

Organised *Tawarruq* in Islamic Law

**A Study of Organised *Tawarruq* as Practised
in the Financial Institutions in Saudi Arabia**

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ABSTRACT

Banking *tawarruq* is considered as one of Islamic products. The contract is offered by Islamic financial institutions and some conventional banks which have Islamic windows. The contract offers another way to finance people and companies to obtain money accordance to Islamic law.

The definition of organised *tawarruq* is a contract to obtain money according to the concept of *tawarruq* in Islamic law.¹ The contract is offered by the financial institutions to their client that the financial institutions buy specific commodities for immediate payment then offer the commodities to their clients for deferred payment with extra sum. Then the financial institutions offer to the clients to be agents, by themselves or other agents, to sell the commodities again in the markets for immediate payment. At the end the financial institution credit the money in the clients' accounts.

For example, F (financial institution) buys 10 tons of irons for \$20,000,000 from the international market, so 1 ton is for \$2,000,000. Then, F offers to C (clients) a ton of irons for \$3,000,000 to be paid by instalments within 10 years. When C bought the irons, F offers to C to sell, by itself or another agent, his irons in behalf of him in the international market for \$2,000,000, as F have bought it for. At the end F credit \$2,000,000 in the account of C.

We will present the paper belong the concept of Islamic law under three points:

- 1- The concept of *tawarruq* sales.
- 2- The practices of the contract under the concept, "do sell something is not under your possession", and its relationship to banking *tawarruq*.
- 3- The scholars view in banking *tawarruq* in specific.

1. Introduction

Organised *tawarruq* is a new mode of provision of personal finance by Islamic financial institutions or conventional banks which provide Islamic products. The contract was introduced in Saudi Arabia at the beginning of this century. The financial institutions consider the contract of organised *tawarruq* as an Islamic product which is subject to the rules of Islamic law, and this type of contract is approved by the Shari'a boards, which supervise any contract which is considered by institutions as an Islamic product or service. Private financial institutions in Saudi Arabia can be classified into two categories: first, Islamic financial institutions, which provide products and services which are supervised by the Shari'a board of the institution. These institutes avoid any products and services which are not approved by the Shari'a board. Examples of this type of institution are Bank al-Rajhi and Bank al-Bilad. Secondly, financial institutions which perform two kinds of transaction: those which are not supervised by the Shari'a board of the institutions, and those which are under the supervision of the Shari'a board. Examples of these institutes are SABB (Saudi Arabia British Bank), Bank al-Riyadh, Samba Financial Group, Saudi France Bank and National Arab Bank.

¹ *Tawarruq* means a sale contract in which the buyer obtains merchandise on credit and then sells it at a loss to the original seller for cash.

As mentioned above, organised *tawarruq* was started in the financial institutions in Saudi Arabia in the last few years. The first institute to offer it was NCB (National Commercial Bank), which did so under the name, *al-taysir*. Then SABB introduced organised *tawarruq* in October 2000, under the name, *mall*. Al-Jazira Bank and Samba Financial Group have offered organised *tawarruq* since the end of 2002. It is called *dina* by al-Jazira Bank, and it is called *tawarruq al-khair* by Samba Financial Group. Now, the majority of financial institutions in Saudi Arabia offer organised *tawarruq* as an Islamic approach to financing, whether for establishments or individuals.

There are several reasons, in terms of commercial purpose, why organised *tawarruq* is favoured by financial institutions:

- 1- Some scholars state that some forms of this contract are not prohibited in Islamic law and people who want to obtain money can do so without being involved in usury.
- 2- It is an easy way to obtain finance; in some institutions, the funds are released about two days after the application has been completed by the client.
- 3- The transaction has low risk

This presentation will discuss organised *tawarruq* which is provided in the financial institutions in Saudi Arabia, focusing on transactions of which the subject matter is commodities. Then, the forms of contract, which are practised in the institutions, will be discussed, and the view of scholars on this kind of transaction under Islamic law will be explained.

