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The Role of Banking Advice and Warning in Preventing a Client's Cessation of Payment

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Abstract:

This research addresses the role of banking advice and warning as two preventive mechanisms aimed at reducing the risks of customer default and cessation of payment when granting bank credit. It seeks to determine the legal basis of these two obligations and their scope, while highlighting the effect of breaching them on the establishment of the bank's civil liability. The study adopts an analytical comparative approach, through the analysis of legal texts and judicial precedents, particularly in French legislation and case law, and compares them with the position of the Algerian legislator. The study concludes that the Algerian legislator narrows the scope of the bank's obligations in the loan contract, confining them merely to placing funds at the borrower's disposal, without an explicit recognition of a duty to warn or advise, which limits the preventive protection afforded to the customer. In contrast, French courts and doctrine have recognized a professional obligation incumbent upon the bank, especially toward non-professional customers, and have established its civil liability for breach thereof once damage and causal link are proven. The study also highlights that banking advisory contracts constitute an effective contractual mechanism to compensate for legislative shortcomings and to achieve a better balance between the bank's interests and customer protection. The research recommends legislative intervention to strengthen the bank's preventive role in granting credit, thereby contributing to reducing cases of cessation of payment and supporting financial stability.

Keywords: Banking advice; banking warning; bank credit; bank liability; customer cessation of payment; banking consultancy; credit risks.

Introduction:

Bank credit constitutes one of the fundamental pillars of contemporary economic activity; however, its increasing expansion has been accompanied by a noticeable rise in the risks of default and cessation of payment, threatening the interests of both customers and banking institutions alike. In this context, the preventive role of the bank has emerged through the mechanisms of banking advice and warning as means to limit credit risks and to enable the customer to make an informed economic decision based on prior awareness of the potential effects of the loan.

Nevertheless, determining the legal nature of these two obligations and their limits remains a matter of doctrinal and judicial debate, especially when balancing the duty to protect the customer on the one hand and the principle of non-interference by the bank in its customers' affairs on the other. This divergence appears clearly when comparing Algerian legislation, which confines the bank's obligation in the loan contract to merely placing funds at the borrower's disposal, with the French approach, which has expanded legislatively and judicially in recognizing professional duties incumbent upon the bank,

particularly toward non-professional customers.

This study seeks to analyze the role of banking advice and warning in preventing customer cessation of payment, by clarifying their legal basis and scope, and by examining the effect of breaching them on the establishment of the bank's civil liability, while highlighting the limits of the protection provided by the Algerian legal framework in light of the French experience.

This study proceeds from the following problem statement:

To what extent do banking advice and warning contribute to preventing customer cessation of payment, and what is the legal basis of the bank's obligation thereto and the limits of its liability upon breach, in light of the comparison between Algerian legislation and French judicial and doctrinal trends?

From this problem stem several subsidiary questions, most notably:

- Does the duty of warning and advice constitute a legal, contractual, or merely a natural obligation?
- To what extent does the criterion of customer professionalism affect the determination of the scope of this obligation?
- What are the conditions for establishing the bank's liability for breach of the duty of warning or for providing inappropriate advice?
- Do banking advisory contracts represent a practical alternative to filling the legislative gap in Algerian law?

To answer this problem, the study is divided into two sections: the first addresses the bank's obligation to warn the customer; the second addresses the bank's obligation to inform and advise the customer.

1. The Bank's Obligation to Warn the Customer

The issue of the bank informing its customer about his financial situation is essentially linked to warning of the risks that may result from granting credit. Accordingly, what are the risks that the bank must warn the customer about, and when must the bank warn its customer?

1.1. What the Bank Must Warn the Customer About

The process of granting credit involves numerous risks related to the use of the financial value of the loan. The customer's position and profession play a fundamental role in the usefulness of the bank informing the customer of the risks related to the loan. These risks, regardless of how they are limited, may lead to severe consequences for both parties to the contract—the bank and the borrower—since they may result in the bank's customer losing the value of the loan and may even lead to cessation of payment, which would inevitably create difficulties for the bank in recovering its funds. Moreover, the bank's obtaining sufficient guarantees for the loan does not justify granting loans that it knows to be impractical for the customer and that may largely lead to the loss of the loan amount. Algerian legislation, in the Law on Money and Credit, does not refer to the bank's liability for informing the customer of potential loan risks, unlike French legislation, which has recognized the bank's liability and its obligation to inform, advise, and counsel the customer.

