## 205810 - Giving a loan with a penalty clause

### the question

My sister works in the Iraqi Central Bank (Mosul branch) and there is an interest-free loan that is given exclusively to them (bank workers) for the purpose of buying a house, but the contract contains a clause which refers to the borrower paying back the loan plus interest in particular circumstances, so as to prevent the loan being used for any purpose other than buying a house. I will quote the clause in question here:
“The loan becomes due immediately, with any interest accrued, and must be paid by the borrower or his guarantor, on the basis that it is a government loan, in accordance with the law on collecting government loans, no. (xx), year (xx), in the following situations:
1. If the borrower resigns or gives up his job for any reason, or if he is in an accident, before presenting the title deeds.
2. If the loan given is not used for its stated purpose in accordance with the conditions set out in this contract (which is that it is to be used to buy a house only, and this house is to be mortgaged as security for the loan with the land registry department.
3. If the borrower does not produce the title deed within four months from the date of signing the contract, provided that it shows his name only.
4. The borrower is required to give another guarantor in the event that the first guarantor becomes unacceptable for some legal reason, within one month from the request by the lender (the Iraqi Central Bank).
My question is:
Does this loan become impermissible because of a penalty clause that requires interest to be paid in the event that these conditions are not met, or not?

### Detailed answer

Praise be to Allah.

The penalty clause mentioned in this contract requires repayment of the loan plus any interest

accrued. Such a condition renders the entire contract invalid and haraam.

Any loan that includes a condition stipulating that something additional to the amount loaned be paid under any circumstances is a riba-based (usurious) loan, and it is not permissible to go ahead with it or enter into it.

Ibn ‘Abd al-Barr (may Allah have mercy on him) said:

Any additional amount of the same item or substance, or benefits stipulated by the lender to the borrower, constitutes riba (usury), and there is no difference of scholarly opinion on that.

End quote from al-Istidhkaar, 6/516

In a statement issued by the Islamic Fiqh Council of the Muslim World League, it says: If the lender stipulates or requires the borrower to pay a certain amount of money as a specific penalty and at a particular rate in the event of payments being made after the time agreed upon, then this is an invalid condition which should not be fulfilled. In fact it is not permissible, whether the one who stipulates this condition is the bank or otherwise, because this is the exact type of riba that was known during the Jaahiliyyah, concerning which Qur’an was revealed prohibiting it.

End quote from Qaraaraat al-Majma‘ al-Fiqhi, p. 266

It is not permissible to enter into any contract that stipulates a usurious condition, even if the borrower is determined to adhere to the conditions mentioned and not pay any interest.

For more information, please see the answers to questions no. 112090, 98118, 103416

And Allah knows best.