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The Role of Banking Secrecy in Activating Bank Governance: A Critical Comparative Analytical Study

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Abstract

This study aims to explain the role of banking secrecy in activating governance. In terms of the method of research and writing on the subject, this study relies on the comparative method and the applied method. In terms of the comparative method, appears through a presentation of the position of the Jordanian legislator and the position of other legislation. In terms of the applied method, it seems through a presentation of some provisions related to applications of the concept of governance to the banking sector. The results indicated that the application of banking secrecy in banks and financial institutions has important economic effects at the local and international levels, represented by increasing the ability of banks and institutions to expand mergers and investments and attract local and foreign capital, which leads to an increase in the rate of economic growth. Moreover, the study recommends that the concept of bank governance in general and the principles of confidentiality and transparency in particular, be consolidated in the work policies of banks and financial institutions.

Keywords: Banking Secrecy, Governance, Confidentiality, Transparency and Banks.

Introduction

The foundation of the confidence that credit demands is the financial relationship between the bank and the consumer, where banking secrecy is seen as a fundamental principle and a key tenet. Therefore, the foundation of the connection between the bank and its clients is trust, which serves as the strongest link between them (Al-Janafawi & Al-Hazza, 2023). As a result, it is impossible to envision a sound banking industry in any nation where there is a culture of trust (Almatarneh et al., 2023). Because the customer does not want others to share his banking information in his best interests, the bank is not required to

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disclose this information, which emphasizes how important it is that banks keep these banking secrets secret. Additionally, the harm that could result from their disclosure to the customer is highlighted (Alrjoob, 2024). As one of the laws directly pertaining to the operations of banks, most legislation has come to embrace the principle of the bank's commitment to preserving the secrets of its customers because it is a fundamental tenet of the banking profession and is related to its dignity and sanctity. Despite having a moral component at first, this responsibility eventually evolved into a legal requirement with particular protection to advance both the public and individual interests (Jarah et al., 2024).

As a result, banking secrecy is regarded as one of the dependable laws that is directly relevant to what banks do (Alazzam, 2024). Banks are required by law and banking conventions to protect the privacy of their clients' information and financial activities, unless a specific legal document or agreement specifies otherwise (Alghriebeh, 2024). The need imposed on banks to protect economic concerns is known as banking secrecy. Financial and private concerns pertaining to clients and individuals that they handle either in the course of their job or as part of their profession, require secrecy in order to protect these clients' interests (Liem, 2016). The more a bank keeps its clients' information private, the more people it serves and the more business it does, both of which are good for the economy as a whole. Furthermore, the national economy benefits from the concealment of financial transactions since it fosters public credit trust, which is the state's top priority. It is also necessary to consider the significance of total secrecy within the bank by keeping all client accounts, deposits, trusts, and safes there (Zulfikar et al., 2020). Any information on them cannot be disclosed, either directly or indirectly, unless authorized in writing by the owner of the account, the deposit, the trust, the treasury, one of his heirs, or a court ruling (Alhwaimel & Al-sarairah, 2024). The restriction is still in effect even if the client and bank part ways for whatever reason, and it is appropriate in an ongoing legal dispute or because of one of the situations allowed by this legislation (Steinlin & Trampusch, 2012).

Furthermore, the role that banking secrecy plays in triggering bank governance results in a deficiency in the application of governance standards and principles, in their incomplete application, or in the application of one principle without the other (Almajali & Alarnaaot, 2024). These outcomes could lead to weak discipline as well as bank collapse, bankruptcy, and the loss of depositor and shareholder rights. administrative inadequacies, a lack of transparency, and the inadequacies and fragility of Arab law concerning the regulation of banks and the cornerstones of their governance. As a result, research on bank governance and how its implementation affects the banking industry was required.

Research Objectives

This study aims to explain the role of banking secrecy in activating governance. To demonstrate this, we will address the legal regulation of banking secrecy in Egypt, the legal regulation of banking secrecy in Jordan, and the legal regulation of banking secrecy in some comparative legislation.

Research Questions

The main question in the research topic is: What is the extent of the role of banking secrecy in applying governance standards?

