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**CREDIT CARDS FROM THE ISLAMIC  
LEGAL PERSPECTIVE  
(SPECIAL REFERENCE TO MALAYSIA)**

BY

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**A THESIS SUBMITTED IN PARTIAL  
FULFILMENT OF THE REQUIREMENT FOR  
DEGREE OF MASTER OF COMPARATIVE  
LAWS**

**AHMAD IBRAHIM KULLIYYAH OF LAWS**

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## ABSTRACT

The importance of credit cards in contemporary society and the need to use them is no doubt becomes a matter of necessity in many circumstances. To show their importance, the study first of all, discusses the development of credit cards, their advantages and disadvantages. The study at the same time is trying to explain the contracting parties involved in the credit cards transactions, their relationship between one another and their responsibilities in carrying out credit cards activities. Furthermore, the study looks into the discussion of credit cards from the Islamic point of views. The discussion starts with discourse amongst the Muslim jurists concerning the freedom of the contracting parties to the contract stipulating conditions in their agreement and follows by the explanation on the conditions those are recognized by Islamic law and those are not. After that, the study deals with the conditions of credit cards that are valid Islamically and that are null and void in which they should not be stipulated in the credit cards agreement by all means. In addition, the adaptation of credit cards to the recognized contracts of Islamic law is discussed and the study seems to indicate that the best way of adaptation is to adapt a combination of principles of *aqd al-iqrad*, *al-kafalah* and *al-wakalah* as the principles applicable to credit cards transactions. Since the study is conducted in Malaysia, it also analyses the Islamic credit cards issued by bank in this country that their issuance rely on *bay al-inah* despite its controversy on its recognition. Therefore, to avoid such thing the study suggests that the current practice in Malaysia should be replaced by a real debit card or *ijarah* card.



## APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Comparative laws.

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# DECLARATION

I hereby declare that this dissertation is the result of my investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

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Credit Cards from the Islamic Legal Perspective (Special reference to Malaysia)

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This work is dedicated to my beloved parents, for their support, advice, encouragement and prayers. It is also dedicated to those who are struggling day and night to rescue the *Ummah* from the illegal transactions. May *Allah* Almighty bless them all

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# CHAPTER 1

## INTRODUCTION

Islam is the religion of all times and places in terms of its flexibility. One of the clearest manifestations of this flexibility is in the field of transactions that is based on “the concept of permissibility in principle provided that it does not involve prohibited objects”. Muslim jurists usually find no difficulty in arriving at a suitable ruling on any new developments in such field.

This study intends to highlight one of the recent developments in contemporary commercial transactions pertaining to credit cards since they have not been discussed by the Muslim jurists in the past because of the non-existence of such cards. Hence, the concept of permissibility is discussed for investigation on the legality of credit cards.

Before discussing the concept, the study plans to elaborate on some important issues pertaining to credit cards such as their historical development and importance in contemporary societies. Furthermore, it proposes to explain the contractual relationship between card holders, the issuing bank, the merchant and the *Shariah* issues involved in it. It will also explain the types of credit cards available and the characteristics of the cards used in modern transactions.

The study will also explain how jurists adapt the credit cards transaction from the Islamic legal perspective and the *Shariah* general rulings on credit cards. It will also look at the Malaysian Islamic Banking scenario on the credit cards and their methods of issuing credit cards, Islamic contracts involved in the issuance and further examine its

compliance with *Shariah* principles. Finally, the study will conclude with some recommendations.

### **1.1. Statement of Problem**

Credit cards are very important in the contemporary society. The need to use them has become a necessity in many circumstances although the safety considerations sometimes have to be compromised. The issue is that whether Islamic law allows the usage of credit cards. If their usages are allowed, another issue is whether they are considered as Islamic law compliant. To answer these issues, Muslim jurists need to address them accordingly.

### **1.2. Hypothesis**

The best way to address the issue of credit cards is to adopt the principles pertaining to contracts of credit (*aqd al-iqrad*), guarantee (*aqd al-kafalah*) and agency (*aqd al-wakalah*) in Islamic law as the underlying contract for credit cards.

### **1.3. Literature Review**

A preliminary reading on transactions in Islamic law (*fiqh al-muamalat*) shows that they are not updated to include discussions pertaining to credit cards. Therefore, the Islamic *Fiqh* Academy of the Organization of Islamic Conference (OIC) decided to hold conferences and seminars on different sessions for the study of the legality of credit cards. This started in the year 1412 A.H /1992 A.D. on the Seventh Session in Jeddah,

Saudi Arabia<sup>1</sup>. The Session did not issue any legal opinions due to lack of information on the principles of credit cards. That resulted in the postponement of the study, to give more time for research and more profound studies.

