

## The pre-purchase condition of the lease contract between the comparative legislative texts and the practical applications in Algeria

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**Abstract---**The rental dependence is based on a very creative idea, which is financing through leasing with the possibility of ownership at the end of the contract, but the effectiveness of the rental dependence may be reduced in light of the total reliance on the provisions of the Algerian law, which omitted the condition of buying the subject of the contract, that is, the lessor may lease one of his properties only. Thus, the Algerian legislator has missed trading opportunities for assets on the one hand, and has given those wishing to obtain financing the opportunity to choose the most appropriate money for their project on the other hand. On the other hand, it is clear from the extrapolation of the application in Algeria (the lease credit contracts of Al Baraka Bank and Natixis Algeria, for example) that the lease credit contracts settled on the inclusion of the condition of purchasing the subject of the contract by the lessor and then leasing it, on the selection and negotiation of the supplier, the selection of the asset and its receipt by the lessee, although the ownership of that asset will transfer to the lessor. In fact, the Algerian application on this point is in line with what is established in comparative law.

**Keywords---**Rental credit, Bank loans, Supply contract, Banks, Financial institutions.

### Introduction

Modern economies are based on the pillars of investments within the country, so countries seek to encourage and promote investment, but there are many obstacles in the way of investment projects, perhaps the most important of which is the problem of financing. Until not long ago, financing was limited to self-financing the project and borrowing. Moreover, commercial companies can increase their capital by issuing new shares or setting aside some of their profits in the form of reserves.

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However, the application has revealed many difficulties and criticisms surrounding previous sources of funding, from reducing the financial liquidity of the project to freezing part of the capital in the event of relying on self-financing for the project to buy new production equipment, and the need to provide guarantees and bear periodic interests in the event of requesting loans, and increasing the company's capital may require the entry of new partners, which is not usually favored by traders.

In the face of these criticisms - and others - economic thought invented a new method of financing known as rent dependence, and since the legal rule is concerned with regulating the phenomena on the ground, legislators in various countries quickly took the initiative to regulate this emerging economic phenomenon with special laws. So did the Algerian legislator.

Algerian law defines leasing as a commercial and financial process that is achieved by banks, financial institutions, and leasing companies with Algerian or foreign economic dealers, based on a lease contract that can include the option to buy in favor of the lessee, and respond to assets of professional use, shops, or craft institutions.<sup>1</sup> The rental credit can also be defined as a contract that enables the lessee to benefit from the leased property for a specified period in exchange for an allowance agreed upon with the lessor. At the end of the contract, the lessee may purchase the leased property at a usually reduced price, return the leased property, or renew the contract.<sup>2</sup>

It is worth mentioning that rental credit is a banking process, as Article 70 of the<sup>3</sup> Algerian Monetary and Banking Law considers it one of the forms of bank loans, so rental credit can only be exercised by banking institutions (banks, digital banks, investment banks) and financial institutions. The reason for this is that bank loans are a banking process monopolized by loan institutions<sup>4</sup> exclusively in accordance with the text of Article 68 of the Algerian Monetary and Banking Law.

So, the rental credit appears as a unique means of financing whose advantages are not hidden, and in order to know the way to achieve the largest amount of those advantages, the following question arises: For the purposes of developing the economy and advancing development and investment in Algeria, is it preferable to require the lessor to buy the property before renting it according to a rental credit contract, or is it preferable for the lessor to rent one of his properties only? Then what is the legislative position and practical reality in Algeria on this issue, as well as comparative law?

This issue will be addressed through the following plan:

The first Axis: The legislative position on the pre-purchase condition of the place of the rental credit contract.

Section One: The position of Algerian law.

Section Two: The Position of Comparative Law.

The second Axis: The pre-purchase condition for the place of the rental credit contract in the Algerian application.

Section One: Advance Purchase Condition in Al Baraka Bank Lease Credit Contracts.

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<sup>1</sup> According to the text of Article 1 of Order 96-06 dated January 10, 1996 related to the rental credit (published in the Official Gazette No. 03 dated January 14, 1996).

