

## Mechanisms of legislative criminal intervention in the field of protecting bank secrecy

آليات التدخل التشريعي الجنائي في مجال حماية السرية المصرفية

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### **Abstract:**

*Banks are important economic institutions where they facilitate transactions and provide good service to customers, and the dealers with these banks put their trust in them by depositing their property and declaring the value of the money they have, but may occur and that the latter let them down by disclosing their secrets, either In its capacity as a legal person or by one of its employees as a natural person, here the legislator enters into punitive provisions and legislative mechanisms in order to deter this crime of disclosure of the banking secret.*

**Keywords:** bank - crime - disclosure - the secret - penalty

**المخلص :**

تعدّ البنوك من المؤسسات الاقتصادية البالغة الأهمية حيث تقوم بتسهيل المعاملات وتوفير حسن الخدمة للزبائن، كما أنّ المتعاملين مع هاته البنوك يضعون ثقتهم التامة بها وذلك بإيداع ممتلكاتهم والتصريح بقيمة ما يملكون من أموال لها، لكن قد يحدث وأن تخذل هاته الأخيرة متعاملها وذلك بإفشاء أسرارهم، إمّا بصفقتها كشخص معنوي أو من قبل أحد موظفيها بصفقتها شخص طبيعي، فهنا تدخل المشرع بنصوص عقابية وآليات تشريعية بهدف ردع هاته الجريمة المتمثلة في إفشاء السر المصرفي. الكلمات المفتاحية: البنك، جريمة، إفشاء، السر، الجزاء.



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## **Introduction:**

Banks play a major role in creating and distributing credit in order to support the activity of economic projects, as credit imposes trust, and trust is only based within the framework of secrecy. When banks perform their banking function, they attract different types of their customers, merchants or ordinary persons, who deal with them in all banking business and see many of their secrets, but the employee or bank may exploit the trust of their customers by disclosing their secrets without their permission, which may entail criminal responsibility for disclosing the secret, as the disclosure of banking secret is one of the things that require punishment in order to protect the privacy of their customers and their financial liability.

The importance of studying the subject by clarifying the principle of commitment to banking secrecy and the penalty resulting from its disclosure, and highlighting it as a basic rule of banking dealings, as its status is embodied in achieving the interests of customers, as well as achieving the general interests of the bank. But despite the importance and complexity of the subject, it has not received much attention from the legislator and legal scholars, so the research on this topic needs to be studied in light of contemporary changes as they are related to the modern problems of banking secrecy.

One of the reasons for choosing the topic is the need for banking secrecy under the capitalist system, as well as the multiplicity and increase of services provided by banks so that their work is no longer limited to keeping the money of their customers, but their work goes beyond knowing the personal information of their customers as well as their private secrets, as commitment to banking secrecy is one of the most severe obligations that fall on banks, as the disclosure of the customer's financial position and the way his money is managed is one of the private matters that the knowledge of others causes harm to the interests of the customer Material and moral.

The objectives of the study lie in determining the bank's obligations, which are to preserve the secrets of its customers and the penalty resulting from their disclosure, and to show the bank's role in the economic field, as it is an important economic institution to advance national development. From the above, the following problem has come to our minds: What is the crime of disclosing bank secrets, and what are the mechanisms of legislative criminal intervention in the field of protecting banking secrecy? To answer, we will adopt the descriptive approach in clarifying the concept of banking secrecy, the elements of the crime of disclosing banking secret, as well as the analytical approach in Article 301 of the Penal Code and Article 117 of the Monetary and Loan Law.

Thus, we have divided the subject of our research into two sections, where we touched in the first of them to the nature of the crime of disclosure of banking secret, which in turn divided it into two requirements, where we talked in the first of them about the definition of banking secrecy, while the second dealt with the elements of the crime of disclosure of banking secret. The second section has been devoted to the penalty applied to the bank in the event of a breach of the preservation of the banking secret and the

exception contained on the application of the penalty, where we divided it is also into two requirements, where we touched in the first of them to the penalty resulting from the disclosure of the bank secret, the second of them we have dealt with cases of permissibility of disclosure of bank secret or exception.