Literature Review

The First Section: Legal regulation of banking secrecy

Looking at banks as a person, independent of the people of others, brings us to the consequence of worry, which is the requirement. The different interests are distinguished, as is the interior of the bank's economic project, which occurs often. And the interest collectively, as long as there are entities organized to achieve joint objectives. It is vital to legally safeguard and recognize them as legal people (Alzubon & Albtosh, 2024). As long as it aims to further a legitimate goal. If the goal is to report the right to selection and obtain the desired information from the bank, it does not want a piece of the bank's interests, which is to find a way to protect its secret information from disclosure until it can compete (Al-Mahi 2003).

Comparative legislation and systems vary regarding the secrecy of bank accounts. Some of them allocate a separate law, and some of them include banking secrecy in the laws related to that (Shakhatreh et al., 2022). The first roots, as we mentioned previously, of banking secrecy in modern times go back to Swiss banks since 1933, when the Nazi government prevented European Jews from transferring their property and money outside Germany, and therefore they resorted to Swiss banks that pledged to them not to reveal these properties and to disclose them to the Nazi government (Alofishat, 2024). In 1934, the Swiss legislator enacted the Banking Law, which affirmed the principle of confidentiality of bank accounts. After that, various and comparative Arab legislation followed the example of Swiss law, and banking secrecy became one of the established traditions and stable norms in Arab legislation, including Egypt and Jordan (Jarah et al., 2022).

The First Requirement: the legal regulation of banking secrecy in Egyptian law.

The Egyptian legislator was not isolated from the successive developments that occurred on the issue of banking secrecy in various legislations,

as the Egyptian legislator regulated the secrecy of bank accounts in several stages, which will be discussed in some detail.

First, in 1990, the Egyptian legislature passed an independent law on banking secrecy known as bank account secrecy Law No. 205 of 1990, the first article of which states that all customers' accounts, deposits, trusts, and safes in banks, as well as the transactions related to them, are confidential and cannot be viewed or disclosed. Directly or indirectly, except with written permission from the owner of the account, deposit, trust, or treasury, one of the heirs or legatees, with all or some of these funds, or from the legal representative or authorized agent in this regard, or based on a judicial or arbitrator's decision.

Article Two of this law also granted customers the right to open secret accounts, known as numbered accounts, as the text of the article stated that banks may open free, numbered accounts in foreign currency for their customers, link deposits from them, or accept numbered deposits in the aforementioned currency, and the names of the owners of these accounts may be unknown (Al-Araishi et al., 2023). The Minister of Economy and Foreign Trade, in consultation with the Governor of Egypt's Central Bank, must establish the terms and conditions required to create these accounts or receive deposits (Arabyat, 2024). The Central Bank of Egypt's Board of Directors selects which banks are licenced to create accounts and accept the aforementioned deposits. In all cases, the identity of the account holder or the numbered deposit may not be revealed unless written permission is obtained from him, one of his heirs, one of the legatees of all or some of these funds, the legal representative or authorized agent in this regard, or an enforceable judicial or arbitral ruling (Alkhwaldah, 2024).

Second, Egyptian Law No. 88 of 2003 establishes banking secrecy. It repealed the Account Secrecy Law of 1990 when the lawmakers passed Central Bank of Egypt Law No. (88) of 2003, which was updated by Law No. 194 in 2020. The new law merged five pieces of legislation issued since 1957, namely the Credit and Banking Law, the Central Bank Law, the Secrecy of Transactions in Banks Law, the Foreign Exchange Dealing Law, and the law allowing the private sector to own a portion of banks, into one piece of legislation that aims to facilitate work and tighten control over banking work, and addresses economic reform following the renewal process that took place for banking leaders (Al-Erian, 2007).