4.2.2 Concept of organised *tawarruq*

Researchers who study this type of contract discuss it under two expressions. The first expression is banking *tawarruq* (*al-tawarruq al-mas'rifi*). This expression is commonly used in commercial contexts because the inclusion of the word banking indicates the provider of the transaction. The second expression is organised *tawarruq* (*al-tawarruq al-munaz'am*) which seems to be a more academic term, because it indicates the procedure of the contract which is arranged by the financial institutions and the arrangement differs between organised *tawarruq* and the traditional form of *tawarruq* which is explained in the traditional *fiqh*.

We will begin by considering how organised *tawarruq* is defined by the financial institutions, starting with NCB (National Commercial Bank): "Taysir al-Ahli is based on the Islamic financing mechanism of *tawarruq* whereby the client buys commodities from NCB on credit and sells them back in the market for a spot price to get cash. NCB, of course, helps in making the whole process compliant with Shari'a, and convenient so you can get the proceeds in your account quickly".

Next, SABB (Saudi Arabia British Bank) defines its way of offering organised *tawarruq* as follows: "Mal is designed to allow you to trade on the international commodities markets whilst satisfying Islamic Shari'a. Here's how it works: SABB buys a commodity – usually metal – on the international market and sells it to you at a certain profit mark up over a certain period of time. Once you own the commodity, you simply issue SABB with the power of attorney to sell it on the international market and credit your account with the sum obtained".

The above definition is more detailed than the NCB form. The bank specifies the market, which is the international market, and the type of commodity which is, normally, a metal. Then, the bank indicates the contract which is offered to the client, which is a mark up sales (*bay' al-mura>bah}a*). This means that they indicate the cost of commodities to the client and the amount of profit, and the price must be paid within a certain period of time. This transaction might be under the concept of deferred sales (*al-bay' al-mu'ajjal*) if the payment is a single transaction or instalment sales (*bay' al-taqsi>t}*) if the payment is by more than one instalment. Then they say, "Once you own the commodity, you simply issue SABB with the power of attorney to sell it on the international market and credit your account with the sum obtained". This shows that the role of the institution does not end after selling the product to the client but they also offer to the client their services as an agent to sell the commodity on his behalf and receive the price, which is credited to the client's account.

ANB (Arab National Bank) also offers this kind of transaction, which they explain in the following terms: when you buy *tawarruq* commodities through the bank, you automatically authorize the bank to sell it on your behalf for cash. The commodities are sold at prevailing market prices, on the spot and cash proceeds are then deposited in your account. The transaction is quick, easy and low cost. You repay on an easy instalment basis of up to 60 months".

As it is seen, the institution takes the authority to sell the commodity when the client entered into the contract, as they say, "When you buy *tawarruq* commodities through the bank, you automatically authorize the bank to sell it on your behalf for cash", but they do not mention whether the client must authorize the institution to sell the commodity on his behalf of him or not. Then, the institute indicates that they sell the commodity in the market for the prevailing price; they do not indicate any referral to the client to ask him whether he is satisfied with the price or not. Next, according to the definition the payment is by instalment over up to 60 months. Thus, the method of payment falls under the umbrella of instalment sales.

Next, we will discuss the definitions of organised *tawarruq* offered by researchers who study contracts. Al-Suwailem indicates that organised *tawarruq* is a contract in which the seller, who is the financial institution, arranges the process of the transaction by selling a commodity to the client for deferred payment. The institution then sells the commodity, as an agent on behalf of the client to a third party, in the market and then credits the price to the account of the client. Then he also indicates that the institution may enter into an agreement with a trader to buy the commodity from the institution, who is the agent, for less than the common price in the market.

So al-Suwailem does not mention whether the financial institution obtains the commodities before it sells them to the clients or not, and he also does not mention who is the owner before the institution or, in other words, whether the owner before the institution is the third party who buys the commodity from the client or whether the owner is different. Al-Suwailem's definition seems to be focused on the relationship between the institution and the client, without considering the whole process of the contract, whereas the relationship between the institution on the one hand and the first owner and the third party on the other hand is important from an Islamic point of view, because according to the conditions of sales,

a seller must own a commodity before he offers it and some financial institutions buy commodities after the clients apply for the *tawarruq*. In addition, he does not mention the types of commodities which are normally offered. This is important because the types of commodity affect deferred payment according to Islamic law and the contracting parties have to consider the rules of usury when they plan to engage in any kind of deferred sales. For instance, it is not permissible to exchange between money and gold or silver when one of them is deferred.

