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The Effectiveness of the Leasing System in Supporting Commercial Real Estate Projects

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Abstract:

The success of implementing large-scale commercial real estate projects depends on the availability of adequate, flexible, and sustainable financing mechanisms. In an increasingly competitive and rapidly changing economic environment, these projects must adapt to global market transformations by enhancing operational efficiency, improving production quality, and maintaining their competitiveness both domestically and internationally.

In this context, leasing systems have gained growing importance as innovative financing instruments capable of addressing the structural constraints that limit traditional credit mechanisms. The Algerian Rental Credit Law No. 09-96, relating to financial leasing, established the legal framework for this system as a modern financial instrument aimed at diversifying sources of investment financing, supporting enterprise development through flexible financial solutions, promoting technological modernization, and reducing the financial burden on public authorities by mobilizing the resources of both the private and banking sectors.

In the field of commercial real estate, the leasing system aligns with these legislative objectives by enabling investors to obtain property financing without the immediate need for full ownership. This mechanism allows for the acquisition, construction, or modernization of facilities with a commercial character while preserving liquidity and minimizing financial risks. Furthermore, leasing contracts contribute to legal and financial security by clearly defining the rights and obligations of the parties involved, thereby ensuring transparency and stability throughout the project's lifecycle.

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Keywords: Leasing system; Commercial real estate; Rental Credit Law No. 09-96; Investment financing; Economic diversification.

Introduction:

The modern era has witnessed significant economic transformations and substantial technological developments, which have clearly impacted the real estate financing needs of economic projects. This has led to a major evolution and diversification of these needs, making it essential to develop financing sources and innovate modern means that are more responsive and suitable to meet the financial and material requirements of project owners. In this context, new financing models have emerged, altering the landscape of global financial markets, most notably the real estate leasing credit system. This system has allowed real estate projects to benefit from capital assets by leasing them without the need for outright purchase. This concept originated in the United States in 1952 under the name "United States Leasing Corporation" and later spread to many European countries, especially France, where the leasing company "Loca France" was established in 1962. The rapid spread of this system came as a result of economic projects' inability to finance their investments using their own funds. Subsequently, this model extended to developing countries and North African nations, where it was adopted by national companies and specialized financial institutions, including national and foreign commercial banks. Due to the increasing costs and the state's financial burden in funding public and private economic development sectors, including the commercial real estate and large space sectors, the need for their development and expansion has made financing them a significant challenge for investors and project owners. In this regard, the leasing credit contract has emerged as an innovative and effective tool in financing commercial real estate projects, as it offers financial advantages and contract flexibility, making it easier to acquire commercial properties without resorting to personal or traditional financing. This model has gained increasing interest in some Arab countries, particularly for financing commercial real estate, thanks to legal frameworks that support its principles and provide an organizational structure that protects the rights of contracting parties. These new contracts are based on traditional legal rules related to leasing, sales, loans, and agency, which have been developed and amended to acquire a more advanced credit role, contributing to achieving economic goals and keeping up with technological progress. These modern contracts have been given Anglo-American names, such as Leasing, Franchising, and Factoring, reflecting their origins. These contracts introduce new legal concepts that differ from traditional rules of classical contracts, requiring a departure from rigid legal frameworks established by lawmakers to keep pace with the development of commercial life.

In light of the current economic challenges, Algeria seeks to enhance its economic growth by developing large commercial spaces, which are a key driver of development. A financing method in this context is exploring ways to generalize this technique in providing financial and material financing for acquiring commercial real estate within the leasing credit system. Despite the many benefits provided by this contract, including three options available to the lessee at the end of the lease term (renewing the lease, purchasing the asset, or returning the asset or terminating the contract), it faces some legal and financial challenges that may hinder its effective use.

Therefore, this research paper will delve into the new models of this type of banking financing in the real estate sector and some of the legal challenges associated with acquiring commercial property and financing it. Given the significant importance of commercial real estate in driving the national economy—contributing to the revitalization of commercial markets, developing cities, and creating jobs—there is a noticeable lack of a legal framework that supports real estate and economic development, due to the scarcity and ambiguity of some legal texts governing this type of real estate.

Thus, the following question arises:

What is the role of the leasing credit contract system in financing commercial real estate and large spaces in light of the current economic challenges and legal circumstances in Algeria?

