ABSTRACT

Objective: The research aims to show the nature of the bank's obligation to provide this information and whether the sources of this obligation are either contractual or legal.

Method: The research followed the descriptive and analytical approach in preparing the research to learn about the texts of the law, judicial rulings, and jurisprudence.

Result: The bank’s obligation to provide financial credit information arises either as a direct effect of an agreement concluded between the bank and the information requester or based on the existence of a legal text obligating the bank to provide information to certain parties, and it may be a result of banking customs.

Conclusion: The study concluded that the legislator should enact a specific law on banking secrecy due to its importance, as well as taking into account not to expand on the exceptions in accordance with the principle of banking secrecy.

Keywords: sources of banks, financial credit information, the principle of bank secrecy, jordanian legislation.
RESUMO

Objetivo: O estudo pretende demonstrar a natureza da obrigação do banco de fornecer esta informação e se as fontes desta obrigação são contratuais ou legais

Método: A pesquisa seguiu a abordagem descritiva e analítica na preparação da pesquisa para aprender sobre os textos da lei, decisões judiciais e jurisprudência.

Resultado: A obrigação do banco de fornecer informações financeiras sobre o crédito decorre quer de um efeito direto de um acordo celebrado entre o banco e o requerente da informação, quer da existência de um texto jurídico que obriga o banco a fornecer informações a determinadas partes, e pode resultar da alfândega bancária.

Conclusão: O estudo concluiu que o legislador deve aprovar uma lei específica sobre o segredo bancário devido à sua importância, bem como ter em conta não alargar as exceções em conformidade com o princípio do segredo bancário.

Palavras-chave: fontes de bancos, informações de crédito financeiro, o princípio do sigilo bancário, legislação jordaniana.

1 INTRODUCTION

Banks in the past were keen to respect the principle of non-interference (non-intervention) in the affairs of their customers, and confined to the principle of banking secrecy, the focus was limited to managing and preserving the money of banks customers. However, because of the development of this role, and the stability of modern banking habits, the bank's role has become more and more positive in the relationship with customers, including providing financial credit information.

Providing that kind of information is one of the most important modern banking services, and according to its importance in helping clients to make important decisions about trading and investment. This development affected the banks' relationship with clients' projects. Banks have played an important role in these projects such as providing them with assistance in many fields, preparing the necessary studies for their development, giving advice to help those in charge of them in making important decisions, such as decisions which are related to project policy and budget preparation. The bank's role becomes more positive when clients' projects are exposed to faltering and financial difficulties.
The importance of the study stems from explaining the legal nature of the bank's obligation to provide information. The bank, by virtue of its work, collects a lot of information about customers and others who deal with them, access to information on accounts, provide credits and commercial papers. The bank's provision of this information is an exception to the principle of banking secrecy, which it is committed to.

From the foregoing, it is necessary to identify here the position of the Jordanian legislator towards granting the bank the provision of financial credit information as an exception to the principle of bank secrecy, and what are the sources on which the bank relies on to provide this information?

The problem of the study in this research lies in the extent on which the bank is obligated to provide information about financial credit to customers, and what is the source of the bank's obligation to provide financial credit information? Moreover, is this considered as an exception to the principle of bank secrecy?

1.1 THE OBJECTIVES OF THE STUDY

The research aims to show the nature of the bank's obligation to provide this information and whether the sources of this obligation are either contractual or legal.

2 THEORETICAL FRAMEWORK

The bank's commitment to providing financial credit information is considered one of the most important services, which are provided by banks recently and is no longer limited to the usual banking work such as deposits, checks and financing. This commitment is an exception to the principle of banking secrecy, as the bank provides information to whoever requests it according to certain provisions. The provision of financial credit information achieves great interest (attention) for the economy and commercial activity in the country, in addition to protecting customers' interests.

2.1 THE LEGAL SOURCE OF THE BANK'S OBLIGATION TO PROVIDE INFORMATION

Financial credit information is defined as every matter or fact related to the customer that reaches the bank’s knowledge, whether the customer provided it himself, or obtained it through other methods. It is the information that the bank obtains about the customer through internal sources, which is represented by the customer’s request when
granting credit, during its validity, or when renewing it. In addition, through the bank's previous experience in dealing with the customer, or through documents such as accounting documents and legal documents.

