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مجلة جامعة الانبار للعلوم القانونية والسياسية المجلد الحادي عشر- العدد الاول -

A Legal View of the Concept of Banking and Its Types

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Abstract

Banking has witnessed a scientific transformation as a logical result of the revolution in new technologies in the stock market and banking activities. This reason has led banking and financial institutions to provide a new type of services that are coordinated with what has become prevalent in the banking market. The development of the bank performance came in line with the surrounding circumstances and in what is embodied in electronic banking. This research aims to clarify the role of banks in providing services to customers in new areas, with various alternatives and options. Banks have a clear activity in all countries of the world, represented by the activity of banking and by converting national cash into foreign currency, whether manually or by means of a visa card and calculating salaries as bank credit. This fact is reflected in many bank operations such as documentary credit, letter of guarantee, loans, discount operations, and an overdraft. It is also represented by investment and other banking activities.

The research problem lies in the need to face some challenges in the integrity of information in electronic work. The electronic signature is one of the challenges that encountered the Iraqi judiciary as evident. A customer account hacking problem may arise, as banking may also be associated with operational or strategic risks. The difference in banking operations and the diversity of activities, especially since the development and continuous growth of banking operations caused a problem in setting a definition for the bank. Nevertheless, the concept of banking stems from its primary purpose that is related to the business for which it is established, money trade. It has imposed the same necessity to resort to banks. Finally, we suggested keeping pace with the development in the information revolution due to technological progress in electronic banking, which has become a part of our daily life, to determine the guarantees, rights and, obligations that result from the electronic transactions.

Keywords: Cash banking, electronic banking, and paper banking.

Introduction

In addition to its main function of banking processes, the bank carries out varied operations, such as accepting deposits, granting credit, banking transfer, opening accounts and credits in addition to guarantees, issuing letters of guarantee, and others. Banking is the conduct of operations and the provision of

services in a traditional or electronic way. The Iraqi Banking Control Law No. (97) for the year 1964 in Article (1) defines banking as accepting deposits and using them with other resources in investing wholly or partly through lending or any other method that is permitted under this law, at the expense and responsibility of the depositary. In Article (3), law defines a banker as the person or company for which the Central Bank of Iraq has authorized the practice of banking - as a banker.

It is well known that banks are divided into two types; electronic banks and ordinary banks, which provide traditional services. It is impossible to ignore the role that bank play in terms of multiple activities. It occupies wide tasks and continuously increasing jobs that are compatible with the development of economic and commercial life. Electronic banking is in line with the developments which increase users' confidence in addition to what it requires in terms of efficiency, ability, human, and material sufficient. This can be proved by the means of technical advance and technical skills which facilitate purchasing goods and services, especially among merchants and the general public.

Article (1 / P 7) of the Central Bank of Iraq Law No. 64 of 1976 has defined banking service as the requirement to accept deposits and grant credit, on the account and responsibility of the depositary. Banking is divided into cash, paper and electronic banking, manual, which is handled and electronic, which has emerged as a result of the information revolution and the fundamental changes in the nature of banking and financial sector's work. The Iraqi Electronic Signature and Electronic Transactions Law No. 78 of 2012 authorized the adoption of

electronic technologies in conducting and verifying transactions that take place remotely, as it regulated its provisions in (29) the protection article for those transactions and granting legal validity to them in the proof and in the second article thereof. These transactions are (requests, documents and transactions that take place by electronic means)

The third article in the first paragraph deals with electronic transactions that are carried out by natural or intangible persons and electronic financial and commercial papers such as electronic bank transfer and payment by smart payment cards such as Master and Key Card, which is electronic writing with an electronic signature authenticated and certified by an electronic certificate from the electronic certification authority in accordance with Article (13) From the Iraqi Electronic Signature and Electronic Transactions Law No. 78 of 2012, and these conditions are not available in all transactions, which is considered a challenge in the field of proof.

Electronic banking is a result of the aspiration to provide advanced and diversified banking and the financial services, depending on what technology and the information revolution have produced. It is important to identify the types of banking into three demands.

Research Methodology

By examining a legal view of the concept of banking and its types, and the accompanying development of the banking business and the fundamental changes and challenges that faced the banking sector in providing the best services to customers. The traditional means of dealing with customers are not

consistent with the circumstances and developments witnessed by banking activity in light of modern and diversified services quickly and with less effort. Time is like electronic banking, and the process of transformation and expansion of banking activities using electronic banking systems and applications is one of the major administrative challenges that Iraqi banks are currently facing, but this transformation cannot be achieved without developing a plan based on correct and developed foundations that harmonize the environment in which banks operate. Iraqi (the culture of the bank, its capabilities, capabilities, and supporting bodies) on the one hand, and between the challenges and difficulties associated with the intensive use of information and communication technology on the other hand, and that the process of harmonization between the banking environment and the challenges of electronic banking can take place through the countries developing a clear strategic plan to support electronic banking and remove obstacles before it. Supporting and improving the infrastructure needed for the Internet and communications Helping to create public awareness among the public, by spreading digital culture in various areas of life, and setting the necessary legal framework for electronic banking that achieves protection for all parties involved in banking operations, as well as qualifying capabilities to deal efficiently with new technology, and on the other hand, the bank set a strategic plan To develop the technology used within the bank and benefit from what is provided by the operations of linking the bank to internal and international communication networks, and to develop an intensive plan to develop the performance and efficiency of

workers in proportion to the skills required by electronic banking applications, all of this contributes to developing the banking awareness of the public about the new tasks and services offered by electronic banking. Third, the success of new applications depends greatly on the extent of customers' response to the new electronic services. The customer has a role in producing and providing the service, as well as the amount of awareness that these customers possess, which will certainly be reflected in the speedy completion of the adaptation process for the banking environment.[1]