### **The first topic: The nature of the crime of disclosing the banking professional secret**

the nature of the crime of disclosure of banking professional secret In this section, we will clarify what is meant by banking secret (Section I), as well as we will address the elements of the crime of disclosing the banking professional secret (Section II).

#### **Section I: Definition of banking secret**

In this requirement, we will address the linguistic and terminological definition (Subtitle A), and then the Algerian legislator's definition of banking secrecy (Subtitle B)

##### **A) Linguistic and idiomatic definition of banking secret:**

###### **1- Linguistic definition of banking secret:**

The secret is linguistically defined as what is hidden and hidden or what a person conceals in himself, it is every news that is limited to a limited number of people, and it is every information that is scheduled to be hidden or is what a person leads to another trusting him not to disclose it. The meaning of the secret also came as concealment or secrecy and non-publicity, especially in the legal concept, which is kept away from the knowledge and observation of people who can be affected by the act or event that is the subject of speech, it is something that one person or a few people know and is isolated from the knowledge of others<sup>1</sup> The banker has its origin as "exchange" - the teller who exchanges cash for cash - the custodian of the treasury funds receives and disburses what he deserves, and the exchange is the profession of the teller, and in the economy the exchange of a national currency for a foreign currency, and it is also called the exchange rate... Banking - exchange of dirhams - bank - departure and the place of exchange and the bank was called a bank<sup>2</sup>.

###### **2- Jurisprudential definition of banking secret:**

There have been many jurisprudential definitions with regard to banking secrecy, as some jurists called for several theories to determine the concept of banking secret, and among these theories we mention some of them: Damage theory: This theory means that the disclosure of a bank secret is not considered a breach of the legally obligatory obligation unless the disclosure is of a harmful nature or the disclosure results in damage to the customer. Proponents of this theory believe that the crime of disclosing a bank secret is a type of slander and insult, as each of these crimes causes damage or harm to the victim in his reputation and feeling. But this theory has been subjected to many criticisms, the most important of which is that the crime of disclosing the banking secret can not be associated with the crimes of insult and slander because their elements are different, and

the purpose of criminalization in them is also different, while the purpose of criminalization in defamation crimes is to protect the reputation and honor of citizens, we find that the purpose of criminalizing the disclosure of the secret is to protect the supposed and due confidence in the practice of some professions such as the banking profession and its prejudice to the public interest<sup>3</sup>.

The theory of the depositor's will to keep the matter secret: This theory is based on the tendency of the will of the owner of the secret to limit the scope of knowledge of the incident to specific persons, and this will is not required to be explicit, it may be implicit, as the secretary is obligated not to disclose the secret even if the owner of the secret did not ask him to do so explicitly based on his implicit will. This theory objects that the owner of the secret may in many cases be unaware of it, because the trustee has discovered it with his technical experience that was not available to the owner of the secret, for example, such as the customer's lack of knowledge that he is on the verge of bankruptcy for economic reasons that only the bank knows with his experience and knowledge.<sup>4</sup>

Public order theory: The main reason for criminalizing the disclosure of secret, according to proponents of this theory, is due to the public social danger it poses independent of the consequences that may occur to the person who owns the secret. This theory was not spared from criticism as the proponents of this theory did not specify what is meant by public order, and whether it is absolute that cannot be departed from absolutely even if it comes to the owner of the secret himself, which makes it contradictory. The origin is that the secret is decided in favor of the client and the secret cannot be invoked in the face of it. This theory also sometimes prevents justice from being done. Absolute prevents reporting of crimes, while the public interest requires their disclosure to protect society<sup>5</sup>.

