

# Legal Protection for the Buyer in Credit Sales

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The legal protection of the buyer within the scope of the credit sale is one of the most important guarantees for the buyer, especially since the legislation has focused on the protection of the seller. This protection, which is a guarantee for the buyer shall be in stages and may provide protection before the conclusion of the contract of the sale of credit. The obligation of the seller to inform the buyer's protection in this sale is not limited to the previous phase, but extends to the implementation phase of the contract where the buyer's protection is at the stage of the implementation of the credit sales. It occurs in writing the contract, but this writing is required by the legislation in the credit sales and is for proof and not as a pillar of the contract. The second guarantee, at this stage, concludes from the nature of the credit contract as the contracts are binding on both sides where these recent contracts entitle the parties not to the implementation of its obligations. This occurs if the other party does not implement its obligation as authorised by these contracts to claim avoidance and there are guarantees during this period required by the contract, which must be executed in good faith. The buyer's legal protection does not stop there, but for the period after the contract, there is protection. The buyer is the seller's breach and this protection is the imposition of the penal and civil sanctions represented by the avoidance of credit contracts as well as the right to cancel the credit contract. The second part of the buyer's protection is the direction of the credit institutions that provide loans to the buyer to complete the conclusion of the credit contracts.

**Key words:** *Legal Protection, Seller Protection, Credit, Commitment Parties.*

## Introduction

The subject of legal protection for the buyer in the credit market is one of the most important topics in the scope of sales. This is because the legislation under comparison and legal studies have focused on the subject of the protection of the seller in this type of sale from the breach issued by the buyer. There was no legal study dealing with the legal protection of the buyer in the credit sales direction of the seller or credit institutions. The increase in the dealing of credit

sales in the recent period has occupied a prominent place among the contracts and increased the problems raised by these contracts. Therefore, it became necessary to study and research this subject (Ibrahim, 1984).

It is no secret that legal protection, whether civil or penal, is the legal means to preserve rights from loss and compensate the contractor in the event of harm. This type of sale is different from the normal sale, which is the difference by postponing some obligations and becoming a credit sale due to the trust that one party places on the other.

### **The Research Problem**

The problem of this research is that the legislation has focused on the legal protection of the seller only, disregarding the buyer. For this reason, the researchers focused this project to fill the legislative void by focusing on the knowledge of the legal protection available to the buyer in credit sales. The researchers also investigate whether this protection is limited to the stage implementation only extended before the contracting phase and during the implementation and in the post-contract phase to indicate whether this protection of the buyer lies in the direction of the seller only or applies in the face of the credit institutions.

### **The Importance of Research**

The importance of this study comes through the statement of legal protection of the buyer. This determines its scope so that it can invoke the direction of the last party and lay the foundations of this protection so that it is the basis for reference in the subject of credit sales where the general rules were used in contracts. The two sides are obliged to determine the protection of the buyer in this sector, as the latter is a normal and binding sale, but it includes an agreement to postpone some obligations, the most important of which is to pay the price, because of the trust that one party gives to the other.

### **The Methodology of Research**

The researchers will follow in our study the comparative approach between both Iraqi civil law and Egyptian civil law, taking into consideration the knowledge of the judicial principles in both countries as well as reference to the opinions of jurists in the subject in question.

### **The Definition of Terminology:**

The researcher will demonstrate here the meaning of the credit sale, while taking into consideration all understandings of the concept of legal protection. Therefore, the term credit

sales has been defined by multiple definitions. The Lebanese legislator also defined the credit sale as:

1. A contract under which a natural or moral person named the creator named the trustee is entitled to administer and act for a specific term of rights or movable funds called credit disclaimer, where it is taken on the definition of the Lebanese law of credit sales that he did not refer to the subject of transfer ownership to the other party, but it gave the right of management to the other party, but the act mentioned in the text above was not clear about it whether it was intended for legal conduct or material conduct.
2. This is the definition by the Lebanese legislator, which the researchers referred to when reviewing the definition of French law, and what is taken on the text of the law for a Lebanese civilian to transfer property in this type of sale when the other party fulfils its obligations shall be in a final form and not for a specified period (Razzaq, 2009).