Al-Sa'idi defines organised *tawarruq* by saying that the financial institutions buy a quantity of minerals from the international market; they may have agent to act on their behalf in this matter. The commodities are held in international stores. Then, the company, which sold the commodities to the institutions, provides a certificate of storage to the institutions containing a description of the commodities, their amount, the place of storage, their reference number and the institution's ownership of them.

To make the definition clearer, we will give an example. The financial institution buys a hundred tons of copper for 2 billion pounds sterling from the international market, and then the institute divides the copper to suit the applications of the clients. The institute sells a hundred kilos of copper for 22 million pounds sterling, including the original price and mark up. Afterwards, the institute becomes an agent on behalf of the client to sell the copper again in the international market.

The above definition delimits the commodity which is the subject matter (*al-mabi'*) of the contract by indicating that the institutions buy a quantity of minerals, and it also specifies the source of the minerals, as it says from the international market. However today, some financial institutions deal with local companies in Saudi Arabia and the subject matter might be not minerals, but other goods such as rice, cars and electrical goods. The definition does not indicate that the institutions declare the original price to the client. Some institutions declare the original price which they have paid to obtain the commodities from the international market, and there is a difference between declaring and not declaring the price in the contract according to Islamic law, because if the price is declared, the contract falls under the concept of mark up sales.

Al-Mushaiqih¹ defines the organised *tawarruq* as a contract where the financial institution arranges to sell a commodity to a client by deferred payment then becomes an agent on behalf of the client to sell the commodity to a third party whereupon the institution pays the price to the client. Then, al-Mushaiqih² elaborates on the procedure. He says that the institutions buy commodities, normally minerals, specifically zinc, bronze, nickel, tin and copper, every week. They choose these minerals because they are common in daily exchange in the international market. In the contract, clients apply to buy a specific mineral which they specify and the contract is based on instalment sales. The commodities are normally in another country, such as Bahrain. Then, the institutions sell the minerals in many units according to the wishes of the clients. After the client buys a unit, he empowers the institution to receive and sell his commodity in the international market, and credit the price of it to his account. The clients have the power to change in the price, so they might sell their commodities for the same price or a different one. The clients also have the right to receive their commodities in the place where they are normally delivered. In addition, al-Mushaiqih³

also indicates that the financial institutions engage in an agreement with some brokers to obtain the metals.

For instance, A (financial institution or seller) buys 300 tons of bronze from B1 (broker no. 1) from the international market for 3 billions pounds and the payment is immediate. C (client) applies to buy a ton of bronze to be paid in instalments within three years. The financial institution offers it to the client for 11 millions pound (original price + mark up) to be paid in instalments within three years. After the financial institution and client have signed the contract, the financial institution offers to the client the agency of the financial institute himself or another party to sell the commodity in the international market to B2 (broker n. 2) for 10 million pounds to be paid now. At the end, the financial institution receives the price and credits it to the account of the client.

To conclude, organised *tawarruq* is a sales contract the purpose of which is to finance people in accordance with Islamic law. The process begins in the international or local market where the financial institutions buy commodities for immediate payment, and obtain a certificate which proves their ownership of commodity. Then the financial institutions offer the commodities to their clients who want to be financed, then the clients buy the commodities as an instalment sale, and the financial institutions often indicate the original price (*al-thaman*), which has been paid. The clients then enter into another agreement to empower the financial institutions or a third party to sell the commodities in the market, although they normally avoid selling the commodities to the traders who originally sold then to the financial institutions. However, in some cases the financial institutions and clients enter into the contract before the financial institutions obtain the commodities. At the end, the financial institution credits the price to the account of the client.

4.2.4 Conditions (*shuru>t}*) of organised *tawarruq*

As mentioned previously, organised *tawarruq* is a contract under the concept of sales. Therefore, the conditions of sales in general are applicable in the contract of organised *tawarruq*. In addition, there are also extra, particular conditions for the contract, because it has extra characteristics compared to traditional sales. Therefore, in this section we will discuss the conditions of organised *tawarruq* under the concept of sales:

1- Ownership of the commodities.