#### **E) Definition of banking secret according to the Algerian legislator:**

The Algerian legislator did not define the banking secret and did not specify its scope, nor did it mention the data that are considered secret or refer to the criteria through which the information and data covered by banking secrecy can be identified, and this is due to jurisprudence<sup>6</sup>. The legislator also did not work to include the banking secret in a special law, but it was governed by the rules of public law, it is noticeable when referring to the Penal Code, we find that the legislator has stipulated the imposition of punishment on anyone who engages in a profession or job and discloses a professional secret, as he did not refer to the employees of banks or the bank themselves, as it is stated in the text of Article 301 of the Penal Code that: "shall be punished by imprisonment from one month to six Doctors, surgeons, pharmacists, midwives and all persons who are de facto entrusted with a permanent or temporary position shall be entrusted with secrets made to them and disclosed in cases other than those required by law and authorized to do so." Article 302 of the same law stipulates that: "Anyone who works in any capacity whatsoever in an institution and gives or attempts to disclose to foreigners or Algerians

residing in foreign countries the secrets of the institution in which he works without being authorized to do so shall be punished by imprisonment from two to five years and a fine of 20,000 to 100,000. If these secrets are given to Algerians residing in Algeria, the penalty shall be imprisonment from three months to two years and a fine of 20,000 to 100,000."

Doctors, surgeons, pharmacists, midwives and all persons who are de facto entrusted with a permanent or temporary position shall be entrusted with secrets made to them and disclosed in cases other than those required by law and authorized to do so." Article 302 of the same law stipulates that: "Anyone who works in any capacity whatsoever in an institution and gives or attempts to disclose to foreigners or Algerians residing in foreign countries the secrets of the institution in which he works without being authorized to do so shall be punished by imprisonment from two to five years and a fine of 20,000 to 100,000. If these secrets are given to Algerians residing in Algeria, the penalty shall be imprisonment from three months to two years and a fine of 20,000 to 100,000."

In addition, in view of the specificity of banking transactions, the Algerian legislature has stipulated the principle of banking secrecy in a special text, which is embodied in article 44 of Law 86-12 on banks and loans<sup>7</sup>, which stipulates that: "Any person who has the capacity of a worker in one of the institutions of the banking system and acts on its behalf, or intervenes in a process of supervision, shall conceal professional secrecy in addition to the duties imposed on him by law."

Article 25 of the same law contained in Chapter II entitled "Management of the Bank of Algeria", Part II entitled "Management and Control of the Bank of Algeria" and Book II entitled "Structure, Organization and Operations of the Bank of Algeria", stipulates that:

Without prejudice to the obligations imposed on them by law, the members of the Board of Directors may not disclose, directly or indirectly, facts or information that they have come to know under their custody, and except in cases where they are called to testify in a criminal case, any person to whom the Board of Directors resorts in order to perform its duties shall be bound by the same duty."

Without prejudice to the obligations imposed on them by law, the members of the Board of Directors may not disclose, directly or indirectly, facts or information that they have come to know under their custody, and except in cases where they are called to testify in a criminal case, any person to whom the Board of Directors resorts in order to perform its duties shall be bound by the same duty."

Accordingly, it should be noted that the legislator did not find a comprehensive definition of banking secrecy, but we only find miscellaneous in the Penal Code, where he referred to the penalty for disclosing professional secrecy in general, and another in the Monetary and Loan Law, in which he specified the persons who are bound by professional secrecy, as it was sufficient in Law No. 86-12 once bank employees were

warned of the need to keep professional secret, so the legislator had to develop a special law related to banks and the penalty resulting from disclosing the confidentiality of their customers in order to be spared from criticism.

### **Section II: Elements of the crime of disclosing a bank secret**

The disclosure of a secret is the disclosure of an incident that has the character of a secret issued by those who knew about it by virtue of his profession, and therefore there is no crime if the accused does not have criminal intent, and therefore as every crime its legal structure must consist of a legal element (**subtitle A**), a material element (**subtitle B**) and another moral element (**subtitle C**).

#### **A) Legal element:**

In order to clarify the legal element of the misdemeanor of disclosing the banking professional secret, we had to refer to the general rules in the Penal Code, and it was stated in the text of the first article of it that: "There is no crime, no punishment or security measure without law"<sup>8</sup>, as this crime derives its legitimacy from this article, in addition to the text of Article 117 of the Monetary and Loan Law<sup>9</sup>, which in turn referred us to the Penal Code to apply the penalty, although it did not refer or refer to a specific text in the Penal Code, It states: "Professional secrecy shall be subject to the penalty provided for in the Penal Code...", and articles 301 and 302 mentioned above include some penalties prescribed for certain professionals and employees, for example, but not limited to.