As for the level of Iraqi legislation, the definition of credit contracts was not provided, but rather referred to its provisions and types indirectly. In light of the foregoing, the researchers will define the credit contracts as “valid sales that have full effects between the seller and the buyer, but the ownership of the sale is not transferred to the buyer except after the fulfillment of all obligations incurred by him because of this sale” which should be noted by the mechanism of credit sales. This should occur in two forms: sale by instalments and rentals.

## **The First Research Phase**

### ***Legal Protection for the Buyer before Concluding the Contract***

Trust and goodwill imposed on credit sales require the debtor (the seller) to inform the buyer of all information related to the deal and the special circumstances surrounding it that they cannot reach on their own initiative. The implementation of this commitment from the seller may be in accordance with what was dictated by the seller. Therefore, it is necessary to study these two obligations in detail. Based on the foregoing, the researchers will divide this topic into two requirements. In the first demand, the researchers will address the seller’s commitment to insight in accordance with the buildings of good faith. The researchers will allocate it to discuss commitment to structure of notify the buyer (Razzaq, 2007).

## **The First Requirement**

### ***The Seller's Commitment to Sigh in Accordance with the Buildings of Good Faith***

The seller is obliged before concluding the contract of the credit sale with the buyer to inform the buyer of all the information the seller has about the sale. This can be in terms of its requirements and specifications and the resulting right of others, whether that right relates to the origin of ownership such as the rights of easement, exploitation, etc. or if it arises as a result of the arrangement of one of the legal guarantees on it, like a mortgage.

The credit sale is often made through contract forms containing questions to be answered by the seller. This enables the buyer to take note of the overall case of sale, and does not exempt the seller from the need to inform the buyer of the other circumstances surrounding the sale. This includes the contract request. The reason for this is that the credit sale is based on contracts based on trust and personal consideration.

Therefore, it is similar to the insurance contracts that require absolute good will under Article (186-b) of the Iraqi Civil Code that “the insured shall decide in accordance with the conclusion of the contract all the circumstances known to him, which the believer is interested in knowing, so that he can assess the risks he has taken upon himself. “There is no doubt that the principle established by this Article is not limited to the insurance contract, but is an obligation arising from the subjection of contract negotiations in general and in credit contracts in particular to the principle of good faith in the formation of contracts. With all the necessary information and data so that consent will come in accordance with true will.

It should be noted that this obligation continues throughout the period of the execution of the contract. If the credit sale is a sale in instalments, for example, good faith requires the seller to notify the seller of any right that arises later and would affect the buyer's right to receive the sale later, as if the seller had purchased the sale. This can occur from the first seller on the terms of holding the property until its price is met, or other conditions and other effects (Sultan, 2012).

## **The Second Requirement**

### **Seller Commitment to Inform Based on Buyer Notification**

Some may object that the seller's commitment to inform the buyer of the condition of the sale on the basis of goodwill is an assumption that lacks a legal basis. There is nothing in the legal texts related to the transfer of the right to indicate explicitly or implicitly that commitment. Accordingly, to get out of these forms requires the buyer acumen and precaution in their

relationship with the seller. Therefore, the Seller takes advantage of the established legal principles in the civil law that the contract is the law of the contractors and this is done through an explicit condition in the contract, or that the buyer expressly notifies the seller of verbal dangers. This can also be written during the period of executing the contract, and the buyer, according to the notification form, adds other expressions in which he requests the debtor to inform him of the circumstances of the right and what may arise. This makes obtaining or using it not possible, provided that it is in clear and explicit terms that do not cause ambiguity Or ambiguity that might affect p Li made this commitment.

It is worth noting that the buyer must set a period for the seller to provide them with information. The reason for this is that the buyer can take the necessary measures to refrain from the deal in case the seller breaches this obligation.

