

The Effect of Forced Execution Procedures on the Obligation to Bank Secrecy^(*)-

د. سيبيل جعفر حاجي عمر

د. ياسر باسم ذنون

مدرس القانون المدني

أستاذ قانون المرافعات والإثبات المدنية

كلية القانون و العلوم السياسية/ جامعة دهوك

كلية الحقوق/ جامعة الموصل

الاستخلص

تسعى البنوك عند ممارسة نشاطها دائماً الى تلبية رغبات عملائهم في حفظ كل ما يخص ودائعهم، ومنها حفظ الجواهر والحلي والمصوغات الذهبية والاشياء الثمينة الاخرى، وذلك من خلال تقديم خدمة لهم تشمل تخصيص خزانة معينة للعميل في مكان يعده المصرف لهذا الغرض، وذلك في اطار السرية المصرفية.

تعد السرية أحد ضمانات المصرفية، والتي تحث على اقبال المودعين أكثر على الخدمات البنكية. إلا أن رفع السرية عن المعلومات والبيانات المصرفية يجب أن يبنى على أحكام قانونية تحدد للبنك الحالات التي يجوز له ذلك.

اختلفت التشريعات في مدى الالتزام بالسرية الى اتجاهين أحدهما السرية المطلقة وآخر نسبية. كما ان هناك خلاف حول تحديد الطبيعة القانونية للعقد المبرم بين العميل والمصرف الا انه يمكن تكييف هذا العقد بانه عقد مركب ذو طبيعة خاصة. وقد كيف المشرع العراقي على غرار التشريعات المقارنة الأموال الموجودة في الخزنة أو الصندوق باعتبارها أموالاً مودعة لدى الغير ، كما اقر المشرع العراقي بالسرية المصرفية النسبية وليست المطلقة.

ويلاحظ أن قانون المصارف العراقي رقم ٩٤ لسنة ٢٠٠٤ لم يتضمن نص قانوني بهذا الشأن، لذا ندعو المشرع العراقي الى تضمين نص خاص في قانون المصارف يعالج هذه الحالة بحيث تسمح بمباشرة اجراءات التنفيذ الجبري على موجودات الخزينة الحديدية،

(*) أستلم البحث في ٢٠٢١/٥/١٢ *** قبل للنشر في ٢٠٢١/٧/٦.

وفي نفس الوقت لا تشكل عملية الإفصاح من قبل المصرف بناءً على هذه الإجراءات اختلافاً بالسرية المصرفية.

الكلمات المفتاحية: السرية المصرفية، الودائع، البنوك، العميل.

Abstract

The bank provides many functions and services including seek to meet the wishes of their customers in keeping all matters related to their deposits, including the preservation of jewels, ornaments, gold mats and other pricey things, by providing them with a service that includes allocating a certain treasury to the customer in a place prepared by the bank for this purpose, within the framework of bank secrecy. Banking secrecy play an important role in increasing the volume of deposits with banks and thereby increasing investments, which requires the application of legal provisions that may conflict with the bank's instructions to disclose customer information or deposits, affecting bank secrecy.

There are two trends related to the bank secrecy in most laws applied in different countries, absolute bank secrecy and relative bank secrecy. There is disagreement over the legal nature of the contract between the client and the bank, but this contract can be adapted as a composite contract of a special nature. The Iraqi legislator and the comparative law have gone on to consider the money in the bank's treasury as money deposited with others, and the Iraqi legislator acknowledged the bank's confidentiality, not absolute.

Key words: Bank secrecy, banks, deposits, client, investment.

1. Introduction

In the past, banks sought to satisfy their customers' desire to preserve papers, documents and other means containing their secrets, as well as their desire to preserve their jewelry and ornaments, gold jewelry and other valuables, and then the banks would take the initiative to provide them with a service, including the allocation of a certain treasury to the customer in a place prepared by the bank for this purpose, thereby reassuring the customer of valuables that may be feared of theft or destruction. The credit imposes existence of trust and reassurance between banks and their customers. This can only be strengthened by the mean of confidentiality. As it is known, confidentiality at work and the bank requires things that no one else should know about as the best way to keep them hidden. From this point, the legislature started to adopt the idea of bank secrecy and form it in legal frameworks represented in laws passed on confidentiality that regulate banking activity in general.

Importance of the topic and the reason behind choosing it.

Bank secrecy is a feature of banking, because the bank's relationship with their customers is based on the trust, leading the bank to keep secret, not the financial secrets of its customers. The bank secrecy is of great importance in maintaining the increase in the volume of deposits with banks and thus increasing investments. Therefore, I decided to address a vital subject regarding the identification and implementation of problems, as a result of applying legal provisions that may conflict with the bank's instructions to disclose information, accounts or deposits of customers, which affects the obligation of the bank to bank secrecy.

Research Problem :

In studying the effect of forced execution procedures on obligation to bank secrecy we need to find answers to the following questions:

1- **What is bank secrecy?** Is it a form of professional secrecy in general or not?

2. **What is the purpose of regulating bank secrecy?** Is it limited to the protection of personal rights or are there other considerations of care such as considerations related to the protection of the interest of the bank and the protection of the public interest of the community?

3- **Is the obligation with confidentiality an absolute or relative obligation?** Is it possible to disclose the client's information and private data in case of seizure of the client's funds? Or does the bank keep the secret and protest it to face all these cases?

- Research Methodology :

Based on the comparative approach and in order to complete the research structure, we will compare Iraqi Laws with the Egyptian Trade Law. References are to be made to the position of the French legislator where necessary.

Research Structure :

The research paper is divided into two chapters as follows:

Chapter I: The concept of bank secrecy.

Section I: The definition of bank secrecy

Section II: The considerations underlying bank secrecy

Chapter II: The provisions of service banking operations

Section I: The customer's relationship with the bank

Section II: To determine the procedures for seizing funds in the treasury.

Conclusion.

2. Chapter 1

The Concept of Bank Secrecy

Banking is based on several bases; the most important one is the credit. It requires a pure trust between the bank and the client. This trust does not arise only within the framework of credit. This is related to the client's information and data, which led the legislature in most countries to pass regulation that govern the relationships between the client and the bank, and at the same time ensure the protection of the interest of the client, especially their banking secrets. In order to understand the concept of bank secrecy, it is important to find a definition of bank secrecy, its legal concept, its types and the considerations underlying it through the following two sections:

2.1. Definition of Banking Secrecy Linguistically and terminologically

The term banking secret consists of two parts term (secret word) and the second (banking word). Hence, references should be made to the linguistic meanings in order to obtain the definition of banking secrets agencies:

First: Definition of the secret in the language and in terminology: Linguistically, secrecy means having what to keep up with, what he was not, and he did not know. The thing is confidential, that is, its concealment, and the secrecy is derived from the secret⁽¹⁾ and thing secrecy: it is good to

(1) Ibrahim Al-Anis Attia Al-Sawahi and others. The Intermediate Dictionary:1st P .1st Edition. Dar Al-Wawawaj, Beirut, 1990, P. 426.

be secret and show off which is opposites⁽¹⁾ "They will hide the remorse when they see the suffering"⁽²⁾ and the secret is all that is kept secret and secret or all that one is keeping in one's self or what one is secret with in one's self of things that one intends to do, and the plural is secrets and form this, the word secret is derived. It is in the sense of doing something subtle³.

Terminologically: As for the term: it is known as discreet, concealment and non-public, especially in the legal concept and in a way that makes it far from the knowledge and observation of others who may actually be affected or the event or something that is the subject of speech⁴.

Due to the importance of the secret in the life of society in general, the jurisprudence differed in its definition according to the different angle from which the secret is seen. In the realm of banking known by some⁽⁵⁾ that all the unknown information and data would affect the dealing with the client of the bank or his trust or affect his financial or social situation in general.