#### **B) Material element:**

The material element of the crime is its external appearance, which highlights it for existence, and the occurrence of the crime of disclosure of banking secret requires the existence of the material element, which is that the secret is disclosed, as well as the availability of the capacity of the person entrusted with the secret<sup>10</sup>

Disclosure of secret: There is no definition of professional secrecy in Algerian law, as the determination of secret is a relative matter that varies according to circumstances, and what is considered secret in certain circumstances may not be considered in others. In general, everything that the Secretary knows during or on the occasion of the exercise of his office or profession and whose disclosure is embarrassing to others is considered confidential. The disclosure is not required to be public, but it is sufficient that it be to one person<sup>11</sup>. In Algerian law, the text of Article 301 of the Penal Code applies only to a certain group of secrets, who are secretaries by necessity "confidants nécessaires", or whose job or profession requires receiving the secrets of others. The legislator did not limit them and only mentioned some of them: doctors, surgeons, pharmacists, midwives and all persons entrusted with de facto or permanent or temporary employment over secrets made to them and disclosed them in cases other than those required by law to disclose them. Article 301 refers to those whose job requires public confidence in such a way that the law imprints their work with secrecy and secrecy<sup>12</sup>. It should be noted from the foregoing that Algerian law does not criminalize the

disclosure of any secret, but the criminalization is limited to the disclosure of secrets deposited with those who practice certain professions that assume in their clients that they are forced to deposit with them, and it is required that the link between the secret and the practice of the profession be established, and accordingly article 301 of the Penal Code is punishable only for the disclosure of the secret received by the disclosed or deposited due to his condition or profession<sup>13</sup>.

#### **Q Moral element:**

The availability of the legal and material element is not enough for the crime, but this criminal behavior must be issued by the will and awareness of the offender, which is called the moral element and the crime of disclosing the banking secret of intentional crimes, it is not enough for it to broadcast the secret or take it out of its hidden state to the public, but that disclosure must be deliberate and therefore take the moral element of this crime in the form of criminal intent, and without the availability of the latter there is no such crime, because the criminal intent It is an essential element in various crimes according to the general rules because the origin of crimes is to be intentional and the exception is to be unintentional<sup>14</sup>. The criminal intent according to this crime is the banker's awareness that he is providing information of a confidential nature without requiring damage, the crime of disclosing the banking secret exists even in the case if the purpose of disclosing the secret is not to cause damage, and as a result in order to punish the act of disclosure must be associated with criminal intent<sup>15</sup>.

### **The second topic: Penalty for the bank's failure to maintain**

#### **banking professional secrecy and the exception provided for the imposition of the penalty**

In many States, the disclosure of banking secrets entails criminal liability, as Latin legislation criminalizes the disclosure of bank secrets as well as the right to seek compensation for damage suffered by him as a result of the disclosure of his secrets, while Anglo-Saxon legislation is limited to giving the customer the right to claim compensation for the damage suffered as a result of the disclosure of his banking secrets. There is no doubt that the criminal penalty imposed on the perpetrator in the crime of disclosing the banking secret represents a general deterrence to anyone who breaches the obligation of this banking secret on the one hand, and on the other hand, it satisfies the feeling of the bank customer whose banking confidentiality has been violated to see the perpetrator of the crime behind bars<sup>16</sup>.

Accordingly, through this section we will address the penalty for breach of the bank to maintain the banking professional secret (Section **I**), as well as show the exception contained in the criminalization of the disclosure of the banking secret or the so-called cases of permissibility of disclosure of banking secret (Section **II**).

### **Section I :Penalty for the bank's failure to maintain the banking professional secret**

The statement of the perpetrator in the crime of disclosing the bank secret may require us to clarify two issues, the first issue is the extent to which the criminal responsibility of the bank as a legal person is determined (SubtitleA), and the second issue is to clarify the extent of the criminal responsibility of the bank's employees as natural persons (SubtitleB).