The sellers, whether the broker, financial institution or client, must own the commodities, before they offer them to the buyers. Scholars agree that a seller must have the ownership of a commodity before he offers it. In some cases, the financial institutions do not obtain the commodity in advance, especially when the contract is very expensive, such as a contract for more than SR100 millions. In such a case, it is not permissible to offer the commodities before acquiring them, as that would be just a form of selling a debt for debt (*bay' al-dain bi-dain* or *bay' al-ka>li' bi-l-ka>li'*) because the contract would involve a deferred or instalment payment for a commodity which has not been acquired, so the price and the subject matter are absent. However, under the concept of mark up sales, the Ma>liki>s indicate that it is permissible to promise the buyer to obtain a specific commodity for him without a real contract of selling and the seller and buyer should fulfil their promise.

2- Commodity is specified

The seller has to explain the details of the commodity to the buyer, when the buyer does not see it.

3- Possession of commodities

As mentioned, the commodities, which are normally used in the contract organised *tawarruq*, can be transferred from place to place, and this kind of commodity is called, in the traditional *fiqh*, a transferable commodity (*manqula*). Examples include metals, cement, rice and cars. Avoiding *'i>na* sales

As has been mentioned, the majority of jurists consider that *'i>na* sales are prohibited according to Islamic law. Therefore, the financial institutions avoid buying the commodities again from the client, because they have already sold them to the client by instalment payments for more than what they normally pay to acquire the commodities. Consequently, if they were to buy the commodities from the clients for less than what the client had paid, the contract, in this case, would be under the concept of *'i>na* sales.

5- Details of the time of payments

The contract between the financial institution, as the seller, and the client, as the buyer, is based on the contract of instalment sales or deferred sales in general, and one of the conditions of the both contracts is that it must explain in detail the manner of payment, whether in one payment after, for instance, three years, or by instalments, for instance, an instalment every month for three years.

6- Avoiding usury

The contracting parties have to be careful not to deal with commodities which it is not permissible to exchange for deferment, otherwise, they would be involved in the usury by way of deferment (*riba* *al-nasi'*).

7- Delivery is immediate

As indicated previously, the contract of organised *tawarruq* is based on deferred or instalment payment, so if the delivery is also deferred, the contract would be in this case a sale of debt for debt, and this kind of sale is prohibited in Islamic law.

4.2.5 Comparison between organised *tawarruq* and *tawarruq* in the traditional *fiqh*.

In this section we will discuss the comparison between organised *tawarruq* on the one hand traditional *tawarruq* on the other hand.

When comparing the traditional form of *tawarruq* and organised *tawarruq* the similarity is that the aim of both contracts, for the buyer, is to obtain money or cash, so he does not buy the commodity to use it for any purpose. The contracts include two transactions: the first, the purchase of the commodity for a deferred payment, and then the second, the sale of the same product for immediate payment; the second price normally is more expensive than the first price. In addition, there are more than two parties involved in the contracts; the first party is the seller who sells the commodity in a deferred sale, the second party is the first buyer, and the last party is the second buyer who buys the commodity from the first buyer for an immediate payment. The first buyer who buys the commodity by deferred payment is the seller in the second transaction which is for immediate payment.

There are, however, differences between the traditional *tawarruq* and organised *tawarruq*. In the traditional *tawarruq*, the first party who sells the commodity in a deferred sale does not know that the second party who buys the commodity in a deferred sale plans to sell the commodity to obtain cash, or at least the seller does not arrange the second transaction. As a result, the only one who is involved in both transactions, whether directly or indirectly is the first buyer. On the other hand, the financial institution arranges the contract from the

beginning by offering the commodity to the client until the end by crediting the price in the account of the client.

To conclude, organised *tawarruq* is a new form of contract, although it has some characteristics of certain other forms of contract in traditional Islamic law, and the rulings on the forms which have interrelated characteristics are not applicable to organised *tawarruq*. Therefore, the ruling of organised *tawarruq* has to be considered under two concepts; the first concept is the ruling of the contracts which are related to organised *tawarruq*. The second concept is the general rules of Islamic business transactions.