In the year 1414 A.H /1993A.D, the Eighth Session was held in Brunei Darussalam<sup>2</sup>. Research on credit cards was introduced and discussed openly but as before, no legal opinions were announced. The Session only announced a recommendation that the General Secretariat of the Academy should actively recruit researchers, jurists and economists on the subject in order to allow the Council of the Academy to make decisions.

In the year 1418 A.H /1997 A.D, the Tenth Session was held in Jeddah, Saudi Arabia to conduct an extensive study entitled “The Financial Transaction Cards: Juridical Analytical Comparative Studies”<sup>3</sup>. The study provided jurists with new aspects and new legal views on the cards.

The Session decided that the General Secretariat of the Academy should collect as many as possible forms of agreement and conditions of the cards issued by banks. It also decided that a committee should be established in order to study all prepared agreements concerned and provide the Academy with the results in the coming session.

The Session also urged Islamic governments to do the following:

- i) To prevent banks from issuing cards with interest.

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<sup>1</sup> Session Seventh of *Fiqh* Academy of the Organization of Islamic Conference, Jeddah, Saudi Arabia, *BiĒqĒt al-I'timĒn*. 1412H/ 1992A.D, Vol.1,pp.353-382.

<sup>2</sup> Session Eight of *Fiqh* Academy of the Organization of Islamic Conference, Brunei Darussalam, *BiĒqĒt al-I'timĒn*, 1414H/1993A.D, Vol.2, pp.571-637.

<sup>3</sup> Session Tenth of *Fiqh* Academy of the Organization of Islamic Conference, Jeddah, Saudi Arabia, *BiĒqĒt al-I'timĒn*, 1418H/1997A.D, Vol.3,pp.5-127.

- ii) To establish committees consisting of jurists and economists for protection of their people's interests and national economy.

The efforts to find answers for the legality of credit cards were also carried out by the High Board of Jurists of Saudi Arabia and many Islamic Banks' *Shari'ah* Boards<sup>4</sup>.

Few studies have been conducted relating to some aspects of credit cards by some individual authors such as Mu'ammad Abd al-Halim Umar, who authored *al-Jawanib al-Shar'iyyah wa al-Masrafiyah wa al-MuhasabÉyyah Libitiqat al-I'timan*, 'Itrak , First edition, Cairo, (1997). He started his discussions with general information on credit cards. He then discussed some *Shari'ah* issues pertaining to the use of the credit cards. The book, however, focuses on both the banking and accounting aspects of credit cards and gives some principles on these two aspects of the cards. Although there is some discussion about *Shar'iah* issues, it is not a profound discussion which may give a clear picture to the reader about the position of Islam on the issue.

'Abd al-Wahab Abu Sulayman's *al-BitaqÉt al-Bankiyyah al-IqrÉiÉyyah wa Sahb al-Mubashir min al-Rasid*, Second edition, Dar al-Qalam, Damascus, (1424/2003) can be considered as one of the best individual efforts in the discussion on credit card issues from Islamic point of view. The author, however, started his discussions with a correction of the common Arabic translation of the term credit card. He then elaborated the discussion on the credit card providers universally, procedures of acquiring credit cards, the agreement between the parties to card transaction and rights and obligations of the parties. The second part of the book is about the underlying contract of credit card

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<sup>4</sup> 'Abd al-WahhÉb AbÉ SulaymÉn, *al-BiÉqÉt al-BankÉyyah al-IqrÉiÉyyah wa al-SaÍb al-MubÉshir min al-RaÍÉd*, (second edition), DÉR al-Qalam, Damascus, 1424/2003, p.245.



transactions, effect of invalid stipulation on the credit cards transactions. Finally, he discusses the relationship between the contracting parties to credit cards and some *Shari'ah* issues involved in this.

Hence, this study will discuss the history of credit cards, their importance in contemporary society and their classification. The study will also look at the relationships between the contracting parties to the credit card transactions and the type of Islamic contract which will be the underlying contract. Furthermore, it will explain the *Shar'ah* issues and rules involved in issuing credit cards. Finally, the study will highlight the Malaysian Islamic bank scenario in issuing the credit cards and examine the compatibility with Islamic rules.

#### **1.4. Scope and Limitation of the Study**

This study is intended to focus on the importance of credit cards in contemporary society, the classification of credit cards and the *Shar'ah* issues involved in issuing cards. The study will look at the relationships between the contracting parties and the type of contracts that shall be the underlying contract. Finally, it will highlight the Malaysian bank scenario in issuing credit cards. However, the study will not touch credit card frauds and misrepresentation by the merchant and other related issues such as criminal offences on credit card transactions as they have been widely addressed.