#### **A) Criminal liability of the bank as a legal person:**

In many cases, it may be impossible to know the employee responsible for disclosing the banking secret because a large number of employees have access to it, and therefore a criminal case is instituted in such a case against the bank for its responsibility for the actions of its employees because they are the ones who express its will<sup>17</sup>. The sanctions imposed on a natural person are not the same as those imposed on a legal person, since the latter is a legal entity. Referring to the general rules of Law No. 15-04 containing the Penal Code, we find that it recognizes the criminal responsibility of the legal person in general, as it is stated in the content of article 51 bis thereof<sup>18</sup>: "With the exception of the State, local groups and legal persons subject to public law, the legal person shall be criminally liable for crimes committed on its behalf by its legal organs or representatives when the law so provides. The criminal liability of a legal person does not preclude the accountability of the natural person as a principal actor or as an accomplice to the same acts."

This criminal responsibility is also confirmed by Article 303 bis 03 of the Penal Code, as for the penalty prescribed for the bank as a legal person in the event of disclosure of banking secret, it is a fine according to the text of Article 303 bis 03, second paragraph, according to the modalities stipulated in Article 18 bis and Article 18 bis 2, in addition to one of the complementary penalties, such as dissolving the legal person, closing the institution, or one of its branches for a period not exceeding five (5) years, preventing him from practicing the activity or several professional or industrial activities directly. Thus, we note that through the analysis of the aforementioned articles, the legislator did not refer to the bank's responsibility directly, but rather referred to the general criminal responsibility of each legal person in the event that he commits a crime, and by dropping this on the bank as a legal person, we concluded the penalty applied to it, which is the financial fine.

What is wrong with the legislator is that he did not impose a harsh penalty more than a fine, as the penalty of a fine is somewhat a mitigating punishment, not a deterrent in the actual sense.

#### **B) Criminal responsibility of the bank as a natural person:**

The penal legislator has criminalized the disclosure of professional secret for some persons, as it mentioned them, for example, but not limited to, in Article 301 of the aforementioned Penal Code, which states: "Doctors, surgeons, pharmacists, midwives and all persons entrusted with de facto or permanent or temporary employment shall be



punished by imprisonment from one month to six months and a fine of 20.000 to 100.000 DZD." During the extrapolation of the text of the article, the legislator did not provide a special and specific penalty for the bank employee in the event that he disclosed the secret of its customers, unlike the legislation in other countries such as Switzerland, Lebanon and Egypt, which was not satisfied with the legal texts on professional secrecy, but also devoted an independent law to this obligation, as it referred in the Algerian Monetary and Loan Law to the need to refer to the Penal Code to apply the penalty.

It is noticeable from the text of the article that the legislator tolerates the penalty of imprisonment from one month to (6) months because it is a short period compared to the damages resulting from the crime of disclosing banking secret, and therefore the legislator must reconsider the penalty of deprivation of liberty in order to prevent the occurrence of the crime as it leads to the loss of credit and confidence, which is the basis of this banking business on the one hand, as well as the loss of public confidence on the other hand. It is also noted from the same article that it punishes anyone who discloses a secret that comes to his knowledge on the occasion of carrying out his mission, as the punishment is considered a personal infliction on the person who committed the act of disclosure as long as he has done the act<sup>19</sup>.

#### **Section II: Exception to the criminalization of the disclosure of professional banking secret (cases of permissibility of disclosure of secret)**

It is decided to adhere to professional secrecy to protect the customer in the first place, as he is the owner of the secrets entrusted to the bank, and there are persons by virtue of their relationship with the customer against whom professional secrecy is not invoked, in addition to that there are specific bodies in the Monetary and Loan Law that do not invoke banking secrecy to protect the public interest, which we will refer to in this requirement.

##### **A) Persons against whom confidentiality is not invoked:**

It should be noted that the first person who does not consider confidentiality in his confrontation is the customer in the first place, and then comes after him people who share the customer's interest, provided that his banking transactions remain confidential, whether while he is alive or after his death, which results in the bank not invoking the secret in confronting them, and among these people we mention some of them, namely.

