

Expiry of the Interim Bank - An Analytical Study

Ahmed Hamid Abdul Hassan^a, Huda Sadoon Lafta^b, Hussein Obai Shawat^{c*}, ^aImam Jaafar Sadiq University, Iraq, ^{b,c}Al-Qadisiya University College of Law, Al-Qadisiyah, Iraq, Email: ^{c*}Hussein.ali@qu.edu

This summary looks at the interim bank which, according to the provisions of the Iraqi bank 94 for the year 2004, was the most important means of rehabilitating the faltering private banks. This kind of reserve now has its own medicine, which differs from the other banks stipulated by the Iraqi banks in terms of the establishment and in terms of Sunset. What concerns us in our study of the subject is the expiry of the bank in progress, as the bank in question ends normally by either carrying out its tasks, which is rehabilitating the troubled private bank and returning it to normal, or finalising the expiry of the specified period under the law. It is set to be three years in any case. The other way to finish the bank is to close the progress bank, based on the impossibility of implementation, where in some cases the administrators of the interim bank consider that it is impossible for them to carry out the duty assigned to them, which is to rehabilitate the troubled private bank, as well as to end it by a decision of the Minister of Finance at any stage of rehabilitation. We will therefore address this research on the expiry of the interim bank and reach several conclusions and proposals.

Key words: *Interim, Bank, Analytical, Study*

Introduction

First: The Essence Research Idea

The interim bank in light of the Iraqi Banking Law No. 94 of 2004 is one of the most important means of rehabilitation of the troubled private banks, which was due to the lack of confidence in the banking environment in Iraq. The Iraqi legislator in the Banking Act introduced this type of bank for addressing the default that private banks may encounter and thus help them to return to normal (Esmat Abdel, 2015).

However, this type of banking has its own nature, which is different from the other banks established under the law referred to above, especially in terms of expiry. The interim bank is terminated either naturally, namely through the completion of the work assigned to it, which is the rehabilitation of the bank, or the expiry of the period specified by the law, or ends

abnormally by a decision of the Minister of Finance or the impossibility of implementation (Esmat Abdel, M. (2015).

Second: Research Problem

The problem of research to be addressed in this study comes with the overlap and conflict between the provisions of the Iraqi Banking Law No. 94 of 2004 and the Law of the Central Bank of Iraq No. 56 of 2004, when the central bank's law made the establishment and completion of the banks an exclusive authority. Therefore, this study aims to find proposals that remove and resolve this conflict.

Third: Importance of the Study

The importance of the study is illustrated by the fact that the interim bank is a means of rehabilitating the troubled banks, so it should be given priority in the legal studies, especially the subject of its termination. This raises a lot of legal problems because of the overlap and conflict between the banking law and the central bank law, so the end of the bank is characterised by the specificity that distinguishes it from other banks in terms of expiry. It is a bank that determines its own period of expiry, unlike all other types of banks.

Fourth: Research Methodology

The study of the subject of "the end of the interim bank" requires us to take an analytical approach in our study of the subject by following the texts of the Iraqi banks and the provisions of the Central Bank Act and the Iraqi Public Companies Act No. 22 of 1997.

Fifth: A Philosophical View of the Bank's Interim Legislation

The study of the philosophy of the interim bank (Zahra Mohammed, 2018) raises many questions, including whether the philosophy of the existence of the interim bank is intended for the benefit of the bank al-Ta'ad or the interest of the creditors or both. In other words, does the legislator seek from the existence of the interim bank to save the troubled bank, or to save creditors from the risk of not getting their rights in the case of the bankruptcy of the troubled bank. The banks are institutions of financial and economic dimensions that negatively affect the entire economic life - and the national economy - in case of failure.

When looking at these questions we find that when the legislator organises any incident or relationship, including the case under consideration, it seeks to create a balance between the interests of the parties of this incident or the relationship, without one party at the expense of the other party, and therefore, when looking at the organisation of the legislator of the progressive bank, we find that the philosophy of balancing interests between different parties exists in the mind of the legislator. If we look at it from the perspective of the troubled bank, the purpose of the interim bank's establishment is to save the troubled bank from the exceptional situation it is going through. It aims to rehabilitate it in order to return it to its

normal position in terms of fulfilling all its obligations towards customers, as well as making profits for the establishment of the troubled bank from its starting date. Thus the bank will be spared any harm that negatively affects the shareholders (Farouk, I. J. 2017).