In this context, a case presented before the French courts is cited, in which the Banque Populaire granted a loan of 200,000 French francs to a 63-year-old woman who earned a monthly salary of 5,500 French francs. The woman failed to repay the due loan amount. Consequently, the Court of Appeal held the bank liable, justifying this by the fact that the bank had granted a loan to a person who was clearly unable to repay it without warning her of this fact.[1]

[1] **Dominique Legeais**, *Banking Liability for the Granting of Credit*, Revue Trimestrielle de Droit Commercial (RTD Com), Paris, 2003, p. 793

The bank's duty to warn the customer requires it to inquire into the borrower's financial situation and to ensure a level of profitability that can be anticipated. Therefore, the documents relied upon must be certified by professional parties. For this reason, courts often require banks to base their assessment on documents prepared by professionals such as certified accountants. In another case, a French Court of Appeal convicted a credit institution that relied on forecasts prepared by the company's sole manager, who was a farmer and was not assisted by a certified accountant; consequently, the credit institution was unable to form an objective opinion regarding the borrower's true financial situation. As a result, the credit institution provided incorrect information that caused damage to the borrower[2]. Thus, according to French case law, failure to warn the customer does not differ from providing incorrect information based on documents not certified by professionals. Accordingly, the bank must warn the customer and, when granting credit, provide information based on certified documents, thereby relieving the bank of liability for the borrower's failure to repay the borrowed amount.

1.2. Providing Banking Information within the Framework of the Duty to Warn

First: Market Information[3]

In practice, Algerian banks attach great importance to studying the market and general consumption behavior in order to ensure that the banking products offered correspond to customers' needs. Such studies undoubtedly help banks determine activities in which investment is possible and avoid economically unviable activities. Accordingly, the importance of banks' market studies, for our purposes, lies in identifying the type of information that helps customers determine the activity most suitable for them, and consequently in determining the bank's liability in the event of failure to inform customers of information that may harm their interests arising in connection with obtaining credit from the bank. This information can be limited to two categories:

- Information on the best economic activities that can ensure the highest profit margin for customers, in addition to the ease of recovering the liquidity of such investments, on the one hand; and information on economically unviable activities that may lead customers to fail to repay credit, on the other hand.
- Information on demand, which is directly related to competition, that is, to the activities of other customers, which may affect the customer's choice.

It is self-evident that the bank must provide all information related to the banking products it offers. The purpose of imposing this obligation on the bank is to protect potential customers in addition to actual customers. Providing all characteristics of its products affords preventive protection against the risk of customer cessation of payment, as it prompts customers experienced in banking transactions to refrain from requesting loans at an early stage preceding the conclusion of the contract with the bank.[4]

In practice, Algerian banks often conduct interviews with loan applicants during which they present suitable products to customers. This process may be considered a proactive step to exonerate the bank from liability for failure to inform the customer, and consequently from failure to exercise due care, which would constitute the basis of the bank's liability—a matter that will be discussed later.

Second: Information on Economic Operators

[2] **Dominique Legeais**, *Banking Liability: Scope of the Duty to Inquire*, RTD Com, Paris, 2006, p. 646.

[3] **Ben Saad Fatna & El-Houari Djamel**, *Market Study and Its Role in Creating Effective Marketing Performance – The Case of Algerian Banks*, Journal of Innovation and Marketing, University of Sidi Bel Abbès, Issue No. 2, 2015, p. 304.