<sup>2</sup> Galais, Jean Auloy, *répertoire de droit commercial*, tome 3, crédit-bail (leasing), *Encyclopédie juridique*, Dalloz, France, 1999, page 2, paragraphes 1 et 2.

See also:

Bey, E.M. et Cavalda, CH: *Le crédit-bail mobilier*, collection *que sais-je*, P.U.F., France, 1981, page 45.

See also:

Al-Hayari, Ahmed Ibrahim, and Al-Alawin, Kamal, *The linkage of the supply contract with the financial leasing contract in the Jordanian Financial Leasing Law*, *Jordanian Journal of Law and Political Science*, Mutah University, Jordan, accepted for publication, 2010, p. 1.

<sup>3</sup> Law 23- dated June 12, 2023 09 containing the Monetary and Banking Code, published in the Official Gazette of the People's Democratic Republic of Algeria No. 43 dated June 27, 2023, p. 4 et seq.

<sup>4</sup> The loan institutions are banks and financial institutions, and the Algerian legislature has named them by this name in the text of Articles 455 and 456 of the Civil Code.

Section Two: Pre-purchase condition in the rental credit contract of "Natixie Algeria".

**The first Axis: The legislative position on the pre-purchase condition of the place of the rental credit contract**

The lease credit contract has received legislative regulation in many countries, but the positions of legislators do not stand on an equal footing with regard to the various issues raised by this type of contract, and here comes the role of jurisprudence to differentiate between different legislative positions by conducting comparative studies. In this context, the position of both the Algerian law and the comparative law on the condition of buying the place of the lease by the lessor before renting it will be reviewed, and then each position will be placed on the balance of appreciation.

**Section One: The position of Algerian law.**

The Algerian legislator sought to keep abreast of the emerging methods of financing, including rental credit. The lease credit contract was regulated by Order No. 96-09 dated January 10, 1996 related to rental credit, and Executive Decrees Nos. 06-90 and 06-91 dated February 20, 2006, specifying the methods of advertising rental credit operations.

The first six articles of the Algerian Rental Credit Law dealt with the definition of rental credit operations, and did not include - nor in others - the requirement to buy the place of the rental credit contract by the lessor and then lease it.

It appears, then, through the provisions of the Algerian Rental Credit Law that the Algerian legislator did not set the pre-purchase condition for the place of the rental credit contract, but explicitly shows through some provisions of the articles of the Algerian Rental Credit Law that the lessor can rent money he already owns according to a rental credit contract, for example, the text of Article 09 of this law, which explicitly authorized the rental credit company to rent a commercial store or a craft institution from its property, and Article 02 of the same law considered the rental credit operations as a method of financing the acquisition or use of assets, and if the word "acquisition" contained in this article means the purchase of the asset, the word "use" suggests that the asset was owned by the lessor and then enabled the lessee to use it through a rental credit contract.

As a natural result of the Algerian legislator's omission to determine the pre-purchase condition of the place of the rental credit contract, the same legislator also omitted to regulate the supply contract (which is concluded to form and implement the rental credit contract), the status of the supplier, and the tenant's direct recourse to the supplier in the event of hidden defects. These three issues are more worthy of regulation by the legislator because they exist at least in cases where the tenant agrees with the lessor that the latter buys the place of the contract and then leases it to the former in accordance with the rental credit contract.

**Section Two: The Position of Comparative Law**

French law requires the purchase of leased money in order to rent it under penalty of losing the status of a rental credit contract,<sup>5</sup> as the French legislator required in Article 01 of Law 66-455 dated July 02, 1966 related to the institutions practicing rental credit to<sup>6</sup> buy money from the lessor and then lease it to the lessee, and this article reads as follows: "The rental credit processes concerned with this law are: 1- Rental operations of equipment, equipment and machines purchased for the purpose of rental by institutions ...".

On the part of the French judiciary, the French Court of Cassation - a chamber of commerce - considered in a decision issued on 13/04/1976 that the process in which the factory leases its products, even if it includes a promise to sell in favor of the lessee at the end of the lease term, this process is not a rental credit.<sup>7</sup>

<sup>5</sup>Al-Badali, Najwa Ibrahim, Finance Lease, Alexandria, Egypt, New University House, 2005, pp. 308 and 309.

