contracts, which becomes a legal trick to circumvent the prohibition of *ribā*.

## VI. CONCLUSION

This paper highlights the important role of credit cards in the purchase of goods and services on credit. From the Sharīʿah perspective, credit cards are allowed as long as they do not involve any *ribā* element. The majority of Sharīʿah scholars and institutions, such as AAOIFI, IIFA-OIC and SAC-BNM agreed that the issuer/bank is allowed to charge some fees, such as membership, renewal or replacement fees, where no interest is involved. Such fees are not regarded as a lucrative profit for the bank, since the rates are predetermined, where the bank is not allowed to raise the amount. However, charging a fee on a guarantee is still controversial since it has been regarded as *ribā.* In conventional banks, the institutions generate their income/ profit via the interest charges based on the outstanding balance. If the cardholder defers in paying the amount due, he/she will be charged based on the percentage stated in the product. However, such mechanism is not allowed under the Sharīʿah provisions as it is similar to *ribā.* The bank is only allowed to charge a minimum fee as a penalty if the cardholder delays payment.

From the case study examined, this paper finds that the main problem of the product is the monthly and withdrawal fees, which are equivalent to *ribā.* To solve the problem, it is suggested that the bank retain FMMCs and FMCWCs but eliminate the AMMCs and AMCWCs in tandem with the resolution made by the IIFA-OIC, AAOIFI and SAC-BNM that allows for the charging of only fixed administrative and management fees. The bank may also charge fees

based on the types of the purchased items by the cardholder, such as food, clothes, or utilities. In this case, the bank is required to work together with the selected business outlets in which every purchase is made by cardholders, so that there is some profit shared by the owner of the outlet and the bank. However, this practice is probably not practical, since not many outlets and shops would share their profit.

Another alternative is for the bank to generate profits without charging AMMCs and AMCWCs through promotion and marketing strategies that encourage the cardholder to spend more on retail purchases. This effort aligns with such Islamic legal maxims like *al-kharāj bi al-ḍamān* (revenues comes with liability) and *al-ghunm bil-ghurm* (profits goes with loss) which recommend that profits, revenues and proceeds corroborate with the required efforts.

Regarding the issue of combining exchange and non-exchange contracts between *qarḍ* and *kafālah bi al-ujr*, it is proposed that the bank instead structure the Islamic credit card based on the concept of *takāful*. This is proposed to resolve the controversial issue of combining exchange and non-exchange contracts, which is tantamount to *ribā.* Under the concept of *takāful,* the concept of guarantee is still applicable, where the cardholder is a policyholder and the bank is the manager of the fund to guarantee the payment spent by the cardholder. The payment of the cardholder can be divided into two accounts, one for *tabarruʿ,* which attempts to cover the risk exposed by the cardholder, and the other for investment. Meanwhile, the premium paid is based on the credit assessment and risk profile of the cardholder. The bank may invest the premium given into Sharīʿah-compliant ventures to realise some profits based on the contract of *wakālah* or *mudārabah,* which becomes an incentive to the bank and the cardholder. As such, the bank would make profit from the investment account, not from the *tabarruʿ* fund.

However, if the bank is still interested to offer Islamic credit cards based on the *ujrah* contract, the bank should ensure that the fees imposed are fixed and not tied to the amount of outstanding balance; otherwise the transaction will involve *ribā.*

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