It is clear from this term that the legislator gave thought to the section that included the provisions of the interim bank, which is intended to save the troubled bank, and not to take corrective measures to help correct the weaknesses, which would lead to the cessation of the loss to the bank if it continued to manage without the procedures. He then highlighted the profit of these measures and accredited success to them. The intention of the legislator to achieve the interest of the troubled bank is clearly indicated by the text of article 67/2, which states that "it is attached to the recommendation of the Central Bank of Iraq, which requires the rehabilitation of the Bank of Iraq Rehabilitation Plan prepared by the Central Bank of Iraq in consultation with the trustee, and the plan identifies weaknesses in the management or operations, and sets out in detail the corrective measures necessary to correct these weaknesses.

It is clear from the foregoing that the purpose of the interim bank is to rescue the troubled bank and correct the administrative and financial path in time, and then to achieve its interest and the interest of the shareholders. This intention is evidenced through the text of paragraph 3 of the same article above which states that, "for the purposes of preserving the assets of the bank and protecting its deposits and managing the work of the bank, subject to its qualifying as a continuing one, the Central Bank may order the trustee to transfer part or all assets or liabilities of the bank to a bank broker. The content of this paragraph also clearly and explicitly indicates that the purpose of establishing the interim bank is to achieve the interest of the troubled bank and preserve its assets as well as to manage the bank in the right form, which saves it from default.

If we look at the bank's interim bank - creditors of the troubled bank - customers are keen to obtain their dues and deposits from the bank easily and smoothly. The philosophy of the existence of the interim bank is the intention to improve the performance of the troubled bank and its promotion and rehabilitation administratively and otherwise, and this strengthens the confidence of the customers. It finances the bank in the form of capital, loans, grants and guarantees, and it can order an increase in the bank's capital. In some cases the state bears the costs of rehabilitation, and this is ultimately in the interest of the customers, which shows that the philosophy of the existence of the stage bank is in the interest of the customers as well as the interest of the troubled bank.

In addition, the presence of the interim bank brings benefits to the level of economic and commercial life in the country, which reflects positively on the national economy through the provision of a safe and secure banking system, which helps to grow banking and commercial operations, leading to the recovery of the country's economy. This can be demonstrated by

what the legislator mentioned in the purpose of issuing the Iraqi Banking Law, which was based on the order of the authority of the provisional coalition No. 40 concerning the modernisation of the banking system, and establishes a secure banking system characterised by being safe, competitive and accessible to all, in order to provide a basis for growth and economic development and the development of a stable Iraqi economy.

Therefore, we note that the philosophy of the legalisation and regulation of the interim bank has come to achieve the balanced interests of the three parties: the bank faltering, the creditors, and the public interest - it cannot be limited to one party without another as shown above.

Expiry of the Interim Bank

We have shown that, when dealing with its characteristics, the interim bank is a temporary bank, i.e. it inevitably ends at the time of the specified period, although this is not the only way the bank ends. The expiry of the bank is meant to remove the legal and moral personality of the interim bank which arose correctly at the time (Farouk, 2017). It is necessary to indicate the ways of the interim bank's expiration, so that we have completed the full study of the subject. In the light of the above, we will divide this research into two demands that we will deal with; in the first demand, the natural expiry of the interim bank, and the second requirement will be allocated to the study of the abnormal or premature expiry of the bank in progress.

The First Requirement

The Natural Expiry of the Interim Bank

The interim bank normally expires in one of two ways, either by the expiry of the period specified in the Iraqi Banking Law, or it ends after achieving the goal for which the interim bank is intended, which is to revive the troubled bank and let it return to normal (Raed Ahmed, 2014).