<sup>6</sup>Available at [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr), accessed on 06/02/2012.

<sup>7</sup>A judicial decision mentioned by :

Al-Ahdab, Abdul Hamid, The Leasing Contract, research published in: Al-Jadid in the work of banks from the legal and economic sides, the work of the annual conference of the Faculty of Law at the Arab University of Beirut, Part II, Lebanon, Al-Halabi Human Rights Publications, 2002, p. 38.

It also seems that the Jordanian legislator sees the advance purchase of money as a condition for adding the description of financial leasing (which is the rental credit in Algeria) to the contract, as Article 03 of the<sup>8</sup> Jordanian Financial Leasing Law No. 45 of 2008 stipulates the following: "The contract shall be a financial leasing contract if the following two conditions are met, regardless of whether it includes the purchase option: 1-The lessor owns the leased property with the aim of leasing it under the lease contract..."

At the international level, the pre-purchase condition of the rental credit contract is contained in the Ottawa Convention on Rental Credit<sup>9</sup> dated May 28, 1988, as stated in the text of paragraph (a) of Article 01 of this Convention:

"This Agreement shall apply to the lease credit operations described in paragraph 02 in which a party (the financial lessor) shall:

(a) Concluding, at the request of another party (the financial lessee), a supply contract with a third party (the supplier), according to which he buys from him fit-out funds or work equipment specified by the financial lessee ...".

Therefore, it is noted that the laws of France and Jordan and the Ottawa Convention on International Rental Credit are in line with those who considered that the rental credit is a financing technique in which the customer requests the rental company to buy certain money from others with the aim of renting it to him. Therefore, the rental credit is a tripartite process based on two contracts: a sale contract concluded between the lessor and the seller, and a rental credit contract concluded between the lessor and the lessee.<sup>10</sup> The funds concerned with the Financial Leasing Law must be purchased for the purposes of leasing them, and even if the purchase does not actually take place, the financial leasing company must undertake in the terms of the contract to purchase the specified funds at its expense. In all cases, the property subject of the contract must be purchased, but if the leased property is of the manufacture of the lessor himself, the Financial Leasing Law shall not apply to this act.<sup>11</sup>

The legislator, if he previously stipulated the purchase of money in order to rent it to the lessee, has taken into account the financial role played by the rental credit companies, which are nothing more than financial intermediaries in the trading of productive assets.<sup>12</sup> One of the most important characteristics of the rental credit is that the lessor is not the producer of the asset or equipment, but its role is limited to providing financing only, and that the lessee chooses the equipment himself, and it is his

<sup>8</sup>Available at [www.pm.gov.jo](http://www.pm.gov.jo), accessed on 06/02/2012.

<sup>9</sup>The full text of the Agreement is available at [www.unidroit.org/french/conventions/1988leasing/1988leasing-f.htm](http://www.unidroit.org/french/conventions/1988leasing/1988leasing-f.htm)., Site Browsing Date: 06/02/2012.

<sup>10</sup>Bonneau, Thierry, droit bancaire, Paris, France, librairie générale de droit et jurisprudence, 7ème édition, 2007, page 394.

Cabinet seddik, le crédit-bailou leasing, ppges 2 et 4 ,article disponible sur le site: [www.cabinetseddik.com/entelechangement/credit\\_bail.pdf](http://www.cabinetseddik.com/entelechangement/credit_bail.pdf), visité le 25/03/2012.

In the same vein, see:

Mahasneh, Nisreen Salameh, Financial Leasing in Jordanian Law Compared to Ijarah Ended with Ownership According to Islamic Jurisprudence, Research Published in: Journal of Laws of Kuwait University, Issue 04, 2008, p. 126.

See also:

Dowidar, Hani, Financial Leasing from the Legal Point of View, research published in : Al-Jadid in the work of banks from the legal and economic points of view, the work of the annual scientific conference of the Faculty of Law at the Arab University of Beirut, Part Two, Lebanon, Al-Halabi Law Publications, 2002, p. 34.