To answer this question and considering the nature of the topic, we will rely on a descriptive analytical approach that will enhance the value of this research paper from both legal and practical perspectives, clarifying how the leasing credit contract contributes to financing commercial real estate in Algerian law. This will involve evaluating its role and importance as a superior financing tool for commercial properties. Based on this, the research will address the following topics:

- **First section**: Developing the Advantages of the Lease Credit Contract as an Alternative Mechanism for Financing Commercial Real Estate.
- **Second section**:Analyzing the Contribution of Lease Credit to the Financing of Commercial Real Estate Development

Section One: Developing the Advantages of the Lease Credit Contract as an Alternative Mechanism for Financing Commercial Real Estate

The real estate lease credit contract is considered a modern method of financing investments, as it contributes to driving economic development thanks to the advantages it offers compared to traditional financing methods. It allows individuals and project owners to acquire the capital assets they need. This is done by applying to banks, financial institutions, or specialized leasing companies to obtain the necessary financing, in accordance with Article 1 of Ordinance No. 96/09, dated 10/01/2009, relating to lease credit. Due to its specific nature and economic function as a means of financing investments, the lease credit contract uses the lease model to achieve financing objectives, ensuring ownership for the lessor and benefit for the lessee. Recognizing the role and purpose of this contract, both parties have realized the need to outline its effects, particularly clarifying their respective obligations. The complementary rules of the lease contract help in this regard, as most rules governing lease contracts do not concern public order, meaning the parties can amend them according to the terms specified in the contract. They can either increase the obligations of one party or reduce the obligations of the other.

In this section, we will examine the legal framework of the lease credit contract as a financing tool for commercial real estate in the first sub-section, and the contribution of the real estate lease credit contract to financing properties related to large commercial spaces and shopping centers in the second sub-section.

First Sub-section: The Juridical, Legal, and Regulatory Framework of the Lease Credit Contract

Lease credit represents a financial and in-kind financing tool. It allows an investment real estate project to acquire the capital it needs for construction, expansion, or purchase, in exchange for its commitment to the financing company to pay the lease amount for the duration of the contract. At the end of the lease term, the lessee has two options: to acquire the assets (either movable or immovable) at a price lower than their market value, considering the value of the paid installments.

Lease credit is considered a relatively modern contract that only became common in practice after the development of the commercial environment and the economic relations arising from it. Scholars have disagreed on providing a comprehensive definition of it, as the legal relationships involved and the parties involved are complex. Some scholars defined it by highlighting the distinguishing features of the lease credit contract from the traditional lease contract. They argued that the lease credit contract involves three aspects: financing the purchase process, retaining ownership of the asset as collateral, and benefiting from the asset. Therefore, some have described the lease credit process as a legal operation made up of multiple, simultaneous processes.

As for the Algerian legislator, it followed the approach of comparative legal systems and considered the lease credit contract as a designated contract. Its emergence occurred in two phases. The first phase, before 1990, established its legal framework, and in the second phase, it was incorporated into Law No. 90/10 (now repealed), which dealt with currency and credit, specifically in Article 112. This law considered lease credit as a lease operation coupled with a purchase option. In 1996, a special legal framework was introduced for the lease credit contract, distinguishing it from other contracts through the issuance of Ordinance 96/09 on lease credit.

In practical terms, the mechanism of lease credit allows an investor in a real estate project who lacks the necessary funds or prefers not to use his own capital to approach one of the specialized financial institutions in lease credit, as stipulated in Article 8 of the same ordinance. The real estate lease credit contract is for immovable assets and involves the lessee paying lease installments over a fixed and consecutive period. The contract also gives the lessee the option to acquire the leased assets or part of them during the term of the lease. This is done according to one of the following provisions in the contract:

- Either by waiving the promise of sale unilaterally or through the acquisition of ownership rights over the land where the building or leased property is located, either directly or indirectly.
- Or through the legal transfer of ownership of the assets built on the land, which are owned by the lessee.

In light of rapid economic and social changes, lease credit has become a strategic option for acquiring real estate, especially for individuals and companies facing liquidity shortages and difficulty obtaining commercial properties. This approach requires careful planning by the state and awareness of all the legal and financial aspects involved to ensure maximum benefit from the leased property, whether for residential or commercial purposes. Therefore, this sub-section will first explore the concept of lease credit in the context of granting real estate leases, then examine the classifications of the lease credit contract, and finally, distinguish the lease credit contract from other contracts.

First: The Concept of Real Estate Lease Credit

Some legal scholars consider the definition of the lease credit contract, from an economic standpoint, to be a financing operation. However, they disagree on a comprehensive definition due to the complexity of the legal relationships arising from it and the numerous parties involved.

Professor C. CHAMBOUD's definition adapts the legal framework of the lease credit contract, describing it as a composite contract. It consists of several contract templates in sequence, according to the effects they generate: (a bilateral lease contract, agency, unilateral promise of sale, and sale).