4.2.6 Organised *tawarruq* from an Islamic point of view

In this section the contract of organised *tawarruq* will be discussed from the Islamic point of view. The discussion will not include the ruling on agency in Islamic law, except the issue of permissibility for the financial institutions to be agents on behalf of clients to sell commodities on their behalf for immediate payment for less than the price for which it was sold by the financial institution to the client. The study also will not consider financial punishment in Islamic law, so we will not discuss the delay penalty which is stipulated by the financial institutions when there is delay of payment which was due on a specified date.

As explained before, there is more than one form of organised *tawarruq*, and the differences may affect the ruling of the contract. There are two main views concerning the ruling of organised *tawarruq*, according to the contemporary scholars in Islamic law. The first view is that financing by organised *tawarruq* is prohibited according to Islamic law. The second view is that organised *tawarruq* in general is not prohibited in Islamic law, and it is a permissible way to finance people who need money for any purpose, although the scholars who support the second view do not agree that all forms of organised *tawarruq* conform to Islamic law.

Before discussing the view of the scholars, we should point out that when scholars say that *tawarruq* is prohibited, this obviously applies to organised *tawarruq*.

The Islamic *Fiqh* Academy, which belongs to the Islamic World League, discusses the contract of *tawarruq* in the traditional form and the contract of organised *tawarruq* as practised today in the financial institutions. The resolutions on the two contracts are different, however. According to the Islamic *fiqh* academy, the traditional form of *tawarruq* is permissible (In the Circle 15th, Makka, 1998) whereas the new form of *tawarruq* which is called banking *tawarruq* (*al-tawarruq al-mas}rafi*) or organised *tawarruq* (*al-tawarruq al-munaz}jam*) is prohibited (In the Circle 19th, Makka, 2003). According to proponents of this view, there are three differences between the two forms; the first difference is that the role of agency which is been played by the financial institutions changes the nature of the contract, bringing it close to the form of *'i>na* sales which is prohibited in Islamic law according to the majority scholars, whether the agency of the financial institution is indicated as a condition of the contract or is very common in this type of contract. Secondly, this kind of contract, in many cases, does not reflect the concept of possession in Islamic law. Thirdly, the reality of this type of contract is to finance the client (*al-mustawriq*) who applies for some money and to charge him extra; the financial institute arranges the procedure of the contract, by obtaining the commodity and selling it in the market on behalf of the client, to achieve this purpose. However, that is not the real form of *tawarruq* which has been

indicated in the traditional *fiqh*, and previously premised by the Islamic *fiqh* academy. The traditional form of *tawarruq* is a contract in which the seller sells a commodity which is normally under his ownership and belongs to his business, to the buyer for deferred payment, and the seller delivers the commodity to the buyer to be under his full possession and responsibility. Then, after the commodity is received by the buyer, he sells it to a third party, who is not the seller, for immediate payment.

Those who regard organised *tawarruq* as unacceptable support their opinion with the following arguments:

1- Narrated 'Amr Ibn Shu'aib on his father's authority from his grandfather that Alla'h's Messenger said, "The condition of a loan combined with a sale is not lawful, nor two conditions relating to one transaction, nor the profit arising from something which is not in one's charge, nor selling what is not in your possession."

The above hadith shows that having two conditions relating to one transaction is not lawful, and organised *tawarruq* involves even more than two conditions, as it has been mentioned above.

However, the scholars do not agree on the meaning of two conditions relating to one transaction, and many scholars indicate that it refers to the contract of *'i'na*, and the meaning of the condition in this case is the price. Then the meaning is that it is not lawful to have one transaction between two people who deal with the same commodity, by selling it the first time by deferred payment, and in the second time for immediate payment. In such a case, the contracting parties are the same, and the commodity in the first exchange is itself in the second exchange; the only thing which is changed is the price. The contract appears as two transactions, but in reality it is just an exchange of money for money with an extra sum, and that is the reality of *'i'na* sales.

Another interpretation of two conditions in one transaction is that it is two transactions in one. So, in this case the two conditions two prices are indicated in the same contract; the first price for immediate payment, and the second price for deferred payment, the second being more expensive than the first.