##### **1- The customer's representative or legal agent:**

The considerations on which the banking profession secret is based include, in addition to the personal aspect, a financial aspect, so it was logical for the customer to share his secret with those who have representative authority in managing or disposing of his money, and therefore there is no place to hide the secret from those entrusted by the customer to manage his business as his authorized agent in managing his business and his account manager, as these have the right to see the customer's secrets and the bank cannot invoke the secret in their confrontation. Also, the effect of the obligation to bank secret

also does not apply in the face of the customer's employees and employees authorized to work in his name and for his account, since the customer is the owner of the secret, he has the right to waive the secrecy of this secret to the account of the persons he wishes to inform them of his accounts, as if the customer was a legal person such as a company or institution. It is inconceivable that the secret should be hidden from his legal representative or employees prescribed by the system of such legal person to carry out his financial and banking transactions.

As for the agency, we believe that the general agent or whoever has a public power of attorney has the right to view the accounts of his client if there is an explicit text in the agency that allows the agent to review banks and see the accounts of the principal in them or the like, such as the agent has the right to withdraw and deposit from the principal's accounts in banks, and there is a special power of attorney in which the agent is granted the authority to view the accounts of his client, and this power of attorney is usually organized by the bank and is called a special bank power of attorney<sup>20</sup>.

## **2- Trustee**

If the customer is a minor or interdicted, he shall be replaced in the banking secret by his guardian, guardian or custodian, as the case may be. The customer's representative in this hypothesis is the only master of the secret and he is the one who can authorize the bank to disclose it, and this does not require guardianship over oneself, but guardianship over the money is sufficient. The trustee or trustee can request the bank to inform him of the data and operations of the account of the minor or the garnishee, even if they were prior to the decision to appoint him<sup>21</sup>.

## **2-Heirs**

The heirs receive the financial disclosure of their testator within the limits of the principle of no estate until after the payment of debts, and the bank must, upon learning of the death of its customer, notify its heirs of its financial position, because their right relates to him from the day of his death. Therefore, the bank cannot invoke the secret against the heirs, and the heirs become the stakeholders in the secret and the bank is not allowed to disclose it unless it obtains permission from them to do so<sup>22</sup>.

## **B) Bodies against which secrecy is not invoked**

In order to protect the public interest, it is decided to lift the banking secrecy before some bodies that are empowered to monitor the financial and commercial practices of banks, and in this regard the principle of banking secrecy defines exceptions in Algerian law, as stipulated in Article 117, paragraph 4, of Law No. 11-03, as amended and supplemented.

### **1- Lifting the bank secret by order of the judicial authority.**

Article 117 of Act No. 11-03, as amended and supplemented, on cash and loans, stipulates that the judicial authority, regardless of the bodies it represents, is excluded from banking secrecy, and thus we find that: Bank secrecy shall not be considered before

the Public Prosecution, in application of the provisions of article 36 of the Code of Criminal Procedure, which authorizes the public prosecutor to directly or order the taking of all necessary measures to search and investigate crimes related to the Penal Code.

Bank secrecy cannot be invoked before the investigating authority, in accordance with the provisions of Article 68 of the Code of Criminal Procedure, which stipulates that the investigating judge deems necessary to uncover the truth by investigating the evidence of accusation and exculpatory evidence. Here, the principle of raising the bank secrecy can be extended to the judicial police officer on assignment in accordance with the provisions of Article 84 of the Code of Criminal Procedure, which stipulates that: "If it is necessary during an investigation to search for documents, the investigating judge or the judicial police officer acting on his behalf alone has the right to examine them before seizing them", in addition to the judicial police officer, the investigating judge can be assigned by deputizing any judge of his court or any of the investigating judges to carry out as it deems appropriate, (Article 138 of the same Code). The lifting of bank secrecy also extends to judicial police officers who carry out investigations in cases of flagrante delicto felonies or misdemeanours (Article 45 of the Code of Criminal Procedure)<sup>23</sup>.

Bank secrecy shall not be invoked before the criminal judge, on the grounds that every person who is summoned to appear before the court to be heard as a witness is obliged to appear, take an oath and testify, and the judge is obliged to examine the evidence and order its presentation in order to hear cases (Article 222 of the Criminal Code). It should be noted that the military judicial authorities enjoy the same powers vested in the ordinary criminal judiciary mentioned above.