In this matter, we deal with several aspects related to cash banking, electronic banking and paper banking through three requirements. It is necessary to identify the types of banking, and all of this is separated accordingly as follows: -

I.The First requirement

Cash banking

Bank is an institution that conducts banking business and it may be a governmental institution or a private joint-stock company. The legal text (1) of the Iraqi Central Bank Law No. (56) of 2004 defined the bank as a person who has a license or permit under the Banking Law which is authorized to participate in banking or other activities. The first article of French Law No. 46-84, related to the activity of credit and control

([1]) Dr. Sabah Majeed Al-Najjar and Hussein Lazim Mizban, Adapting the Iraqi Banking Environment and the Mechanism of Transition to Electronic Banking, Journal of Accounting and Financial Studies, Higher Institute for Accounting and Financial Studies, Volume 2, Issue 5, 2007, p.1.

institutions of 1984, defined the bank as credit institutions that include people who practice a usual profession represented by carrying out banking activities, receiving money from the public, conducting credit operations, placing them in customer service, as well as practicing management and repayment.[2] Banking has many elements that support the bank to be an institution. The bank should be represented by a group of regular integrated businesses under the management of a president and equipment in order to achieve a specific goal, yet this institution cannot be an individual proprietorship.[3]

Cash banking is represented by banknotes, which is a negotiable guarantee instrument. These papers are issued by the government and an authorized specialist such as the Central Bank of Iraq. These cards derive their power from state sovereignty so that the debtor cannot refuse to guarantee his debt with money. The banknote is stripped for payment and does not become obsolete with the passage of time. It is always valid for a guarantee unless it is canceled according to law. The banknote takes a specific form in accordance with the law which does not include attention because it does not include a time limit for payment.[4]

Money has numerous functions because it is a swap broker, a standard, and a store of value. It is a tool for deferred payments

(2) Available on the website of the French Legislation Database, visit date 3/3/2019 www.codes –et -–lois .fr

(3) Elias Nassif, Al-Kamil in the Commercial Law, Banking Operations, Part Three, Awaidat Publications, First Edition, Beirut, 1983, p. 35.

(4)Dr. Ali Fawzi Ibrahim, Al Wajeez in Commercial Papers, a study in the effective Iraqi trade law, issued by the College of Law, University of Baghdad, Al-Sanhouri Library, 2014, p.30 .

since it facilitates internal and international exchange. Money is a resource for calculating the value of things and storing wealth as it is a means of accumulating investment[5]. Money is considered as a tool of exchange a measure of values, besides being a saving tool[6]. The money was defined as every exchange intermediary enjoys general acceptance in fulfilling obligations. Money has a value that is derived from its utility and performs services similar to those provided by other commodities. In addition, the relative value of money is represented by its purchasing power over other goods and services.[7]

It is important to mention that there is money on the computer systems of payment institutions and it does not have a physical form. The cash balance is recorded electronically on a stored card with a monetary value. Electronic money is a series of numbers with a financial value. Electronic money may be money via the internet and store cash in the form of a computer hard disk[8], Electronic money may be outside the internet and it is called electronic money wallet, which is in the form of cards.

Money is defined as (every exchange intermediary enjoys general acceptance in fulfilling obligations). Money has a value derived from its utility and performs services similar to the services provided by the rest of the commodities. The relative

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Muhammad Hafez Abdo Al-Rahwan, Money, Banks and Financial Markets, .(°)Dr Balasnah, p. 15-22.

(6) Elham Waheed Daham, The Effectiveness of the Performance of the Financial Market and the Banking Sector in Economic Growth, First Edition, 2013, p.50.

(7) Muhammad Yusef Yassin, Banking and Monetary Law, First Edition, Al-Halabi Legal Publications, 2007, p. 23-24.

(8)Dr. Nisreen Abdel-Hamd Nabih, The Electronic Side of Commercial Law, Al Maarif Institution, Alexandria, 2008, p. 11.

value of money is represented by its purchasing power over all other goods and services.[9]

It should be noted that there are funds on the computer systems of the payment institutions and they do not have a physical form, as the cash balance is recorded electronically on a stored card with a cash value, and electronic money is in the form of a series of numbers with a financial value, so electronic money may be money via the Internet and the money is stored in the form of a computer Or, electronic money may be outside the Internet and it is called an electronic money wallet, which is in the form of cards.[10]

And that the field of information systems includes all areas of life, the concept of the bond has moved from that physical concept associated with paper to the electronic deed circuit, from a written signature to an electronic signature and from paper money to electronic transfers that represent that financial value of money through non-material information.[11]

II.The second requirement

Electronic banking

([9])Muhammad Yusuf Yassin, *,op,cit*, p. 23-24.
([10])Dr.Nisreen Abdel-Hamd Nabih, *op,cit*,.. , p.11.
([11])Hassan Fadala Musa Hassan, Faculty of Law, 2010
Legal regulation of electronic evidence (a comparative study in light of the provisions of Iraqi law., Electronic information network, date of the visit 5/21/2021. https://nahrainuniv.edu.iq)