## **The Second Research Phase**

### **Legal Protection for the Buyer during the Implementation of the Contract**

Given the extended period of implementation of credit contracts, some developments may be created from this continuity that can cause conflicts between the contractors themselves or with others. Therefore, based on the second legal principles in the legislation, the researchers can extract a set of guarantees that aim to protect the parties in a way, the creditor (the buyer) in particular. These guarantees are summarised by writing the contract and protecting the buyer by the legal definition of the contract requirement as well as the protection based on contract guarantees that are binding on both sides. Therefore, the researchers will address these guarantees on three independent demands (al-Fadhli, 1989).

### **The First Requirement**

#### ***Writing a Credit Contract***

The purpose of writing in the credit environment is to include in the contract a certain form through which the rights of contractors can be guaranteed during the implementation period. Therefore, they are limited to the status of proof in accordance with general principles and do not extend to be a pillar of the meeting even if it is held on a property or transfer that necessitates the law to transfer its ownership is a certain formula. Therefore, special legislation requires that the credit sale contract be written and that special data be placed on the seller, the buyer, the place of the contract, the agreed price, the amount paid in advance at the time of contract, the deferred price, the number and duration of the instalments, and other data through which control can be imposed. It is important to ensure that the binding rules imposed by the legislation are respected ( Ali, 2009).

## **The Second Requirement**

### ***Protection of the Buyer by Legal Definition of the Contract Requirement***

The contractors may neglect the method of explicit writing to conclude the credit contract and use it to prove the right of each of them. This is raised about the terms of the contract and the extent to which it has implications for each of them. Article (150) of the Iraqi Civil Code responds states that (1) the contract must be executed in accordance with its provisions and in a manner consistent with the obligation of good will, (2) The contract is not limited to obliging contractors to what is contained in it, but deals with all its requirements in accordance with law, custom and justice and according to the nature of the obligation.

It is understood from this provision that it refers us to elements outside the scope of the contractual association, namely the law, custom and the rules of justice, where they can be found in the knowledge of the requirements of the contract and the obligations of the seller and the resulting performance of the buyer. This ensures that the buyer is entitled to their rights. The seller is not arbitrarily abused as the legally stronger party that can refrain from or manipulate the implementation of its obligation if the contract between them is not written. It is not surprising that based on the text mentioned in the order of legal guarantees of the buyer's right to the sellers right to the credit of the seller because it is not legally regulated expressly. On the other hand, it is linked to commercial processes and the latter rely heavily on custom in determining its requirements and the resulting effects. Therefore, the use of custom is a matter of ambiguity or ambiguity, and if this occurs, it is subject to the discretion of the trial judge (Mohammed, 2010).

## **The Third Requirement**

### **Buyer Protection Based on Mutually Binding Contract Guarantees**

The arising defences of one of the parties to the contract are intended as a result of the other party's failure to comply with its obligations, and the buyer may pay them against the seller. This may occur even if they are discovered after the buyer's right is transferred to the buyer. If the buyer discovers defects in the sale after the transfer of ownership to them, they can pay by claiming avoidance. The contract of sale, and this fact is benefited from the credit status based on trust and good will imposed in the credit sales contracts in addition to the established provision of the law in the legislative text (282/1) of the Iraqi Civil Code, which is a non-implementation payment. The credit sales should refrain from fulfilling its obligation if the seller does not meet the obligation that was made in its obligation due to the buyer's obligation and is associated with it (Kazem, 2008).

The legal guarantees are binding on both sides, both the right of avoidance and the non-execution payment, the latter being a guarantee for the buyer in the event that the seller does not comply with its contractual obligations or to implement part of it.

## **The Fourth Research Phase**

### **Subsequent Legal Protection of Contracts**

The limits of trust, credit, and goodwill based on the transaction in credit contracts are not limited to the conclusion and execution of the contract. However, these concepts reflect a technical extension to include the post-contract phase and its effects and divide this protection into those imposed in the interest of the buyer to the seller if the buyer subsequently breaches its fiduciary obligations or the buyer discovers it after the end of the contract and this protection is represented by the sanctions approved by law on the inset (the seller in the subject matter in question). The second section is the protection of the credit institutions that often use the buyer's operation to complete the process of credit sales in the execution phase.