## **2- Lifting the banking secrecy before the administrative and supervisory bodies**

The legislator has empowered some administrative bodies to access bank data, even if they are confidential. The following institutions and bodies are concerned:

### **\* Tax Administration**

The law grants tax administration agents who have at least the rank of controller the right to conduct research and investigation with banks about their debtor's deposits and accounts, as well as with regard to the preparation of the tax base for banks and financial institutions and the preparation of third party tax bases, without invoking professional secrecy against them (articles 312 and 316 of the Code). Tax on gross income and tax on corporate profits).

### **\* Customs administration:**

Professional secrecy shall not be invoked against customs agents who have at least the rank of control officer and those entrusted with holding duties, and they may at any time request access to the types of documents relating to operations of interest to them (article 48 of the Customs Code).

**\*Bookkeepers**

Banks, financial institutions and branches of foreign banks are required to appoint at least two (2) bookkeepers (Article 100 of Ordinance No. 03-11 as amended and supplemented) in order to investigate the books and securities of the company and monitor the regularity and correctness of the company's accounts, as well as the correctness of the information provided in the report of the board of directors or the board of directors, and in the documents sent to shareholders on the financial position of the company and its accounts.

**\*Court of Auditors**

Banks and financial institutions whose funds or capital are of a public nature are subject to the supervision of the Court of Auditors, and in the exercise of their functions, officials and agents of the services and bodies subject to the supervision of the Court are exempted from the duty of professional confidentiality (article 59 of Ordinance No. 95-20 on the Court of Auditors). General Inspectorate of Finance: The supervision of the General Inspectorate of Finance is limited to banks and public financial institutions only, and in the exercise of its functions officials of banks and public financial institutions cannot invoke banking secrecy against them (article 13 of Decree No. 92-78 of February 26, 1992 defining the competences of the General Inspectorate of Finance).

**\*Competition Council:**

The Competition Council is an administrative control body with legal personality and financial independence, which ensures the protection of competition with broad powers, as once notified, its president appoints a rapporteur to consider the request or complaint. Securities Regulation and Control Committee: In addition to its functions, this committee has a supervisory function, as it investigates publicly saving companies, banks, financial institutions, brokers in stock exchange operations, and persons who, due to their professional activity, evaluate their contributions to movable value operations or in quoted financial products or manage securities.

Its qualified agents may request to be provided with any documents and obtain copies thereof, without invoking professional secrecy<sup>24</sup>.

National Authority for the Prevention and Combating of Corruption: The Authority may request from departments, institutions and bodies affiliated with the public or private sector or from any other natural or legal person any documents or information it deems useful in detecting acts of corruption, without invoking professional secrecy. Consequently, banks and financial institutions cannot invoke bank secrecy against them, as any deliberate and unjustified refusal to provide them with the required information and documents constitutes an offence of obstructing the proper administration of justice (article 21 of the Law on the Prevention and Combating of Corruption). In conclusion, we conclude that banks are obliged and obliged to disclose the secrets of their customers to these bodies in order to preserve the public interest and public order of society.

### Conclusion:

At the end of this study, we reached several results and recommendations, namely: In terms of our findings, they are: - Banking or banking secrecy is one of the very complex issues, as it has shed a lot of ink at the legal jurisprudence level, as the latter proposed several jurisprudential definitions. - The application of the sanction for the disclosure of banking secret is not only to protect the customer, but also to protect confidence in banks, to ensure the proper and orderly functioning of these facilities, as well as to protect the public interest, strengthen the credit system and provide economic stability. - The bank's commitment to preserve the secrets of its customers is not an absolute obligation, but can be departed from in certain cases or so-called cases of disclosure of banking secrets. - The legislator in Article 303 bis 3 of the Penal Code did not impose an aggravated penalty for the legal person in general or the bank in particular when committing the act of disclosure, but only imposed a fine.