See also:

Khaled, Hisham, Financial Leasing in Islamic Banking Transactions, research published in : Al-Jadid in the work of banks from the legal and economic sides, the work of the annual scientific conference of the Faculty of Law at the Arab University of Beirut, Part II, Lebanon, Al-Halabi Law Publications, 2002, p. 256.

See also:

Mr. Abdel Moneim Hafez, International Financial Leasing Contract, Alexandria, Egypt, Dar Al-Fikr Al-Jami, 2010, p. 554.

<sup>11</sup>Bonneau, Thierry, op.cit, page 397.

<sup>12</sup>Kaissi, Muhieddine, droits des affaires, librairie juridique Al-Halabi, Beyrouth, Liban, 2002, page 36.

responsibility to provide it or not to keep pace with modern developments and its suitability for its purposes.<sup>13</sup>

The peculiarity of this purchase is that it is made by the lessee on behalf of the lessor,<sup>14</sup> although the contract of sale will bind the seller to the lessor.

It is clear from the above that there is a difference in the positions of each of the French and Jordanian legislators and the drafters of the Ottawa Agreement compared to the behavior of the Algerian legislator, as the latter, unlike its counterparts, did not require the prior purchase of the leased asset.

In the place of putting previous legislative trends in the balance of appreciation, the researcher supports the approach of both French and Jordanian legislators and the drafters of the Ottawa Convention on International Rental Credit to require the prior purchase of assets before they are leased financially. This condition is what confirms the financial economic nature of the process, and in the absence of the pre-purchase condition, the process becomes more like an installment sale of the lessor's property, and therefore the financial lease in this way is unable to play its role - in a more effective way - in pushing the pace of investments, because it does not allow the supplier to dispose of goods and products while receiving their prices immediately, and also makes the lessee in a bad position to choose what he needs from productive assets, because he must first search for a supplier who accepts to pay the price installments over a period that is not short or lease one of the lessor's property with the attendant lack of meeting his needs in full, but the talk here is that the requirement for the lessor to buy the leased asset in advance and then lease it according to a lease contract is more economical.

Even from a practical and logical point of view, the benefit of deciding the pre-purchase condition of the lease contract is shown. Rental credit contracts usually end with the ownership of the property to the lessee. If the rental credit companies do not oblige the lessee to own the asset at the end of the contract period, they work to convince him to do so by creating a realistic situation that dictates the implementation of his option to own, including<sup>15</sup> reducing the ownership price compared to the market value of the asset (usually equal to the price - the remaining accounting value of the asset). If this is the case, it is better to rent an item of the lessee's choice first, and the best way to do so is to enable him to select it and then buy it from the supplier, and this is what we mean by the pre-purchase condition of the place of the rental credit contract in this study.

### **The second Axis: The pre-purchase condition for the place of the rental credit contract in the Algerian application.**

Several companies practice the<sup>16</sup> activity of financing through leasing in the Algerian region, and it is customary for these companies to prepare contracts - in advance - with contractual clauses, so that the role of the lessee is limited to signing that document or not.

Continuing to address the issue of the purchase of the place of the lease by the lessor before renting it, the researcher will hereinafter explore the situation in Algerian practice through the lease contracts of both "Al Baraka" Bank<sup>17</sup> and "Natixis Algérie"<sup>18</sup> as an example.

<sup>13</sup>Al-Banna, Muhammad Ali Muhammad Ahmad, Bank Loan (A Comparative Study between Islamic Sharia and Positive Law), First Edition, Scientific Books House, Beirut, Lebanon, 2006, p. 583.

<sup>14</sup>Al-Khasawneh, Ahmed Sakhr, The Financial Leasing Contract (A Comparative Study in Jordanian Law with Reference to the Provisions of Islamic Jurisprudence), First Edition, Dar Wael, Amman, Jordan, 2005, p. 162.

<sup>15</sup> Dowidar, Hani Mohamed, The Legal System of Financial Leasing, Second Edition, Radiation Technical Press, Alexandria, Egypt, 1998.

<sup>16</sup>The official website of the Algerian Ministry of Finance [www.mf.gov.dz](http://www.mf.gov.dz) lists the companies that currently practice rental credit in Algeria, namely:

Five financial institutions: Sofinance, Arab Leasing Company (ALC), Maghreb Leasing Company (MLA), National Leasing Company (NL), and Refinancing Company (SRH).