Second: Banking in terms of language and terminology

The word banking derives from the exchange that means in language anything that spends to have something else i.e. money is exchanging to another currency such as dinars to be spent to dirhams so it is said to spend the money

(1) Jamal Al-Din Mohammed bin, Makram, Ibin Manzor. Lisan al-Arab, Volume 4, Dar Sader, Beirut, Lebanon, 1990, P.356-357.

(2) Surah Younis Al-Ayah (54)

(3) Youssef Mohammed Reda. Contemporary Arabic Dictionary, Lebanon Library, Beirut, 2006, P. 0863.

(4) Abdulqadir AL-Utair. The Secret of the Banking Profession in Jordanian Legislation, 2nd Edition, Dar AL-Thaqafa for Publishing and Distribution, Amman, 1996, P.11.

(5) Fadi Fouad Abibadat. Legal Dimensions of Banking Secrecy (Comparative Study), University of Oman, Graduate Studies, 2005, P.12.

exchange ⁽¹⁾.The bank is a place where exchange is carried out.

The bank is known as a commercial shop that trades precious metals, money, securities with rights in kind and brokerage between clients⁽²⁾.Therefore, through the linguistic definitions of the term banking secrecy, it can be to defined as a banker's concealment of the secrets and data of the bank's clients and their banking dealings from others.

Legally, according to our knowledge, the Iraqi Banking Law No. (94) of 2004 does not mention the definition of the term bank secrecy, this is justifiable as it is not preferable for the legislator to introduce definitions of terms, but it is a task that lies with the jurisprudence, but rather the banking secrecy is mentioned in Chapter Eight From the abovementioned law within Articles (49-52).

The jurisprudence defines³ the banking secret that it precedes to every order, or information or documents that reaches the bank's knowledge about its client on the occasion of its activity. It is intended that the customer has referred it himself to the bank or may have contacted the bank's knowledge from other or, it is all information or data which are not known with its precise components or in its final form, that may affect the dealings with the bank's customer or their trust or affect their financial and social situation in general ⁽⁴⁾.

-
- (1) Jamal Al-Din Mohammed bin Makram, former source, P. 87.
 (2) Khaled Abdullah Jarak Al-Hadi, Arbitration Organization in Financial and Banking Institutions, a Comparative Study, House of Thought and Law for Publishing and Distribution, Mansoura, Egypt, 2018, P. 187.
 (3) Ali Jamal Aldin Awad, Legal Banking Operations, 4th Edition, Dar AL-Nahza AL-Arabia, Cairo, P. 9.
 (4) Muhammad Ahmad Muhammad, Mona Mushtaq, Iraqi banks 'commitment to banking secrecy, a paper submitted to Baghdad=

It has been known that the duty of the banker to keep the sure secret of all that reaches his knowledge about a natural or legal person who deals with him while performing his professional work. According to the above definitions, the banker should keep secret information that reaches him because of his professional work.

At this point we need to distinguish between banking secret and the secret of the banking profession, which is known as the obligation of bank employees to preserve the secrets of their customers and not disclose them to the others, as the bank is entrusted with it by virtue of the profession especially, the bank's relationship with its customers is based on trust that is based on the bank's concealment of its customers' secrets and their financial status⁽¹⁾.

It is noted that the banking secrecy as its mission their employees should to keep all information and data of customers from others because the bank is regarded as the secret place and the relationship between the two sides is based on the trust and credit. So it can be said that banking secrecy is a form of professional secrecy⁽²⁾ everyone who works in a particular mission should to respect their mission including the banking profession.

2.1. 1. Theories of banking secrecy:

There are two approaches of banking secrecy according to the adherence in most laws that apply in different countries:

=University, College of Administration and Economics, Issue 36, 2015. P.112.

(1) Abdulqadir Al-Atair (n 2) 14.

(2) Ali Jamal AL-din Awad (n4) 1181.

First: Absolute bank secrecy:

This type is considered to be an absolute secret, and is not subject to any exception, because the legislature determines the rules that should to be respected which is supported by jurist Charles Meto. Absolute obligation to bank secrecy is justified by the need to protect the client's trust in the bank, and on this basis the bank employee can not violate this obligation under any circumstances ⁽¹⁾.

The most important consequence sought by this approach is the expansion of the objective scope of banking secrecy, because taking this direction makes the banking secret not only the information given by the client to the bank, but also includes all that the customer reaches by virtue of the profession whether the customer requested or not. In addition, taking this approach leads to the expansion of the personal scope of banking secrecy including assistants, employees and anyone who has accessed banking information as his mission such as consultants, legal and financial⁽²⁾.

Second: Relative banking secrecy:

This theory appeared in the late 19th century. The supporters of this approach believed that there may be exceptions to the principle of adherence to banking confidentiality. Therefore, the secret to which banks are committed can be disclosed whenever a public or private interest better than to secret it. As a general rule, that banks are committed to keep the secret of information or their customers secrets unless there is another legal provision obliging it to disclose this information. In this way, the

(1) Turki Musleh Musaliha, The Impact of the Western Recovery Law on Bank Secrecy Accounting, Research presented to Sharjah University Of Legal Sciences, Volume 17, Issue 8, 2017 P. 42.

(2) Ali Jamal AL-din Awa (n4) 197.

obligation to bank secrecy is a relative obligation that could be disclosed as we have mentioned earlier in the care of the first interests however prevent it use for illegal purposes⁽¹⁾.

As for the position of Iraqi law, we will know its position during the second topic if it takes two directions.

Supporters of this approach are based on the fact that this principle takes into account the will of the secret owner and allows him to disclosure whenever his interest requires it, contrary to the previous approach that made the obligation to the banking secret an absolute obligation which may be detrimental to the interest of the client if required by the latter to disclose the bank as entrusted by the facts, as well as allowing the agreement between the supreme social interest and the legal protection of the banking secrecy, and this result is only achieved by permitting the possibility of raising the secret whenever necessary⁽²⁾.

The most important thing that follows this approach is that the duty to keep the bank secret in cases provided by law, which at the same time are considered the reasons for the legalization, does not negate the bank's responsibility in the event of disclosure⁽³⁾.

2.2. Considerations underlying bank secrecy

The right in the confidentiality is regarded as a collateral right of personality⁽⁴⁾, as long as everyone has the right to keep or disclose their secrets to those who have trusted with them and at that same time they should to

(1) Mohammed Abdulatif Faraj, Criminal Protection of Bank Credit, without Publishing House, Cairo, 2006, P. 142.

(2) Turki Musleh Reconciliation (n 8) 44.

(3) Ali Jamal AL-din Awad, former source (n 4) 1181.

(4) Berk Fares Hussein al-Jubouri, Personal Rights and Civic Protection, Master's Degree to The Faculty of Law, Mosul University, 2004, P. 79.

obligate to keep their secrets, since the legal system of banking secrecy has been based on the bank's obligation to preserve the information and data of its client entrusted to him on the occasion of his activity.

In particular, the relationship is based on considerations of trust and reassurance, personal consideration and the bank has the right to choose its customers, as well as the protection of financial secrets is only a protection from the community and the public interest because its disclosure leads to disturb the public trust which is banking mission. In addition, this is not only affecting the interest of the bank but also affect the confidence of the customers who bank dealt with ⁽¹⁾. Therefore, the considerations underlying the banking secrecy are those related to the protection of the right to privacy, public interest and the interest of the bank and this is what we will show in the following branches.

Therefore, the considerations on which the banking secret is based on are protection of the right to privacy, the public interest and the interest of the bank which is going to be explained it in the next parts.

2.2.1. Protecting the right to privacy

Every person has the right to protect his private life, as stipulated in the 1948 Universal Declaration of Human Rights (Article 12) (No one is subjected to arbitrary interference in his private life, family, residence, correspondence or campaigns in his honor and reputation).

Every person has the right to protect the law from such interference ⁽²⁾ or to those campaigns (as confirmed by the Law on State Administration for the Transitional Period

(1) Muhammad Abdulwadud, Criminal Responsibility for Spreading Speed. Dar Wael for Publishing, 1999, P. 29.