Third, the Egyptian legislator addressed banking secrecy more specifically and first in the Central Bank and Banking Sector Law No. 194 of 2020 in Article 140: "All customer data, accounts, deposits, trusts, and safe deposit boxes in banks, as well as the transactions related to them, shall be confidential, and may not be accessed." Or disclosing information about it, directly or indirectly, except

with written permission from the owner of the account, deposit, trust, or treasury, or one of his heirs, or one of the legatees of all or some of these funds, or his legal representative or agent, or by a judicial or arbitration ruling (Alheari & Alzoweri, 2024). Even if the customer's connection with the bank terminates for whatever reason", it also states in the text of Article 141 of the same law regarding the disclosure of bank secrecy to judicial authorities in cases where disclosure is required: "If it is necessary to reveal the truth in a felony or misdemeanor and there is serious evidence of its occurrence, the public prosecutor or whoever he delegated from among the public attorneys at least.

The Second Requirement: the legal regulation of banking secrecy in Jordanian law

Banking secrecy in Jordan was governed by distinct sections in several statutes, including the Companies Law, the Central Bank Law, and other laws governing professional confidentiality. However, with the enactment of Banking Law No. 28 in 2000, banking secrecy became subject to regulatory regulations. The Jordanian Banking Law No. 28 of 2000, Article 72, compels banks to maintain total secrecy of all clients' accounts, deposits, trusts, and safes. It is prohibited to provide any data about it, directly or indirectly, except with written consent from the owner of the account, deposit, trust, or treasury, or one of his heirs (Aljboor, 2024). The above-mentioned text of Article 72 clearly states that the bank must maintain complete banking secrecy for all customer accounts, deposits, trusts, and vaults, and it is prohibited to provide any data about them directly or indirectly, with the exception that the customer's written consent to allow others to view his banking information exempts the bank from its confidentiality obligation (Al-Tarawneh, 2005).

It was also stated in the text of Article 73 of the Banking Law, which prohibits any current or former bank administrators from providing information or data about customers, their accounts, deposits, safes, or any of their transactions, revealing them, or allowing others to see them. In instances other than those authorized by this legislation (Albtoosh, 2024). It is worth noting that the phrase "current and former" mentioned in the previous text added a temporal dimension to the protection of banking secrecy, as it is not only linked to the legal status of the person entrusted with keeping the secret but also to the bank's client, so the secrecy remains even if the bank's board of directors or employees change (Abdel Hamid, 2002).

Article 25 of the Jordanian Electronic Transactions Law also stipulates: “Any licensed or accredited electronic authentication body shall be punished with a fine of no less than (50,000) fifty thousand dinars and no more than (100,000)

one hundred thousand dinars, in addition to the cancellation of its license or accreditation if it provided incorrect information in the license or accreditation application, disclosed the secrets of one of its clients, or exploited the information available to it about the electronic authentication certificate applicant for purposes other than electronic authentication activities without obtaining the prior written approval of the certificate applicant (Jordanian Electronic Transactions Law, 2015).

The Third Requirement: Legal regulation of banking secrecy in some comparative legislation

In this requirement, we will review the experiences of the laws that singled out a special legal regulation for banking secrecy, most notably the Swiss law, as this law made the principle of banking secrecy among the established laws and prevailing customs in banks' dealings with customers, by the Federal Banking Law issued in 1943, so it made banking secrecy it is of particular importance to consider the banking secret a professional secret from a legal perspective, as stated in the text of Article 47 of this law, as this law does not speak of banking secrecy as a legal duty, but rather as a form of breach of the obligations stipulated by the law and provides penalties for anyone who violates the provisions (Elias, 1983).

Referring to the provisions of English law, we do not find a text that explicitly obliges the bank to maintain customer secrets, but the judiciary had another opinion, as it obligated banks to maintain confidentiality, and a breach of this obligation is considered a breach of a contractual obligation, as the English courts issued many judicial rulings, the most famous of which was the foster case in 1862. Its content is that one of the customers of the Bank of London accepted a promissory note for 532 pounds, with the bank paying its value when the maturity date arrived. When the maturity date came, the beneficiary came forward to cash the promissory note, so the bank informed him that the client's balance was not sufficient to pay the entire value of the promissory note and that in exchange for fulfillment, the promissory note would be reduced by 104 pounds, so he the beneficiary deposited what corresponded to this missing amount and then made a withdrawal on the value, so the client filed a lawsuit against the Bank of London demanding compensation for the damage he sustained as a result of the breach of the duty to maintain confidentiality, and the court ruled that he be compensated as a result of the breach of contract (Shafi, 2001).