Another perspective defines the lease credit contract as: "One of the new legal frameworks that allows a business or individual to obtain or use assets without the immediate financial capacity to purchase them. These assets may be either immovable or movable."

As for the Algerian legislator, it defined lease credit through Article 1 of Ordinance No. 96-09, dated January 10, 1996, which regulates lease credit. The law considers lease credit as a commercial and financial operation carried out by banks, licensed financial institutions, or leasing companies approved for this purpose. These operations target economic actors, whether individuals or entities, whether domestic or foreign, subject to public or private law. Subsequently, System No. 96-06 was issued to define how lease credit companies should be established and the conditions for their approval. This was followed by legal provisions regulating the publication of lease credit operations, aiming to enhance transparency and ensure legal compliance through two executive decrees issued in 2006 (No. 06/90 and No. 06/91).

The system also outlines procedures for the publication of lease credit for both movable and immovable assets, and defines the legal mechanisms linked to these operations, ensuring the legal documentation and transparency of these assets. This system allows for what is essentially a loan contract, which may be practiced by banks or accredited financial institutions to finance large commercial projects for this group of economic actors, whether individuals or entities.

However, the application of lease credit is limited, according to the third paragraph of the same article, which specifies that the financing operation only pertains to movable or immovable assets used for professional or commercial purposes, or for craft establishments. In contrast, this type of contract is widely used in European countries or Arab countries like Egypt, Tunisia, and Morocco, in addition to land and buildings. This reflects the general nature of the term and the broad scope of its use in some comparative legal systems related to leasing for financing purposes.

The lease credit contract, as a financial mechanism, allows investors and companies to use real estate without the need to pay the total amount upfront. This enables them to expand and grow faster, while minimizing financial risks associated with purchasing assets in Algeria. It ensures the continuity of multiple projects simultaneously, without waiting for the completion of projects financed by private investors, which may take a long time, especially during price fluctuations and liquidity shortages. This delay can lead to project disruptions and incompletion, putting investors at risk of contract termination or, in some cases, forcing them to sell or change the direction of their projects. Thus, lease credit can serve as a lifeline for investors and a safeguard for their projects, especially commercial real estate projects that require significant funds to purchase, construct, and equip assets.

It is worth noting the German law, which regulated this type of contract through a decree issued on April 19, 1971. The German law defines financial lease credit as: a contract concluded for a specified period, which cannot be terminated during the contract term. The amounts paid by the lessee are non-refundable, covering at least the purchase value of the financed asset or compensating for ancillary costs related to the property leased by the financing company.

From this, it can be understood that the German legislator abandoned the buy-back option and renewal in this contract, making it resemble a promise of sale, as ownership will transfer to the lessee at the end of the contract term. Furthermore, as stipulated in Article 6 of Ordinance 75/58 of September 26, 1975, concerning the Civil Code, contracts may shift from lease contracts to sale contracts or promises of sale in real estate transactions. Since real estate transactions require notarial certifications and publicity, this is confirmed by Article 6 of Ordinance 96/09, which states that "...lease credit operations are subject to publication..." to ensure the rights of the parties involved, the sustainability of the commercial project, and to avoid disputes and risks that could hinder the project.

Second: Classifications of the Lease Credit Contract

To understand the classifications of the lease credit contract, it is essential to explain the main characteristics of the lease credit contract outlined in Ordinance 96/09. The key components of the contract must be determined, whether it concerns movable or immovable assets.

1. **Lease Credit Contract for Movable Assets:** According to Articles 7 and 3 of Ordinance 96/09, the lease credit contract for movable assets is a contract through which leasing companies provide economic operators with equipment, machinery, and tools for professional use. The lessee has the option to partially or fully acquire these leased assets at the end of the contract.
2. **Lease Credit Contract for Immovable Assets:** Articles 37 and following of the aforementioned ordinance outline the rights and obligations of the parties in a lease credit contract for immovable assets. If no specific provisions are mentioned in the contract, the Civil Code's lease provisions apply, unless exceptions are stated in this ordinance or if the Civil Code's provisions are incompatible with the nature of the lease credit contract, which is considered a type of loan as per the ordinance. These provisions include obligations for the lessor, whether the lessor is the owner of the asset or leasing it from another party.

