

A Study of Installment Sale and Its Formation in the Banking Systems of Iran, France, and the United States

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Abstract

Islamic financing through installment sale can be considered as one of the appropriate financial resources for economic and social developments. Installment sales contracts in Iranian banking system are different from those in French and American banking systems. In Iranian banking system, bank is the seller itself and gets involved in the real economy by purchasing the customer's required goods and selling them in installments; but in the French banking system, banks are usually not directly involved in the buying and selling process of goods and installment sales contract, which is regarded as a contractual group, is concluded in completely different ways. In American banking system, the financial institutions get involved in the contracts through financing installment sale. This paper will discuss the methods of installment sales contracts in Iranian, French and American banking systems in order to point out the shortcomings and insufficiencies.

Keywords: Installment sale, Banking system, Iran, France, United States of America

Introduction

The present study considers one of the legal relationships which gains significance in the areas of economics and legal affairs, due to the current requirements and economic necessities of the country. In Iran's legal system installment sale is one of the Islamic contracts which is used widely by the sellers – especially equipment vendors and sellers of expensive goods – and it is done in cooperation with banks and financial institutions. Installment sales contract is one of the economic activities of Islamic banking in resource allocation which has replaced the conventional way of usury banking. This practical method can meet a major part of the requirements in various economic units (industrial, agricultural, services, mining, etc.) and it can also be useful for the client because he is recognized as the owner and pays the mortgage more confidently.

In the economic sphere, many factors are disruptive; some of these factors in addition to their impact on economic activities play an important role in other aspects of human life. Specific examples of these factors are those that lead to the creation, distribution, and consumption of unlawful wealth, or even doubtful wealth in the society whose effects go beyond the realm of economics and influence the cultural and spiritual dimensions of the consumer. That is why Islam requires people to approach these issues accurately. Therefore, bank contracts and transactions must be studied more carefully. Since the performance of financial sector has a determinative role in economy, examination of financial instruments has been the major focus of economists and lawyers. Although in western economy interest is an important factor in finance, Islamic economy emphasizes on the removal of interest in economic operations. Therefore, it is necessary to examine the efficient financial instruments in Islamic economy. A legal review of installment sales contract

and its role in financing is a very effective step in this regard. In this study important and prominent role of credit sale through installment has been emphasized.

Considering the importance of comparative studies and the increasing need for full attention to it in different issues of law, and in order to enrich the analytic discussion and avoid one-dimensional study of Iranian legal system, the present study reviews the installment sale and its procedure in Iranian legal system and also in French and American legal systems because like Iran, Installment sale has a long history in these systems and installment sale in each of these countries takes a special form. It should be noted that installment sale in above-mentioned countries is a type of collateralized installment sale that we will discuss in detail; the other point is that choosing a country to discuss a specific form of installment sale, does not necessarily mean that there aren't other types of installment sale in that country.

Installment sales contract in French, American, and Iranian banking systems

Since installment sale contracts in French and American banking systems are different with the same type of contracts in Iranian banking system, the paper initially examines the practices and procedures in French and American banking systems and then it discusses the contracts in Iranian banking system.

Installment sales contract in French banking system

In French banking system installment sales contract is concluded in the form of credit assignment (dependent credit). One of the important and practical results of collateralized installment sale in the form of credit assignment is that it gives the financial institution two choices to participate in such a contract: a) Sometimes the financial institution negotiates directly with the customer on the sale of goods and attempts to develop a credit (loan) in order to conclude the contract and it may ask something pledged to assure repayment of installments. b) Sometimes the financial institution permits the dealer (seller) to negotiate with the customer on the sale of goods and credit development and then sends the loan application to the bank (E.A. Farnsworth, 1973:16). It is noted that in both cases customer lending is done by the financial institution. Unlike American law, in French banking system the dealer (seller) usually does not get a right of pledge that is subsequently transferred to the financial institution. As in England, it only serves as a liaison between the bank and the customer¹.