Therefore, the researchers will divide this project into two demands. First, the researchers will address the protection of the legal penalty against the informer, and secondly, will be allocated to the study of the buyer's legal protection towards credit institutions (Mubarak, 2008).

## **The First Requirement**

### **Protection for the Legal Penalty against the Informer**

The law may impose a penalty on the seller as a result of his violation of the implementation of his contractual obligations. Since the credit contract is based on trust and good will, the penalty imposed for violating its provisions may be criminal sanctions once and may be a civil penalty or both. Considering this statement we will divide this demand for two branches. The researchers will first deal with criminal sanctions as a result of violating the provisions of the credit sale, while the second branch will deal with civil sanctions as a result of the violation of the provisions of the credit sale.

## **The First Branch**

### **Criminal Sanctions for Violating Credit Sales Provisions**

There is no doubt that acting contrary to the principle of trust or contrary to good faith means that the offender has committed fraud or fraud and bad faith and is therefore subject to the provisions of the crime of fraud and fraud.

However, these sanctions, although few in the field of civil and credit contracts in particular, do exist, some legal regulations have stated that violating the legislative provisions governing the credit environment is an economic crime that requires a criminal penalty, as it entails it has to nullify the contract.

It should be noted that the French judiciary decides that by fraud and fraud that constitute the crime of fraud, the seller gives the buyer a list of purchases that includes a price for sale higher than the real price agreed to enable the buyer to obtain a loan from the credit institution higher than the loan they receive on the basis of the real price.

## **The Second Branch**

### **Civil Penalties for Violating Credit Sales Provisions**

Violation of the credit sales provisions as a civil transaction entails many civil sanctions that may relate in its capacity as nullity to avoidance or grant the buyer the right to terminate the contract at any stage of the contract.

#### **First: The Avoidance of the Credit Sales Contract**

Article (177) of the Iraqi Civil Code stipulates that (1) in contracts binding on both sides, if one of the contractors does not fulfil his duty with the contract, the other may apply for annulment with compensation if it is necessary( Majid, 1980). It is clear from this article that if the seller violates one of his obligations in the sale of credit, the buyer would have to apply for avoidance of the contract and claim compensation if necessary.

However, it should be noted in this regard, the laws of the majority of the states that have regulated credit contracts in particular go to facilitate the conditions of avoidance if the buyer is required to the credit sell ( Majid, 2007). While it goes to the emphasis on those conditions if the applicant for annulment is the seller, and in our assessment, this legal orientation is justified. This dictated by the special nature of the credit sale, which was necessitated by the buyer's trust and trust in what it contracted with the seller. Therefore, the reasons for the breach by the seller are more frequently received than by the buyer, since the seller still retains ownership of the sale and that it can legally order some rights on it for others, whether it is right or wrong.

Although Article (177) requires doing many things that must be done, the buyer can cancel the contract of selling the credit without the need for excuses if this is due to the imbalance of the elements of trust, credit and personal considerations that the buyer relies on upon acceptance. The conclusion of the contract. This is the case with Article 60 of the French Credit Law. No.



084/46 / of 1984, where it is possible to benefit from the termination of the credit contract, whether it is fixed or for an indefinite period, in the event that the credit grantor acts in this area according to the text of Article (178) of the Iraqi Civil Code, which authorized the agreement to terminate the contract without the need for excuses or a court ruling.

## **Second: The Right to Renounce the Contract**

In line with the solidarity orientation with the buyer in the credit sale, the buyer is entitled to abandon the transaction, although they have paid some instalments of the price or received the sale. This is provided that the seller declares it within a short period of time that varies according to the regulations (Jamal, 1996). In the event of non-notification, the buyer may be considered to be abusive in the use of his right pursuant to the provisions of Article (7) of the Iraqi Civil Code (Mansour, 1979).