Five banks: Natixis Algeria, Al Baraka, Al Badr, Algerian General Company, National Bank of Paribas "BN Paribas".

<sup>17</sup>Al Baraka Algerian Bank is a joint stock company with a capital of 250000000000 Algerian dinars, subject to the Algerian Monetary and Loan Law, and registered in the Commercial Register of the State of Algeria under No. 00/B/0014294, and its headquarters is Villa 01, Bouthleja Houidef neighborhood, Ben Aknoun, Algeria, and includes within its activity the rental credit.

### Section One: Advance Purchase Condition in Al Baraka Bank Lease Credit Contracts.

Al Baraka Bank has been practicing the activity of rent credit since 1993, and thus it is one of the first companies that practiced this type of financing in Algeria.<sup>19</sup>

Al Baraka Bank has given a definition of the rental credit contract in the preamble of the contract as follows:

“A lease is the process of leasing an asset with the promise of sale to the lessee.

It is a rather new financing technique, in which three main parties intervene:

-Supplier (Manufacturer or Seller).

- The lessor (the bank that buys the asset for the purpose of leasing it to its customer).

The lessee who leases the asset and retains the right of choice in the final purchase of it under the lease contract.”

Therefore, at the beginning of the contract, Al Baraka Bank refers to the intervention of a third party in the leasing approval process as the supplier, meaning that the bank has previously purchased the leased asset from that supplier.

Another clause in the preamble to the lease credit contract of Al Baraka Bank always states the following:

"-Whereas the customer has requested the bank to purchase the movable assets described in Article 02 below, provided that he leases them from the bank as a rental credit within the meaning of Order 96-09 dated 10/01/1996.

- Whereas the bank purchased the movable assets at the request of the customer and for the purpose of leasing them as a rental credit.

In these two clauses, there is a clear indication that the asset must be purchased by the bank before it is leased to the lessee according to a rental credit contract.

In the preamble to the contract, Al Baraka Bank always gives an applied vision of the steps to conclude and implement the rental credit contract as follows:

"1. The bank customer chooses from the supplier the equipment he needs and negotiates the terms of his purchase (price, delivery, after-sales guarantee...).

2- Submit to the bank a financing request for the purchase of the equipment, supported by the initial invoices, contracts or other required documents.

3-After studying the financing file by risk, return, guarantees and conformity, and in the event of the approval of the competent authorities, the bank grants the financing in favor of the customer in the amount of the initial invoices, and informs its supplier that the equipment will be purchased in the name of the bank on the terms agreed upon between the supplier and the customer.

4- The bank authorizes the customer to receive and install the equipment and carry out all administrative or other procedures related to it.

5-Upon receipt of the equipment, the bank and the customer sign the contract of leasing the asset with a promise of sale to the latter, if he wishes.

6- The lease contract must clearly specify the assignment of the leased asset, the lease period, the amount and rents to be paid, the obligation to secure the asset with a subrogation in favor of the bank, in addition to other items related to the lease.

7-After signing the contract, the client signs the documents to order the agreed rental amount.

8. To calculate the periodic rent, the formula conforming to the principles of the bank is to add a mutually acceptable profit margin to the purchase value of the asset.

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<sup>18</sup>Natixis Algeria is a joint stock company with a capital of 348319263600 Algerian dinars, subject to the Algerian Monetary and Loan Law, with its headquarters at Mohamed Drarni Street, Hydra, Algiers, and includes within its activity the rental credit.

<sup>19</sup>Hideur, Nacer (directeur a bank Al Baraka d'Algérie), le leasing en algerie, page 1, un article disponible sur le site : [www.apsf.org.ma](http://www.apsf.org.ma), visité le 25/03/2012.

9-At the end of the lease contract, and provided that all the agreed rents are paid, the bank assigns the asset in favor of the customer against the symbolic dinar, in the case of the lease ending in ownership.

If it comes to the rental credit with the right to buy, there are three aspects:

- The customer returns the original to the bank.
- The customer buys the asset at its residual value.
- The Customer and the Bank agree to renew the Lease for a new term, in which case, the Parties shall renegotiate the terms of the Lease...”.