[4] **Nicolas Dissaux**, *Brokerage Regime*, Commercial Law Encyclopedia (Répertoire de droit commercial), Dalloz, 2019, p. 215

The information that a bank may provide to its customers within the framework of the duty of information and warning may include information about the level of activity of economic operators active in the same field as the customer. Providing such information does not necessarily mean that the bank breaches its duty of banking secrecy; rather, it must balance maintaining banking secrecy with fulfilling its obligation to warn and inform the customer. This can be achieved by providing the customer with abstract information devoid of the specific identities of the bank's own customers when the customer intends to engage in the same activity as those customers. This means providing general information about potential competitors and warning the customer of the risk of engaging in the activity due to the slim chances of obtaining a market share that would enable repayment of the loan. Providing such information serves the bank's interest by avoiding the granting of high-risk loans that may ultimately lead customers to cease payment and consequently cause the bank difficulties in recovering its funds.

As part of its social plan, one of its employees obtained hotel-related activities, and the company established by the bank employee concluded that the project was profitable. However, the company was quickly placed under compulsory liquidation. As a result, the credit institution was held liable on the basis of breach of the duty of care, information, and advice. The Court of Appeal retained a number of elements that would previously have been considered sufficient: the decline in the project's viability was evident at the time of financing, and the bank's analysis of development prospects was incorrect. The court considered as an aggravating factor the bank's dual position, as it was both the employer and the credit provider at the same time.

1.3. Sanction for the Bank's Breach of the Duty to Warn

In this context, reference is made to a case before the French courts in which a bank granted a loan to a married woman known as Mrs. "Fusco." The loan was intended to acquire assets for investment purposes. Upon maturity and failure to repay the loan amount, the bank seized the assets, immediately declaring the recovery of its rights following the legal liquidation of Mrs. Fusco, and also seized her salary earned from her profession as a teacher. Mrs. Fusco claimed that the bank had abandoned its obligation to inform her of the potential risk, given that she held a teaching position and was not a professional in commercial matters nor engaged therein in any form. On the other hand, the defenses of the other borrower (Mrs. Fusco's husband) were not accepted on the basis that he was her partner in the loan, as the bank proved that it had warned Mrs. Fusco's husband. The court thus considered that warning one of the partners constituted a warning to both, taking into account the relationship between the partners—namely, the marital relationship—which makes it unlikely that the warned partner would not inform the other of the warning[5]. Logic and common sense require that the informed borrower notify his wife of the potential risks of the credit transaction. If there was any negligence, it is attributable more to the husband's silence than to the lending bank's silence, due to the dual nature of the relationship between Mrs. Fusco and her husband: he was her partner in the loan on the one hand and bound to her by marriage on the other. Moreover, the bank is not obliged to warn all partners. It should be noted that the matter is left to the discretionary power of trial judges to determine whether borrowers deserve to be warned or not.

Although the French Civil Code does not expressly provide for a duty of banking warning, French courts adopt this duty as a criterion for determining the bank's liability. The French Court of Cassation has applied the criterion distinguishing between warned and unwarned customers, whereby the customer who must be warned is determined by the nature of the credit—whether professional or

[5] **Stéphane Piédelièvre**, *Uninformed Borrower and Banking Liability*, Recueil Dalloz, 2007, p. 2081.

not. Verification of the borrower's profession determines whether the bank must warn the customer. Moreover, the non-professional borrower, even if he possesses knowledge of commercial matters, does not alter the bank's obligation to warn him. Thus, French case law has adopted the criterion of professionalism—that is, the borrower's professional status—to determine when he must be warned of loan risks. This criterion has been criticized on the grounds that a professional borrower is not necessarily aware of loan risks, and conversely, a non-professional borrower may be aware of them; in such a case, the professional borrower would be more deserving of warning than the non-professional borrower. In this regard, Professor **Stéphane Piédelièvre** considers it preferable to adopt a personal criterion, that is, to consider the situation of each borrower individually regardless of profession, whether professional or not, by attempting to ascertain the degree of his awareness of loan risks. Theoretically, this criterion appears more equitable; however, in practice it would undoubtedly be significantly different, as it entails the potential for judicial arbitrariness, given that determining the extent of a borrower's awareness of loan risks is an imprecise matter.

Accordingly, the bank is responsible for informing and warning the customer of the risks that may lead to losses that could ultimately result in cessation of payment[6]. But what is the source of the bank's obligation to warn the customer of risks?