Moreover, the financial credit information can be obtained from external sources through the exchange of information between banks, or through various administrative bodies such as the real estate and commercial registry (Barakat, 2006:62). We will discuss the legislative and customary source of this function in the following two requirements.

The first requirement: The legislative source of the bank's obligation to provide information. The bank's obligation to provide certain information to specific parties is mentioned in various legislations, which we will talk about next.

### 2.1.1 Section one: substantive legislation

These legislations may be financial or commercial legislations.

**First: Financial Legislation:** The aim of the legislator in obliging the bank by legal texts is to provide certain information to specific parties to protect the public interest, and not to hinder the work of these agencies. It also makes those banks a safe place for individuals who are interested in hiding that information (Al-Jilawi, 2009). We will discuss these legislations.

**Central Bank Law and the law of banks:** According to the Central Bank Law, the Jordanian legislator obligated banks to provide information to the Central Bank without being bank secrecy an obstacle to providing it.

The article (37/B) of the Central Bank Law requires that the Central Bank provide a clearing service to banks between them, and the service of exchanging credit information for their customers.

In addition, article (45) of that law stipulates that other departments, institutions and companies, which are subjected to the control of the Central Bank, shall provide it with any documents, data or information that deems necessary to carry out its tasks in accordance with the law and legislation in force.

The information and data provided are confidential and may not be accessed.

Whereas, the article (50/C) of the aforementioned law stipulates that the Central Bank may request any data or information from any public institution if the Central Bank deems that data or information to have an impact on financial stability within the Kingdom.
For the article (26) of the Banking Law, it stipulates that the bank’s general manager is obligated to provide the Central Bank with the information and data it requests in accordance with the provisions of this law, the regulations and orders issued pursuant to it.

The legislator aims with these articles not to make the secrecy of bank accounts an obstacle to the Central Bank in carrying out its function, and allow the exchange of information between it and other banks, as well as between banks among themselves. The bank is not considered committing the crime of disclosing the banking secret in these cases (Farag, 2000:170).

The Anti-Money Laundering and Terrorist Financing Law: The banking sector is considered one of the most important means in which money-laundering operations are carried out, especially in developing countries or countries where there is no or less control over money laundering operations. The banking sector is considered the first resort for owners of illegal funds to launder their money through it (Safar, 2001:64).

People who want to launder their money (the cleaners) resort to open a current bank account, obtaining a large number of checks or acceptable payment bank transfers for bearer. Then, they begin to use them to be traded in fictitious operations or projects inside or outside the country (Zaghloul, 1999:716).

It is vital for the interest of banks to detect money-laundering operations and combat them. The benefit of this is to preserve their credit and banking reputation from exposure to collapse in the event if these operations were carried out through them (Awad Allah, 2005:104). Banks are obligated to provide information to the appropriate authorities upon knowledge of the existence of suspicious operations of money laundering. Money laundering is a process aimed to legalize the funds that obtained from an illegal source (Moebius, 1993:2).

The Anti-Money Laundering Law required, that an independent anti-money laundering unit must be established in the Central Bank, and for that reason, banks are obligated to notify this unit about any suspected operations that involving money laundering that referred to it in article (4) of this law. This unit is linked to the Governor of the Central Bank of Jordan; it has the authority to request, analyze and investigate information related to it, and to provide the appropriate authorities with this information when necessary. Financial institutions must take the initiative to provide this information.
without obtaining prior permission from any party (for example, the customer or the court).

The Anti-Money Laundering Law required, that an independent anti-money laundering unit must be established in the Central Bank, and for that reason, banks are obligated to notify this unit about any suspected operations that involving money laundering that referred to it in the article (4) of this law. This unit is linked to the Governor of the Central Bank of Jordan; it has the authority to request, analyze and investigate information related to it, and to provide the appropriate authorities with this information when necessary. Financial institutions must take the initiative to provide this information without obtaining prior permission from any party (for example, the customer or the court).

The position of the Jordanian banking law, and according to the article (93), if the bank knows that the implementation of any banking transaction, to receive or pay any amount related, or it could relate to any crime or any illegal act, it is obligated to inform and notify the Central Bank. This is not considered a breach of the obligation to comply with banking secrecy, and neither the Central Bank nor the bank bears any responsibility as a result (Tarawneh, 2005: 11).