#### **1.5. Methodology**

The study will be library based and is theoretical in nature. Various Islamic sources will be used as well as journals, the Internet and other important books and

reports on the area will be consulted. In addition, some relevant documents from banks will be referred to.

This study is descriptive, analytical and critical as it presents the different juristic views. The research follows the process of criticism, consolidation, if possible, and finally, arrives at certain conclusions.

## **1.6. Table of Contents**

The study is divided into six chapters. Chapter one is an introductory chapter. Therefore, it discusses the objectives, statement of problem and hypothesis of the study. It also includes discussion on literature reviews, scope and limitation of the study together with the methodology used.

Chapter two focuses on the historical development of credit cards as well as its importance in contemporary societies. It also touches on providers of credit cards universally and various types of credit cards and their characteristics.

Chapter three discusses the relationship between the contracting parties in credit card contracts and their rights and responsibilities towards one another. The study therefore sheds light on the relationship between the issuer and the card holder as well as the issuer and the merchant, and between the merchant and the card holder. It finally discusses the termination of the contract between the issuer and the card holder and the legal effects of such termination.

Chapter four discusses various Shari'ah issues including the concept of conditions, validity of credit cards conditions, adaptation and legal rulings on credit cards.

Chapter five focuses on the Malaysian practice of issuing Islamic credit cards. It explores the underlying contracts used to issue Islamic credit card by Malaysian banks, their conditions of issuance and the privileges given to the card holders. It also elaborates the types of Islamic credit cards issued by banks in Malaysia.

Finally, chapter six concludes the study, together with some recommendations.

## **CHAPTER 2**

# **HISTORICAL DEVELOPMENT AND CHARACTERISTIC OF CREDIT CARDS**

### **2.0. Introduction**

The use of credit cards originated in the United States in the 1920s<sup>5</sup>. Hence, this chapter will shed light on the development of credit cards, their advantages and disadvantages, the types of cards that can be used as a method of payment and finally, the provider of the cards globally.

### **2.1. Historical Development of Credit Cards**

Man has been involved with trade and commerce since the beginning of history. As this area has expanded and become more important, different methods of exchange have been developed. From barter trading, to money as a medium of exchange and now the World is moving towards credit cards. In this age of rapid technological advances, it is only natural that man should seek out a new, more efficient system of carrying on trade and commerce. This system appears to be the use of credit cards<sup>6</sup>.

Credit cards are not new. They, or some equivalent, have existed since the early part of this century. Some time before 1920, some large department stores began to issue

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<sup>5</sup> Peter E. Sayer, *Credit Cards and The Law: an Introduction*, Fourmat Publishing, London, 1988, p.1.

<sup>6</sup> Irving J. Sloan, *The Law and Legislation of Credit Cards: Use and Misuse*, Oceana Publications Inc, London, 1987, p.2.

“credit coins”<sup>7</sup>. These coins were a small piece of metal, which displayed the name of the merchant and a series of numbers identifying the customer's account. They were issued to good customers and allowed them to purchase merchandise on credit in the store. About the same time, oil companies began to issue charge plates (usually made of metal) to their customers for the purchase of gasoline, oil and the likes at the companies' service stations<sup>8</sup>. All this development notwithstanding, the yield was relatively insignificant until 1950.

In 1950, the Diners' Club introduced the first independent credit card plan. This plan involved an agreement between the club and its members and between the club and the merchants. The members agreed to pay the club to obtain a card and then agreed to pay a monthly billing as it came in. The merchant agreed to honor the card and then forward his credit vouchers to Diners' Club for payment once a month. The members thereby were able to get service from many types of establishments by carrying only one card and were able to pay for it at the end of the month. The merchant, on the other hand, was relieved of having to have his own plan and was also likely to increase the volume of his business since card holding members would find it more convenient to deal with him than with a merchant who wouldn't honor his card<sup>9</sup>. The success of the Diners' Club plan was such that the American Express Company entered the field in 1958, while Hilton Credit Corporation initiated the "Carte Blanche" plan the following year<sup>10</sup>.

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<sup>7</sup> Tony Drury & Charles W Ferrier, *Credit Cards*, Butterworths, London, 1984, p.19.

<sup>8</sup> Lee Mei Pheng & Dettta Samen, *Banking Law*, Malayan Law Journal, Kuala Lumpur, 2002, p.232.