- There is doctrinal disagreement regarding the source of the bank's obligation to warn. Some jurists identify the source of this obligation in the credit-opening contract and require, for its validity, that this obligation be expressly included in the credit-opening contract, on the basis that there is no duty obliging the bank to warn customers. Proceeding from the principle of non-interference in the customer's affairs, the bank's function is to grant credit, not to guide the customer's economic awareness. Contrary to this view, another group of jurists adopts the idea that the obligation to warn arises automatically upon the opening of credit, without the need to include it among the terms of the credit-opening contract. There is no justification for the bank to hide behind the principle of non-interference, as it is unreasonable for the bank to remain silent while seeing its customer's interests threatened; rather, it must intervene to enlighten customers about the risks surrounding the credit they have obtained, based on the expertise the bank possesses in this field. From our perspective, we favor the second opinion, namely the natural obligation, which holds that the source of the bank's obligation to warn is merely the opening of credit. The Algerian legislator regulated the loan contract in the Law on Money and Credit in Article 68.[7]

"A loan operation, within the meaning of this order, consists of any act for consideration whereby a person places or promises to place funds at the disposal of another person, or whereby he undertakes, for the benefit of another person, an obligation to sign as a standby guarantee, surety, or guarantee."

From the text of Article 68, it is clear that the Algerian legislator defines the reciprocal obligations between the parties to the loan contract by limiting the bank's obligation to merely placing funds at the borrower's disposal. In this case, the bank is bound by an obligation to achieve a result, since an obligation to achieve a result requires the debtor to realize a specific outcome under the agreement, and failure to achieve that outcome

[6] **Stéphane Piédelièvre**, *op. cit.*, p. 2081.

[7] **Order No. 03-11 of 26 August 2003**, Relating to Money and Credit, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 52, 2003.

gives rise to liability on the part of the debtor. With regard to the bank in a loan contract, the result that the bank must achieve is the availability of funds at the borrower's disposal. Accordingly, the bank's obligation in this case does not presuppose that the bank must exercise due care in achieving the borrower's objective or in realizing the purpose of the loan. The legislator has expressly determined that the bank's obligation ends once it places the funds at the borrower's disposal, whether directly or upon the fulfillment of the promise to grant the loan. Thus, the bank here is obliged to achieve a result, and this result does not consist in achieving the purpose of the loan for the borrower. Consequently, the bank in this case is not obliged to exercise due care in enabling the borrower to benefit from the placement of the funds at his disposal.

Rather than considering the bank's obligation to warn as an obligation of due care, it may be assumed in this case that warning is merely a natural obligation. Natural obligations are, "by their origin, moral duties that have attained sufficient importance to be taken into account, without reaching the level of civil obligations. Examples include a person's obligation to provide support to relatives toward whom he has no legal duty of maintenance, and a father's obligation to provide for his daughter's trousseau[8]." We believe that it is more appropriate to characterize the bank's obligation to warn as a natural obligation, since it is ethically inappropriate for the bank to see its customer heading toward squandering the funds placed at his disposal without warning him. The logic of a natural obligation revolves around commitment without legal compulsion, that is, an obligation without a civil sanction in the event of breach. The Algerian Law on Money and Credit did not provide, in Article 68, for any obligation to warn when granting bank credit, nor did it accompany this with any provision for a civil sanction. This may be a reason for the absence of a civil sanction in the event that the bank fails to do so. Accordingly, we are inclined to consider the bank's obligation to warn when granting a loan as merely a natural obligation, due to the absence of a legal text enshrining it as a civil obligation in the Law on Money and Credit. The only situation in which this obligation may arise as a civil obligation incumbent upon the bank is when it is included among the contractual terms at the conclusion of the loan contract.

Thus, the bank's liability for warning depends on the source of this obligation. If the source of the obligation is the contract—namely, if the credit-opening contract includes a clause obliging the bank to warn the customer of the potential risks of the loan—then if the bank abandons this obligation, it incurs contractual liability in accordance with the general rules. However, if this condition is not expressly stipulated in the contract, the bank's obligation does not go beyond being merely a natural obligation, and consequently the civil sanction against the bank is excluded.