As for the recommendations, they are: a clear concept of banking secrecy must be developed through either the development of a special law for banks or the development of an article in the Monetary and Loan Law referring to the concept of banking professional secret, as we have seen, the Algerian legislator did not specify its concept. The legislator must enact a special codification that defines the functions of banks, and the cases of the responsibility of criminal banks in the event of disclosure of banking secrets, and also shows the cases of permissibility of disclosure of banking secrets. Determine the cases of banking secrecy in detail and the cases of accountability of the bank and its employees in the event that they disclose the secrets of their customers. The need to create a balance between maintaining the confidentiality of banking transactions on the one hand and the public interest on the other. Not to use bank secrecy as an excuse to hide suspicious transactions that harm the public interest.

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  - <sup>2</sup>- See, Hiam Al-Jard, *The Tides between Banking Secrecy and Money Laundering, 1st Edition, Al-Halabi Human Rights Publications, Lebanon, 2004, p. 35*
  - <sup>3</sup>- Muhammad Abd al-Wadood Abu Omar, *previous reference, p. 24*
  - <sup>4</sup>- See, Mohamed Abdel Hay Ibrahim, *Disclosure of the banking secret between prohibition and permissibility, New University Publishing House, Alexandria, 2012, p. 30*
  - <sup>5</sup>- See, Hisham Liyousfi, *Criminal Protection of Professional Secret, 1st Edition, Dar Al-Waleed for Publishing, Cairo, 2015, pp. 36-37*
  - <sup>6</sup>- See, Fadila Melhak, *Preventing the Algerian banking system from money laundering, 2nd Edition, Dar Houma Publishing, Algeria, 2014, p. 152*
  - <sup>7</sup>- Law No. 86-12 of August 19, 1986 on the system of banks and loans, G.R. No. 34 of August 20, 1986

- <sup>8</sup> - Ordinance No. 66-156 of June 8, 1966 amending and supplementing Law No. 16-02 of June 19, 2016, JR, n°37.
- <sup>9</sup> - Ordinance No. 03-11 of 27 Jumada II 1424 corresponding to August 26, 2003, on cash and loan, p. 17.
- <sup>10</sup> - See, Ahsan Bouskaia, *Al-Wajeez fi Private Penal Law*, vol. 1, 15th edition, Dar Houma Publishing, Algeria, 2012-2013, p. 279.
- <sup>11</sup> - Muhammad Abd al-Wadood Abu Omar, *previous reference*, p. 119.
- <sup>12</sup> - Ahsan Bousqaia, *op. cit.*, p. 277.
- <sup>13</sup> - Hassi Mariam, *The Obligation of Banks to Maintain Professional Secrecy*, Memorandum for obtaining a master's degree in law, specializing in professional responsibility, Faculty of Law and Political Science, Tlemcen, 2011-2012, p 108.
- <sup>14</sup> - See, Khalil Youssef Jundi Al-Mirani, *Criminal Responsibility Arising from Assault on the Secrecy of Bank Accounts*, 1st Edition, Modern Writing Establishment Company, Lebanon, 2013, p. 96.
- <sup>15</sup> - See, Mahrous Nasser Al-Hithi, *Crime in the Penal Code*, 1st Edition, Zain Human Rights Publications, Iraq, 2015, p. 19.
- <sup>16</sup> - Muhammad Abd al-Hai Ibrahim, *op. cit.*, p. 216.
- <sup>17</sup> - Muhammad 'Abd al-Wadood Abu 'Umar, *op. cit.*, p. 143.
- <sup>18</sup> - *The Penal Code*
- <sup>19</sup> - Al-Hasi Maryam, *op. cit.*, p. 119.
- <sup>20</sup> - Muhammad Abd al-Wadood Abu Omar, *previous reference*, p. 76
- <sup>21</sup> - See, Hussein Al-Nouri, *The Secret of the Banking Profession in Egyptian Law and Comparative Law*, 2nd Edition, Union of Arab Banks, p. 24.
- <sup>22</sup> - Hussein Al-Nouri, *previous reference*, p. 26.
- <sup>23</sup> - Ordinance No. 66-155 of June 8, 1966, amending and supplementing the Code of Criminal Procedure, G.R. No. 49 of June 11, 1966.
- <sup>24</sup> - Fadila Malhaq, *op. cit.*, p. 163.