

# CONTRACT OF SALE UNDER THE CIVIL TRANSACTIONS LAW

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In our previous publication, we introduced the Civil Transactions Law (the “CTL”) of the Kingdom of Saudi Arabia (the “Kingdom”). This article continues our CTL series by delving into the application of the CTL in commercial transactions, providing further insights into various aspects covered by the CTL.

Before the enactment of the CTL, contracts were generally governed by uncoded general principles of Islamic Shari’ah Law. The CTL is the first codified legislation in the Kingdom’s history regulating contracts, ensuring they align with Islamic Shari’ah Law jurisprudence, while addressing modern commercial needs for more clarity and predictability. The CTL regulates 18 types of contracts. In this article, we focus on two types of contracts: the contract of sale and the exchange contract.

The contract of sale, is defined in the CTL as “a contract under which a seller transfers ownership of the sold item to a buyer in return for a cash amount.” The contract of exchange is defined as “a contract under which the parties transfer to each other ownership of property other than cash.” Article 365 states that “[a] contract of exchange shall be subject to the provisions governing the contract of sale in a manner not inconsistent with the nature of the exchange contract.”

## FORMATION OF A CONTRACT OF SALE OR A CONTRACT OF EXCHANGE

A valid contract of sale or contract of exchange requires:

1. Mutual Consent: Both parties must mutually agree to the terms of the contract through offer (Ijab) and acceptance (Qabul).
2. Competent Parties: Both the buyer and the seller must have the legal capacity (sound mind and legal age) to enter into a contract.
3. Subject Matter: The subject of the sale must be defined, and it must be lawful and permissible under Islamic law. The CTL clarifies, however, that if the buyer's knowledge of the subject matter is indicated in the contract of sale, the buyer shall not have the right to demand nullification of the contract due to lack of knowledge, unless the buyer can show deceit by the seller.
4. Consideration (*Thaman*): The price or consideration for the sold item must be defined and agreed upon. Estimation of the sale price may be made based on valid pricing criteria. The CTL clarifies that even if the price for the sold item is not stated by the parties, the sale shall not be nullified if the circumstances indicate that the parties intended to apply the market price, or the price applied in the usual dealings between the parties.
5. Delivery (*Tasleem / Qabd*): The item sold must be deliverable. If the item cannot be delivered or is nonexistent at the time of the contract, the sale may be deemed void. The CTL clarifies, however, that the following shall be deemed delivery:
  - If the parties agree to the case in which the buyer is deemed to have taken delivery.
  - If a legal provision provides for the case in which the buyer is deemed to have taken delivery.
  - If, with the buyer's consent, the seller retains the sold item in his possession after the sale for a reason other than ownership.

## SELLER AND BUYER OBLIGATIONS AND WARRANTIES

The CTL imposes specific obligations on both the seller and the buyer and includes statutory warranties. These obligations and warranties should be applicable, in addition to any agreed upon contractual obligations and warranties (which should be included in the contract).

### • ENTITLEMENT WARRANTY:

The Seller warrants that the purchased item is free from any third-party rights. The purchased item must be transferred free from any unknown right to a third party. The pa-

parties, however, can agree to limit the seller's warranty to only cases where the third-party right arise from the seller's acts or the seller's deliberate concealment. An agreement to relieve the seller from warranty of title shall not preclude the buyer's right of recourse against the seller for the amount paid, unless it is established that the buyer was aware of the third-party right at the time of the sale.

## ● **FREE FROM DEFECTS WARRANTY:**

The seller warrants that the purchased item is free from any defects that would diminish its value or render it unfit for its intended use. If a defect is discovered in purchased goods, the buyer may cancel the contract or claim the price difference from the seller unless the seller replaces the item by an identical one free from defects.

This warranty is not applicable, however, in the following circumstances:

- The defect was known to the buyer at the time of the sale or would have been discovered by a reasonable person upon inspection, unless the seller warrants to the buyer that the product is free from a certain defect, or the seller deliberately conceals the defect.
- The defect is customarily acceptable.
- The defect occurs after delivery, unless the cause of it existed prior to delivery.
- The sale was made at auction by judicial or administrative authorities.

Nonetheless, the CTL places an obligation on the buyer to inspect the condition of the purchased items promptly upon delivery. Failure to notify the seller of any defects within a reasonable timeframe will result in the buyer being deemed to have accepted the purchase item as is.

A 180 day statute of limitation is applicable to claim for warranty against defects, unless a longer period has been agreed upon or it can be proven that the concealment of a defect was a fraudulent act by the seller.

## ● **FREE FROM DAMAGE DELIVERY:**

The seller must deliver the purchased item free from damage. If a purchased item is damaged before delivery due to the actions of the seller or a third party (not the buyer), the buyer will have the following options:

- cancel the sale;
  - accept the damaged item and recourse for compensation from the responsible party;
- or

- terminate the sale of the damaged part of the item only.

If a purchased item is destroyed before delivery due to force majeure or any reason not attributable to the parties of the sale or a third party, the sale is terminated and the buyer must be reimbursed. If only part of the sold item is destroyed, the buyer can terminate the sale for that damaged portion alone or choose to cancel the entire transaction.

## • BUYER'S FINANCIAL RESPONSIBILITIES:

Unless agreed otherwise, the buyer must pay the price of the purchased item prior to delivery. If there is a deadline for the payment and the seller stipulates that the sale will be terminated if no payment is made by said deadline, the sale shall be deemed terminated if the buyer fails to meet the deadline, and the seller so elects, without the need for notification. The buyer is responsible for covering the costs of payment, delivery, the sale contract, and registration unless agreed otherwise.

## CONCLUSION

The CTL provides a legal framework for contracts in Saudi Arabia, including contract of sale and contract of exchange, and outlines rights and obligations of the parties involved. This framework ensures that these contracts are legally binding and enforceable. While integrating Islamic Shari'ah law principles, this framework also promotes consistency and predictability by creating a standardized set of rules and principles which helps mitigate disputes arising from these contracts and provides legal recourse and remedies for breaches or conflicts. It specifies the essential elements required for the contract to be valid and enforceable and helps parties understand their warranties and obligations and the legal consequences of their actions.

**Contact us for further  
information**



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