2. The Bank's Obligation to Inform and Advise the Customer

The bank is considered a professional entity in the practice of banking activities, as it is presumed to possess expertise and knowledge in this field. This makes reliance on such expertise necessary for customers in order to enable them to make sound decisions in this area. In this section, we will attempt to address how customers obtain these services from the bank.

2.1. The Bank's Information and Advice to the Customer on Its Own Initiative

The bank provides advice to the customer spontaneously, based on its expertise in the banking field. In this context, a distinction must be made between information, advice, and consultancy, as advice differs from consultancy in terms of the consequences resulting from each. Advice is given on the bank's initiative, whereas consultancy is provided at the customer's request.

[8] **Samir Abdel-Sayed Tanagho**, *Rules of Obligation and Evidence*, Al-Wafaa Legal Library, 1st ed., Arab Republic of Egypt, 2009, p. 227.

First: The Bank's Duty to Inform the Customer

The bank's obligation to inform the customer, especially with regard to granting bank loans, is among the essential obligations of the bank in this type of operation. The bank may fulfill this obligation by providing information that it deems important for the customer, by virtue of its knowledge of the banking field, in a neutral and abstract manner, without offering any suggestions to the customer or directing him to undertake actions that the bank considers suitable for him. The bank may give effect to this obligation through any means that demonstrate the provision of such information to the other party to the contract (the customer).[9]

Second: The Nature of Advice

The French legislator, in the Monetary and Financial Code, has recognized the necessity for the bank to inquire about the customer with regard to his knowledge and experience in banking operations, as well as his financial situation and needs, in order to enable him to obtain services adapted to his circumstances. The bank must also verify all information relating to the customer's resources, expenses, and outstanding loans, so as to ascertain the customer's financial solvency. The bank's objective in this procedure remains the provision of sound advice to the customer[10]. In this case, advice is provided voluntarily and spontaneously by the bank, without a request from the customer. Such advice extends beyond actual customers to potential customers, meaning that the bank provides advice even before entering into a contractual relationship with the customer, as it must present the most suitable options for him. From this, we can infer the objective of the French legislator, which was to avoid customers falling into poor financial situations as a result of insufficient knowledge of the most suitable credit options. Although this position of the French legislator serves the interests of customers, it contradicts the principle of non-interference by the bank in the affairs of its customers. Ultimately, the bank is merely a trader seeking to generate profit through its activity, and its spontaneous provision of advice may inconvenience the customer on the grounds of interference in his private affairs. This consideration may explain the Algerian legislator's silence on imposing any obligation to provide advice to the customer. The Algerian legislator's position in this regard is consistent with his definition of the loan and of credit opening, as he limits the bank's liability to merely placing funds at the customer's disposal and/or promising to do so, without obliging the bank to exercise any due care to verify the profitability of the project for which the loan is granted.

Third: Providing Advice Based on Inaccurate Information from the Customer

There is no doubt that the bank investigates its customer before commencing any financial relationship. However, it is possible that the customer may provide inaccurate or incorrect information, which could lead to the provision of incorrect advice to the customer and ultimately result in the failure of the customer's activity. This raises the question of who bears responsibility for such incorrect advice: the customer, as the provider of inaccurate information, or the bank, which provided advice based on inaccurate information?

To answer this question, it is necessary to determine whether the bank's obligation to advise extends to verifying the accuracy of the information provided by the customer. If the bank's obligation extends to this extent, then it will inevitably be liable for providing incorrect advice. If, however, the bank's obligation is limited to merely providing advice based on the information provided by the customer, whether accurate or not, then the customer will

[9] **Boualkour Rafiqa**, *The Obligation to Inform the Consumer Client in the Field of Bank Credit*, Daftars of Politics and Law Journal, Issue No. 18, 2018, University of Kasdi Merbah – Ouargla, p. 14.