(2) Universal Declaration of Human Rights issued 10/8/1948.

that began on 07/30th/2004) as it presented in Paragraph (H), Article (13) of which says (The Iraqi has its right privacy of his private life)⁽¹⁾ This means that life of Private citizens are a sanctity protected by law. Every person has the right to keep and hidden their private life secrets from the public, and protected from interference by others. This includes all aspects of his private life such as his way of life, family and health affairs, his financial and economic affairs such as his banking and other transactions⁽²⁾.

Because of the role of banks in supporting economic projects, finding and distributing credit is increased, banks have been able to collect and store much information and data about their customers, especially credit and personal data, and the cost of breaching the confidentiality obligation would be high and harm to the owner of the secret⁽³⁾.

The importance of bank secrecy is clearly highlighted when the client is a trader, it is better for him to keep hidden his bank accounts from his competitors, for fear of being exploited during the financial crises that the trader is going through illegally, they buy debts on him or demand their debts in order to seize his money and tighten the noose on him, they put him in bankruptcy and remove him from their way, rather than to disclosure of the financial crises that that trader is going through to the public, which undermines confidence in him and then dismisses his customers or lack of new clients coming to him. This affects the trader, because customers are the essential component for the

-
- (1) Zeina Ghanem Al-Saffar, Banking Secrets (a comparative study), PhD thesis submitted to the Faculty of Law at the University of Mosul, 2005, P.11.
 - (2) Jalal Wafa Mohammedin, The Role of Banks in The Fight against Money Laundering, Dar AL-Jamea AL-Jadded, Egypt 2001, P. 64.
 - (3) Ibrahim Hamed Tantawi, Secret Criminal Protection Bank Information About My Clients in The Light of The Law, Dar AL-Nahza Al-Arabiya, Egypt, 2005,P. 8.

commercial business, as the more of customers increased, leads to the trade becoming successful and prosperous⁽¹⁾.

2.2.2. Protecting the interest of the bank

The prosperity and development of the bank depends on the number customers and their movements who deal with, because the work of bank depends totally on their clients. The bank's interest is to keep its business hidden because it relates to the interest of customers who secure it on their financial secrets, which it must keep, not out of the legal protection of the secret⁽²⁾.

Therefore, bank employees must be obliged not to violate the client's special confidentiality obligations relating to information and data and to keep them confidential, away from the knowledge of others, whatever the reasons for disclosing them. Thus, any mistake in this obligation will destabilize the trust and weaken the reassurance that the customer seeks from the bank, leading the client's reluctance to deal with it. Consequently, The bank's loss, both financially and commercially, and all of this does not spare its claim for compensation for the damage caused to the client as a result of the disclosure of his secrets⁽³⁾.

Article 49 of the Iraqi Banking Act No. 94 of 2004 stipulates this obligation by saying that "the bank keeps the secret of all customers' accounts, deposits, security and safes." Or in the case of the client death except with the consent of his legal representative or one of the client's heirs or one of the recommended or only by the decision of a competent judicial authority or the attorney general in an existing legal dispute or because of one of the cases

(1) Elias Nassif, Full in Trade Law, Part 3, Bank Operations, Mediterranean Publications, Lebanon Sanctions Publications, 1985 P. 275.

(2) Elias Nassif (n 3) 277.

(3) Abdul qadir AL-Utair (n 2) 24.

permitted under the provisions of this law, this prohibition remains in place even if the relationship between the client and the bank ends for any reason.

The role of banks is not limited to bringing together venture capitalists and traders, but is much more focused on banks than the most important elements of the economy and in trade in general.

This is the element of trust, and this is what article (3) of the Iraqi Trade Act No. 30 of 1984 states, which stipulates that "trade is an economic activity that must be based on trust, security and strict adherence to the rules of law, and those who do not comply with it are exposed to civil and commercial responsibilities." This shows that the bank's failure to keep its clients' secrets exposes it to legal liability and the payment of appropriate compensation to those affected by the disclosure of the secret, which is one of the implications of the bank in case of its disclosure of bank secrecy, all of which are contrary to the interests of the banking institution⁽¹⁾.

2.2.3. Protecting the public interest

The public interest is one of the best interests of care, attention and protection, as the bank's obligation to confidentiality is not limited to considerations related to the right to privacy, but it extends to the public interest, considering that respect for the individual's private life and his right to keep his financial affairs confidential, and this requires that the interest of society should not be ignored because the interest of the individual is not indispensable to each other⁽²⁾. This is because the violation of the banking secrecy of banks exposes the national economy and the supreme interest of the state to risks, as this is a loss of

(1) Muhammad Ahmad Muhammad (n36) 115.

(2) Abdulqadir AL-Utir (n 2) 27.

confidence in the general credit order as the supreme economic interest of the state⁽¹⁾.

The public interest is considered a consideration justifying the obligation to bank secrecy varies widely and narrowly according to the political system under which the bank exercises its usual activity in relation to its clients.

The matter that led to an increase in the cases in which the banking secret was exposed, the state's authority to monitor and supervise the work of banks expanded⁽²⁾, which leads to the flight of the owners of large capitals and the alienation of foreign capital from delegations to it, due to the lack of a suitable climate for investment.

But if the countries follow the capitalist system, these countries offer a policy based on respect for the banking secret, considering that the secret and freedom are complementary, in such a way as allowing banks to invoke the banking secret to face public authorities, especially since these countries with a free economy do not interfere in economic activity except as an exception, and the most obvious example, when Switzerland rejected the demands of the Allied states to give the German funds deposited to them and had to stop supplying Switzerland with the initial materials from making demands on. It is clear that Swiss banks have been and remain very cautious in order to maintain the confidentiality of banking⁽³⁾.

As for the Arab countries, Egypt was also one of the countries that paid a high level of attention in maintaining bank secrecy, especially after the transformation of its system from the economy oriented to the free economy, it

(1) Saeed Abdeullatif Hassan, Criminal Protection of the Banking Secret, Dar Al-Nahza Al-Arabiya, Egypt, 2004, P. 15.

(2) Dr.Zina Ghanem Al-Saffar, 52.

(3) Abdul qadir AL-Utair (n2)82.

issued the Arab International Bank Law No. 77 of 1971, which dealt with the confidentiality of accounts in it and the lack of access to its documents because of the existence of some kind of control over other banks in Egypt, where this law helped attract large amounts of Egyptian and Arab savings⁽¹⁾.

3. Chapter II.

Provisions of service banking operations

Among other things, banks provide banking services, which are to allocate iron boxes that they rent to their clients in order to put in them valuables and special bonds, such as jewelry, jewelers, secret documents, title deeds, private and family papers, which are feared of theft, destruction or damage, as well as ensure that the secrets of the papers and the items they put in the treasury are not disclosed without being seen, and these boxes are placed somewhere. This place is a room with a number of lockers, each with a specific number⁽²⁾.

The locker room is open only through the bank according to the system and the dates it sets, but the client is free to enter and open the locker with the key that he has to put in it or take from it what he wants without being seen by anyone else, even the bank in which the treasury is in his custody.

The client may put all his money and valuables in the treasury allocated to him by the bank. Is it permissible for a creditor with an executive bond if the debtor refuses to meet voluntarily to take enforcement measures on what the Treasury contains in order to obtain his right to pay for such funds? The creditor can, which is obvious as long as that

(1) Muhammad AbdulWadud. Abdel Hafeez, 33.

(2) Elias Al-Nassif, Banking Contracts, 2nd Edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2012. P.91.

money is owned by the debtor and can be booked, but what is the appropriate booking route? Based on the principle of bank secrecy by the seizure of this money, what are the procedures that follow, and what is the nature of the relationship between the client and the bank? This is what we will show in this research through the following two demands, the first dealing with the client's relationship with the bank, and the second to determine the methods of booking the funds contained in the treasury.