Electronic banking is a form of transformation in the digital and virtual economy[12] with the emergence of electronic money, and electronic banking is one of the financial and banking services that is characterized by modernity, magnitude, and withdrawal at any time the customer wishes, and through electronic banking as an advanced service that reduces the number of withdrawn instruments. Banking operations electronically and with modern means of communication, the most important of which are related to the Internet, mobile phones and computers, whether by withdrawal, payment, credit or transfer.[13]

Electronic banking is one of the financial and banking services that is characterized by modernity, magnitude, and withdrawal of customer desires. As an advanced service, electronic banking decreases the number of withdrawn bonds. There are many types of electronic banking, such as automated teller machines, message banking, customer service centers, mobile banking, and others[14]. The fundamental changes have affected information technology. This fact has been greatly reflected in the activity of banks and their financial and commercial work. In addition, the desire to keep pace with progress and the pursuit of sophisticated and diversified banking services the creation of new payment methods that are distinguished by high speed and

[12] Maryam Matti , Managing monetary policy under electronic banking, Al-Agouz University, Case Study of the Bank of Algeria, Studies, Economic Issue, Volume (8), Issue (2), 2017, p. 65.p.65.

([13])Maryam Matti , op, cit, .p.65.

([14]) Dr. Sadiq Rashid Al-Shammari, Banking Operations Department Entries and Applications, Al-Yazuri, Arabian Gulf University, 2018, p. 37.

lower cost, without a spatial meeting between the customer and the bank.

The emergence of electronic banking has led to intense competition among banks with other financial institutions at the local and international levels. Besides the increasing entry of many, non-bank financial institutions, such as securities companies and their competition with banks, have greatly affected the emergence of modern services. As a result of information technology, the development of the banking business has depended on the existence of a communicative network to conduct banking operations electronically. The work of these electronic devices has been developed to obtain access to customer data immediately, and to provide advanced services in cash disbursement. These devices perform advanced functions that allow customers to access their checking accounts. Electronic banking is established at the beginning of the eighties, with the emergence of electronic money. In 1992, all bank cards became carrying personal data for their bearer. The first electronic bank appeared in the United States of America as one of the pioneering countries in the use of banking. Through a study conducted in 1998, it has been found that the existence of a large number of banks offer services through electronic channels.[15]

In France, at the end of the year 2003, an automated teller machine (ATM) appeared to allow cash deposits, whether they are papers, coins, or even checks. These banks specify the

([15]) Mahmoud Siyam and Alaa Saad, supervised by Dr. Yasser Al-Shurafa, Electronic Banking-Tools, Applications and Expansion Obstacles, pp. 37-39, site.iugaza.edu.ps/yshorafa/files/ 02/2013 .

means of customer communication on the network, the conditions for membership, and the validity of access for its participants through one of the outlets. One of the advantages of electronic banking is that it enables withdrawals and deposits at any time, which reduces dealing with paperwork in addition to the secrecy enjoyed by electronic banking. In addition, the customer does not have to travel to the bank's headquarters or branches to obtain the service at any time.[16] The rapid changes in informational and communicative technology have been affected by the methods of linking the financial markets to each other. The movement of funds accounts, the diversity of the developed financial instruments, and the techniques of remote dealing through ATM networks in banks, and the use of plastic money (credit cards) create a favorable technological environment.[17] Electronic banking business represents (all operations or activities that are held, executed or promoted by electronic, or optical means such as telephone, automatic teller, computer, internet, digital television, and others.[18]

As a result, electronic banking enhances competitiveness in a manner that is inconsistent with the tremendous development in the field of information and communication technology. This confirms the importance of investing in banking services. In addition to monitoring the conduct of business and internal control, the automated teller machine is one of the electronic

(16) Dr. Youssef Hassan Youssef, Electronic Banking, National Center for Exportation, Cairo, Volume One, First Edition, 2012, pp.13-12.
(17) Dr. Sadiq Rashid Al-Shammari, *op,cit*,. p. 37,129.
[18]Ikhlas Baqer Al-Najjar, "Electronic Banking: The Concept, The Requirements, and Challenges," Journal of Economic Sciences, College of Administration and Economics, University of Basra, Issue (14), 2004, p. 158.

distribution channels through which it becomes possible to carry out banking operations for individuals. The process is implemented through a card containing a password. Through electronic shopping, payment is made through electronic cash payment, electronic instruments, and cards.[19]

Electronic checks are defined as (a documented and secured electronic message sent by the source of the instrument (the buyer) to the recipient of the instrument. The recipient of the instrument is the merchant to approve it and present it to the bank that works over the Internet, and then the bank deducts the amount of purchases made over the Internet from the buyer's balance and add it to the merchant's balance. This deduction is made electronically and with the intervention of the banking system.[20]So, the electronic instrument is an electronic copy of the traditional paper instruments that were used to deal with as a legal obligation to pay a certain amount that includes information that taking an electronic form. The electronic service has developed so that it sends messages to customers as soon as certain movements occur like the arrival of salaries, and transfer, or withdrawal of a check as well as approval of a loan or a bank review for a specific reason. The development and modernization of the messaging service continues to ensure that customers receive banking services at any time and place.