As for the United States of America, it allocated an independent law in which it placed some interest in banking secrecy in many different texts, so it issued the Banking Law in 1970. However, the secrecy was not widespread and absolute because the enactment of this law in the first place was not intended to

protect the interests of customers, but rather to protect banks from the crime of money laundering, and therefore it was possible to reveal the confidentiality of bank accounts out of consideration for the public interest and then for the interest of the bank and the customer in the event of a dispute, as this law obligated American banks to maintain reports and records of some operations. In the event of a violation, civil or criminal penalties would be imposed. In addition, banks were obligated to submit certain reports to some financial authorities such as the Tax Authority (Mohsen, 2001).

The Second Section: The repercussions of disclosing banking secrets in light of bank governance.

As previously discussed, banking secrecy is defined as any matter or incident that the bank becomes aware of, whether as a result of its operations or as a result of those operations, and whether the customer discloses the matter to the bank directly or through another party, and the customer has a stake in keeping it confidential. One of the factors governed by an individual's feeling of the autonomy of his financial and personal entity is the concealment of financial problems (Abdel Aleem, 2022). One must exercise caution in disclosing information about all facets of his personal life that he wants others to remain unaware of; however, some necessities may push a person to entrust his secrets to certain institutions, such as banks. Banks obtain specific help or services, which are then supposed to be safe places to protect their money from theft or loss and being seen by others (Alqudah et al., 2023).

Numerous domestic and international crises have demonstrated the need to build a strong banking system that meets the needs of the modern world in light of the abuses these crises have caused in the past, which have led to significant collapses in local and international markets, as well as the extent of financial and administrative corruption and the consequences that have resulted from it. because of financial disasters in banks and other financial organizations brought on by management's concealment of their activities and disregard for the interests of shareholders and consumers (Emmenegger, 2017).

Therefore, this was necessary and emphasized the necessity of adopting the concept of governance as a general framework to limit the repercussions of global crises, as the importance of governance in the work of banks increased and became a necessary necessity, considering that banks are among the basic pillars that influence the national economy and are reflected on customers and banks among each other, whether internally or externally. The importance of governance and its applications to the work of banks (Ayari, 2012).

Numerous agreements and guidelines that direct the operations of these

organizations, particularly those about banking secrecy, have laid the groundwork for the concept of governance. These have exposed numerous legal gaps concerning banking secrecy, particularly those about the principles of governance that were endorsed by the Basel Principles of 1999, which played a part. He is well known for creating contemporary ideas for the operations of banks and their governance, all the while attempting to reconcile the values that underpin banking operations with those that are subject to Basel Committee regulation (Raghavan, 2007).

The expansion of the banking business, especially in the field of banking at the global and local levels, and the widening of the challenges in this business, the successive challenges of global crises, the repercussions of which continue to increase from time to time, and the resulting collapses in various global markets (Abdul Hamid, 2006). As modern global developments attempt to lay down modern foundations related to harmonizing the principles of governance and the requirements of banks to create an important balance between them (Omarova, 2016). E-commerce also formed an important and new aspect of banking in the relationship between banks and companies, as it expanded the buying and selling of services, goods, and information between individuals, companies, and companies among themselves, which was reflected in the successive changes in banking, in saving through reduced costs for banks (Al-Asraj, 2013). It is also worth noting that financial globalization has a relationship with the governance of banks, through which many benefits can be achieved, namely the development of local and global markets, as the expansion of the presence of foreign banks within the country leads to improving the quality of financial services provided and increasing their efficiency, in addition to imposing more discipline (Suleiman, 2006).

It is worth noting that financial crises cannot be attributed to one or two causes, such as the famous English Baring Bank case and also the collapses that occurred in many East Asian countries and the United States of America between the years 1997 and 1999. There are multiple reasons for the occurrence of financial crises, including the lack of suitability of banks' assets and liabilities, as the expansion of granting loans leads to the occurrence of such problems, especially if there is insufficient liquidity to confront these crises, So local banks resort to requesting loans from abroad at times when Global interest rates are high, and one of the reasons is the accelerated financial liberalization without caution, which leads to the occurrence of banking financial crises (Überbacher & Scherer, 2020).