   A challenge in this contract arises in determining the responsibility of the parties involved in the lease credit contract for immovable assets, as three parties are involved in practice. The first party is the property owner (the producer or supplier), whether the property is built or undeveloped. This party may be the prior owner of the leased property or a tenant of the asset. The second party is the leasing company, which acts as the lessor and owner of the leased property. In this case, the first contract is considered a sale according to Article 324 of the Civil Code, which requires official writing and notarization for ownership transfer contracts between the property owner and the new owner of the leased asset, which could be a financial institution, a bank, or a licensed leasing company practicing this activity as a lessor and property owner according to the provisions of Article 1 of Ordinance 96/09. The third party is the lessee, who does not own the leased property, but the legal relationship indicates a bilateral contract between the lessor (the property owner) and the lessee (the asset beneficiary), who has the option to purchase the asset at the end of the lease term. This raises the need to clarify the roles of each party in the lease credit contract for immovable assets, particularly when there are hidden defects or emergencies that the lessee is not responsible for, as these assets are usually linked to complex commercial matters, such as compensation and other issues.

Third: Distinguishing the Lease Credit Contract from Other Contracts

We will now examine the similarities between the lease credit contract and other contracts, such as lease contracts and sales contracts, as well as its relationship with real estate development activities, particularly those of a commercial nature.

Fourth: Distinguishing Real Estate Lease Credit from a Lease Contract

Article 1, paragraph 1, of Ordinance 96-09 states: "Lease credit is considered... a commercial and financial operation."

In this context, it becomes clear that lease credit is primarily an economic operation regulated under the provisions of a lease contract. However, it differs from the traditional lease contract as defined in the general rules of the Civil Code, according to Article 6 of the Civil Code. This is because the lease contract is based on the principle of freedom of contract, where the parties define the duration and subject matter of the contract, as well as the lease amount, provided it is not excessive. On the other hand, the lease credit contract is characterized by the following:

- For the lessee, lease credit is a financing tool to acquire an investment asset. It also includes a unilateral promise of sale for the benefit of the lessee, at an agreed price, with partial payment, considering the installments already paid.
- The mutual obligations between the contracting parties for immovable assets are those specified in the lease credit contract. If these are silent, the provisions of the Civil Code concerning leases apply, unless exceptions are outlined in this ordinance. These exceptions arise because some provisions of the Civil Code are not suitable for the nature of the lease credit contract, which is considered a loan operation according to Ordinance 96/09.

It should be noted that in cases where the provisions of the lease credit contract apply to the lease contract for operations involving immovable assets, we are dealing with two parties: the lessor and the lessee. According to Article 38 of Ordinance 96/09, which outlines the obligations of the lessor, it states: "The lessor is obliged to fulfill the obligations imposed on the property owner as stipulated in the Civil Code... at the time of signing the lease credit contract." Similarly, Article 39 of the same ordinance sets out the obligations of the lessee: "The lessee is obligated to fulfill the lessee's duties as stipulated in the Civil Code in return for the right of usufruct granted by the lessor... the obligation to return the asset to the lessor on the agreed date if the lessee has not exercised the right of purchase." Therefore, it is clear that the legislator refers to the general rules applicable to sale and lease contracts, as outlined in Articles 351 and 467 of Ordinance No. 75/58 of September 26, 1975, which includes the Civil Code, unless otherwise stated in Ordinance 96/09, which sets out a specific legal framework for certain types of contracts, such as lease credit contracts, which align with these general rules.

It is also important to note that when the lease of immovable assets expires, between the lessee and the lessor (bank or lease credit company), the lessee has the option to purchase the leased asset at the agreed-upon price in the lease credit contract or renew the lease for another period with a new rent agreement as agreed upon by the parties, or notify the lessor of the intent to exercise the purchase option, as per Article 39, paragraph 12. Otherwise, the right to exercise this option is forfeited if the lessor exercises their right to repossess the leased asset on the agreed date. In this regard, it is emphasized that another specified date must be included in the contract for the lessor to exercise their right to repossess the leased asset, regardless of the legal notice period, which is typically after the contract's term or agreement ends according to the general rules. The lessee maintains the right to exercise the purchase option after the agreement ends. Thus, it can be said that the promise of sale for the leased asset is subject to a suspensive condition, which is the lessee's confirmation of the option to purchase. In all cases, simple declarations between the lessee and lessor in commercial transactions are not enough; the contract must directly transform into a sale, considering that the lessee has chosen the purchase option in the original agreement. The contract then becomes a sale, as outlined in Article

45 of Ordinance No. 96/09, which states that if the lessee decides to exercise the purchase option on the agreed date, they must send a registered letter to the lessor 15 days prior to that date.