Electronic payment is one of the modern means of communication within the scope of commercial activity in

(19) Dr. Youssef Hassan Youssef, Electronic Banking, National Center for Exportation, Cairo, Volume One, First Edition, 2012, pp.13-12.

(20)Noha Khaled Issa, Al Mohaqiq Al Hilli Journal for Legal and Political Sciences, Issue Three, Seventh Year, 2015, p.562.

accord with scientific and technological progress. It is a method that allows money to be transferred by an electronic means to enables people to fulfill their monetary obligations away from routine, and through licensed bodies that provide these electronic services by a provider Electronic money payment service.An electronic payment service provider is associated with customer activity through several operations such as deposit, transfer, withdrawal and credit. He also has specialized technical experience, financial capabilities, and sufficient skills to practice this work, compatible with electronic payment methods, and to ensure the preservation of the funds of those dealing with the service. The electronic service provider has organizational capabilities in terms of providing protection and safety to protect the money of its clients in order to avoid misuse or loss of information. The electronic payment service provider has several obligations, including the fulfillment of legal conditions, to abide by the laws and instructions. He has obtained a license from the competent authorities to initiate the provision of the electronic service. He must submit an application that includes a set of information, such as the name and address of the company requesting the license, the name of the director and the founders, its capital, and other statistics. Digital electronic money is one of the most widely used electronic means of payment, especially when it provides a safety element used in payment transactions. It can be used in payment transactions with an element of safety. It can also be used by young individuals, unlike other means of payment.[21]

([21]) Dr. Youssef Hassan Youssef, *op,cit*,., p.120.

The Internet banking system or the electronic bank has several advantages since it gives customers the opportunity to know their accounts in the bank and review them first-hand. The transaction between the customer and the bank takes place remotely, which saves the customers and the bank a lot of time, effort and cost. It also gives customers an opportunity to pay their obligations electronically. It gives clients the ability to manage their financial portfolios and change their composition in record time. The banking system allows clients to carry out money transfers inside and outside the country. It allows the bank to carry out clearing operations among clients' accounts electronically.[22]

Article 2 / a) defined the electronic document according to the UNCITRAL Model Law for Electronic Commerce of 1996 as (information that is generated, sent or received by electronic or optical means or by similar means, for example: electronic data exchange, e-mail, telegram, telex or Hard copy)[23],

The Iraqi legislator defined electronic documents in the Electronic Signature and Ethnic Electronic Transactions Law No. 78 of 2012 as documents and are created, merged, stored, sent, or received in whole or in part by electronic means, including electronic data exchange, e-mail, telegraph, telex, or copies). The Iraqi legislator also define the provider of electronic money payment services in Article (4 / first) of the Iraqi electronic payment services system for funds No. (3) of 2014 as the person who obtained a license from the bank to

(22) Dr. Youssef Hassan Youssef, *op,cit*,. p.120.
(23) The UNCITRAL Model Law for Electronic Commerce of 1996 issued in the session No. 25 of the General Assembly of the United Nations on December 16, 1996.

provide electronic payment services on the condition of being a moral person.[24]

Legal jurisprudence defined the electronic payment service provider as the issuer of credit cards to the consumer which is either a bank or an institution concerned with payment services.[25] It is also known that every legal person is authorized by law or the central bank to practice all or some of the bank operations.[26] In addition, it provides services and issues cards, such as cash withdrawal, payment or credit cards, and payment cards, so that accounts are monitored, cash deposits and withdrawals are managed, payment operations are carried out, and electronic money transfer services are performed.

Electronic banks may be exposed to risks necessitated by freedom from traditional restrictions and complicating factors. Electronic banks may face operational risks related to the nature of activity, risks related to weak banking experience and awareness, legal risks with the diversity of activities and increased reliance on financial services technology.[27] Electronic banking is virtual banks that conduct banking operations electronically and create websites for them to facilitate the e-

([24])Article (4 / First) of the Iraqi Funds Electronic Payment Services System No. (3) for the year 2014

([25]) Firas Mahmoud Khalil, Online Payment via Mobile Phone, Journal of Monetary and Financial Studies, Central Bank of Iraq, Issue Three, 2018, p. 125,

([26])Dr. Samiha Al-Qalioubi, New Payment Methods (Plastic Cards), New in Banking from Legal and Economic Aspects, Al-Halabi Legal Publications, Beirut, First Edition, Part One, 2007, p. 65.

([27]) Nidal Sahib Khazal, (The Effect of Operational Risks on Electronic Banking in the Light of Basel Principles) An Applied Study in Some Iraqi Banks, Journal of Accounting and Financial Studies, Technical Management Institute, Baghdad, Vol. Seven and Issues 20 ,, 2012, p. 259.

commerce process and reduce time, effort and cost.[28] International Bank Account Number (IBAN) also contributes to improving the level of financial and banking services to complete the money transfer process and is confirmed by international bank account standards.[29] The money may be transferred by electronic means.[30]

III.The Third requirement

Paper banking

Paper banking, in the form of check, plays an important role in commercial and economic activity[31], and the check is considered as a commercial paper because it is legally regulated. It is ordered by a person called the drawer to another person called the Bank. He pays a certain amount of money and is due to be paid upon seeing a specific person. The establishment of the instrument is considered a legal act that must fulfill the substantive and formal conditions.[32] If the instrument does not include these data, it will have a legal effect. The check is defined as a paper that includes an order from a person called the drawer to the bank. He pays, upon seeing them, a certain amount of money to a third person who is the beneficiary, or the