It is worth noting that the successive global financial crises had a major role in strengthening the concepts of governance principles since the beginning of

the twentieth century, which was followed by the beginning of the current century, as they had the largest role in establishing the basics that became an essential foundation for their application to the principles of banking (Al-Tuni, 2004).

Since the principles of governance are a requirement for the work of banks and financial institutions, financial markets and global institutions have recently been experiencing the most dangerous financial crisis known to the global economy, which began in the United States of America as a result of mortgages, which very quickly turned into a major global crisis that threatened economic stability. Proper application of bank governance principles plays a role in eliminating these crises (Al-Najjar, 2009).

As for the local level in Jordan, it was not isolated from global crises, as the banking system in Jordan was exposed to many financial collapses in the banking sector, the most prominent of which was the collapse of the Petra Bank in 1989, as a result of administrative and financial corruption, as the director of the Petra Bank seized approximately two hundred million. Jordanian dinars and smuggled them out of Jordan for his account, in addition to wasting more than four hundred million Jordanian dinars, as a result of the individual and absurd decisions practiced by the bank's managers, in addition to the weakness of the effective oversight of the Central Bank of Jordan and its leniency in periodic monitoring of the bank's financial situation. Also due to the lack of experience of the employees and their lack of keeping up with and knowledge of the seriousness of banking operations, especially through the absence of the academic qualification required in the field of banking work (Al-Akhras, 2005). After examining the aforementioned, we find that there were multiple real causes of the local financial crises. The primary ones are the external ones, which stemmed from the effects of the global financial crises, and the internal ones, which include the events that occurred in the Bank of Petra, the Bank of Jordan, and the Gulf as a result of financial and administrative corruption brought about by lax oversight by the Central Bank of Jordan. The subsequent infractions are unrestricted (Al-Khazali, 2000).

Therefore, the Egyptian legislator approached, like other countries, by issuing the new Central Bank and Banking Sector Law No. 194 of 2020, which dealt with many articles that stipulated the necessity of applying and strengthening the rules of governance in banking work. The law took into account the necessity of strengthening the governance and independence of the Central Bank in a way that ensures activating its role and achieving. Its objectives are based on the constitutional controls for independent bodies and supervisory bodies. The law regulates aspects of coordination and cooperation between the Central Bank, the government, and the financial sector supervisory authorities (Turlea et al., 2010).

The law enshrines the principles of governance, transparency, disclosure, equality, non-conflicts of interest, establishing fair competition rules, preventing monopoly practices, and protecting the rights of customers in the banking system.

Methodology

In terms of the method of research and writing on the subject, this study relies on the comparative method and the applied method.

In terms of the comparative method, it appears through a presentation of the position of the Jordanian legislator and the position of other legislation

In terms of the applied method, it appears through a presentation of some provisions related to applications of the concept of governance to the banking sector.

Conclusions

- The application of banking secrecy in banks and financial institutions has important economic effects at the local and international levels, represented by increasing the ability of banks and institutions to expand mergers and investment and attract local and foreign capital, which leads to an increase in the rate of economic growth.
- Among the rights imposed by the constitution is the preservation of secrets related to the individual, as it is related to the personal freedom of individuals, in addition to being linked to banks and their dealings with customers.
- The principle of banking secrecy and the disclosure and transparency it requires is not new, as legislation and laws have known it for a long time, because it has an effective role in preventing corruption.

Recommendations

- The concept of bank governance in general and the principle of confidentiality and transparency in particular must be consolidated in the work policy of banks and financial institutions. Community awareness of the importance of governance must also be developed through effective educational frameworks such as conferences and seminars.
- Amending legislation, laws and regulations by the requirements of banking secrecy as one of the principles of governance.
- Benefit as much as possible from the experiences of developed countries in the field of bank governance and banking secrecy applications.

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