Therefore, we will divide this requirement into two branches:

The First Branch

Expiry of the Bank by the End of the Term

The Interim Bank of Iraq, which we have shown in its characteristics as a fixed-term bank, ends this period, and this is as stipulated in article 61/6, which states, "Regardless of the requirements in article 14, the Central Bank of Iraq may, by its choice, organise a licence for a bridge bank owned and controlled by the Central Bank of Iraq, and receive any assets and liabilities of one or more banks for which the trustee is appointed under Section 1 or received under Article 14. Al-Jisri Bank (1) can place it under the control of a trustee or recipient under this section 11 and (2) can complete its operations after a two-year period of issuance of leave,

except that the Central Bank of Iraq, by its choice, can extend its legal status for an additional year.

He also referred to the expiry of the interim bank Article 67/A/7, which stated that "the interim bank, which is under the control of a guardian or guardian of a judicial guard based on Section 11, 2 will terminate its operations after two years following the issuance of its licence, unless the Central Bank of Iraq makes the choice to extend its legal existence for three additional chapters within one year. It is clear from the above articles that the period of the bank has a legal and moral responsibility and therefore can carry out its assigned functions in a period of two years from the date of issuance of the leave, but this period can be extended for another year to a period of three years, which is the longest period the bank can remain.

Therefore, the interim bank ends two years from the date of the leave or three years from the date of the leave in the event of an extension, and in all cases, it ends within three years of the date of issuance of the leave (Rabah and Troansaid, 2017).

The article 67/A-7 is taken into account in the drafting, which says "Interim Bank under the control of a guardian or guardian of a judicial guardian based on section. This wording raises the question of whether the interim bank is protected by the judicial guardianship, or if the bank is under judicial custody. It can therefore be proposed to be amended as follows "the operations of the interim bank will end with two years of licensing, unless the Central Bank extends the law for another year.

The Second Branch

The Expiry of the Bank in Progress after Achieving the Goal for which it was created

The interim bank expires before the expiry of the term and in a normal way if the bank achieves the goal for which it was created (Latif Jabr, 2012). The main objective for which the interim bank was established was the rehabilitation of the bank that is faltering. This is achieved through the bank's completion of a series of tasks that lead to the revival of the bank. Therefore, the interim bank aims to save the troubled bank from the exceptional situation it is going through until it returns to normal, by correcting its administrative and financial situation and then achieving the interests of all parties, which is in the interest of the debtor (al-Adin Bank) until it returns to its normal state and purpose. The basic principle of its establishment is to get profits, as well as the realisation of the interest of the customers to get their full rights but, if the bank continues to falter and increase its loss, the creditors do not get their full rights. The public interest is to maintain the stability of the banking environment and activity of the bank in the country.

If the interim bank has begun its functions and this has led to the recovery and return to normal of the troubled bank, i.e. it has been restored to its financial and administrative position, then in this case the interim bank ends in a normal way before the end of the term, because there is no benefit from its survival, since the main purpose was achieved, and the bank has recovered. It should be noted that the time limit is in order to avoid prolonging the liquidation of a faltering bank, which cannot be rehabilitated through an interim bank that has been set up to rescue it, and therefore the expiry of the specified period of the interim bank and the failure to improve the status of the troubled bank is terminated. This route for the expiry of the interim bank was not provided for by the new arrangement, but it can be inferred through the purpose of the establishment of the interim bank.

The Second Requirement

The Abnormal Expiration of the Interim Bank

The ways of the interim bank's expiration are not limited to natural routes, because next to these routes there are abnormal routes where the interim bank is eliminated, and these methods are: the end of the bank based on the decision of the Minister of Finance after consultation with the Central Bank, as well as the end of the interim bank due to the impossibility of implementing the purpose it was set up for.

In the light of the foregoing, the unnatural ways of the expiry of the interim bank are the decision of the Minister of Finance to end the interim bank and the impossibility of implementing the purpose for which the bank in question was intended. We will divide this requirement into the following two sections:

The First Branch

The Expiry of the Interim Bank by Decision of the Minister of Finance

In article 67/2, the Bank of The O'Rourat stipulates that the interim bank will be eliminated by a decision of the Minister of Finance after consultation with the Central Bank in article 67/2 that reads. The Minister of Finance may at any time during the implementation of the plan and after consultation with the Central Bank of Iraq 1- complete the process of rehabilitation 2- the Central Bank of Iraq is required to apply to the Financial Services Court to file a bankruptcy claim under Article 72. It is understood from the text of the above article that it allowed the Minister of Finance to consult with the Central Bank to complete the operations of the interim bank at any stage before the expiry of the term (Raed Al, H. 2018).