[10] **Nicolas Dissaux**, *Brokerage – Brokerage Regime*, Commercial Law Encyclopedia, Dalloz, 2019, p. 215.

be responsible in this case. The French Court of Appeal addressed this issue by holding a financial institution liable for the default of an agricultural company, as the institution relied on forecasts prepared by the company's manager without being supported by any accounting document issued by a certified accountant. The provisional balance sheet prepared by the manager did not constitute a serious document providing sufficient information about the project and its expected profitability. Consequently, the financial institution provided incorrect advice on the basis of which an unprofitable loan was granted to the agricultural company. For this reason, courts often require banks to base their assessments on serious documents issued by professional specialists[11]. Thus, the bank's obligation in this case does not stop at merely providing advice, but also requires it to verify the accuracy of the information provided. What has been established by French case law is consistent with the law, as French law recognizes the necessity of providing advice to bank customers and imposes it as an obligation on the bank. The French legislator also obliges the bank to ensure a minimum level of profitability in its projections when granting credit[12]. Therefore, the French judiciary's requirement that banks base their assessments on serious documents is nothing more than an explicit embodiment of the bank's obligation to provide sound advice, especially in the field of granting loans. As for Algerian law, providing advice to bank customers is not addressed, and this approach is also consistent with the Algerian legislator's position on granting credit, as he limits the bank's liability to placing funds and/or promising to place funds at the customer's disposal, unlike the French legislator, who obliges the bank to monitor the customer's situation and guide him to ensure the usefulness of credit.

Fourth: The Consequences of Following or Refraining from Following the Bank's Advice

Providing advice to the bank's customer is an obligation incumbent upon the bank under French law and, accordingly, constitutes a right of the customer. At the same time, the principle of non-interference by the bank in the customer's affairs prevents the bank from imposing its advice on the customer. Thus, the customer remains free to exercise his right, whether negatively or positively. If the customer does not follow the bank's advice, he bears the consequences of his actions, and the bank will have fulfilled its obligation toward the customer. This raises the question of whether the bank may refrain from providing banking services if the customer does not follow its advice.

The bank's refusal to provide a service is more closely linked to the nature of the service itself than to the customer's status as such; that is, the bank's refusal is linked to the extent of its freedom with regard to whether the service is contractually agreed upon. The bank cannot withdraw from financing a public contract that it has concluded with the customer, even if it ultimately advised the customer of its lack of feasibility and the customer did not follow that advice. On the other hand, the bank may refuse to grant financing to the customer if the latter does not follow the bank's advice in choosing the appropriate type of financing.

If the customer follows the bank's advice, the question then arises as to whether the bank bears liability for the customer's default resulting from inappropriate advice. May the bank be held liable for providing unsuitable advice?

The bank may provide unsuitable advice to the customer, which may ultimately lead to his default and eventual cessation of payment. In such a case, the customer must prove the bank's fault in its assessment of the customer's financial situation and demonstrate that such unsound advice led to his default. The Commercial Chamber of the French Court of Cassation addressed a similar case, in which an investor filed a lawsuit before the French Court of Appeal against Crédit du Nord, claiming

[11] **Dominique Legeais**, *Banking Liability: Scope of the Duty to Inquire*, *op. cit.*, p. 648.

[12] **Dominique Legeais**, *Banking Liability for the Granting of Credit*, *op. cit.*, p. 648.

that he had terminated an investment contract prematurely based on the bank's advice, causing him to lose 630 euros of his capital. The case continued until the French Court of Cassation rejected the investor's claims for lack of legal basis, holding that the loss of capital was due to stock market fluctuations, not to the bank's advice[13]. From this, it must be clarified that the bank's liability should not be presumed to arise automatically merely upon the customer's default. This is because banking advice provided by the bank, especially regarding potential risks, is not significantly decisive, particularly when the customer was already aware of those risks and the advice merely confirmed them[14]. It is illogical to hold the bank liable for the customer's loss and withdrawal from a profitable transaction that appeared to the customer as unprofitable, just as the bank advised him that it was so. Therefore, establishing the bank's liability in this regard requires the existence of a decisive causal link, which is difficult to prove, especially with respect to estimating future risks.