3.1. Customer relationship with the bank

The operations of banks are like commercial contracts, but they are contracts of a special nature created by the banking business and developed by its customs, as it is characterized by the speed of its development, its elimination, overlap, entanglement and follow-up. The importance of these operations appears in two respects, the first is to determine the legal rules to which they are subject and the consequences thereof, because every doubt, ambiguity or disagreement regarding the content of the process and its effects will be a cause of disagreement between the bank and its operation⁽¹⁾.

In terms of the relationship that arises between the bank and the rented customer, it can be observed by the bank placing an iron cabinet at the disposal of the client, as the client can put, as we mentioned, certain things to him in the treasury, such as documents, instruments, jewelry and other things that have material or moral value in the client's consideration. The bank's delivery of the customer to the treasury in exchange for a fee charged by the banks in exchange for handing over the keys to the treasury to the customer and the banks regulate the process of entering the

(1) Aziz Al-Aqili, Explanation of Commercial Law, Commercial Papers and Banking Operations, Part 2, 1st Edition, Dar AL-Thaqafa for printing and distribution, Amman, 2006, P.292.

client to the treasury in order to ensure its security and confidentiality and the customer has full freedom to enter whatever he wants or take out whatever he wants from the treasury and without the bank's knowledge of the contents of the treasury⁽¹⁾.

The Iraqi legislator organized the contract for the rental of the treasury with materials from (248-256) (36) because of the privacy and legal problems it provoked, the most important of which is to determine the nature of this contract, and this contract was defined in article 248 of the In force Ethnic Trade Act 30 of 1984 (a contract under which the bank undertakes in exchange for a fee to place a certain treasury at the disposal of the tenant for use for a certain period).

This contract brings many benefits to the customer and the bank, the benefit to the client, is to maintain his things that he puts in the treasury and maintains its confidentiality, but for the bank, it is a means of attracting customers and begging them to deal with the bank by entering into agreements such as opening credits and depositing money in addition to the fee it charges for renting the treasury⁽²⁾. Therefore, this relationship between the Bank and the client arranges obligations on the parties to the contract and this is what we will discuss in the following branches:

3.1.1. Obligations to lease iron cabinets

The iron treasury lease arranges reciprocal obligations where the bank is obliged to hand over the treasury to the customer and enable the client to use it, as well as the bank's commitment to preservation and guarding, and the client is

(1) Akram Yamulki, Commercial Law, 1st Edition, Shariqa Public Library publishing, 2012, P. 292.

(2) Articles (248-256) of the Iraqi Trade Act no. 30 are considered,

obliged to pay for the use of the treasury and use the treasury in accordance with the terms of the contract and the treasury refund at the end of the contract, and we will present this in detail.

Once the contract is signed, the bank is obliged to hand over the safe to the customer, free of use, and the treasury must be the same size and type agreed upon in the contract. This obligation is mentioned in Article (248) of the Iraqi Trade Law above, corresponding to the text of the Egyptian Trade Law in Article (316), the bank must turn the key over to the customer so that it can be used for the purpose for which it was prepared, and the bank keeps another key, except for the tenant and the bank, a copy of the key may not be handed over to anyone else ⁽¹⁾.

The bank may breach its obligation if the customer delivers a treasury that differs in size from the agreed size or refuses to receive its key or the treasury has a barrier to its use, the delivery of the treasury may be an actual delivery, i.e. by placing the treasury at the client's disposal so that it can be acquired and utilized, notifying the client of the treasury's allocation and placement at its disposal, and the client's receipt of the key is a presumption for the receipt of the treasury⁽²⁾.

Delivery may be judgmental in the case of renewal of the contract where the treasury is in the hands of the client at the time of renewal of the contract, this does not require receiving the treasury again, and the treasury is delivered in the bank at the time agreed between the bank and the client and usually when the contract comes into effect after the

(1) Aziz Al-Aqili, 392.

(2) Hassan Hosni, Banking Services Contracts, No Dar for publishing , No Place for publishing 1986, P. 286.

payment of the financial return for the use of the treasury⁽¹⁾. The bank is also obligated to enable the customer to use the safe at the times specified for use, by setting regulations for the times of entry into the safe, the method and mechanism of entry and confirmation of entry and exit from the safe, by confirming this in the entry and exit records.

The Bank is also obliged to maintain and guard the treasury and be responsible for the damage caused to the Treasury because of its error, the Bank is obliged to ensure the safety of the treasury and to maintain that all necessary measures are taken to keep it valid so that the client can benefit from it, which is an obligation to achieve a result⁽²⁾ pursuant to article (251) of the Iraqi Trade Act, which states that (the bank shall take all measures to ensure the safety of the treasury and preserve its contents).

Since the Bank's obligation to comply with this is an obligation, the Bank shall be liable for damage to the items in the treasury, such as the collapse of the building in which the treasury is located, the fire or the leakage of water that led to its sinking, and the importance of this obligation⁽³⁾ expressly stipulates the bank's responsibility for the safety, security and viability of the Treasury, including Iraqi law as mentioned above, and may not deny its responsibility only to prove the foreign reason⁽⁴⁾.

(1) Habib Khalifa, The Bank's Responsibility in the Contract Iron Safes, Published Research from the Conference on Banking Operations Between Theory and Practice, Yarmouk University/ College of Administration and Economics, Jordan, 2002, P.20.

(2) Ali Jamal Al-Din, Awad (n 4) 985.

(3) Consider the text of Article (318) in the Egyptian Trade Law No. 17 of the year 1999, the text of Article (469) of the UAE Commercial Transactions Law, Article (436) of the Kuwaiti Trade Law, Article (346) of the Jordanian Trade Law.

(4) Elias Nassif, Banking Contracts (n 2)139.

On the other hand, the client is obliged to pay the rent to the bank in exchange for the use of the treasury, as stipulated in article (254) of the Iraqi Trade Act and is matched by the text of Article (319) of the Egyptian Trade Act (1- If the tenant does not pay the rent of the treasury at maturity dates may after thirty days in the notice of payment that the contract is considered to be expired on its own, and the bank recovers the treasury after notifying the tenant to come to open it and empty its contents⁽¹⁾ .

The client is also obliged to respect the terms of the contract when using the treasury, such as entering the treasury on the dates set by the bank and signing a book dedicated to it and proving his personality for security and confidentiality considerations, and also has to use the treasury the usual ordinary use in the purpose prepared for him, he does not have to put dangerous objects, explosive materials, flammable materials or materials that are prohibited by law to deal with⁽²⁾ .

Finally, the client is obliged to refund the treasury at the end of the contract by returning its key to the bank and emptying it, which is intact with the condition in which it was received⁽³⁾ .

3.1.2. The legal nature of the contract between the bank and the client

Opinions differed on the legal nature of the contract between the client and the bank, and the dispute revolves around the consideration of the contract between the client and the bank as a lease contract, or is it a deposit contract, or

(1) Mustafa Kamal Taha, 548.

(2) Habib Khalifa, 24.

(3) Hussein Salloum, Banking Services, Leasing of Iron Safes, a paper published in the Conference on Banking Operations between Theory and Practice, College of Law, Yarmouk University, Jordan, 2002, P.18.

is it a contract of a special nature and the reason for the difference of the contract between the client and the bank, that it contains some characteristics of the lease as well as some characteristics of the deposit contract as well ⁽¹⁾.

The client rents a certain safe in which he puts what he wants and no one else knows the contents of this safe for a fixed period and these characteristics make the contract close to the rent contract, but the main objective of the client is to put important things for him in a safe place to maintain and the bank will guard the treasury more carefully than anywhere else as it is responsible for the destruction, damage or theft of the contents of the treasury unless it is due to a foreign cause and thus the contract approaches a deposit contract⁽²⁾.

The reason for the difficulty in adapting this contract is due to the existence of a type of common possession that does not exist in the deposit or lease contract ⁽³⁾. The acquisition in the deposit contract belongs to the depositor alone, and in the lease is for the tenant, but in the treasury contract the bank owns the treasury and the client owns what is inside, if the treasury belongs to the client, it would be a deposit contract, the bank's ownership of the Treasury prevents it from being said to be a deposit contract ⁽⁴⁾.