In addition, the majority of scholars indicate that the meaning of two transactions combined in one is that the seller indicates two prices in the contract without a decision upon one of them. So, the agreement upon two forms or transactions is not that they belong to one contract, although they are at the same time, because the first form is an instalment sale between the financial institution which is the seller and the client who is the buyer, and the second form is a contract for agency whereby the client empowers, the seller to sell the commodity on his behalf. The transactions are separate, even though they are at the same time for the same commodity, because the client sells the commodity to a third party. In addition, as mentioned, according to the majority of scholars, it is unlawful to indicate two prices in the same contract, but it is permissible for the seller and buyer to negotiate upon the price before they enter officially into the contract.

2- The ruling of organised *tawarruq* is not be considered as the traditional form of *tawarruq*, which has been considered as a lawful transaction according to the majority of scholars in Islamic law, because there are significant differences between them. Therefore the ruling of organised *tawarruq* must be considered under the general rules of Islamic law

rather than applying the ruling of tradition *tawarruq*. In addition, the name organised *tawarruq* does not mean that the transaction is under the concept of *tawarruq* in Islamic law.²

3- Organised *tawarruq* seems to be closer to the '*ina*' contract than to any kind of sales in the traditional *fiqh*, because the seller which is the financial institutions arranges the contract from the beginning until the end by selling the commodity to the buyer on instalments for a higher price, then it sells the commodity on behalf of the client for less than what the client paid. The role of the client is merely to ask when the money will be in his account, without being really involved in performance of the contract, so there is no significant difference between selling the commodity again to the first seller which is the financial institution, as in the '*ina*' sales or the commodity being sold by the seller, as an agent, to a third party.

However, there is a significant difference between '*ina*' sales and organised *tawarruq*. As it has been explained before, one of the conditions of '*ina*' sales is that the seller in the first contract which is for deferred payment is the buyer in the second contract which is for immediate payment, whereas in organised *tawarruq*, the seller in the first contract is not the buyer in the second contract, although he arranges the second contract.

4- Ma'lik was asked concerning this issue, what would be the position if a person bought a commodity from someone and after the contract the buyer asked the seller to sell the commodity now on his behalf, because the buyer is an expert in the trade. Ma'lik replied that it is not a good deed and he prohibited it. As a result, when we focus on the contract of organised *tawarruq*, we find that in many cases, the financial institution plays the role of agent to sell the commodity for immediate payment on behalf of the buyer, whether by itself or by arranging another agreement with another party to play the role, whereas the client or buyer knows nothing about the party or agent.

5- Looking carefully at the contract of the organised *tawarruq*, it can be argued that there is no difference, in terms of aim and result, between it and usury in Islamic law. To clarify the point, assume that there are two clients who want to be financed for any reason; the first client applies for a loan with interest, which is a form of usury by way of deferment in Islamic law, and he borrows £10,000 for £11,000 to be paid within two years. Then the second person applies for financing by organised *tawarruq* to buy copper from the financial institution for £11,000 to be paid within two years. The client knows that the financial institution has bought the copper from the international market for £10,000, and the financial institution will sell the copper in the international market on behalf of the client for £10,000. As shown, there is no difference between the forms in term of the aim, which is to finance the client, and the result, which is to charge the client more than what he receives. In addition, financing by organised *tawarruq* may cost the clients more than taking a loan with interest, because in the latter case the financial institution lends to the client directly instead of engaging in a long procedure to buy commodities and sells them again in the same

² Islamic Fiqh Academy has two resolutions relevant to this issue the first resolution does not prohibit traditional *tawarruq* and the second resolution prohibits organized *tawarruq*, the reason for that is the differences between the two contracts. For more details see al-Qiri, al-Tawarruq Kama Tujri-h al-Mas}arif al-Islamiyya, MBFM, 1426, n. 67, pp. 38-41; Al-Mushaiqih, al-Tawarruq al-Mas}arif, 1425H, MOQ, v. 18, no. 30, pp. 187-188.

market. Thus, the loan with interest may be processed faster than the organised *tawarruq*, because the client may obtain money directly after the contract, whereas the client who asks to be financed through the organised *tawarruq* would have to wait until the commodities are sold in the market.