Furthermore, in light of Article 9 of the aforementioned ordinance, the sale of a leasehold property under a lease credit contract is conditional upon the lessee's confirmation of the purchase option. Additionally, regarding the obligation outlined in paragraph 5 of Article 39, which obligates the lessee not to make any changes or improvements that may threaten the safety of the property or reduce its commercial value in case the lessor does not respond to the sale request of the leased property, this imposes a limitation on the lessee's right of usufruct, especially if the improvements would increase the value of the commercial property, contrary to the view of the leasing company or property owner.

2. Distinguishing Lease Credit from a Promise of Sale:

The Algerian legislator did not define the promise of sale within the provisions of the Civil Code, except in Articles 71 and 72, which address the general provisions of the promise contract. Article 71 considers a promise as an agreement where one or both parties commit to entering into a specific contract in the future, requiring the determination of the essential issues of the contract to be concluded, as well as the time frame for completing the contract. Thus, the promise of sale is considered a contract that requires the essential elements to be in place, except for the acceptance of the promisee to buy.

Consequently, the promise of sale is a unilateral binding contract, where one party commits to selling a specific item if the other party decides to buy it. The lessee still has the opportunity to convert the promise into a sale contract if they choose to, or they can simply relinquish this option and refuse to purchase the property in question.

In this context, the concept of a promise of sale overlaps with the lease credit contract, where the leasing company provides a promise of sale, allowing the lessee to purchase the leased property at the end of the lease if they choose the purchase option. However, the lessee is not obligated to buy the property; they may renew the lease or return the property to the leasing company. In this case, the leasing company retains ownership of the property throughout the lease term as collateral in case of the lessee's insolvency.

Thus, the lease credit contract and the promise of sale both grant the lessee the option to buy, and the leasing company retains ownership of the property throughout the contract. However, the lease credit contract is more complex legally and financially, as it represents an important phase in the execution of the lease credit contract in general.

3. Lease Credit vs. Real Estate Financing:

Real estate loans aim to finance activities related to real estate, such as buildings, land, and large projects. They are based on a fundamental relationship built on trust. However, real estate lease credit is not a traditional contract; it is a financial lease contract that represents a financing relationship that is more personal. Thus, we can distinguish between real estate lease credit and real estate financing as follows:

Financing is defined as a legal financial process whereby the necessary funds are provided for real estate investment or non-investment activities carried out by specific individuals or institutions engaged in financial activities, whether public or private, banking or non-banking, in the field of real estate investment. This financing is necessary to secure financial resources for real estate investments, whether in-kind or financial, for the construction of major commercial and industrial properties. In contrast, a real estate lease loan is different, as real estate financing is limited to providing the financial resources required for investment or consumption activities, which represent real estate lease credit. Regarding investment, it creates economic value and utilizes production resources and savings while maintaining the existing production capacity.

Thus, real estate loans provide benefits for all parties. For the credit lessor, they retain ownership of the tools or property and allow institutions using lease credit contracts to make real estate investments gradually, expanding in real estate construction without negatively impacting their financial balance sheet.

4. Lease Credit Contract and Agency Contract:

The agency contract, for the lessee benefiting from the lease credit contract, is considered an optional, not contractual, agency, as it obliges the agent to achieve a result in addition to carrying out legal and material actions for the principal's benefit. This highlights the special nature of the lease credit contract, as it is financing coupled with a guarantee in the form of ownership of the financed asset.

What distinguishes the agency contract is that it is not binding, as the principal has the right to dismiss the agent, as stipulated in Article 587 of the Civil Code, even if there is an agreement to the contrary. However, the agency in a lease credit contract deviates from these rules, as it cannot be terminated unilaterally; doing so would constitute an abuse of rights.

On the other hand, some legal scholars consider the agency contract an essential element of the lease credit contract for built properties, as the agent is the one who takes the initiative to approach the supplier (property seller), negotiates the purchase of the property, and handles all technical details related to the asset. The leasing company supervises these procedures until the property is delivered. For unbuilt properties, the beneficiary delegates all actions related to this purchase, acting as an agent for the leasing company by delivering funds to the contractor. Once construction is complete, the lessee receives the property as a tenant.

5. **Leasing within the Framework of Investment Law 22/18**

In principle, the legislator allowed foreign parties the right to own property, subject to certain conditions and controls. This is outlined in Article 03 of the new Investment Law, No. 22/18, which enshrines the principle of freedom of investment and equality among all individuals, whether natural or legal persons, residents or non-residents, Algerian or foreign. Additionally, Decree No. 97/483, dated December 15, 1997, which defined how to grant the privilege of land plots from state-owned private national property in reclaimed areas, was abolished, along with specifying the conditions for such privileges.