So we are going to address these trends through the following sections:-

(1) Aziz Al-Aqili, (n 1) 394.

(2) Elias Nassif, Banking Contracts (n 2) 106.

(3) Hassan Hosni, Banking Contracts in Commercial Banks, Dar AL-Nashir, Cairo, 1987, P. 300.

(4) Faiq Mahmoud Mohammed Al-Shamaa, Legal Nature Not Neighboring Bank Vaults, Research submitted to Yarmouk University Jordan, 2000,P.4.

3.1.2.1. Adapt the contract to be a lease contract

A part of the jurisprudence ⁽¹⁾ goes on to say that the contract between the bank and the client is a lease contract because the bank is committed to putting a treasury at the customer's disposal for a certain period of time for a fee and the client uses that safe freely, as he puts in it the money and things in it without the bank having the right to see what is in it, the client does not hand over money and things to the bank and then the bank puts it in the treasury, but the role of the bank is limited to the customer to allocate a treasury and put it at his disposal to the benefit of a certain period of time. It is supported by the fact that the contract is a lease, the term iron treasury rental on the contract between the bank and the client.

the bank's obligation is limited to maintaining the treasury itself and where it is located, and this obligation does not lead to the bank being considered to be deposited to it, because it did not receive what in the treasury from the client intended to save it, and thus the treasury remains in the client's possession under the contract, which is the right to open it to him alone ⁽²⁾.

The opinion in France and Egypt ⁽³⁾ was that the contract is a lease, not a deposit, so if it is said that the bank is committed to maintaining the treasury, then this obligation is valid to stipulate the lessor in the lease contract, and if it is said that the bank usually has one of the two keys in which the safe cannot be opened with them, then it is forked on the

(1) Planiol and Rieber, French Civil Law, Part 11, 2nd Edition, 1954, referenced to Elias Nassif, Banking Contracts (n 2) 110.

(2) Hassan Hosni, 288.

(3) Al-Sanhouri, the mediator in the civil law, considers the lease of the lease of article 316 of the Egyptian Trade Act, which states that "renting the safes is a contract under which a bank undertakes to pay a fee to place a treasury at the disposal of the tenant for a specified period of use."

bank's obligation to preserve the treasury, and it follows from this opinion that if the tenant's creditors want to impose a seizure on the things in the treasury, they must sign an executive, non-precautionary seizure on what the debtor has with others because these things are considered in their debtor's possession and are from the treasury that he rented and not a deposit In the custody of the bank so that the seizure may be signed under his hands.

If the tenant's creditors want to make a reservation on the items in the treasury, they must sign an executive reservation rather than a reserve on what the debtor owes to third parties because these items are considered to be in the possession of their debtor and are from the treasury that they rented and not a deposit in the bank's hands until the reservation may be signed in their hands.

This opinion was not saved from the criticism, given that the implications of the lease contract do not exist in the safe contract concluded between the bank and the customer. According to the lease contract, the lessee has complete freedom to use the leased items, and the lessor obligates to place the leased thing at the disposal of the lessee, while in the safe lease the customer cannot reach the things within in the safe except through the bank and at the dates specified and recording customer visits in the bank's records. The bank is also obligated to safeguard the safe, which is a major goal that the customer wants to achieve behind his agreement with the bank, and these implications do not entailed in the lease contract⁽¹⁾.

(1) Hosni Al-Masry, Banking Operations in the Kuwaiti Law, First Medical, 1994, P. 33.

3.1.2. 2. Adapt the contract as a deposit contract

Supporters of this opinion ⁽¹⁾ are in line that the contract concluded between the bank and the customer is a deposit contract because the core of the contract is the idea of preservation and maintenance, not the idea of leasing, and keeping the safe in the bank's possession is a fundamental matter in the contract which is closer to a deposit than to rent. The financial possession of things is not entrusted to the bank therefore the contract is not considered a complete deposit. However, there are kinds of legally established deposits, but in which the financial possession of things does not transfer to the bank rather remains for the depositor, such as the luggage of a guest in the hotel.

While the owners of this opinion criticize the French Court of Cassation in adapting this contract as a lease contract because the logic of this adaptation is that the court applies the rules of the lease contract, but it did not do so. Rather, its decision is keeping on the application of the most important implications of the deposit contract, which is the implication of the depositor's obligation to preservation and his liability for the thing deposited. The French Court of Cassation is considered that the bank obligation to safeguarding is obligation to result and does not exempt it from liability unless it proves a foreign cause such as force majeure, as is the case with the depositor in the leased deposit contract⁽²⁾.

It does not prevent from the contract to be a deposit if it did receive not the stuff. The bank may let the depositor himself locates his stuff in the place where he keeps without receiving it. It also does not prevent the contract from being a deposit, because the bank does not return the thing itself,

(1) Ali Al-Baroudi, Commercial Contracts and Banking Operations, Beirut, No Dar for Publishing, 1991, P. 27.

(2) Hosni Al-Masry, P. 34.

so it is sufficient in response that the bank enables the customer to recover what he deposited in the safe. The presence of serious objection that the contract is a deposit, may come from the fact that the deposit is usually not paid, rather, it is a deposit service that a friend performs towards his friend, and then it is necessary to distinguish from the ordinary deposit contracts, what can be called a professional custody contract where a person takes the paid deposit as a trade for him, like the bank with regard to the safe⁽¹⁾.

The most important consequence of adopting this trend is that when the contract was adjusting for rent, the legal logic was that if the creditors of the tenant wanted to impose seizure on the things deposited in the safe, they would sign an executive seizure, not a backup seizure, as it was aforementioned. With the executive seizure, the creditors must have an executive document, and the seizure must be preceded by a notice of payment, and this is sufficient to make the debtor take an early notice of hiding the things that he deposited in the safe. The creditors must clearly check the safe sufficient to take the seizure, while for seizing the debtor's money with others, it is sufficient for them to seize it under the bank's hand without behooving the safe⁽²⁾.

As for the position of the laws, there are laws that put an end to this doctrinal dispute, so they explicitly stipulate the signing of the seizure of the contents of the iron safe, whether it is an executive seizure or backup seizure. It is defined the procedures that must be followed in this regard and this is what was stipulated in Article (256) of the Iraqi Trade Law in force which counterpart Egyptian article (321)⁽³⁾. On the contrary, some legislation insists on

(1) Al-Sanhouri, P. 17.

(2) Al-Sanhouri, P.18.

(3) Aziz Al-Aqili (n 1) 397.

Egyptian secrecy and do not allow seizure of the contents of the safe, whether it is an executive or backup seizure ⁽¹⁾.

The legislator has done well in these legislations if it is not right to implement the idea of leasing or deposit, after the two ideas together are unable to explain all the implications of the iron treasury contract, but it is better to take into account the practical and legal considerations that aim to achieve a balance between two conflicting interests which are the interest of the customer in using the safe by imposing confidentiality in preserving his things and the interest of the creditor from not escaping the client's money from signing the seizure and preserving their general need for the debtor's money.

Several criticisms have been directed towards this trend on the basis that the things that the customer puts in the safe does not deliver them to the bank, and therefore the bank is not obligated to return the things that were put in the safe and did not receive them, meaning that the customer is the one who maintains possession of the things that he puts himself in the safe, It is a unit in which he has a right,

Finally, the order that the customer pays to the bank is not calculated on the basis of the importance of things as in the deposit, but is calculated on the basis of the capacity of the safe and the period of its use⁽²⁾

3.1.2.3. Adapt the contract as an independent contract of a special nature

According to jurisprudence⁽³⁾, it is difficult to consider this contract as a lease or deposit contract. Although the

(1) Samiha Qalioubi, 95.

(2) Faiq Al-Shamaa, 9.