(28) Arab Committee for Banking Supervision, Electronic Banking Operations and Supervisory Framework, Arab Monetary Fund, Abu Dhabi, January, 2002.
(29) Information Security - The Iraqi Commercial Bank, the electronic information network, the date of the visit 2/5/2021. https://cbiq.com.iq ›information-security
(30)Article (24) of the Iraqi Electronic Signature and Electronic Transactions Law No. (78) of 2012.
(31) Dr. Aziz Al-Aqili, Mediator in Explaining Commercial Law, Part One, House of Culture for Publishing and Distribution, First Edition, 2008, p. 105.
(32) Latif Jaber Komani with Dr. Ali Kazem Al-Rafi'i, Commercial Law for students of the Faculties of Administration and Economics, Baghdad, 2000, p. 152.

holder of the paper[33]. A formality in which a person called the drawer issues an order to a bank to pay a certain amount of money as soon as he sees it.[34] The check is considered a banking activity in Iraq.[35]

The draft deed is organized according to stipulated conditions and according to which the drawer orders a person or another, the Bank , to pay upon sight a certain amount of money to a specific person, the beneficiary. There is an order that is not dependent on a condition to pay certain amount of money, the name of the person ordered to pay, the Bank, the place of payment, the date of establishing the check and the place of its establishment, and that the success of the banking business depends on the efficiency and safety of the banking service. Financial markets and the attraction of savings in a related context, the decision of the Civil Commission stated (that the instrument is a fulfillment instrument, not a guarantee, and the drawer guarantees the fulfillment of the instrument).

Finally, it must be said that the Central Bank is the authority responsible for issuing and printing money in all its categories,[36] and electronic money is similar to regular money in several matters in terms of its impact on the monetary policy, and that the spread of electronic payment methods gives the central bank a more effective monetary policy in controlling the cash balance

(33) Dr. Mustafa Kamal Taha, Fundamentals of Commercial Law (a comparative study), Al-Halabi Legal Publications, First Edition, 2006.

(34) Akram Yamlaki, Commercial Law, Commercial Papers, a Comparative Study, University Library, Athraa for Publishing and Distribution, First Edition, 2012, p.319.

(35) Faeq FaMahmoud Al-Shamaa, Accounts Payable, Legal Study, Journal of Legal Sciences, Vol. Fifteen, Issues 1 and 2, pg. 7

(٣٦)Maryam Matty ,op,cit.., p. 66-73.

and in effectiveness Control over financing[37], as the Central Bank of Iraq has the authority to take the necessary measures to license and regulate the work of banks and supervise them, and in a related context stated in the decision of the Civil Commission (that the instrument is a fulfillment tool and not a guarantee, and the drawer guarantees the fulfillment of the check).[38]

VI.Fourth requirement

Challenges facing banking

Banking work raises a set of challenges, which requires avoiding the problems resulting from these challenges, including the need to adhere to the confidentiality of customer information while providing information services and ensuring their integrity in electronic work and preventing phishing and fraudulent e-mails, identity theft, electronic cards and ATM fraud in some cases, as well as the challenges that The Iraqi judiciary is confronted with electronic evidence as an argument in proof, such as an electronic signature. According to the following details: -

First: Confidentiality in providing banking services and ensuring the integrity of information in electronic work: -

([37])A. Maryam Matti, previous source, pp. 66-73.

([38]) Supreme Judicial Council Decision / Civil / Judgment Number: 240 / Civilian Extended Commission / 2017 / Sentencing Date: 23/8/2017 / Issuing Authority :: Federal Court of Cassation www.hjc.iq ›

Banks seek to preserve their reputation by maintaining their relationship with the confidentiality of clients' financial receivables and ensuring the safety of the customer's personal information during electronic transactions. The security of the customer's information is the priority in banks to ensure that the information in the customer's account remains safe. Dealing with the electronic document requires maintaining the confidentiality of the information stored. In it, as the electronic document enjoys confidentiality, as no person can access the information contained therein except for the person sending and sending him or the parties authorized to see to ensure the achievement of confidence and stability in electronic transactions through the encryption and certification systems, and in the event that the information contained in an electronic document is changed[39], it is considered a forgery.[40]

Electronic cards, such as an ATM card, bank cards, social security cards, credit cards, and a loyalty card are a bank fulfillment tool, and electronic cards contain financial or legal information and data about the owner of the card. As for the information on the magnetic strip, it is the electronic document.[41] To avoid fraud and forgery in electronic

([39]) Elham bin Khalifa, Criminal Protection of Electronic Documents from Forgery, PhD Thesis in Legal and Administrative Sciences, Faculty of Law and Political Science, Haji Lakhdar University, Batna, 2016, p. 23.

([40])Muhammad Ali Salem Jassim and Abbas Talib Roqi, the credit card and the legal basis for protecting it from forgery. Al-Muthaqiq magazine, Local for Legal and Political Sciences, Part 2, 2015, p. 125.