In French law details of collateralized installment sales contract will be different if financial institution intends to deal directly with the dealer or it permits the dealer (seller) to deal with the customer. When the consolidation and development of consumer credit expansion is particularly important in terms of profitability and the extent of trade, financial institution deals directly with the customer about the credit expansion. However, when customer credit expansion is not so important, it is usually possible for the dealer to do business with the customer about credit expansion (loan). In most of the cases and about most of the commodities, the dealers already have an ongoing relationship with a few financial institutions. The customer fills in the credit application form which is provided by a financial institution and it is submitted to the vendor. This form will be sent to the credit-providing financial institution to get approved. Normally, at this stage the customer is not required to provide collateral (Op. Cit : 17). The financial institution (credit provider) gives the applicant a form called preliminary offer² (Art. 311-8 Consumption Act). This form must contain certain points that are included in Article 311-10 of Consumption Act in France: 1. Identity of the

¹E. A. Farnsworth, Op. Cit. PP 10-11.

²Preliminary offer (offre préalable) is merely a legal emphasis; because every offer is stated before the conclusion of contract and credit agreement is no exception. French lawmakers undoubtedly intend to emphasize on the importance of preliminary offer and its submission to the consumer before the contract.

parties and if terminated, identity of sponsors. 2. Amount of credit. 3. Nature, subject, and terms of the contract. 4. If terminated, the terms of insurance contract. 5. The general rate of interest. 6. Specifications of financed commodity.

Preliminary offer must be in writing and legal issues must be mentioned in order to protect the credit receiver. This allows him to become aware of features of the credit and assess his obligations deliberately. These are essential points that banks and financial institutions must consider and if not, civil and criminal enforcement actions are taken. For example, they will be fined and deprived of interest (Art. 311-33 and 311-34 Consumption Act). In French law banks and financial institutions do not have much freedom in setting preliminary offer form because they should prepare it based on the suggested model of installment sale predicted in Article 311-13³. However, in a letter to the French Banking Federation on June 13, 1978, Head of Treasury noted that parties of the contract can add other points in preliminary offer form provided that it is not against consumption law (Ghadak, 1997: 116).

Now if the financial institution approves the preliminary offer form which is completed by the customer, credit contract that may involve a pledge right will be sent to the customer to be signed. When credit contract and other documents are signed and returned to the financial institution, the institute writes a cheque for the amount credited and gives it to the customer. The customer gives the cheque to the dealer in exchange for delivery of the goods. After the above steps the financial institution gives itself a right to collateralize the commodity by the help of court clerk.

After the conclusion of installment sales contract, if the customer doesn't make installment payments, the dealer's duties vary according to the different types of transaction. If the deal is done by the financial institution and it is done directly with the customer, the dealer normally will not be held liable for the acts of infringing customer. But if the dealer sends the customer's application to financial institution, he may be obliged to help the financial institution (in repairment, storage, and informing customers) to resell the commodity in the case of customer's violation, or he may be obliged to buy the goods from financial institution or open a reserve account for the installments paid by the customer (E. A. Farnsworth, Op. cit. p: 16).

Installment sales contract in American banking system

In American Law, due to increased use of collateralized installment sales contract, financial institutions consider these contracts as a way of funding and get involved in collateralized installment sales and acquire the ownership of the goods which are sold in installment sale with a clause inserted to retain ownership⁴. In American law whenever installment sales contract is used, in order to guarantee the payments, there are two methods for the financial institutions to intervene in installment sales:

³It should be noted that the French law has suggested nine models that follows:

1) purchase-related credit; 2) credit sale (installment); 3) personal loan; 4) opening a bank account; 5) credit utilizable by credit card in several sections; 6) opening a purchase-related credit account utilizable in several sections by credit card; 7) opening a purchase or service related credit account utilizable in continual sections by vouchers; 8) Lease acquisition; 9) rent-sale. Formerly, the State Council of Credit was responsible for preparation of preliminary offer models. This was done after consultation with the National Committee of Consumption. Accordingly, pursuant to the regulations of March 24, 1978, nine models were prepared and imported to the Consumption law. Today, the onus is on the Committee of Banking Regulations, which in turn is obliged to consult the National Committee of Consumption.