2.2. The Bank's Provision of Advice at the Customer's Request

First: Requesting Banking Consultancy from the Bank within the Framework of the Financial Relationship

The customer may request banking consultancy from the bank as his bank. This raises the question of the extent of the bank's obligation to respond to the customer's request and whether it may refuse to provide advice.

The extent of the bank's obligation to provide banking consultancy upon the customer's request is linked to the nature of the financial relationship, as well as to the law governing that relationship.

- **Providing Banking Consultancy as a Condition of the Financial Relationship Contract**

If the bank and the customer agree to include banking consultancy among the terms of the financial relationship contract, the bank is then obliged to provide consultancy in the manner stipulated in the contract. If the parties agree that the bank shall provide consultancy whenever the customer so requests, the bank will be bound to provide it, and failure to do so constitutes a breach of its contractual obligations. In this case, the bank's civil liability arises, with the contract being the source of that liability. Even if the legislator has never provided for a duty to provide consultancy, the bank is bound by virtue of the contract, not the law. This obligation is imposed by contractual freedom as enshrined in civil law, so long as the law does not expressly prohibit the inclusion of such obligations in contracts.

- **The Existence of a Legal Provision or Judicial Ruling Obligating the Bank to Provide Banking Consultancy to the Customer**

The Algerian legislator has not provided, in either the Civil Code or the Law on Money and Credit, for any obligation on the bank to provide banking consultancy to the customer, whether spontaneously or at the customer's request, unlike the French legislator, who also did not obligate the bank to provide consultancy to the customer. However, some French judicial decisions have recognized this obligation exclusively in certain activities of an exclusive nature, including:[15]

a) **The Banking Guarantee Contract:**

The French Court of Cassation ruled, in Decision No. 503 of 24 May 1981, that a guarantee was null and void because the bank

[13] **Court of Cassation**, Commercial Chamber, Judgment No. 05-21.922, 20 March 2007, (Crédit du Nord Bank v. Mr. X).

[14] **Abdel-Khaleq Ghali Mahdi Al-Yassin & Dhikra Mohammed Hussein**, *Legal Rules of Banking Auditing: A Comparative Study*, Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, University of Babylon, College of Law, Issue No. 4, 2016, pp. 355–356.

[15] **Reda El-Sayed Abdel-Hamid**, *The Banking System and Banking Operations*, Dar Al-Nahda for Publishing and Distribution, 1st ed., Egypt, 1998, p. 63.

did not disclose to the guarantor the true financial position of the guaranteed debtor. Other rulings from the same court have held that the bank is not obliged, on its own initiative, to inform the guarantor of the debtor's financial position, but that the guarantor must himself request clarification from the bank regarding the guaranteed party's financial status. Thus, French case law recognized the nullity of the guarantee when the bank failed to provide consultancy, while at the same time affirming that the customer must request consultancy in such cases, without obliging the bank to provide advice without such a request.

b) **In the Field of Currency Control:**

The bank may act as an authorized intermediary in certain banking activities subject to currency control, such as foreign trade financing operations (documentary credit, documentary collection, etc.). In this case, the bank may be considered an agent of the customer and must therefore inform the customer of all formalities required by law, as well as clarify any ambiguity about which the customer seeks information. In this regard, we believe that the bank remains responsible for responding to any consultancy request from the customer, as the bank is a professional in the banking field and, moreover, acts as the customer's agent, which undoubtedly entails concern for the customer's interests, at least from an ethical standpoint.

Second: The Banking Consultancy Contract

The customer may contract with the bank in order to obtain banking consultancy, and this does not preclude the bank from being different from the bank with which the customer conducts his ordinary transactions. The role of such a contract is to cover the advisory aspect of the customer's banking needs. Under this contract, the bank provides the customer with advice on investment opportunities, their feasibility and returns, as well as on new projects and the information they require regarding contemporary economic developments, market conditions, and investment fundamentals.[16]

The banking consultancy contract is a contract under which the bank undertakes to provide credit-related information to the customer in connection with a particular activity, in return for consideration. The information provided by the bank under this type of contract may take the form of general information about banking activities, studies conducted by the bank for the benefit of the customer, or advisory opinions assisting the customer in making appropriate decisions regarding activities related to banking operations.