Therefore, Al Baraka Bank operates the purchase condition within the financing operations by leasing credit, and even explicitly stipulates that the selection and negotiation of the supplier, and the identification and receipt of the property are works carried out by the lessee with the supplier. Therefore, one of the jurists<sup>20</sup> rightly said: The role of the lessor is limited to expressing acceptance or not to hold the supply contract, as the terms of the contract have been negotiated in advance by the lessee and his supplier.

Some jurists give<sup>21</sup> a practical perception not far from what Al Baraka Bank did, saying: If a student Financing is needed to establish or expand a project or renew production assets, and he did not have the necessary money for that. He can choose the rental credit as a financing means, so he chooses the equipment, machinery or assets he needs according to the technical specifications that correspond to the nature of his activity, and then he makes initial contacts with its seller or producer about its specifications and price without committing to it any obligation, and then the finance applicant searches for one of the rental credit companies to study with it the possibility of financing his deal, and if it accepts, it purchases the specified asset for the purpose of leasing it to the finance applicant. Accordingly, this jurisprudential opinion also considers it necessary to implement the purchase of the place of the rental credit contract.

Article 11 of the lease agreement for immovable assets of Al Baraka Bank stipulates the following:

"The customer shall bear the responsibility for every recourse against the first seller and every dispute with the latter.

The bank gives the customer all the rights and recourse it is entitled to hold against the first seller as a legal or contractual guarantee that is usually related to the ownership of the property ...".

The text of Article 21 of the lease credit financing contract for movable assets of Al Baraka Bank states the following:

"The Customer shall bear the risk of each recourse against the First Seller and each dispute with the latter, the Bank shall entitle the Customer to all the rights and recourse to which it is entitled to hold against the First Seller as a legal or contractual guarantee that is usually related to the ownership of the movable assets."

This means that the bank grants direct recourse against the seller to the lessee, that is, the bank has previously purchased the subject of the contract from the seller, but it has waived the legal recourse against the seller in favor of the lessee. In these two articles, there is an explicit mention of the existence of a seller of the leased asset, in other words: the bank has bought the leased asset from this seller.

As stated in the text of Article 04 of the financing contract with the lease credit of movable assets of Al Baraka Bank:

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<sup>20</sup>Mezher, Habib, The Legal Nature of the Leasing Contract, a research published in Al-Jadid in the work of banks from the legal and economic sides, the work of the annual scientific conference of the Faculty of Law at the Arab University of Beirut, Part Two, Lebanon, Al-Halabi Law Publications, 2002, p. 68.

<sup>21</sup>Gilbert, Claude, la nature et l'intérêt de crédit-bail en informatique, page 03, un article disponible sur le site : [www.erudit.org/revue/cd/1988/v29/n3/042911/ar.pdf](http://www.erudit.org/revue/cd/1988/v29/n3/042911/ar.pdf), visited 25/03/2012.

In the same sense, see: Al-Qalab, Bassam Hilal Muslim, Financial Leasing –A Comparative Study, Dar Al-Raya, Amman, Jordan, 2009, pp. 136 and 137.

"The bank authorizes the customer who has accepted to receive the transferred assets on its behalf in accordance with the conditions stipulated in the purchase contract concluded between the bank and the first seller at the sole expense of the customer, as the bank does not bear any responsibility for the delay in delivery of all or part of the transferred assets in relation to the dates agreed upon with the first seller..."

It is clear that the customer receives the asset directly from the seller and assumes the liabilities resulting therefrom, and this also means that the bank has purchased the asset from this seller.

The word "seller" was also mentioned repeatedly in the text of Article 05 of the financing contract by leasing movable assets in the event that a defect arises in the conformity of the leased asset to the contract, so the customer is obligated to notify the bank of this.

We conclude from all of the above that the lease credit financing contracts of Al Baraka Bank believe that the purchase of the lease credit contract is one of the steps of the lease credit processes. Moreover, these contracts regulate the relationship between the lessee and the seller, which means that the lessor has previously acquired the asset from this seller, and then leased it to the lessee.