⁴ Retained ownership or delay in transfer of ownership is a condition that causes a delay in transfer despite the availability of transfer of ownership from seller to customer. The purpose of this condition is to guarantee the price paid by the customer or the vendor's personal need to own the commodity and cost for a while, or grant a respite to the vendor or customer to think about the transaction subject to the requirement to delay the transfer of ownership (OloumiYazdi, Hamid Reza, "Retained Ownership in Sale contracts: A Comparative Study of English and Iranian Law", *Research in Law and Politics*, P. 10).

a) Sometimes the dealer (seller) deals directly with the customer about supplying the goods and its transfer to the customer and development of credit and mortgage of movable property. Then, based on the principles of mortgage of movable property, assigns its rights to the financial institution which now holds the mortgaged property and with a discount in his rights, pays the seller. Consequently, after the assignments of the seller's rights to the financial institution, the customer must pay the installments of the goods to the financial institution.

b) In second method, the dealer (seller) takes the money from the customer (who has borrowed the money directly from the financial institution) and intervenes only in the supply of goods and its transmission to the customer. He also transfers the task of developing credit to the financial institution which holds the mortgage on the property to ensure repayment of installments.

Since collateralized installment sales contract in American Law states retained ownership (conditional sale), the nature and type of transaction does not permit the financial institution to adjust itself with the second method. So the dealer (seller) deals directly with the customer about supplying the goods and developing the credit. He gives the goods to the customer through installment sales contract with a clause inserted about retained ownership and then, assigns his rights to the financial institution which enforces the discount (Parris, John, 1982: pp 22-23).

Voluntary assignment of vested rights and delegation of performance arising from installment sales contract are recognized in Article 210-2 of The Uniform Commercial Code. Assignment of a right means an agreement for transfer of a right from a person (quitter) to another one (taker); it also includes the case when the right of quitter transfers to the taker as collateral for an amount of money or other sort of obligation from third party (Akhlaghi, Behrouz and Emam, Farhad, 2007: 333).

In many cases, assignment of rights to the third party which is done by a beneficiary who has the right to receive a certain sum or obligations can be useful for both beneficiary and third party. For example, the assignment of a right to a bank or financial institution is a common procedure for funding and is granted by bank to the customer in front of the assignment of the aforesaid right. Rights arising from the contract are transferable upon agreement between quitter and taker even without giving notice, and consent is not required, except in personal commitments. Actually, in American Law, for assignment of rights and obligations consent of the main party is not necessary because the quitter, who is the main party, is still responsible for implementing the obligations of the original contract. The second part of clause 1 of Article 2-210 of The Uniform Commercial Code has declared: "No delegation of performance relieves the party delegating of any duty to perform or any liability for breach".

It should be noted that after the assignments of the right, financial institution and bank are obliged to notify the promisor; otherwise, he will become discharged of his obligations by paying quitter the installments. Therefore, caution should be on the side of assigning side (bank or financial institution) and the promisor may demand proper evidence that proves the assignment. In installment sales contract and within the contract between the quitter (seller) and promisor (customer) it is stated that rights arising from the contract will be assigned to a financial institution in which case after signing the assignment agreement the promise will be notified.

After assignments of rights from the seller to the bank or financial institution, promisor (customer) can introduce all his objections to the quitter because the promisor's situation shouldn't get worse and become different and difficult as a result of assignment of the rights. In other words, in assignment of the rights not only the objections that promisor can make are introduced, but also all the rights of receiving the sum or performing any other obligation vested in the contract and all the rights that warranty the performance of the assigned right, are transferred (E.A. Farnsworth, Op. Cit: p. 9).

In the United States financial institutions cooperate with intermediaries (sellers) continuously and most often, run all or most of their capital investment to installment sales contract (S. Anthony, C. Marcia, op. cit, p 40). Financial institution provides the dealer (seller) with credit application form, transferable promissory note (payable to bearer)⁵, and an installment sales contract which ensures the retained ownership condition. When the customer refers to the seller for Installment deal, the seller gives him the forms of installment sales contracts that are set by the financial institution. The client fills in the credit application form and then, the dealer transmits the data to the financial institution to review this information. If the customer is verified, the dealer sells him the commodity and the customer signs a transferable promissory note and the installment sale contract which includes a retained ownership condition, both in favor of the dealer. Normally, in this contact a guarantor is not required unless there is a possibility of credit risk (Op. cit: p. 10).