It should be noted that the above article did not provide for the closure of the bank, but provided for the termination of rehabilitation works. The Al-Progress Bank is one of the means of rehabilitation, which applies to the rehabilitation system of the interim bank, a branch of the original, which is the rehabilitation. Qualification and therefore based on the base branch of the origin.

We believe that the intervention of the Minister of Finance and the termination of the work of the Interim Bank established by the Central Bank before the end of the two-year period, is a clear violation of the provisions of the law of the Central Bank of Iraq No. 56 for the year 2004, especially article 40 of the law of the Central Bank of Iraq, which stated in it shall be the Central Bank of Iraq. The Iraqi unit has the power to take all necessary measures to license and regulate the work of banks, supervise them and their branches in order to comply with all the provisions of this law and the banking law. The term all procedures, including the termination of the bank's interim work, is the exclusive jurisdiction of the Central Bank (Raed, K. A.G. 2014).

Article 4/I, which specified the functions of the Central Bank of Iraq, including issuing licences to banks and regulating their work and supervising them, is understood from the terms of regulating the work of banks, i.e. the termination of the work of banks is also included in the regulation of the work of banks, as well as contrary to the text of article 16/d of the same law, which specified that taking measures to ensure the safety and security of banks is the competence of the Central Bank of Iraq, within the framework of the regulation of the work of the banks (Ahmed, K. A.G. 2014).

The intervention and the financial visit to end the bank's interim work is contrary to the provisions of the Banking Act, especially article 2 paragraphs 1 and 2, which stated that the main purpose of this law is to maintain confidence in the Banking system. Since the establishment of the interim bank and the completion of its work are one of the most important means that help the trust and stability of the banking system, this is the competence of the Central Bank of Iraq and this is how the content of the second paragraph of the same article made these matters of exclusive competence of the Central Bank. No decision by any other government has any force in relation to these matters. In the light of the above, the procedures for terminating the bank's interim work are the exclusive competence of the Central Bank and the intervention of the Minister of Finance and the decision to terminate is contrary to the provisions of the above-mentioned articles (Zahra Mohammed, N. 2018).

Some may say that the minister's decision was based on consultation with the Central Bank and therefore his decision is correct, because the central bank has been involved in making the decision. It can be argued that the establishment of the al-Matili Bank and its termination of the exclusive competence of the Central Bank was based on the arguments mentioned, when no one should even participate in the decision-making. The minister's consultation with the Central Bank is not binding on the minister, because consultation is not binding. The minister's decision to exercise the exclusive powers of the central bank is therefore an infringement. Therefore, in the light of the above, we propose to amend article 67/2 of the law of the press, which should be in the following form "At any time during the implementation of the rehabilitation plan, the central bank may decide (1) to terminate the rehabilitation processes and (2) to file bankruptcy against the bank under Article 72ⁱ.

The Second Branch

The Expiry of the Interim Bank, due to the Impossibility of Implementing the Purpose for Which It Was Created

We have already shown that the goal of the interim bank is to save the troubled bank from failure through the interim bank's commitment to a set of tasks that lead to the recovery of the troubled bank, and therefore the interim bank in question is to save the troubled bank from the situation. The exception is that the interim bank goes through until the troubled bank returns to normal, by correcting its administrative and financial situation (Abdul Majid, 2007). However, at times, when the interim bank begins its business and before the end of its term, it may be impossible to achieve the goal for which it is intended to revive the troubled bank, due to the collapse of the last bank in a way that cannot be rehabilitated, in which case the interim bank is terminated, because there is no interest in staying with failure to achieve the goal for which it was raised (Abu Zeid, 1978). Then the interim bank is liquidated, i.e. it is terminated in accordance with the liquidation rules of the Iraqi Banking Act, and all of this takes place before the expiry of the period specified in the articles 61/6 and 67/A-7 by Iraqi banks (Zahra Mohammed, N. 2018).