([41]) Brahmi Hanan, The crime of forgery of the official administrative document, of an informational nature, PhD thesis, Faculty of Law and Political Science, University of Muhammad Khayseer, Biskra, 2015, p.107.

transactions, electronic authentication bodies have been established. Governmental and civil.

The Iraqi legislator has dealt with banking secrecy in Articles (49-52) of the Iraqi Banking Law No. 94 of 2004 in force regarding safeguarding the secrets of their clients and not disclosing them to others except in specific cases and for specific periods according to the law. Clients' accounts, deposits, trusts and safes with them, as Article (50) of the law referred to the above individual banking secrecy, which is intended to commit any administrator, official, employee, or current or former agent of the bank to maintain the confidentiality of information, data, accounts and deposits of clients, not to disclose them, and not to inform a third party about them. Directly or indirectly in cases other than those permitted by law, and the person in charge of the electronic authentication services must verify the identity of the person to whom the electronic certificate was delivered and the information that contains the card and its validity at the time of the electronic certificate delivery, and it is canceled in the event of a defect or cause that must be canceled, and therefore Information security is a vital component of banking safety, to ensure the safety of banking operations, and as a result of the tremendous development in modern electronic technologies and inventions And the innovations associated with it from applications in the banking industry, which gave way to the emergence of new methods of fraud, forgery and fraud that depend mainly on the use of information technology (IT), which necessitates that workers in the field of banking work devise the necessary methods of detection and confrontation that are in line

with This unprecedented technological development. With the development of information and communication technology, piracy and illegal access to information and their systems increased, in turn.[42]

The information systems of the financial and banking institutions should be protected in accordance with accepted international standards, and provide protection from breaches, the mechanism of action of protection devices (Firewalls, IPS, IDS), the protection mechanism through encryption, the management of the security and protection of information and technology using the COBIT framework, and ensuring the continuation of electronic transactions in A safe technological environment, and raising the efficiency of the institution in the face of the challenges that it may face against piracy and electronic penetration attempts that threaten the information security stability of the institution and the consequent financial or moral losses.[43] , As the breaches became threatening the future of banks and therefore it was necessary for international institutions and banks to allocate a certain percentage of their

(42) Information Security - Iraqi Commercial Bank, commercial bank of Iraq, electronic information network, date of visit 2/5/2021. https://cbiq.com.iq

(43) Professor Nader Qahoush (CISA, CISM, CGEIT, CRISC)
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budgets to protect their information, [44]and there are websites to help customers protect their financial assets (assets) and their personal details in order to help them understand the various threats and avoid falling victim Electronic phishing, fraudulent addresses, fraudulent emails, identity theft and ATM fraud, so the customer must report these incidents.

Second: Using the bank account number for the purposes of fraudulent activity: -

Some ill-intentioned professionals use fraudulent e-mails to lure users to access fake websites similar to the original websites of financial institutions, and are required to disclose personal information such as account number, credit card number, PIN or password, and the user may be exposed to phishing e-mail. By sending a security message asking the user to verify the correctness of his personal data or security issues, and after confirming those details by the user and obtaining sensitive personal and financial information from the victims being exploited for illegal purposes, and by e-mail scams, offers may be received in the form of letters in the mail. The user is tempted to offer services at discounted prices to obtain credit card information or bank account information, and the bank account number may be used for fraudulent activity, so the user must be careful of any e-mail he receives or a phone call from anyone asking for a word, account number, or credit card information. Its own secret.

Third: Identity Theft and ATM Fraud: -

([44]) Information Security Risks, https://almalnews.com ›Electronic Information Network, visit date 2/5/2021.

Automated teller service (ATM) is one of the international electronic banking services, and the use of electronic cards and automatic teller machines has contributed to serving bank customers to avoid carrying paper money or being stolen. From any ATM, even if it is not affiliated with the customer's bank, and from any country even if it is not the country of opening the customer's account. The ATM has become equipped to provide other banking services in addition to the possibility of obtaining cash, such as the ability to view the balance, the possibility of obtaining a statement of the last banking operations that have been performed and the ability to change the card's PIN number.[45]

When the bad-faith professional obtains the person's personal information, he will defraud the account and steal money from his accounts, and open new credit cards. He may apply for loans for himself and other unlawful acts through the use of the user's identity. All of these actions harm with the customer's credit, which requires immediate reporting to the bank, the cash account management operations are carried out through ATMs, whether during working hours or cash withdrawals outside working hours, and the principle is that only approved banks or ATMs are used to conduct cash withdrawals. In certain conditions and circumstances a person needs cash withdrawal services in places that are difficult to reach to banks or places where banks are few in number, such as places of tourism, for example, so ATM fraudsters approach tourists and provide their services by directing them to local merchants, who in turn use

([45]) Information Security - The Iraqi Commercial Bank, the electronic information network, the date of the visit 2/5/2021. https://cbiq.com.iq ›information-security

private points of sale. Then the merchant embezzles the card account details and uses a device to enter a fake personal identification number (PIN). Then he uses this information to make illegal cash withdrawals with forged cards. Therefore, in case of suspicion, suspicion, or exposure to a fraudulent attempt, the bank management should be informed.

A person may be exposed to frauds from ATMs, including scanning cards, as some professionals in bad faith install devices on ATMs to obtain the card account or extract card account details and record the password that was entered into the ATM, to then use this information to make a procedure. Illegal cash withdrawals with forged cards, and some of the bad faith may pretend they want to help people with little experience in using ATMs in order to obtain the card's PIN number.