**Tax legislations:** The laws grant the competent official authorities wide powers to examine, audit and request information from the persons or entities subject to them, such as banks (Ghossoub, 2007: 403). The Jordanian income tax law (Jordanian Income Tax Law, 2014) is obliged banks to provide the necessary information to impose the tax, which is required by the Income Tax Department.

In article (19/C), the legislator also gave the tax assessor, with a written authorization from the Director of the Income Tax Department, the permission to enter any place of business, such as a bank, to view the entries, books, and documents related to tax deduction. He may seek clarification from those concerned about the deduction and ensure that it is carried out.

The article (23) of the Income Tax Law allows the tax director or the employee, whom he authorizes in writing to request the necessary information. Moreover, he has to abide by confidentiality, and signs a declaration to preserve the secrets that he comes to know by virtue of his work (Al-Atair, 1996:174).

The article (45) of the Central Bank Law stipulates that the entities subject to the supervision of the Central Bank; to provide it with any documents, data or information
that deems necessary to enable it to carry out its duties in accordance with this law and the enforceable legislations. The phrase “enforceable legislation” mentioned in Paragraph (A) includes legislation related to taxes (Kazem, 2013: 221).

2.1.2 Second: commercial legislations

2.1.2.1 Reserving what the debtor owes to others

Seizure of the debtor’s money at the bank aims to prevent him from disposing of part of his money so that he does not attempt to smuggle or conceal it to harm the creditor (Al-Nadawi, 1988:295).

This reservation is one of the precautionary measures that the creditor resorts to in order to preserve his/ her rights through reservation with a third person. This reservation is a precautionary reservation, according to that, the creditor can put the debtor’s money or movables in the custody of others, and here it is – the bank – in the hands of the judiciary (Azmy, 1983:148).

It is possible to seize the funds deposited in banks, whether this sequestration is a precautionary sequestration due to the filing of a lawsuit against the customer or, as it was an executive seizure to implement a judicial ruling or an executive report against the client. The bank does not invoke banking secrecy when seizing the client's money that is in its possession (Al-Atair, 1996: 166).

2.1.2.2 The case of the judicial dispute between the bank and its customer

According to article (74/E) of the Jordanian Banking Law, the bank can disclose some data or information that are related to the customer's transactions in order to prove its right in the judicial dispute that arose between the bank and the customer regarding those transactions (Al-Ajmi, 2010:110).

2.1.3 Procedural legislations

2.1.3.1 The bank giving information when issuing the testimony

The testimony is one of the evidences in civil and penal matters, and its performance is a legal obligation on the shoulders of every person who is asked by the court to do so. The question that arises here is; does the bank have the right to refrain from testifying relying on banking secrecy in the case that its performance requires the disclosure some information about customer accounts?
We should differentiate between whether the testimony is in front of the Jordanian criminal court, as the laws do not allow abstention from giving testimony to prevent obstruction of justice. In addition, the public interest takes precedence over individual interests; in this case, the elements of the accusation cannot be established without a certificate from the bank through its employees (Al-Atair, 1996: 123), and testimony in this area may affect the criminal judgment (Al-Sarheed, 2010: 124).

As for the testimony before the civil courts, the interest in the testimony in civil matters pertains to a special interest. Therefore, the client’s interest that is protected by the banking secret is more important (Al-Atair, 1996: 133).

2.1.3.2 The bank giving information in because of issuing a certificate about the reasons for refusing to cash the check

The article (74/C) of the Jordanian Banking Law permitted the bank to issue a certificate to identify the reasons for refusing to cash any check based on the request of the right holder, because the right action is to cash the check (Al-Ajmi, 2010: 101). If there is an obstacle to cashing the check, the bank must issue a certificate indicating the reason for not cashing it (Al-Sarheed, 2010:121).

2.1.3.3 The client's consent to provide information related to his account

This was stated in the text of Article (72) of the Banking Law, which excluded from the rule of confidentiality of customer accounts the approval of the account holder to provide information related to his account. The approval must be in writing with the satisfaction of the customer himself, and issued by the free and sound will of the customer (Al-Sarheed, 2010:118).