After the conclusion of installment sales contract between the dealer and the customer, the dealer records it to make it valid, legitimate, and attributable. After recording the contract the dealer assigns his rights based on a security assignment and transfers the promissory note to the financial institution⁶ which cashes it for a lower price. After discounting the notes⁷, the financial institution informs the customer about the assignment of the right and receives the payments directly from the customer.

Installment sales contract in Iranian banking system

Installment sales contract is a type of credit sale. Credit transactions used to be easier in the past but now they are more substantial and follow specific regulations. Banks grant the loans and sell the goods in installments and obtain the price in future. In practice, the costs can be obtained in short term, long term, equal installments, unequal installments, or in any other form mentioned in the contract. Installment sales are used widely but the legislator has imposed limitations on

⁵ In the United States promissory note is used as a means of funding. It is also used as a document that proves the debt. Whenever the customer borrows money from the bank, he has to sign a promissory note in favor of the bank. This document indicates the customer's debt to the bank, as well as the amount of debt, repayment procedure, and other important cases in loan agreement. Due to widespread use of promissory note in American Law, now special types of it are developed and used. For housing and real estate loans Mortgage Note is used and for car loans Installment Note is used. In addition, most of the banks for short term unsecured loans use Commercial Loan Note or Signature Note (Mokhtari, Mehdi. Comparative Banking Law: Transferable Business Documents in the United States, *The Journal of Bank and Economy*, No. 38,P. 32).

⁶ Article 3 of the Uniform Commercial Code covers the Negotiable Instruments. A negotiable instrument is a written promise or order to pay the money to bearer (of promise or order paper) or an order for money payable to a specific person named in the paper. The scope of Article 3 is somewhat limited and includes only the documents that are clarified in Article 3-104 and does not include money, payment orders, and Securities governed by section 8 of UCC. Article 3-104 of UCC defines negotiable instrument and specifies its limitations and special rules. In part (a) of this Article negotiable instrument is defined as: "negotiable instrument means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it: (1) is payable to bearer or to order ...; (2) is payable on demand or at a definite time...; (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money...; (page 37).

⁷ As a term used in economics, Discount is defined as: trading and selling the right to receive an amount of money in future, when the present value is less than the future value. According to this definition, discount needs a requirement: calculate the present value of future sum. The Arabic equivalent of this concept is "Alkhasm", in English it is called "discount", and in French it is equal to "escompte". In numerous cases, discount is defined as above. In one case it is stated that discount means selling the right to receive future liabilities and usually, the amount received by the seller is less than the amount of debt to be paid in future and this margin is called the interest.

(G. C. Pande, D. M. Mithani, Encyclopedia Dictionary of Economics, Vol 3, New Delhi, Anmol Publications, 1990, pp: 142,143)

installment sales contract. For instance, banks cannot trade goods such as coal because it is not possible to use it and meanwhile survive it. However, purchase and sale of such goods within the banking system and in the form of installment sales is canonically lawful. Considering the shelf life of machinery and consumable goods in installment sales is also for ensuring the return of money to the bank and it is not because of religious issues because in holy Sharia these issues are not discussed. "One of the tools used in Islamic banking is granting facilities through installment sales contract which provides finance for different economic activities. The bank provides the customer's desired goods and then sells it to the customer in installments". (Kaboudvand, 1983: 63) In order to prevent the banks intractable enterprises, first they must have purchase request and second the purchase commitment must be obtained from the customer prior to the contract conclusion. The installment sales operations can be illustrated as follows:

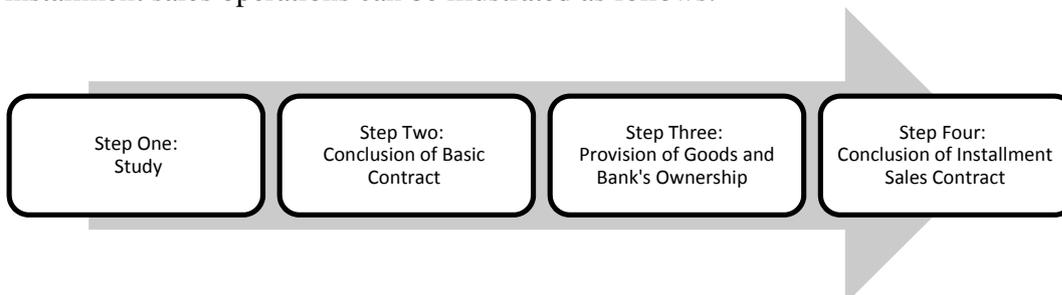


Figure 1. The steps of the conclusion of installment sales contract in Iranian banking system