The Iraqi legislature has touched upon cash withdrawals and deposits through automated teller machines and points of sale, and the implementation of electronic payments by means of digital communications or information technology means or through a network operator that acts as an intermediary between the user and the recipient of the funds, including transfers through the mobile phone.[46]

Caution should be exercised while using the ATM, and the person must save his personal identification number and not disclose it to anyone, while changing it periodically, especially in the case of hacking it, the customer must be careful, especially when someone comes to help him use the ATM And

([46]) See Article (2/4) of the Electronic Payment Services System No. (3) for the year 2014

the customer should use locations where the ATMs he is accustomed to because any changes or suspicious activity such as adding a false attachment device on the front of the device, and the customer should make sure to leave an acceptable distance between him and other people standing in front of the ATM, and keep away from the people who are trying to get the number The personal identification of the electronic card for other people, and if the person notices that the ATM is working abnormally, he can press the main cancellation key and withdraw the card and then go to another ATM machine and inform the bank about the matter, and a record of printed transactions should be kept to compare the ATM receipts With the special monthly account statement, if the electronic card is crammed into it, or withheld, or lost, or if it conflicts with the ATM, and the bank must be notified immediately.

Fourth: Electronic Evidence:

Electronic proof is of the utmost importance in confirming the existence of the disputed right, one of the most legal topics that aroused the interest of a large part of legal jurisprudence, in establishing evidence before the judiciary according to the legally defined methods. Information exchange is simple, thanks to the invention and development of the computer and its ability to store, retrieve and process information at high speed, which in turn reflected on the trust and safety that is given to electronic evidence.

In light of these developments and developments at the level of communication and electronic commerce, the proof of evidence in the traditional sense no longer has a preference for all these

electronic means, so the process of withdrawing money from an ATM using smart cards (credit cards) cannot be proven by traditional means. The development of new methods of proof consistent with these developments because the means of proof have evolved with the emergence of electronic commerce[47] with the legal difficulties and obstacles it bears. Most of these transactions are not signed and documented for many reasons, including that they may take place through cellular mobile phones or messages and conversations via the Internet that are not charged A signature and the presence of authentication or electronic certification bodies may be absent in some transactions, as the Communications Commission granted licenses to some electronic certification bodies, which poses a real challenge to proving these transactions and not recognizing them and thus may lose that protection.[48]

Through electronic transactions, it facilitates the completion of commercial operations with the least effort, costs and time, whether they are fulfilled through the electronic check or electronic transfer of money or credit card, so the electronic documents and the method of saving it electronically have

(47) Hasan Fadalah Musa Hasan, the legal organization of electronic evidence, a comparative study in light of the provisions of Iraqi law, PhD thesis, Faculty of Law, Nahrain University, 2010, https://nahrainuniv.edu.iq ›, Electronic Information Network, visit date 5/21/2021.

(48) Sajy Omar Shaban Al-Amr, Legal Protection of Electronic Transactions in Light of the Corona Pandemic - Faculty of Law, University of Mosul, https://www.uomosul.edu.iq/ News ›, Electronic Information Network, date of visit 5/21/2021.

become a substitute for paper documents, especially in exceptional circumstances.[49]

In various forms of the electronic document, such as the electronic signature, the electronic record and electronic contracts, the electronic signature is considered in commercial transactions that take place via the Internet as an electronic means to determine the identity of the person who signed the electronic document, but the problem lies in identifying the person who issued the signature[50], and the signatures of people can be distinguished electronically Through the electronic notary, as an entity that has a digital system for electronic signature, especially since the electronic archive system includes the signatures saved with the authentication authority, a natural or legal person can obtain a document that includes his name and address, and banks give the customer a bank card that includes his name, address and secret number, and through An electronic tool in the form of electronic payment. An order is directed by the debtor to his bank to pay an amount of money to the creditor.[51]

Article (2) of the UNISRAL Model Law defines an electronic signature as (data in electronic form included in a data message or added to it or logically linked to it, it may be used to assess the identity of the signer in relation to the data message and to indicate the signer's approval of the information contained in the

([49])Dr. Ammar Karim with Dr. Narman Jamil Nehme, The Legal Power of the Electronic Document, Journal of the Center for Kufa Studies, University of Kufa, Issue Seven, 2007, p. 173.

([50]) Dr. Moncef Kartas, the authoritative electronic signature before the court, publications of the Union of Arab Banks, Beirut, 2000, p. 225,

([51]) Dr. Ammar Karim with Dr. Narman Jamil Nehme, op,cit, p. 173.

data message).[52] It is also known as data in electronic form that is attached or logically linked to other electronic data that is used as an authentication method.[53]

Among the most important forms of the electronic signature is the digital or code signature, the biometric signature and the signature with the electronic pen[54], and the provision of protection for the electronic document in commercial transactions leads to an increase in the confidence of the dealers in it, especially after determining and organizing its value in proof.

And that the Iraqi legislator has given equality between electronic, writing and paper writing in terms of legal authority in proof, as Article (104) of the Iraqi Evidence Law No. (107) of 1979 indicated that (the judge may benefit from the means of scientific progress in devising judicial evidence). Estimating the value of the evidence in proof according to the modern means available, and the Iraqi legislator has authorized the estimation of the value of the electronic document to prove the facts using modern technical and technological means, as the electronic document must be saved in an electronic operating system.