(3) Ali Al-Baroudi, 269; Samiha Al-Qalioubi, Legal Foundations of Banking Operations, Dar Al-Nahza Al-Arabiya for Printing and Publishing, Cairo, 1992, p. 276.

custom has been called a locker lease contract, its content does not express the lease contract. The customer here uses the bank to access the treasury on the dates specified by the bank after verifying the customer's personality. On the other hand, if the deposit contract obliges the depositor to refund the deposit that he received, this is not in the treasury contract because the bank is obliged to keep the treasury only without its contents because it is not aware of it ⁽¹⁾.

Accordingly, it is inevitable that this contract will be regarded as having a special nature that distinguishes it from both the lease and the deposit contract. It must be regarded as an independent contract in nature in accordance with the obligations it entails for each side. It is a contract of unnamed contracts, as in most contracts created by banking custom and modern business lifestyles characterized by certain characteristics, i.e. it is a contract of banking service of a special kind.

This view is worthy of support, because this contract, although called the iron treasury lease, but some of the consequences of it are not arranged by the lease contract, and some of the effects generated by this contract cannot be attributed to the deposit contract, so the inclusion of this contract among the unnamed contracts has a special and independent nature subject to the rules of custom and business customs, which is a contract of banking services provided by the bank to customers.

3.2. Determining the way to seize the money contained in the bank's private safe

There are cases in which the bank or the recipients can disclose bank secrecy, so that the bank dissociates itself from its commitment to confidentiality because there is a primary interest in consideration of the interest of the client,

(1) Samiha al-Qalioubi, 279.

which is the interest of the judiciary. The bank or one of its employees plays an important role in confronting the judiciary, which may use it to testify in a particular crime or require it to present documents in its possession, or in the case of the seizure of the client's funds (debtor) and here will appear two interests, the first is the interest of the client who intends to keep his financial transaction away from the knowledge of others, and the second is the interest of the judiciary in order to reach the truth and resolve the case⁽¹⁾.

If the debtor deposits a sum of money in a bank, the way in which this amount is booked is to reserve what the debtor owes to others. However, what method of booking must the creditor follow on the money contained in the treasury allocated by the bank to the customer keeps its key and the bank does not know anything about its contents.

He cannot disclose it to the original creditor without permission from the court. Is it a seizure transferred with the debtor, or is it seizure of the debtor's property with others? The fact that this procedure aims behind the creditor to prevent the debtor from disposing of his money, smuggling or concealing it to harm the interest of the creditors, and then determining the seizure procedures accordingly, and this is what we will present through the following two branches.

3.2.1. Reservations for funds contained in the treasury

The issue of determining the seizure of the debtor's money with banks has arisen, is it seizing the movable with the debtor or seizing the debtor's money with others⁽²⁾, a dispute between jurisprudence on the grounds that the bank

(1) Dr. Zina Ghanem Al-Saffar, 171.

(2) The third side is defined as an independent person of the debtor's personality and has, under law or contracts between him self-or the debtor, with special and independent powers over what he has in his possession, which is considered, Ahmed Indian assets, forced execution, new university house, Alexandria, 2007, P. 366.

is from others? The jurisprudence was divided into two directions, the first trend⁽¹⁾ was that the method of detention to be followed was to reserve what the debtor had to do with others and based on the fact that those who had the actual possession of something must be considered when determining the meaning of others, and here the bank is the actual holder of the treasury, i.e. counting from others, as well as practical considerations and facilitation on the applicant of execution requires the conduct of the way of booking a debtor to the others.

Likewise, following the procedures of executive seizure on the debtor's money is not feasible, as the debtor may seek to empty the treasury of the funds, because at least twenty-four hours before the executive seizure is made, the creditor issues a warning to the debtor and the enforcer of justice goes to sign the seizure and finds nothing, and this encourages the debtor. On non-payment of their debts as long as they were able to empty the contents of the treasury from the funds that they fear seizure⁽²⁾, therefore following the seizure of the debtor's money with others provides more protection for the creditor than seizing the movable with the debtor.

The second trend was that the reservation that can be signed on the contents of the treasury that the customer rents in a bank is to book the transferee with the debtor and not to reserve what the debtor owes to other side⁽³⁾. They also based that the place of reservation is not the treasury itself, it is owned by the bank and not owned by the debtor, but the place of reservation is what the treasury itself contains, i.e.

(1) Samiha AL-Qalioubi, 372.

(2) Elias Nassif, Commercial Contracts (n 2)167.

(3) Ahmad Abu Al-Wafa, Procedures for Execution, Legal Ownership, AL-Maarif Establishment, without place of publication, 1991, P.490.

the reservation is located on what the debtor owns, The bank is also not a third side for the funds contained in the Treasury, as it does not have special and independent powers over the funds, which necessitates the seizure of the transferee with the debtor⁽¹⁾.

As a result of the difference of jurisprudence in determining the way of the seizure of the funds because they differ about the determination of the bank whether it is considered as a third or not, several criteria have been put in place for the bank to consider the third side to the customer (debtor) and to reserve the money under the procedures of the debtor's reservation to third sides, or that it is not so, so that the money is reserved for the transferee with third parties, and from these standards the opinion is that the third person is the one who holds possession independent of the debtor's possession, who is subject to the debtor subject to the subordinate subject of the follower so that his personality is mixed with that of the debtor.

It does not have independent possession, and therefore is not considered by the servant, courier, cashier and, conversely, the non-agent tenant who is in it because they have a possession independent of the possession of the client, the lessor and the depositor ⁽²⁾.

With regard to this standard, the bank is considered third-side because it is the actual owner of the treasury and has control over it, and therefore a reservation must be followed to the debtor to third sides and the opinion ⁽³⁾ is that the criterion of physical control over the object determines whether or not a third-party bank, if the debtor has direct

(1) Hussein Al-Masry, 40.

(2) Wajdi Ragheb, Notes on Judicial Execution, Without Dar and Place for Publication, 1986, p. 327, Ali Jamal AL-Din Awad (n 4) 997.

(3) Muhammad Abdulkhaliq Omar, Principles of Implementation, Without Dar and Place for Publication, 1978, P. 409.

control over the matter, the procedures for booking the transferee with the debtor must be followed, but if there is between the authority of the debtor and the object the authority of another person prevents the control of the debtor on the matter except through this person in this case must be conducted by the way of booking the debtor to others, and does not care to have the control of the third legal or non-bond, and in application of this standard is considered by the third depositor and the agent.

It is evident from the aforementioned above that the first criterion that goes to the other being the person who has special power over the seized money differs from the authority of the debtor who owns. The other has independent possession of the debtor's possession towards the seized money, such as the depository for the deposit and the lessee with respect to the lessor ⁽¹⁾. This is what the Iraqi law and the comparative law went to in considering the money in its safe as the money deposited with others, and the creditor through a letter addressed to the bank, not allows the debtor to use the money deposited in its safe. Here it is sufficient for the bank to acknowledge the existence of this safe because it is assumed that the bank is not aware of the contents of the safe, and the customer will remain in possession of the safe's key, and he alone has the right to deposit and withdraw things without any supervision by the bank, and the rules for renting things apply to him, and the bank is responsible for the safety of the things ⁽²⁾.

Thus, the bank's report on the leased treasury does not include only the leasing incident and its number without

(1) Articles (248-249-250-251) in the effective Iraqi Trade Law No. (30) of 1984).

(2) Ammar Saadoun Hamid Al-Mashhadani, Explanation of the Execution Law, Ibn Al-Atheer House for Printing and Publishing, University of Mosul, 2012. P. 245.

mentioning the contents, as it will remain at the disposal of the customer. The judgmental possession has been transferred to him as a tenant and then the seizure must be made in the face of the customer himself, and this can only be done by referring to the bank's records to know the safe number and its value. The customer (the tenant) is not allowed to use it for the duration of the seizure ⁽¹⁾, and therefore the bank is obligated to decide what it owes in the interest of the seized when certain conditions are required by the law in the implementation procedures related to the debts received on the money held by the bank so that the customer (the debtor) cannot hide its assets are in the bank's accounts under the cover of secrecy ⁽²⁾.