The legislator also mentioned in Article 20 of Law No. 08/11 dated July 25, 2008, which pertains to the conditions for foreigners to enter, reside, and move within Algeria, stating, "A foreigner wishing to practice any commercial, industrial, craft, or freelance activity must meet the legal and regulatory conditions required to practice this activity." This was reiterated in Article 03 of Law 18/22. However, ambiguity remains in terms of the transfer of real estate rights to foreign parties, whether natural or legal persons residing abroad. According to Article 1 of Law No. 72/30 concerning real estate transfers and property rights, dated January 21, 1972, any transfer is considered void unless prior authorization is obtained from the Ministry of Finance, which will state its non-objection to the foreign party's property ownership.

Therefore, it is necessary to establish legal rules that facilitate the process of property utilization and the transfer of private ownership, particularly if the foreign party is a lessor or lessee benefiting from the property through a leasing company, to operate its stores and properties. Additionally, simplifying the procedures for their residency, such as granting residence permits that exceed the depreciation period of the economic project or offering citizenship as an incentive for investment in commercial and industrial projects and the establishment of large malls and commercial centers, as practiced in Turkey and the United Arab Emirates, would promote foreign capital investment in real estate according to the laws governing urban planning, real estate organization, and the preparation of various lands and construction methods, with consultation from all involved parties, including project owners, as stipulated in Articles 70, 69, and 68 of Law 90/25 dated November 18, 1990, concerning urban planning directives.

Section Two: Analyzing the Contribution of Lease Credit to the Financing of Commercial Real Estate Development

Leasing, as a modern financing technique, falls under the real estate sector according to real estate development laws and urban planning and construction regulations. It requires real estate properties, either built or under construction, to be developed within the leasing framework. This section will address the cases where commercial properties are either built or to be built, followed by the importance of directing leasing to finance commercial and investment projects.

First Subsection: Financing Built and Unbuilt Commercial Properties

Leasing is a modern financing technique within the real estate activity sector, governed by real estate promotion laws and urban development and construction regulations. The process requires obtaining real estate properties. However, Law 96-09 does not differentiate between whether the property is built or under construction, as the property could either be built or constructed based on the lessee's needs on land owned by others or on land owned by the lessee. The construction phase involves a relationship between the lessor (leasing companies) and the lessee, who may be the beneficiary and will undertake the project. Thus, we will explore leasing operations for both built properties and those under construction, as follows:

1. **Financing Built Properties:** If the property is owned by a third party, and the lessee wishes to acquire it, they request financing from the leasing company. In this case, the lease of the land and the buildings upon it cannot be separated, as the lessee expresses interest in acquiring the built property. The lessee, acting on behalf of the leasing company, receives the property from the seller as an agent and commits to paying the agreed rental payments after submitting all required information and documents to the leasing company. At the end of the contract, the lessee has three options: buy the property, renew the lease, or return it to the leasing company.
2. **Financing Unbuilt Properties:** In this case, two different scenarios arise. If the land is owned by a third party or the lessee, in the first case, the leasing company purchases the land but conditions the purchase on obtaining administrative authorization. In the second case, if the land is owned by the lessee, the company's role is limited to financing the construction. In both cases, the company owns the buildings that are constructed. An initial contract is signed between the parties outlining the property specifications, which may be an agency or contractor agreement. After construction is completed, the property is delivered to the beneficiary, who is committed to paying rent to the company. If the land is owned by a

third party, ownership of the building will not transfer until the beneficiary expresses interest in buying and pays the remaining amount.

Given the advantages offered by leasing contracts for the lessee benefiting from financing for both built and unbuilt properties, especially those with commercial and professional characteristics, these properties have a direct impact on activating domestic and international trade, positively influencing the national economy.

Section Two: The Role of Leasing in Financing Commercial and Investment Real Estate Projects

The importance of leasing contracts in financing investment projects lies in their role as a new tool to support projects facing financial difficulties. Leasing is characterized by its ability to create new institutions specialized in financing or to restructure banks and financial institutions by expanding their activities and opening new branches to finance commercial real estate projects. It also contributes to diversifying the functions of these institutions through the development of new banking products, while considering the public interest in promoting national economic development. Furthermore, leasing contributes to the full financing of productive and commercial projects. It is also known for its speed and flexibility, which reduces waiting times, especially in financing projects that require rapid development in our modern age, helping to eliminate scarcity and monopolies while creating new job opportunities.