The first step is to study the installment sales contract which can be short term or long term. For conclusion of installment sales contract in the banking system, the applicant refers to the bank and through initial negotiations declares the framework of his desired activities and demands the required facilities for the performance of his plan. The bank consults with the experts and studies the client's request.

Under the forth issue of transactions and credit facilities instructions, after receiving the customer's request, bank gives him the application form for installment sales. He must fill in two copies of the form and after signing, submit the forms and required documents. Applicant's signature on the application form must match his official signature and it needs to be verified. After acquiring the necessary information and documents and considering the following points, the units review the customer's request: 1. In addition to his business address, the applicant must specify his residential address. 2. Accurate and complete profile of the property subject to installment sales and its official rate or fair market price must be stated. 3. The applicant must have the capacity to trade. 4. If the applicant is legally required to have official records, the company's operations must be recorded in registry. 5. Repayment of loans and its duration must be mentioned. 6. Full details and present or nominal value of immovable property, movable property, and documents presented to the bank as collateral or guarantees must be stated in questionnaire. 7. If the property is subject to an import transaction, permission for its import and proforma invoice of the order must be annexed to the application. (In this case, the goods is bought in the form of civil partnership agreement and then after importing the goods, shares of the bank will be transformed to the partner based on the installment sales contract) 8. About new plans, in order to ensure reasonableness of the plan, documents are required for economic, technical, and financial investigations. 9. The applicant must commit to paying prepayment in order to provide part of the cost of assets upon bank's preparation for concluding installment sales contract.

In second step, the basic contract which is actually an agreement contract is set based on Article 10 of the Civil Code. In this contract, the obligations of bank and customer, the rights of the parties and their commitments are included. All terms and conditions of installment sales can be included in the basic contract which means the whole installment sales contract is stated as stipulation in the basic contract. The bases of basic contract are: 1. Bank's obligations to purchase the goods by bank or for bank. 2. Sale fulfillment. 3. Create a demand for the bank (Ansari, 1996: 144).

In procurement and purchasing step (third step), the bank can buy the demanded commodity itself or the customer is deputed to purchase it on behalf of the bank and for the bank. After purchasing the subject of the deal, installment sales contract is concluded (step four). One of the conventional methods of concluding installment sales contract in many Islamic financial institutions is "Murabaha". In this method and its application in concluding installment sales contract, based on an initial agreement, at the beginning of the contract or at any other time the ownership is transformed from the customer to the bank and then, from the bank to the customer. The mechanism of this method is as follows:

1. The customer chooses the desired item and offers the bank (finance supplying organization) to purchase it.
2. The bank confirms the customer's credibility, the seller, and the price of desired goods.
3. The bank pays the seller the agreed price and takes the ownership.
4. Based on the installment sales contract, the bank sells the goods to the customer:
 - 4.1. The bank transfers the ownership.
 - 4.2. The customer pays a monthly fee.
 - 4.3. The customer signs the mortgage and payment documents according to the contract.

According to the procedures of installment sales contract in French, American, and Iranian Law, one can say that as a norm in Western countries such as France and United States installment sales contract (nominal) is a device for benefiting from money and it is not a mere credit exchange (Mousavian, 2003: 51). So in terms of prevailing accounting standards in these countries, when the goods is sold in installments, only the cash price of goods is credited and differential between the price of cash transaction and the price of credit one is recorded as creditor in an account entitled "future years' interest". In other words in these countries: 1. Profit from installment sales credit is independent of sales profit. 2. Profit gained from installment sales credit is in accordance with repayment duration (Salami, 1991: 13). But it can be inferred from non-usurious banking operations that legislator considers installment sales as a mere sale and its profit as sales profit. On the other hand, according to legislator, time is not an influential factor in determining the profit of installment sales contract. Paragraph 3 of Article 20 confirms this deduction. This section clarifies that determining the minimum and maximum of banks' interests in installment sales and lease acquisitions in accordance with transaction costs, is the duty of Central Bank. Definitions made in Articles 47 and 49 of banking facilities adhere to these interpretations⁸. A comparison between Article 47 of non-usurious banking operations and Articles 338 and 341 indicates that the law confirms providing these facilities as being merely a sale.