However, it should be noted here that although the seller (supplier) intervenes to put the rental credit contract into effect, he remains a foreigner to the rental credit contract. Legally, the parties to the rental credit contract are the lessor and the lessee only, while the supplier is not considered a party to the rental credit contract.<sup>22</sup>

#### Section Two: Advance Purchase Condition in the Lease Credit Contract of "Natixis Algeria"

NATIXIS Algeria has been present in the Algerian market since 1999 and provides several financing and banking services, including leasing.

Article 02 of the General Conditions for Rental Credit as practiced by Natixis Algeria states:

"1. The financial lessee shall determine, at his own risk, the specifications of the equipment subject of the contract, the conditions of its use and how to deliver it in agreement with a supplier of his choice.

2- In accordance with these negotiating conditions, the financial lessor submits the purchase order to the supplier, and the receipt of the money is at the expense and responsibility of the financial lessee ...".

It is clear that Natixis Algeria, in turn, is dedicated to buying the rental credit contract shop before renting it to one of the tenants, so it owns the property first (concludes a supply contract with the supplier at the request of the tenant) and then leases it second (concludes a rental credit contract with the tenant).

Perhaps the fact that the lessor is a party to the sale contract with the seller and a party to the rental credit contract with the lessee is what led some jurists<sup>23</sup> to describe the lessor as the focus of the rental credit operations from a legal perspective.

The best thing to say at the end of this requirement is that the application in Algeria<sup>24</sup> has settled on the implementation of the condition of buying the place of the rental credit contract before renting it, based on the rental credit contract itself in the absence of an explicit legal text.

#### Conclusion

It is clear from this study that the pre-purchase condition of the place of the rental credit contract is known in the laws of France, Jordan and the Ottawa Convention on International Rental Credit. It also

<sup>22</sup>Filali, Boumediene, The Problem of Financing Economic Projects in the Arab World, Research published in the Journal of Political Thought, 20th issue, Syria, Syrian Arab Foundation for the Distribution of Publications, 2004, p. 177.

<sup>23</sup>Dowidar, Hani Mohammed, The Legal System of Financial Leasing, op. Cit., P. 93.

<sup>24</sup>Not only Al Baraka Bank and Natixis Algeria, but also by browsing the websites of other companies practicing rental credit, it appears that they work under the pre-purchase condition, for example, the website of Sofinance [www.sofinance.dz](http://www.sofinance.dz), the website of Maghreb Leasing Algeria MLA [www.mlaleasing.com](http://www.mlaleasing.com), and the website of the Arab Leasing Company ALC [www.arableasing-dz.com](http://www.arableasing-dz.com)



appears that the application in Algeria has settled on the stipulation - explicitly - that the lessor buys the property from the supplier before renting it to the lessee. In contrast, the Algerian legislator did not address the issue of buying the place of the rental credit contract, which gives the impression that the Algerian legislator is tweeting outside the squadron at this point, as it did not keep pace with the developments in it.

Thus, the Algerian legislator has missed several economic advantages achieved under the requirement to buy the place of the rental credit contract, including creating trading opportunities for assets, giving those wishing to obtain funds the opportunity to choose the most appropriate funds for their projects, and giving the role of financial intermediation to rental credit companies instead of limiting itself to the role of speculation. In short, it is more economical to require the lessor to purchase the leased asset in advance and then lease it according to a lease agreement.

On the other hand, neglecting that condition not only leads to the abandonment of such economic feasibility, but also leads to the creation of a clear legal imbalance. Comparative law - accompanied by application in Algeria - is stable that the lessee is the one who chooses the property and its supplier, and he is the one who negotiates and receives it from him, and he is the one who has the right to directly refer to it under the pretext of hidden defects. In other words, the supplier has a legal status within the rental approval processes and has a direct legal relationship with the tenant, and it is certain that the failure to regulate the pre-purchase condition of the place of the rental approval contract results in neglecting the organization of that center and that relationship.

Accordingly, the Algerian legislator is invited to make a legislative intervention to determine the pre-purchase condition of the place of the rental credit contract by the lessor before leasing it to the lessee on the one hand, and to regulate the status of the supplier and its relationship with both the lessor and the lessee on the other hand.

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