Given the weak financing from banks and public and private financial institutions for commercial and productive real estate projects, which are limited to financing investment projects supported and framed by new state structures with specific percentages (such as ANAD, ANSEJ, and the National Investment Agency), it is observed that commercial real estate projects (large shopping centers and commercial spaces) lack legal regulations that align with the objectives of leasing contracts. Leasing contracts serve as financial tools for financing commercial real estate projects and other commercial, industrial, or craft activities, contributing to the activation of economic activity, particularly since leasing offers various forms that suit real estate projects related to profitable and fast commerce.

First: The Evolution of Real Estate in Commercial Law

With the issuance of the amended French Commercial Code on July 13, 1967, particularly Article 632, which excluded all activities related to real estate from commercial law, it was stated that transactions involving real estate would not fall under the special provisions of the theory of accessory obligations, nor would the real estate used for commercial activities be considered a commercial element.

It is worth noting that real estate projects related to the construction of commercial spaces and large shopping centers in Algeria are often executed by independent investors who do not hold real estate developer certificates. Therefore, these spaces should be designated by urban planning and construction authorities and then granted through concessions or sold via national or international public auctions to individuals who meet the appropriate conditions for developing such properties and completing them in record time, relying on leasing companies to finance the process. This should adhere to international standards that aim to activate commercial activity and ensure the sustainable development of the city, while avoiding delays often caused by real estate developers in acquiring land to establish these commercial centers. In some cases, these projects remain incomplete or fail to meet the required specifications, being exploited for personal purposes, which negatively impacts the city's development and economic and social revival.

Second: The Legal Basis for Commercial Spaces and Methods of Granting Commercial Real Estate

A series of legislative texts issued after Law No. 08/04 of August 14, 2004, which pertains to the conditions for practicing commercial activities, represent the new legal framework for organizing the real estate assets of state-owned private properties intended for investment projects, including commercial real estate development projects. These provisions aim to ensure effective and rational management of public properties and protect public real estate by subjecting it to non-transferable concessions. Due to the slow procedures for granting land through public concessions, the authorities decided to introduce new measures by amending the previous law with certain incentive measures, excluding the auction system and retaining the agreement-based approach to ease the acquisition of land intended for investment under the 2011 Finance Law (Law No. 20/07/2011) and Law No. 12/12 of 2013.

To improve the qualification of markets and commercial spaces and organize the practice of commercial activities, it was not sufficient to issue Executive Decree No. 09-182 of May 12, 2009 (which was later revoked). This decree defined the conditions and procedures for establishing and developing commercial spaces and practicing certain commercial activities. However, practical experience with this decree revealed several shortcomings regarding the rules for managing and organizing these spaces under the legal framework that governs them. As a result, Executive Decree No. 12-111, dated March 6, 2012, was issued, which defined the conditions and procedures for organizing commercial spaces and practicing certain commercial activities. It included common provisions specifying the conditions for creating both small and large spaces and shopping centers in Articles 3, 2, and 40. However, this decree does not refer to the financing provided by institutions, banks, and accredited companies under leasing contracts to encourage investment in the development of such commercial spaces.

Third: The Relationship between Leasing and Real Estate Development Activities Under Law 04/11

According to Articles 3 and 14 of Law No. 04/11 of February 17, 2011, which concerns real estate development, it can be understood that the law regulates all operations aimed at mobilizing real estate and financial resources, as well as managing operations contributing to the execution of real estate projects by construction professionals, whether natural or legal persons referred to in this law as real estate developers. These developers are committed to taking the initiative and primary responsibility for these real estate projects, which are intended either for sale or for rent or to meet specific needs. These projects primarily include residential properties but may secondarily include professional, craft, or commercial properties.

Regarding leasing contracts, the French legislator introduced them in Article 1, Paragraph 2 of the French Law No. 66/455 of July 2, 1966, which refers to leasing real estate properties intended for professional purposes and purchased for the purpose of leasing.

It is important to note that the content of Article 1, Paragraphs 1, 2, and 3 of Ordinance No. 96/09 states that leasing is considered a commercial and financial operation, carried out by qualified banks or financial institutions with economic operators, whether Algerian or foreign, from the private or public sector. These operations are based on a lease agreement, which may first include an option to purchase for the investor, meaning that the intent to purchase is included in the initial leasing contract and not at the end of the contract. Operations related to non-financial assets that are designated for commercial purposes, such as the construction of large commercial spaces and shopping centers, lead to an increase in their real estate and commercial value, especially after they begin operations and gain commercial reputation. Therefore, it is crucial to establish legal rules concerning commercial real estate assets to ensure the protection of the parties' rights and the public interest, maintaining the continuity of these commercial projects and preventing real estate developers from exploiting these spaces for personal purposes or engaging in speculation on these properties. This could occur at the expense of social housing or professional and commercial spaces, as outlined in Article 9 of the aforementioned ordinance. This would lead to the misuse of real estate assets intended for commercial spaces, either for personal gain or speculative purposes.