2.1.4 The customary source of the bank's obligation to provide financial credit information

If the bank is not required to provide the information, here raise a question, is the bank freed from the obligation to provide information even in the case when it knows that this information has a role in a decision-making in commercial transactions? Does the bank have the right to remain silent when the interests of its client are threatened even if the client does not request the information? Is the bank's silence compatible with the duty of honesty and good faith in transactions?
Jurisprudence was divided in the extent to which the bank is obligated to provide information to a trend that supports obligating the bank to provide information to protect the interests of its client. On the other hand, the direction of not obligated to do so.

2.1.4.1 The first subsection: The bank's obligation to provide information to protect the interests of its client

The bank's obligation to provide information is a duty towards the person requesting it, especially if he does not have experience in the banking and financial field, banks are required to be clear to their customers. The bank must provide information in the event that the client's interest is endangered or damaged because of a process he/she intends to carry out. The banking activity is characterized by the complexity of its operations and the many risks surrounding it. Therefore, the bank is obligated to provide protection to people wishing to obtain a minimum level of guarantees before commencing commercial operations (Gulphe, 1984: 8). It also imposes on the bank an obligation to considering care in providing information to its customer in order to protect him/her from risks. As some banking and credit operations have their own characteristics (Al-Shawarbi, 2005:153).

The banking tradition has settled that providing information is one of the banking services that banks are entitled to provide if it does not violate the commitment to banking secrecy. Particularly, it helps to protect banks and support their contribution to commercial and economic activity, and prevent abuse or damage to the financial market (Bariri, 2007:123).

The article (3) of the Jordanian Trade Law stipulates that the judge may seek guidance from case law, jurisprudence, and the requirements of fairness and commercial custom if there is no legal text that can be applied. Likewise, article (4) of the Trade Law stipulates that the judge shall apply the commercial custom unless it appears that the contracting parties intended to violate it or if it was inconsistent with a mandatory legal provision. Thus, the banking custom is one of the sources of the bank's obligation to provide information when there is no legal text authorizing it (Hamdiya, 2013:228).

2.1.4.2 The second subsection: The failure of the bank to provide the information

Part of the jurisprudence, and many judicial rulings, believe that the bank is not obligated to provide information to the customer when he requests it. Where the French
The jurist (Vasseur) goes that the bank's obligation to provide information vary according to the role that the bank plays in the financial and economic system in general.

Information that is provided by the bank is treated voluntarily within the scope of tort and outside the contractual scope. It is not obligatory for the bank to provide it. It only commits to what is asked of it or promised. The jurist (Vasseur) also confirms that there is no general and permanent obligation imposed on the bank to provide information, as it is not the accountant expert (Vasseur, 1983: 974).

The justification for this view is also that the bank is a money dealer, not a business manager who performs economic duties towards his clients; it does not have the right to interfere in their affairs. The law does not oblige it to do so; it is unacceptable for it to carry out economic studies on clients' projects without their request (Vasseur, 1978: 64).

The contractual source of the bank's obligation to provide financial credit information

The contractual source of the bank's obligation to provide financial credit information arises either from a direct and independent contract in which the information is provided to whoever requests it, or for an indirect contract, a follower of another contract. This is what we will present to it in the following two requirements.

2.1.4.3 The first requirement: The direct contractual source of the bank's obligation to provide financial credit information

A contract for providing financial credit information is established between the bank and the information requester. This contract is defined as: the agreement concluded between the bank and the information requester, where the bank is obligated to provide the information in exchange for the obligation of the requester to pay the price. Thus, the obligations of the two parties are contractual, and the responsibility for breaching those obligations is a contractual responsibility (Kazem, 2013:204). This contract specifies the type of information required, if the bank's obligation is limited to providing the information available to it, or is it committed to searching and investigating information that is not available to it, it also includes the remuneration received by the bank and the method of payment. If the contract omitted something of that, the court shall, when a dispute arises, determine it in accordance with custom, banking habits, and the rule of good faith in transactions (Escarra, et al., 1973:154). The bank's refusal to contract with the information requester is considered widely excluded. Because providing information
is one of the banking services that can satisfy or attract customers (Abdel-Hamid, 2008: 28). The contract is considered a netting contract, in addition to being a binding contract for both sides (Hosni, 1986: 203).

2.1.4.4 The second requirement: The indirect contractual source of the bank's obligation to provide financial credit information

The obligation to provide information may arise from an implied, indirect contractual obligation that is subsequent to another obligation. This is through business and contracts concluded with the client. We talk about examples of these contracts next.