The contrary view, that organised *tawarruq* is permissible according to Islamic law, is also supported by several pieces of evidence:

1- The general ruling of sales is given in the verse, “Allah has permitted trading and forbidden usury.”³

As it can be seen, Allah has permitted trading in general, and the contract of organised *tawarruq* is just a type of sale. More specifically, organised *tawarruq* includes three or four individual contracts. In the first contract, the financial institution buys some commodities from the international market for immediate payment, and this type of sale falls under the concept of ordinary sales. The second contract is between the financial institution and the client, where the financial institution sells the commodities to the client for deferred payment or instalment payment; this kind of sale belongs to deferred sales or instalment sales, which are lawful in Islamic law. Then the third contract is between the clients and a third party but not the financial institution which sold the commodity to the client, whereby the client sells the commodity to the third party for immediate payment. The contract of organised *tawarruq* also contains an agency contract between the client and the financial institution or another agent to sell the commodity on behalf of the client in the market. None of the above contracts are prohibited as individual forms, and the arrangement of the financial institution does not change the reality of the contracts, in terms of Islamic law, As a result, organised *tawarruq* falls under the permissible forms of sales which have been indicated in the above verse.

However, according to Islamic law, the permissibility of the individual transactions does not mean that the whole contract is permissible. For instance, *i>na* sales contains two transactions; the first transaction is between the seller and buyer for a deferred sale or instalment sale, then the seller buys the commodity again from the buyer for less than the first price for immediate payment. As can be seen the first and second transactions are lawful individually, but when they are combined, the contract is unlawful according to the view of the majority of the scholars in Islamic law. As a result, the permissibility of the individual transactions, in the organised *tawarruq*, does mean that the whole contract is lawful, of the reasons indicated previously in the evidence for the first view.

2- The general rule of business transactions in Islamic law is that any kind of transaction is permissible unless there is evidence to show that it is not so. Organised *tawarruq* is a new form of transaction which is a means to finance people through the concept of *tawarruq* in Islamic law with some changes by organising the procedure of the contract to make the financing easier and faster than the normal form of *tawarruq*. Consequently, there is no acceptable evidence to show that organised *tawarruq* is prohibited, and that means that it is lawful according to the rule.

3- People need this kind of transaction. Assume that a person needs money to obtain a house or the like, and he cannot find anyone to offer him an interest-free loan. There are not

³ Qur., Al-Baqara 2:275.

many choices to obtain money to meet his needs, so one of the options is to buy a commodity from the market for a deferred sale then resell the commodity again in the market for immediate payment, to acquire money, by what is called *tawarruq* in Islamic law. It has already been mentioned that according to the rules of Islamic law, “*al-d}aru>ra>t tubi>h} al-mah}d}u>ra>t*” and “*al-h}a>jah tunazzal manzilat al-d}aru>rah*”, and these rules are considered when the contract, with no doubt, is prohibited. However, in the circumstance of organised *tawarruq*, scholars do not totally agree on the prohibition or permissibility, so the rules are more applicable to it than to the contracts which are prohibited in Islamic law.

4- The financial institutions, which finance their clients in accordance with Islamic law or have branches which they call Islamic windows, offer to their clients a contract that helps them to obtain money more easily and faster. In addition to that they lose less than by the normal form of *tawarruq*. Therefore the financial institutions act to the benefit of the client, without any charge for the arrangement itself,⁴ or with some charge as an administration fee. So this kind of role does not change the view of Islamic law, because it is not prohibited in the contract.

In fact, however, organised *tawarruq*, in practice, cannot be free of problems, which might affect the permissibility of the contract in Islamic law, as can be seen if we examine the contract from the beginning. First of all, we will discuss the contract of organised *tawarruq* by means of international commodities, which are normally metals. The financial institutions obtain the commodities from the international market for one reason, which is to sell them in deferred sales with an extra sum, and when Ahmad Ibn Hanbal was asked about the meaning of ‘*ina*’ sales, which are considered as a prohibited form of sales according to the majority of scholars, he replied that is where a trader sells just for deferred sales, but if he sells for both deferred and immediate payment, it is lawful.

Next, when we consider how the financial institutions advertise the organised *tawarruq* service, we find that they advertise it similarly to a loan with interest. For instance, they tell the client. We will finance you up to million Riyals; we will charge you a low amount of profit such as 5% to be paid within ten years. These types of advertisement are the same as those for a loan with interest, which is prohibited in Islamic law. Then, when the client decides to enter into organised *tawarruq*, he applies for the amount, which he wants to obtain, regardless of the type of metal which he wants or also the amount.