Comparing the aim of non-usurious banking and conventional installment sales contract shows that there are two different conceptions of installment sales in Iranian and Western Law and therefore, two different receptions are needed; but in practice, it can be seen that the approach of

⁸ Article 47 of non-usurious banking operations: "Installment sale is assignment of a specified item to the other, for a definite price; in this assignment a part of or all of the cost is received in equal or unequal installments and on certain maturity(s)".

Article 49 of non-usurious banking operations: "installment sales price of the goods referred to in Article 48 will be determined with regard to the final cost and the bank's interest".

both the bank and the customer with this transaction is closer to its conventional (Western) form (Salami, 1991: 13). So that:

1. According to the approvals of Money and Credit Council, the Central Bank determines the minimum and maximum of absolute profit of the facilities which benefit at the time of granting them (installment sales, futures, and lease acquisition) based on annual percentage. But according to the law, this benefit must be determined based on a percentage of the final cost of the goods.

2. While the total profit is realized at the time of granting loans, the banks determine the profit based on the time of customer's use of each installment. But it must go to the bank's profit and loss account at the time of granting the loans and facilities.

3. If the customer pays his debt to the bank before the scheduled time, the bank doesn't receive a portion of profit proportional to the time. While in finalized sale, once the sale occurs, the vendor takes the ownership and the customer has no right to it, and if because of early payment a part of money must be returned, due to its association with time, the return will be a cash discount.

4. It is true that the forms and contracts issued by banks confirm an asset purchase, in practice, however, no purchase is done by the bank, even the goods or commodity is not seen or even no purchase is done by the customer and just a bill is exchanged and the loan funds will be used by the customer as a conventional loan.

Results

1. Installment sales contract in the Iranian legal system is a means for working capital needs of manufacturing units and also it is the means to the housing needs of applicants. In the French legal system installment sales contract is a credit contract where related entities are credited and the main objective of banks and financial institutions signing such contracts is to earn money and expand financial sources. Unlike French Law, in American system credits granted by banks and financial institutes are divided into dependent and independent credits. But the banks like the French banks, without being involved in supplying the goods and transferring it to the customer, provide contract financing.

2. In non-usurious banking unlike traditional banking, when the installment sales contract is signed, the credit amount is not given directly to the customer; the bank gives money to the seller and determines the direction of consumption. However, in traditional banking there is a direct relationship between the bank and the customer when the credit is given; which means the bank gives the amount of the credit directly to the customer. According to the French Law, the credit granted for installment sales contract is a dependent credit so it is granted to the seller of goods and services. In American Law when the dealer signs the installment sales contract in accordance with prepared forms of the financial institution, transfers his rights to the financial institution and the bank gives the credit to the dealer (seller). It is noted that in the countries mentioned, when the installment sales contract is signed, the credit is not given directly to the customer.

3. In Iranian Law and based on non-usurious banking operations, the banks negotiate directly with the customer to obtain the goods and extend credit (loans) for the deal. This is in conformity with one of the accepted principles of Islamic banking i.e. the bank's involvement in the real economy. But in the French and American Law, normally, banks and financial institutions do not intervene directly in supplying the goods and transferring it to the customer. Indirect involvement of banks and financial institutions in installment sales contract helps them to release themselves from any liability arising from the contract and limits their role to developing and receiving the credit and installments with specific interest.

4. In the norms of Western countries such as France and United States of America, an installment sales contract is a means for the benefit of money and it is not a mere exchange. In other

words, in these countries, the dividend income from installment sales credit is independent of sales profit and it is also in accordance with its payback period. But it is concluded from non-usurious banking operations that legislator considers installment sale as a mere sale, and the resultant profit as the sales profit. Furthermore, according to the legislator, the time factor is not influential on determining the profit amount of installment sales contract.

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