2.1.5 First: The guarantee contract

Banks usually ask their customers to provide guarantees in return for obtaining banking facilities. These guarantees may be personal or in kind. The idea of personal guarantees is based joining one or more receivables to the debtor, whereby the creditor can enforce any or all of these receivables to obtain his right. Among these guarantees is the personal guarantee, where one person pledges to another to fulfill his right with another debtor. He shall provide the bank with a personal guarantee from a person who guarantees that the customer will fulfill his obligations (Shehata, TD: 207).

The guarantor is obligated before the bank to pay the debts of the client (the guarantee) if he/ she fails to do so. When the guarantee contract is concluded between the bank and the guarantor, he/ she must be informed of the amount of the guaranteed debt. However, after the signing the contract, some changes may occur in the guaranteed debt, or the customer may begin not to commit to paying the debt installments. Is it permissible for the bank to inform the guarantor of the information that occurred after the conclusion of the contract? (Kazem, 2013: 210).

The Jordanian Banking Law did not include an explicit provision on the possibility of giving information to the guarantor, but it is possible to refer to Article (74/D) thereof, which is related to the exceptions to banking secrecy.

2.1.6 Second: The bank loan contract

Once the loan contract is concluded, the bank has an obligation to provide information related to the soundness of the loan to be concluded, and the possibility of
completing the process. However, if the bank discovers that this process is not possible, it must advise the customer to abandon it (Hosni, 1986: 230).

The bank is considered negligent in its obligation to provide information to the customer if it is related to securing the repayment of the loan and did not provide it to the borrowing customer. The bank must also clarify the risks that may be caused by the operation that the customer is carrying out (Shehata, TD: 327). The Jordanian Banking Law did not regulate the bank loan contract within the financial activities mentioned in the text of Article (37).

It can be deduced implicitly from Article (74/d) of the Jordanian Banking Law, this is due to the possibility of the bank giving information in a dependent manner when concluding the bank loan contract, this is to ensure the safety of granting credit in the event of the conclusion of a bank loan contract.

3 METHODOLOGY

The most important goals of this study were met by using the descriptive technique to identify the phenomena, position it in the appropriate context, and explain all the conditions around it. This is the first step in determining the study findings relevant to the research and in crystallizing the suggestions and proposals, the researcher has made to end the debate it includes. The research followed the descriptive and analytical approach in preparing the research to learn about the texts of the law, judicial rulings, and jurisprudence. To access sources of banks' obligation to provide financial credit information in accordance with Jordanian Legislation as an exception to the principle of bank secrecy.

The research plan: The legal source of the bank's obligation to provide information, the legislative source of the bank's obligation to provide information, the customary source of the bank's obligation to provide information, the contractual source of the bank's obligation to provide information, the direct contractual source of the bank's obligation to provide financial credit information and the indirect contractual source of the bank's obligation to provide financial credit information.

As for the laws, the laws used to achieve the objectives of this study are: Central Bank of Jordan Law No. (23) of 1971 and its amendments. Jordanian Banking Law No. (28) of 2000 and its amendments. Anti-Money Laundering and Terrorist Financing Law.
Sources of Banks’ Obligation to Provide Financial Credit Information in Accordance with Jordanian Legislation, as an Exception to the Principle of Bank Secrecy


4 RESULTS & DISCUSSION

In this research, we dealt with the bank’s obligation to provide financial credit information in Jordanian law as an exception to the principle of bank secrecy, and we reached the following results: The bank’s obligation to provide financial credit information arises either as a direct effect of an agreement concluded between the bank and the information requester or based on the existence of a legal text obligating the bank to provide information to certain parties, and it may be a result of banking customs.

There is no law on banking secrecy in Jordan. Rather, this obligation was mentioned in Article (72) of the Jordanian Banking Law, which stipulates commitment to banking secrecy and not violating it, as well as exceptions to this rule.

The legislator expanded by providing for cases in which the bank is obligated to give the customer information, noting that this is an exception to the principle of banking secrecy.

The existence of effective supervision by the Central Bank on licensed banks reduces the percentage of money laundering crimes and prevents the exploitation of the principle of banking secrecy to hide their business or the true source of their money.