<sup>9</sup> Sloan, *The Law and Legislation of Credit Cards*, p.3. See also Frazer, Patrick, *Plastic and Electronic Money*, Woodhead-Faullner Ltd, Cambridge, London, 1985, p.16.

<sup>10</sup> Sloan, *The Law and Legislation of Credit Cards*, p.3.

In 1951, the First National Bank of Long Island became the first bank to offer its customers a credit card plan. This area was not very important, however, until the late 1950s when the Bank of America and the Chase Manhattan Bank issued their cards. In 1966, the Midwest Bank Card System was started<sup>11</sup>.

With the advent of the bank credit card, the range of goods and services available on credit became staggering. They range from the normal expenditures of food and clothing, shelter, entertainment and travel<sup>12</sup>.

By at least the beginnings of the 1970s, the personal (as well as the corporate) credit card had become a fixture in the nation's economy. Today more than 60 million credit card accounts exist in the United States, and seven out of ten households possess at least one credit card. By 1988 outstanding balances on credit card accounts total more than \$80 billion<sup>13</sup>.

In the United Kingdom however, things did not start to happen until 1963 when American Express issued its first sterling American Express card. The first UK bank issuing credit card was Barclays Bank which issued Barclays card in 1965. Barclays had reached an agreement with Bank Americard (Visa) so that the Barclaycard could be used internationally. The Barclaycard was, and is, a full bank credit card. The other major clearing banks took no action, thinking that the Barclays Bank initiative would be nothing more than a very expensive folly. There were counter-moves in the form of a cheque guarantee card. Upon the presentation of a cheque with the card, the bank would give a collateral guarantee that the cheque would be met regardless of whether there were

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., p.4. See also see Mavis Fowler, *Credit Cards and The Law*, Oceana Publications, Inc. New York, 1995, p.4.

sufficient funds in the account or whether the customer had given instructions not to pay<sup>14</sup>.

In 1970, National Westminster, Midland and Lloyds Banks realized that their individual cheque guarantee cards were not likely to withstand the competition from the Barclays' credit card. They were also worried of the situation that Barclaycard was recruiting their customers. At the end of that year, a joint Working Group was established as a consequence of which the three banks (later joined by Williams and Glyn's Bank and the Royal Bank of Scotland) formed the Joint Credit Card Company Limited to counter the market domination by Barclays, as the sole bank credit card issuer. In 1972 they launched the Access Credit Card Scheme (Access). The location selected for Access was Southend-on-Sea. By May 1972, 50,000 sales outlets had joined the scheme and Access was underway. By 1979, over 4 million cards had been issued<sup>15</sup>.

The economic situation affected the growth of Access although turnover increased from 136 million in 1973 to 973 million in 1979. Cards issued increased from 302 million in 1975 to 4.05 million in 1979<sup>16</sup>.

Faced with the need to match the international acceptability of Barclaycard, Access tried to join Interbank but negotiations foundered on the problem of reciprocal arrangements because Access did not have the data processing capability. For a time it joined the Eurocard System but agreement was reached in June 1974 and in April 1975 Access became part of Interbank (later MasterCard)<sup>17</sup>.

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<sup>14</sup> Peter E. Sayer, *Credit Cards and The Law*, p.2.

<sup>15</sup> Drury, *Credit Cards*, p.31.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

In 1987, the first major debit card was issued in the UK. Once again, Barclays Bank was the bold trail-blazers. Their debit card is called "Connect". It can be used in the same way as any other Visa card. However, rather than the card holder's account being "overdrawn", the card holder must keep his account in credit and the card is used to access that account. Retailers resisted the introduction of the card as Barclays expected them to pay the same rate of service charge or discount as they would for a credit card transaction. Retailers, perhaps not unreasonably, said that they did not mind paying a certain rate if the card used was allowing credit to be given so as to facilitate the purchase of goods which might otherwise have been unaffordable, but that the debit card was simply an alternative to a cheque. If the transaction was for a reasonably large amount, the cost to the retailer could well exceed the amount that would have to be paid to clear a cheque<sup>18</sup>.

## **2.2. Importance of Credit Cards in Contemporary Societies**

There has been a major revolution in the way in which payments are made in the last 20 years. Credit cards have become an essential means of exchange in the economy because they provide consumers and merchants considerable advantages over cash and cheques.

Cash is easier to steal and harder to trace that is why most people do not like to carry too much cash. Cheques have their own disadvantages. To begin with, chequebooks are inconvenient to carry. The traditional chequebook weighs fourteen times more than a

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<sup>18</sup> Sayer, *Credit Cards and The Law*, p.3.