These conditions can be summarized as follows:

1- Banks do not seize the client's money deposited with it or disclose data about them except based on the issuance of a judicial decision by a judicial court and who acquired the final degree in an obligation to maintain banking secrecy, if the court's decision has been appealed by an appeal or cassation, the bank may here invoke secrecy until the decision is decided upon, ratification or veto ⁽³⁾.

2- After receiving the seizure decision, the bank is obligated not to hand over the debtor (the customer) any of the seized money, and to submit to the court within a certain period a statement mentioning the money it has ⁽⁴⁾.

(1) Muhammad Abd al-Wadud Abd AL-Hafeez, 100.

(2) Majed Abdulhamid, The Problem of Money Laundering and Confidentiality of Accounts in Banks from Comparative Law and Egyptian Law, Dar Al-Nahza Al-Arabiya, Cairo, 2002, P.57.

(3) Abdulqadir AL-Utair (n 2) 165.

(4) Abdulqader AL-Utair (n2)166.

3.2.2. Procedures for compulsory execution of funds in the treasury

The Execution Law obligated the Execution Directorate to notify others (the bank) of the decision to seize the debtor's money in its possession ⁽¹⁾. Here, the bank, after being informed of the seizure decision, is obligated not to allow (the customer) to take anything from the seized money and submits to the Execution Directorate a statement stating the money it possesses and the purpose of the notification is to prevent him from disposing of the seized money prelude to requiring the right of the creditor from him or from the value after the sale ⁽²⁾ and the debtor must be informed of the decision to seize his money with the bank according to Article (2/69) ⁽³⁾ of the Execution Law.

Because the seizure in this way is nothing but a seizure of the debtor's money that was done in his absence, and since the law requires the debtor to be notified of the summary of the seizure report that takes place in the absence of the debtor, it is a matter of a priority to notify the debtor of the seizure of his money with others (the bank) ⁽⁴⁾.

If the bank acknowledges the existence of these funds and then refuses to deliver them, then those funds will be seized, and the bank has not to deny what it owes from the debtor's funds under the pretext that they do not exist in the first place or that he delivered them to the client (the debtor)

(1) Article (75) of the Implementation Law No. 40 of the year .

(2) Jabbar Saber Taha and others, Explanation of the Amended Iraqi Implementation Law of 1980, without mentioning the publishing house, place of its publication, and a year of publication,P..204.

(3) Article 16 / Paragraph Two (If the seizure is made in the absence of the debtor. The just enforcer must inform him of the summary of the record, and if he does not initiate the execution of the judgment or the bitter, within (3 days) from the day following his receipt of the seized funds according to the provisions of this law.

(4) Dr. Ammar Saadoun Al-Mashhadani, 249.

before the seizure is made, and here the creditor has to obtain a certified copy of the bank's response. The customer has the right to deny this by asking the bank through the court to prove the incorrectness of his data. The bank must be bound to hand over to the court by way of trust the papers and documents in his possession that prove the validity of this denial with the statement he submits to the court ⁽¹⁾. With regards to the laws in terms of compulsory enforcement procedures on the funds seized with the bank by referring to the comparative law and the Egyptian trade law,

we find that it has approved the principle of the ability of the funds deposited in the safe for seizure, that is, the permissibility of backup seizure or executive seizure on it in Article (321/1) of the Trade Law. By the seizure decision, the client (the debtor) who is seized of his money in the safe is prohibited from using the treasury or disposing of it for the length of the seizure period, according to Article (2/321) of the Egyptian Trade Law ⁽²⁾.

As for the Iraqi legislator, it stipulated in Article (256-257) of the Iraqi Trade Law in force ⁽³⁾ to regulate the procedures for seizing funds deposited with banks separately as follows: -

First:- It is allowed to place backup seizures and executive seizures on the safe.

Second:- The seizure is made when informing the bank of the content of the bond under which the seizure is made, and then the bank must prevent the tenant from using the safe and inform him of that.

(1) Abdul Qadir AL-Utair (n 2) P. 166.

(2) Fathi Wali, Forced Execution, Dar AL-Nahza AL-Arabyia, Beirut 1987, P. 326.

(3) Iraqi Trade Law No. 30 of 1984.

Third:- If the reservation is a precaution, the tenant may ask the court to authorize him to withdraw from the contents of the treasury to the extent that it does not prejudice the creditor's rights.

Fourth:- If the seizure is executive, it obligates the bank to open the safe and empty its contents in the presence of the seizure and the enforcer of justice and notify the tenant of the time that has been set to open the safe and determine the contents of the safe and it shall be delivered to the bank and to the trustee sent by the justice enforcer or his representative until it is sold.

Fifth:- If the treasury has documents papers that are not included in the compulsory sale, they must be delivered to the lessee. If he was not present at the time of opening the treasury, he must hand them over to the bank to preserve them until the tenant or his heirs request it.

Article (275) also stipulates that (with the exception of money stipulated in the law, the bank may not open the safe or empty its contents except with the permission of the lessee and in his presence or in implementation of a court decision). So, by reviewing the legal texts contained in the Banking Law No. 94 of 2004, as well as reviewing the laws related to the leasing of safes contained in the Iraqi Trade Law in force, we note that the Iraqi legislator has recognized relative, not absolute, banking secrecy. Thus, under these provisions, it is authorized that the bank is required to give information related to its customers when there is a legal provision requiring banks to disclose their customers.

It can also be noted that these texts were not accompanied by the legal penalty that would result from the actions of violating the provisions of these texts, meaning that in the event of the disclosure of the banking secret other than the cases stipulated by the law, what is the consequence

of that? So it was necessary for the legislator to explicitly mention from the texts regulating banking secrecy that penalty for him proposing to add a legal text stating that (everyone violating the provisions of Articles (49-50) of this law shall be punished with imprisonment or a fine or one of these two punishments) here it will leave the judge with discretionary power to submit the appropriate punishment for the violator of the provisions of this law.

As for the position of the Egyptian law, it explicitly stipulates a criminal penalty for anyone who discloses the customer's secrets to the bank. Article 124 of the Central Bank of Egypt Law No. 88 of 2003 stipulated that (it is punishable by imprisonment for a period of no less than one year and a fine of no less than twenty One thousand pounds and not exceeding fifty thousand pounds for anyone who violates any of the provisions of Articles (97-100) of this law. ⁽¹⁾ This is a position worthy of support.

4. Conclusion

At the end of this research, we conclude a number of important findings and recommendations as follows:

4.1. First: findings:

1- The banking secret can be defined as a banking secrecy for the secrets and data of the bank's customers and their banking transactions.

2- It appeared that the secret in the banking field is the obligation of employees to maintain all information and data of the customer because the bank is considered faithful to it and the relationship between the two sides is based on trust and credit, so it can be said that bank secrecy is a form of

(1) Lotfi Youssef Abdulhalim, The Bank's obligation for preserving the privacy of Accounts, Journal of the Lawyers Association of the Arab Republic, 1995, P. 168.

professional confidentiality that everyone who works in a particular profession is supposed to respect it in the course of practicing it, including the banking profession.

3- There are two trends of bank secrecy in most law in different countries, The first one is absolute bank secrecy: The most important consequence of taking this trend is the expansion of the objective field of banking secrecy because taking this direction makes the banking secret not only the information that the client gives to the bank, but includes all that reaches it by virtue of the profession. The second one is relative banking secrecy: The most important thing to follow is that the duty to keep the bank secret in cases provided for by law, which at the same time are considered to be the reasons for the legalization, which is not the responsibility of the bank in the event of disclosure.

4- It appeared that, Bank secrecy is established on a range of considerations, some of them related to the protection of the right to privacy, public interest and the interest of the bank.

5- The iron locker lease contract is (a contract whereby the bank undertakes, in return for a rent, to place a certain safe at the disposal of the lessee for a certain period of use). This contract brings many benefits to the client and the bank, so the benefit to the customer is to preserve, keep and safe his things in a secret. For the bank, it is a means of attracting customers and encouraging them to deal with the bank by entering into agreements such as opening credits and depositing money in addition to the fee they charge for renting the treasury.