The judiciary must resort to sophisticated interpretation with regard to electronic transactions issues. [55]Article 3 of the

(52) UNITRAL Model Law for Electronic Commerce of 1996 issued in Session No. 25 of the General Assembly of the United Nations on December 16, 1996.
(53) Official Gazette of the Algerian Republic, Issue 6, 10 February 2018, p.7.
(54) Abdel Fattah Al-Bayoumi Hegazy, Combating Computer and Internet Crimes in the Model Arab Law, First Edition, Dar Al-Nahda Al-Arabiya, Egypt, 2009, pp. 70-71.
(55)Dr. Saja Omar Shaaban Al-Amr, Legal Protection of Electronic Transactions in Light of the Coronavirus Pandemic - Faculty of Law, University of Mosul,

Evidence Law No. 107 of 1979 amended stipulated that (the judge is obligated to follow the advanced interpretation of the law and take into account the wisdom of legislation when applying it), and modern electronic communication systems of an informational nature constitute the most prominent features of them in commerce. The electronic document and its multiple transactions that were previously impossible to accomplish, the electronic document facilitates its preservation and access, and allows its use upon reference at a later time, and for this importance in relation to the electronic document, legislation, jurisprudence and the judiciary in many countries have pushed to think carefully about developing new legislative and regulatory formulas that allow the development of solutions for various transactions. That emerged as a result of developments due to the use of the electronic document.[56]

Conclusions

1-The conscious development of banking strategies and methods has led to the emergence of electronic commerce that uses electronic means. The working methods of banks have become a service necessity through which banks provide the best service to the customers as a result of the importance of banking services and technology in the field of business monitoring and internal control.

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https://www.uomosul.edu.iq ›news›, Electronic Information Network, visit date 5/21/2021.

([56]) Dr. Ammar Karim with Dr. Narman Jamil Nehme, op,cit , p. 173.

2- Electronic banking has many benefits. It controls costs and investment, activates production, and improves technological strategy at the local and international levels. Electronic banking aims to enhance competitiveness. As a result of the tremendous development in the field of information and communicative technology and due to the importance of banking services according to modern technology, banks gain the best chance to be affected by the information and communicative revolution.

3- Electronic banking provides banking services by using information technologies, private networks, mobile phones and personal computers. The remote banking service allows high speed and low cost, without a physical meeting between the customer and the bank. In addition, there is intense competition between banks and other financial institutions. This competition is not limited to national economies, but it has acquired international dimensions in the light of liberated global trade. As a result of the transformation of many financial institutions into security companies, many customers have demanded high-level service at a competitive cost imposed by the increasing competition between commercial institutions and economies in the banking business market.

4- The bank seeks to increase its cash resources because it works to expand the areas of operation of those resources by finding new investment methods. The methods go beyond focusing on financing commercial activities to include various businesses in production, distribution, transportation and government contracting. It intends to support and develop the national economy and accelerating economic growth. It provides individuals, companies and other economic institutions with

their financial status, or the type of project to be financed. So, they can estimate the size and quality of the necessary facilities. the success of electronic banking, plans and coordination should be drawn up among contracting parties locally or internationally.

Recommendations

1- The Iraqi legislature aims to establish texts that keep pace with the information revolution and technological progress in electronic banking. Electronic banking has become part of the reality of our daily life to determine the guarantees, rights, and obligations that entail in electronic transactions besides the need to face some challenges in the integrity of information in electronic work, such as the electronic signature. The electronic signature is one of the challenges that face the Iraqi judiciary. It depends on a live signature despite the existence of separate provisions in the Iraqi law that allows it to be taken, such as the Iraqi Investment Law No. (13) of 2006, the Electronic Signature Law, and the Iraqi Transport Law No. (80) of 1983. Besides imposing taxes, providing legal protection for information and data, and completing electronic transactions, it becomes necessary to establish an independent body specialized in certifying electronic transactions and ensuring their validity.

2- We encourage the Iraqi legislator to develop a comprehensive definition of overdraft. The amount of dependence is not limited to cash withdrawal for the amount only that refers to the means of payment within a certain amount instead of an amount of cash. It is preferred that the amount at disposal is used by all means of payment, by withdrawing the amount in cash,

deducting commercial bonds, accepting commercial transfers, bank guarantees, and by bank transferring from account to other accounts, according to the agreement between the bank and the customer.

3- Banks work to develop legal texts that serve the public interest, regulate the functioning of the market, increase confidence, and raise the efficiency and development of the market.

4- Creating an appropriate environment for the concept of banking, especially electronic ones, by setting up solid structures in the fields of electronic communications with efficient cadres consistent with the desire to keep pace with the rapid developments in the field of information technology and to identify new electronic threats and their impact on the banking sector and the importance of risks that may result from security incidents or Electronic piracy or computer crime targeting information technology security in all banking and financial institutions and ensuring the improvement of the efficiency of the institution's operations related to information technology and information technology protection.

5- Setting plans to ensure the success of electronic banking and access to electronic banking services for commercial banks, relying on the bank's secure websites, and beware of any e-mail you receive or a phone call from anyone asking for an account number or credit card information or requesting updating or confirming personal information for the user And immediately report any wrongdoing.

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