Article (294) of the Iraqi Civil Code, which states that in current work, may be used to strike at the interest of the debtor. Otherwise, if the contract or from a provision in the law or circumstances indicates that it is a strike in the interest of the creditor or the interest of the parties. The term for the benefit of one of the parties may be waived by this party and by its own volition, therefore it can be said that all circumstances indicate that the term was struck in the interest of the buyer in the credit sale and that the buyer could waive that and request the cancellation of the contract if the seller violated any of the uses required by the credit attribute in the credit sale (Rabbo, 2008).

## **The Second Requirement**

### ***Buyer Legal Protection towards Credit Institutions***

The buyer may use a person outside the scope of the contractual relationship to implement their obligations in the credit sale contract. Often, this occurs by obtaining a loan from one of the financial and banking institutions and therefore the buyer remains after carrying out their obligations to the seller, or a debtor of the credit institution where the loan was, obtained . Therefore, states in their modern orientations often intervene to protect the buyer from those institutions, and in this direction they distinguish between whether the loan obtained by the buyer is related to the sale process or is a personal loan that is not linked to the sale process. The researchers will address this issue on two separate points.

#### **First - If the Loan Is Related to the Sale**

The credit institutions adopt, in an advanced stage of commercial credit, the process of granting loans to the debtor through credit sales. This is in order to support and encourage small and

medium-sized commercial enterprises in an effort to strengthen their national economy. If the debtor becomes insolvent or bankrupt, it does not require them to provide compensation for it, provided that such insolvency or bankruptcy is not due to their failure, fraud, or rebellion (Fadli, 1997).

In addition to this, the buyer has the right to adhere to the credit institutions with all the defences that the buyer can hold against the seller (Doidar, 2008)

**Second: If the Loan is Unrelated and Not Linked to the Sale (Personal Loan)**

The normal handling of credit institutions is their dealings with people with the information they have about them regarding their commercial and practical qualities. Therefore it is often the case that the credit is granted personally and not related to the credit sale process, and therefore the ruling in the case of a personal loan is stripping the buyer of the payment privileges in the face of the institution with their payments to the seller (Al-Jubouri, 2011). Additionally, if a personal loan becomes insolvent or bankrupt, the credit institution will have the right to consult his guarantees to obtain the loan to fulfill its right.

**Conclusion:** After the researchers have completed our tagged research (legal protection for the buyer in the credit sales), we have reached several conclusions and recommendations

### **First: Results**

1- The buyer's protection before the conclusion of the contract either does not need to be notified by the buyer but is based on the buildings of good faith to be available in all contracts. This is either based on the notices of the buyer and done by express condition in the contract, or the buyer explicitly risks the seller verbally or editorially during the period of the execution of the contract and the buyer, under the notification formula, adds other terms requiring the debtor to inform them of the circumstances of the right and what may be new. This makes it impossible to obtain or use it, provided that this is in clear and explicit terms that do not provoke confusion or ambiguity that would affect this commitment.

2- The buyer's protection at the stage of the implementation of the credit sales is the writing of the contract. However, this writing required by the legislation in the credit sales is for proof and not as a pillar of the contract, and the second guarantee at this stage is derived from the nature of the credit contracts as binding contracts. For both sides, these last contracts entitle the parties not to implement their obligations if the other party does not fulfil its own obligation as these contracts entitle them to claim avoidance, and there are guarantees during this period required by the contract to be executed in good faith.



3- The buyer's subsequent protection of the contract is the protection of the buyer from the seller's breach. This protection is the imposition of the penal and civil sanctions represented by the avoidance of credit contracts, as well as the right to cancel the credit contract, while the second part of the buyer's protection is the direction of the credit institutions that loans are provided to the buyer to complete the conclusion of the credit contracts.

### **Second: Recommendations**

We call on the Iraqi legislator to organise credit contracts with explicit texts and give them more attention because they are dealt with by individuals - as well as other contracts that the legislator has strictly regulated - especially regarding the legal adaptation of this sales. This is because it raises a lot of problems between its parties and the provision of legal protection for the buyer with new provisions because it is considered a party to the contract and therefore may need protection in the face of the seller from certain actions that may come from the latter to damage the buyer.



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