The banking consultancy contract is characterized by the following:[17]

- **A Consensual Contract:**

The banking consultancy contract is concluded upon the concurrence of offer and acceptance between the bank and the customer, does not require any specific form, and does not require formal written documentation.

- **A Commutative Contract**

Whereas the banking consultancy contract is considered one of the contracts under which the bank receives a commission for the information provided to the customer, especially if it takes the form of a contract separate from the financial contract between the bank and the customer.

- **A bilateral binding contract:**

Once the banking consultancy contract is concluded, the bank and the customer exchange obligations between them, whereby the bank undertakes to provide credit information, while the customer undertakes to pay the commission determined by the bank in return for the information provided.

- **A commercial contract:**

The consultancy contract is considered a commercial contract as it constitutes a banking operation. The Algerian legislator stipulated in Article 2 of the Commercial Code that every

[16] **Salah El-Sissi**, *Scientific and Practical Banking Encyclopedia*, Arab Nile Group, Vol. 2, Egypt, 2011, p. 325.

[17] **Hamdiya Aboud Kazem**, *Sources of the Bank's Obligation to Provide Financial Credit Information*, Risalat Al-Qanun Journal, Issue No. 1, Iraq, 2013, p. 204

banking operation is deemed a commercial act by subject matter.

In conclusion, we believe that the bank should encourage customers to enter into banking consultancy contracts, as the customer should benefit from the bank's professionalism and expertise in banking operations, thereby assisting the customer in making sound decisions related to various banking activities and consequently avoiding decisions that may lead the customer to cease payment, with the resulting negative effects on both the customer and the bank.

Conclusion:

This study concluded that banking advice and warning constitute two highly important preventive mechanisms for reducing the risks of customer default and cessation of payment. However, the legal framework governing them differs clearly between Algerian legislation and French legislation. French jurisprudence and doctrine have adopted an expanded protective approach, pursuant to which the bank's obligation to warn, inform, and advise—especially toward non-professional customers—has been recognized, and any breach of these obligations has been considered a basis for civil liability whenever damage and a causal link are established.

By contrast, it is noted that the Algerian legislator has adopted a more cautious position, limiting the bank's obligation in the loan contract to merely placing the funds at the borrower's disposal, as an obligation to achieve a result, without expressly establishing any legal obligation to exercise due care related to warning or advising the customer about credit risks. This has led part of the doctrine to characterize the duty to warn as a natural obligation, imposed by ethical and professional considerations rather than by a binding legal text.

The study also showed that the absence of explicit legislative regulation of the duty to warn and advise in Algerian law does not, in practice, prevent the emergence of this obligation in the contractual sphere, whether through contractual clauses or through independent banking consultancy contracts, which have become an effective tool for reducing risks and achieving a better balance between the interests of the bank and the customer. Accordingly, preventing the customer from ceasing payment cannot be effectively achieved except by activating the role of the bank as a professional economic actor, without this leading to interference in customers' affairs or imposing absolute liability on the bank for the failure of financed projects.

Based on the findings reached, a set of practical and legislative recommendations may be proposed, most notably:

- Calling on the Algerian legislator to introduce explicit provisions in the Law on Money and Credit to regulate the duty of banking warning and information, at least with respect to non-professional customers, so as to achieve a minimum level of preventive protection without undermining the freedom of banking activity.
- Establishing flexible legal criteria to determine the customer entitled to warning, combining the professional criterion and the personal criterion, rather than relying solely on the criterion of professionalism, in order to avoid the shortcomings and criticisms raised doctrinally against it.
- Encouraging Algerian banks to include clear contractual clauses relating to warning and advice in loan contracts, allowing for precise determination of the scope of liability and enhancing legal certainty in the banking relationship.
- Promoting a culture of banking consultancy among customers by encouraging them to conclude independent banking consultancy contracts and to benefit from the bank's expertise before embarking on high-risk investment projects.
- Activating the guiding role of banking supervisory authorities by issuing instructions or professional circulars urging banks to adopt preventive policies in granting credit, thereby

contributing to reducing default rates and protecting financial stability.

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