When the financial institution sells to the client, it does not distinguish the share of every client. For instance, the financial institution has bought 10 tons of copper and it has a reference number and certificate of deposit for this metal. Then client no. 1 buys a ton of copper, and client no. 2 buys a ton of copper also. Then the financial institution sells them from the whole 10 tons. It does not separate a ton for client no. 1, and another ton for client no. 2. So, the clients do not have the complete possession of ownership of the commodities, which they have bought from the financial institutes, to sell them again in the international market. Similarly, financial institutions that deal with local commodities also do not distinguish the share of every client.

⁴ But they obviously made a profit in the instalment sales.

In addition, some scholars are not satisfied with the contract of agency between the client and the financial institution since, as mentioned earlier, Malik disapproved of buying something from the seller for deferred sale and asking him to sell it on behalf of the buyer for an immediate payment. However, Mohammad Ibn Ibrahim Al-Shaikh was asked about the same kind of transaction, and he replied that it is lawful in Islamic law. In addition, some financial institutions get another party to sell the commodities on behalf of the client, and the clients sign the agency contract after they have signed the contract with the financial institutes.

Furthermore, let us discuss the aim of the financial institutions that offer the contract of organised *tawarruq*. The aim of the contract is to find a way to finance people for a deferred payment with an extra sum through trade in goods which they do not normally deal in especially local commodities such as cement, cars and electrical goods. They offer them to the clients to provide people with access to finance with payment of an extra sum, and the clients, normally, are not concerned what types of commodities which they buy; they just want to know how they will obtain money. This aim is similar to the aim of a person who wants to engage in usury (*riba*) by applying for a loan with an extra sum.

As discussed before, under the ruling of *tawarruq* in general, *tawarruq* as a mode of finance is better than being involved in usury which is strictly prohibited in Islamic law. However, we have to be aware that the contract of organised *tawarruq* has been criticised more than the normal mode of *tawarruq*. Therefore, the Islamic *Fiqh* Academy, which belongs to the Muslim World League, states that the normal form of *tawarruq* is lawful according to Islamic law, whereas, the organised *tawarruq* is not. However, this does not mean it is not possible to find some solutions to render the contract permissible. Therefore, the following suggestions are offered:

- 1- The financial institution could be a trader itself or a partner with traders to do business with clients and sell the product for deferred or immediate payment. For instance, A (the financial institution) forms a company with B (a trader) to sell some commodities which are normally stable, in terms of the price, such as cement, iron, rice and sugar. Then they sell the commodities for immediate payment and deferred payment with extra sum, and deliver the commodities to clients, for then to use them or sell as a normal form of *tawarruq*.
- 2- The commodities which have been sold to the client must be completely under their possession, by distinguishing the commodity of the client and recording it under his name, so any time he wants to see it; he can do so, even if the commodity is not in the country of the financial institution or the client.
- 3- The role of financial institutions is not to be agents on behalf of clients to sell commodities again in the market. So, the clients have to take the responsibility to find another party to buy the commodity.
- 4- The financial institutions should not charge the clients for delayed payment, as a financial penalty, but should sue the clients, who delay payment, in the court, to make sure whether they can or cannot pay the instalments. If the client is able to pay, in this case, would force him to pay or punish him according the concept of Islamic law, but if he cannot pay, the court would deal with the client as Allah says, “And if the debtor is in a hard time (has no money), then grant him to repay; but if you remit it by way of charity, that is better for you if you did but know.”⁵

⁵ Qur., Al-Baqara 2:280.

In conclusion, organised *tawarruq* as practised today does not seem to be acceptable in Islamic law, for the reasons mentioned above. However, organised *tawarruq* is better than involvement in usury by way of deferment, because at least the scholars do not agree that the organised *tawarruq* is prohibited in Islamic law, whereas there is a consensus that usury by way of deferment is prohibited in Islamic law. So, if a person needs money for something important, such as a house to live in, or to pay for medical treatment for his child and so on, there is a way that is permissible to acquire what he needs. But, if he wants money for something not important, the ruling does not recommend involvement in the contract of organised *tawarruq*.

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