6- Opinions differed on determining the legal nature of the contract between the client and the bank, and the dispute revolves around the consideration of the contract between the client and the bank as a lease contract, or is it a deposit contract, or is it a contract of a special nature, or the reason

for the difference of the contract between the client and the bank, that it contains some characteristics of the lease as well as some of the characteristics of the deposit contract, and it became clear to us through the terms of the subject of the research that although it contains some characteristics of the lease and deposit contract, but does not apply to him the terms of these contracts independently, It's a composite contract of a special nature.

7- It clears form this research that the Iraqi legislator and comparative law, it went on to consider the money in the bank's locker of money deposited to the other, which enables the creditor through a letter addressed to the bank not to allow the debt to use the money deposited in the bank's treasury. Here it is enough for the bank to acknowledge the existence of this treasury because the bank is supposed to not know the contents of the treasury. The client will keep the key to the treasury and has the right to deposit and withdraw the items without any control by the bank and the rules of renting things apply to him and the bank is responsible for the safety of things

8- It became clear through the review of the legal provisions contained in the Banking Act No. (94) of 2004, As well as reviewing the laws relating to the rental of safes contained in the Iraqi Trade Act in force, we note that the Iraqi legislature has acknowledged the relative and not absolute bank secrecy authorized by these provisions, it obliges the bank to give information about its customers when there is a legal provision requiring banks to disclose their customers.

4.2. Second: Recommendations:

1- As the Banking Act No. 94 of 2004 did not contain a legal provision addressing the situation mentioned in the subject matter of the research and since the private restricts the public and in order to lift the contradiction

between the two legal provisions and the fact that the bank is third in relation to the reservation and forced execution of the assets of the iron treasury, we call on the legislator to include a special provision in the Banking Act that addresses this situation so that the drafting of the text allows the initiation of the procedures of forced execution on the assets of the iron treasury and at the same time does not constitute the process of disclosure by The bank is committed to the compulsory execution procedures established under the provisions of the Implementation Act No. 45 of 1980, without any breach of bank secrecy by the bank."

2- Since the legal texts contained in the Banking Law No. 94 of 2004 were not associated with the legal penalty that would result from the violation of the provisions of these texts, meaning that in the case of the disclosure of the banking secret other than the cases stipulated by the law, what is the consequence of that? So it was necessary for the legislator to explicitly mention from the texts regulating banking secrecy that penalty for him proposing to add a legal text stating that (everyone violating the provisions of Articles (49-50) of this law shall be punished with imprisonment or a fine or one of these two punishments) here he will leave the judge with discretionary power to submit The appropriate penalty for violating the provisions of this law.

References

Specialized and general references:

First: The Holy Quran

Second: Legal Books

- 1- Ibrahim Al-Anis, Attia Al-Sawalhi and others, AL-Waseet Dictionary, Part 1, Dar AL-Afwaj, Beirut, 1990.
- 2- Ibrahim Hamed Tantawi, Secret Criminal Protection, Banking Information about My Clients in Light of the Law, Dar Al-Nahza Al-Arabiya, Egypt 2005
- 3- Akram Yamulky. Commercial Law, 1st Edition, Shareqa Public Library, 2012.
- 4- Elias Nassif, Banking Contracts, 2nd Edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2012.
- 5- Elias Nassif, Al-Kamil in the Trade Law, Part 3, Banking Operations, Mediterranean Publications and Lebanon Sanctions Publications, 1985.
- 6- Jabbar Saber Taha and others, explaining the amended Iraqi Implementation Law of 1980, without mentioning the publishing house, without the place of publication, without the year of its publication.
- 7- Jamal al-Din Muhammad Ibn Makram, Ibn Manzur, Lisan al-Arab, Volume IV, Dar Sader, Beirut, Lebanon, 1990.
- 8- Jalal Wafaa Muhammadin, The Role of Banks in Combating Money Laundering, Dar AL-Jamea AL-Jaded, Egypt, 2001.
- 9- Hassan Hassani, “Banking Services Contracts”, excluding publishing house, Dunum Place of Publication, 1986.
- 10- Said Abdel-Latif Hassan, Criminal Protection of the Banking Secret, Dar Al-Nahza Al-Arabiya, Egypt, 2004.
- 11- Abdul Qadir Al-Ateer, The Secret of the Banking Profession in Jordanian Legislation, 2nd Edition, Dar AL-Thaqafa Library for Publishing and Distribution, Amman, 1996.

- 12- Aziz Al-Aqili, Explanation of Commercial Law, Commercial Papers and Banking Operations, Part 2, 1st Edition, Dar AL-Thaqafa for Publishing and Distribution, Amman, 2006.
- 13- Ali Al-Baroudi, Commercial Contracts and Banking Operations, Beirut, without Dar for Publishing, 1991.
- 14- Fathi Wali, Forced Execution, Dar AL-Nahza AL-Arabyia, Beirut, 1987.
- 15- Muhammad Abdel-Latif Farag, Criminal Protection of Bank Credit, without Dar for Publishing , Cairo, 2006.
- 16- Muhammad Hussein Abbas, Banking Operations, Dar AL-Nahza AL-Arabyia, Cairo, 1968.
- 17- Majed Abdel Hamid, The Problem of Money Laundering and Confidentiality of Accounts in Banks from Comparative Law and Egyptian Law, Dar AL-Nahza AL-Arabyia, Cairo, 2002.
- 18- Muhammad Abd al-Wadud Abd al-Hafeez, Criminal Responsibility for the Spread of the Banking Secret, 1st Edition, Dar Wael for Printing and Publishing, 1999.
- 19- Youssef Mohamed Reda, Lexicon of Contemporary Arabic, Lebanon Library, Beirut 2006.

Third: Research and Studies:

- 1- Turki Musleh Musalaha, The Impact of Western Pick-Up Law on Accounting for Banking Confidentiality, a paper submitted to the University of Sharjah Journal of Legal Sciences, Volume 17, Issue 8, 2017.
- 2- Habib Khalifa, The Bank's Responsibility in the Contract Iron Safes, a published paper from the Conference on Banking Operations between Theory and Practice, Yarmouk University, College of Administration and Economics, Jordan, 2002.
- 3- Khaled Abdullah Jarak Al-Hadhi, Arbitration Organization in Financial and Banking Institutions, a Comparative Study, House of Thought and Law for Publishing and Distribution, Mansoura, Egypt.

- 4- Zeina Ghanem Al-Saffar, Banking Secrets (a comparative study), PhD thesis submitted to the Faculty of Law at the University of Mosul, 2005.
- 5- Ali Gamal El-Din Awad, Legal Banking Operations, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, without a year of publication.
- 6- Muhammad Ahmad Muhammad Mona Mushtaq, Iraqi banks 'commitment to banking secrecy, a paper submitted to Baghdad University, College of Administration and Economics, Issue 36, 2015.
- 7- Fadi Fouad Obeidat, Legal Dimensions of Banking Secrecy (a Comparative Study) Amman University, for Postgraduate Studies, 2005.
- 8- Faeq Mahmoud Muhammad Al-Shamaa, The Legal Nature of Treasury Leasing and Banking, a paper submitted to Yarmouk University, Jordan, 2002.
- 9- Burke Faris Hussein al-Jubouri, Personal Rights and Civil Protection, an MA thesis submitted to the College of Law, University of Mosul, 2004.

Fourth: Laws:

1. Universal Declaration of Human Rights Article (12) of 1948.
- 2- Consider the Valid Declaration of Human Rights issued 10 August 1948.

Fifth: Laws

- 1- Iraqi Trade Law No. 30 of 1984
- 2- Iraqi Banking Law No. (94) of 2004
- 3- The Law on the State Administration of the Transition, which began on 30 July 2004)
- 4- Arab International Bank Law Numbered 77 of 1971
- 5- Egyptian Trade Law No. 17 of 1999,
- 6- UAE Commercial Transactions Law
7. Kuwait Trade Law
- 8- Jordanian Trade Law