Recommendations for further studies

1. Exploration of Alternative Financing Mechanisms

Investigate the role of public-private partnerships (PPPs) in financing large-scale commercial projects.

Assess the viability of crowdfunding and real estate investment trusts (REITs) as alternatives to traditional financing methods.

Analyze the impact of green financing options on the development of sustainable shopping centers.

2. Impact of Leasing Contracts

Conduct case studies to evaluate the effectiveness of leasing contracts in addressing financial challenges faced by shopping centers.

Explore the legal frameworks governing leasing contracts and their impact on the real estate market.

Assess the role of leasing contracts in mitigating risks for developers and investors.

3. Comparative Studies

Compare real estate financing practices in different countries to identify best practices that can be adopted locally.

Examine the success of leasing contracts in other industries and their applicability to the real estate sector.

Investigate how global economic changes, such as inflation or interest rate fluctuations, affect leasing and financing models.

4. Economic and Social Implications

Study the socio-economic impact of financing gaps on the development of commercial spaces in urban and rural areas.

Analyze the role of real estate financing in promoting job creation and local economic development.

Investigate the influence of consumer behavior and spending patterns on the financial sustainability of shopping centers.

5. Technological Integration

Explore the use of digital platforms and blockchain technology in facilitating leasing contracts and real estate transactions.

Assess the potential of AI-driven analytics in optimizing financial planning and risk management for real estate projects.

6. Policy Recommendations

Examine the role of government incentives and subsidies in encouraging innovative financing methods.

Propose regulatory reforms to streamline leasing contracts and real estate financing processes.

Investigate the impact of taxation policies on the profitability and sustainability of large-scale commercial spaces.

These recommendations aim to provide a comprehensive understanding of the challenges and opportunities in real estate financing while highlighting areas that require deeper exploration to support the growth and sustainability of shopping centers and similar projects.

Conclusion:

Financing is the main commitment that financial institutions, banks, and accredited leasing companies undertake to finance commercial real estate projects and large spaces. However, leasing contracts are still considered a modern, non-traditional financing tool, and their contribution remains limited in terms of practical application in Algeria. This has led to the marginalization of commercial real estate projects, as institutions accredited for these types of contracts tend to finance movable assets and avoid financing immovable assets. This preference is due to several reasons, including legal and practical considerations that simplify the procedures for the sale and rental of movable assets, as well as the lower risks associated with movable assets. These assets allow for the rapid recovery of paid amounts and quick receipt of interest from financing operations, while avoiding the risks inherent in long-term contracts typically associated with immovable assets. Therefore, it is essential to plan and develop a strategy that helps create legal frameworks and regulatory measures to facilitate the establishment and operation of large commercial hubs, similar to those in major commercial capitals. This should be in accordance with the terms and specificities of real estate leasing contracts to stimulate and develop the national economy while ensuring sustainability.

Recommendations:

- **Leasing of Immovable Assets**: Leasing operations involving immovable assets sometimes require the involvement of a fourth party, particularly when the property is not yet built. In such cases, a second contract should be concluded to define the responsibilities of the parties in case of delays in project completion.
- **Facilitating Residency for Muslim Diaspora**: It is necessary to facilitate the residency of Muslim expatriates from foreign countries who own leasing companies and intend to invest in Algeria.
- **Creating a Harmonized Model for Commercial Property Financing**: A harmonized model should be developed for granting and financing commercial real estate dedicated to commercial and entertainment spaces for investors, whether national or foreign. This should be done through a 30-year concession, renewable, in line with laws related to construction, urban planning, and the environment.
- **Promoting Islamic Cooperative Insurance**: Activate cooperative insurance models that are compatible with Islamic finance as an alternative to commercial insurance, to encourage the spread of leasing contracts in Algeria.
- **Expanding Leasing to Large Commercial Projects**: Work on expanding the scope of leasing to include large commercial projects that contribute to the development of major cities and border regions, encourage trade exchanges, and stimulate local markets.
- **Reviewing Leasing Termination Rules**: Review the rules concerning the expiration of leasing contracts related to real estate, in order to define the obligations of contracting parties in the event of contract termination or force majeure, as well as the role of insurance companies in such cases.

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