The Conclusion

After we have completed the study of our topic of our research tagged “The legal regulation of the interim bank” we have reached several conclusions and recommendations.

First: Results

1- We concluded that the philosophy of the bank's interim legislation is aimed at achieving the interests of three parallel requirements, which are: the interest of the troubled bank by saving the troubled bank from the exceptional situation it is going through; rehabilitating it in order to return it to normal status in terms of fulfilling all its obligations towards customers; and achieving profits. It also aims to satisfy the interest of the customers (creditors of the troubled bank). The presence of the interim bank is intended to improve the performance of the troubled bank and its promotion and rehabilitation both administratively and financially, and this strengthens the confidence of the customers of the bank (creditors) to obtain their full rights. It satisfies the interest of customers through the services provided by the interim bank and the state to the troubled bank, and reflects positively on the customers in obtaining their rights. The presence of the interim bank brings benefits to the economic and commercial life of the country, which reflects positively on the national economy by providing a safe and secure banking system, which helps to grow banking and commercial operations, leading to the recovery of the country's economy.

2- We concluded that the expiry of the interim bank is in a natural way, which is either to end the period specified for its expiry under the Iraqi Banking Law, whether it achieves the purpose

for which it was established or not, and this period does not exceed in all cases three years, or it ends with the achievement of the goal that we want for it, which is rehabilitation. The troubled bank and its return to normal in terms of administrative and financial situation ends in this case at any time and before the end of the three-year term.

3- It ends in an abnormal way by a decision issued by the Minister of Finance at any time during the period of the interim bank and this has many observations on it, because its termination by decision of the Minister of Finance is a clear violation of the specialised laws and a clear end to the exclusive competences of the Central Bank contained in the relevant laws. It also ends abnormally when it becomes impossible for the bank in question to implement the purpose for which it was created, because the troubled bank has reached a stage that cannot be rehabilitated and rescued through the interim bank.

Second: Recommendations

- 1- We recommend that the Iraqi legislator amend the Iraqi Banking Law No. 94 for 2004 and completely reformulate its articles because of the many language errors in it and errors in their formulation, as well as the repetition of the numbers of legal articles. This is a strange approach for the Iraqi legislator, so we propose that the legislator reformulate all the articles.
- 2- We propose that the legislator reformulate article 67/ A-7 to be as follows 7- The operations of the Progressive Bank will end with the expiry of two years from the date of its licence to work, unless the Central Bank extends its legal existence for another year.



REFERENCES

- Abdul Majid, A.-H. (2007). Summary in the Explanation of Civil Law, Sources of Commitment, Legal Library.
- Abu Zeid, R. (1978). Commercial Companies in Kuwaiti Law, II, Modern Book House, Kuwait. Central Bank Law No. 56 of 2004.
- Esmat Abdel, M. (2015). Briefs in Civil Contracts (Sale and Rent), II, Zain Human Rights Publications, Beirut.
- Farouk, I. J. (2017). Summary of Commercial Companies, Atak Company, Beirut. Iraqi Banking Act No. (94) of 2004.
- Latif Jabr, K. (2012). Commercial Companies, Comparative Legal Study, II, Sanhoury Library, Baghdad.
- Rabah, K. and Troansaid, K. (2017). Expiration and Liquidation of Commercial Companies, Master's Thesis, Abderrahmane Meera University- Bejaia, Algeria.
- Raed Ahmed, K. A.G. (2014). Commercial Brokerage Contract, II, National Source of Legal Exports, Cairo.
- Raed Al, H. (2018). Bridge Bank is a new experience we hope for success, an article published on- Media Network in Denmark [http:// alarshef.com/ kareta/ 2018-10-11-08-25- 02#ixzz5n Lcu HQH](http://alarshef.com/kareta/2018-10-11-08-25-02#ixzz5nLcuHQH) www.economy -news- net. Economy Agency website, visit date on 4/7/2019.
- Zahra Mohammed, N. (2018). Bridge Banks Concept and Goals, article published on the following website: [http:// www.nib.iq / ar/ articles- studies/bridge- bank](http://www.nib.iq/ar/articles-studies/bridge-bank) Iraqi Public Companies Law No. (22) of 1997.
-