5 CONCLUSION

The study concluded that the legislator should enact a specific law on banking secrecy due to its importance, as well as taking into account not to expand on the exceptions in accordance with the principle of banking secrecy. On the other hand, this study contributes to reducing the granting of exceptions to the principle of bank secrecy. Also, Developing a law on banking secrecy in Jordan. The article (74/D) is to be amended so that the exchange of information is limited between banks, and companies do not have the right to bank inquiries. The Banking Law did not explicitly refer to the possibility of giving information to the sponsor. It would have been more appropriate for the legislator to include the guarantor to ensure the safety of granting credit and to prevent provoking conflict in the future between the contracting parties. In addition, giving information to the guarantor does not constitute a violation of banking secrecy because when the customer provided the bank with a person to guarantee him in return for obtaining a loan
from the bank, for example, he implicitly agreed to the guarantor's access to the information related to the sponsored debt.
REFERENCES

Abdel-Hamid, Ashour Abdel-Gawad (2008), The Bank's Role in Providing Information Service, Dar Al-Nahda Al-Arabia, Cairo, p. 28

Al-Ajmi (2010), Limits of the Bank's Commitment to Banking Secrecy and the Legal Implications of Disclosure, Master's Thesis in Private Law, Middle East University, p.110.

Al-Ajmi, Mannaa Saad, Limits of the Bank's Commitment to Banking Secrecy and the Legal Implications of Disclosing it, previous reference, p. 101


Al-Atair, The Secret of the Banking Profession in Jordanian Legislation, previous reference, p. 166

Al-Atair, The Secret of the Banking Profession in Jordanian Legislation, previous reference, p. 132

Al-Atair, The Secret of the Banking Profession in Jordanian Legislation, previous reference, p. 133


Al-Sarheed, Legal Aspects of Banking Secrecy, previous reference, p. 124

Al-Sarheed, Legal Aspects of Banking Secrecy, previous reference, p. 121.

Al-Sarheed, Legal Aspects of Banking Secrecy, previous reference, p. 118.


Awad Allah, Safwat Abdel Salam (2005), the economic effects of money laundering operations and the role of banks in combating these operations, research published in the Journal of Law, University of Law, Issue 25, p. 104.


Bariri, Mahmoud Mukhtar Ahmed (2007), Commercial Transactions Law - Banking Operations - Commercial Papers, Dar Al-Nahda Al-Arabiya, Cairo, p. 123

Farag, Mohamed Abdel-Latif (2000), Criminal Protection for Bank Credit, Dar Al-Nahda Al-Arabia, Egypt, p. 170.
Ghossoub, Abdou Jamil (2007), the new banking inquiry in the work of banks from the legal and economic points of view, the proceedings of the scientific conference at the Faculty of Law, University of New Law in Banking Techniques, Al-Halabi Human Rights Publications, Lebanon, p. 403.

Gulpe (pierre), le secret professionnel du banquier en droit francais et droit compare, revue trimestrill de droit commercial, 1984, p8

Hamdiya, Sources of the Bank's Obligation to Provide Financial Credit Information, previous reference, p. 228

Hosni, Hassan (1986), Banking Services Contracts, Dar Al-Taawun for printing, Cairo, p. 230

Jordanian Income Tax Law No. 34 of 2014 published in the Official Gazette on 12/30/2014

Kazem, Hamdiya Abboud (2013), Examining the sources of the bank’s commitment to providing financial credit information, a research published in the Journal of Rights, University of Karbala, fifth year, first issue, p. 221

Kazem, Hamdiya Abboud, Sources of the Bank's Obligation to Provide Financial Credit Information, p. 204

Moebius (Gerald), (1993), blanchiment de fonds, revue international de police cirminelle, 1993, p2.

Safar, Ahmed (2001), Banks and Money Laundering, Union of Arab Banks, Beirut, p. 64
Shehata, Salah Ibrahim, Controls for granting bank credit in a legal and banking perspective, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, p. 327


Vasseur, (1983), des responsabilite encourues par le banquier a'r aison des information avais et conseilie asescline,revue banquie, p974

Vasseur, la des , (1978), responsabilite civil du banquier dis penteur de creidit, paris, p64.

Zaghloul, Khaled Saad (1999), the phenomenon of money laundering and its effects on the national economy, research published in the Law Journal, Kuwait University, p. 716.