

**Demand for issuing execution from debtors and cancelling bank contracts**Amirarsalan Hatami Kia<sup>1</sup>, Saeed Mardani<sup>2\*</sup><sup>1</sup>Department of law, Faculty of Humanities, Persian Gulf International Branch, Islamic Azad university, khorramshahr, iran<sup>2</sup>Department of law, Faculty of Humanities, Persian Gulf International Branch, Islamic Azad university, khorramshahr, iranCorresponding Author: Saeed Mardani<sup>2\*</sup>

**Abstract:** The possibility of examining the application for the issuance of the performance by the overseer reflects the timing and manner in which after the customer has paid the banking facility, the client can take action to avoid further losses against himself and apply for the issuance of the order. Given the usual routine of applying for the issuance of an order by a solicitor in the banking system, which has been somewhat a sign of neglect of customer's rights, it seems reasonable to proceed with the provisions of Articles 156, 151 and 522 of the Civil Procedure Code and Articles 227, 229 Civil Code and Article 47 of the Code of Laws on the Offices of Notaries and the Code of Conduct on the Transfer of Unnecessary and Welfare Properties of Banks and the Legal Principle of Islamic Law, in order to prevent the violation of the rights of individuals, accept the possibility of issuing an oath of operation And, in accordance with civil law, the law of banking operations without usury and the rules of the law of practice Bankruptcy banking and approvals of the Money and Credit Council between the customer and the bank are void in the event of non-observance of the declared rules, although the issue of issuance of the order is being expanded by the sponsor, but the examination of the possibility of issuing the executive by Owes and cancellation of bank contracts in the field of research for lawyers and in practical terms for legal authorities and even beneficiaries is still unknown. Regarding the title and its mechanism, it has not been studied independently and specific rules have been established in the area in question. Not compiled. In this research, the parties' obligations and the guarantee of non-performance of the obligations of each beneficiary bank and customer have reviewed the scope of the beneficiaries' interest in creating a procrastination for the issuance of the executive, and there are strategies for preventing the payment of late payment damages by the employer.

[Amirarsalan Hatami Kia, Saeed Mardani. **Demand for issuing execution from debtors and cancelling bank contracts.** *N Y Sci J* 2018;11(3):88-90]. ISSN 1554-0200 (print); ISSN 2375-723X (online). <http://www.sciencepub.net/newyork>. 12. doi:[10.7537/marsnys110318.12](https://doi.org/10.7537/marsnys110318.12).

**Keywords:** Bankruptcy, Bankruptcy, Execution, Delayed Damage Damage, Bank Mediation

**Introduction**

In every economy, contracts between bank and clients suggest a mutual practical and executive relation. Contract law deals with the two sides of a contract in case of contravention from its content. Therefore, bank contracts should be studied in the framework of basic contract principles and specific rules. Bank contracts are among imperative law in which contravention of the two sides makes the other side to compensate.

**Problem statement**

All contracts including bank contracts, without exception, have their specific effects. The two sides are obliged to observe its content and based on basic principles of contracts and civic codified rules they are tackled in the case of contravention. Therefore, demand for collecting a debt through the creditor bank is one important issue when clients break agreement.

Issuing an execution for official deeds is carried out in offices of execution of official deeds. Obligors often try to enterprise the demand. In addition to basic terms there are also some specific principles for

making a contract between bank and client in which the contract will break in the case of contravention. Therefore, in the view of large outstanding payments of banks and making disorder in the economic system, not only banks lost their investment, but also debtors need to pay large amount of money more than received facilities to banks, while they are in debt to the bank as usual.

Existent of bank interest out of the bank rubric and contracts between bank and client and not to timely issue execution from the bank leads to pay more compensation to debtors. The present research aims to study the subject and its alternatives to avoid wasting people rights in spite of observing bank interests and economy circle of the society from illegal pressures on bank debtors regarding existent codified rules and issued provisions as well as legal and juridical principles.

Accordingly, if rule of commandite is a kind of bank contract, to perform an accurate study not only investigating its regulations for cancelling the contract is needed but also it is necessary to study the issue in

codified rules and juridical principles to make the best decision for repayment the loan without any compensation when the contract is terminated.

### Research review

Regarding the issue of research and its specialization, most lawyers in Iran due to the lack of banking law, despite the great differences in the banking agreement between the parties to the agreement on the subject of banking law, the review of the books and articles of jurists can be found in the books of Dr. Elan, Mostafa, Law Bank, First Edition, Publishing Session, Winter 2010, Dr. Bahrami, Bahram, Implementation of Non-Official Documents, Fourth Edition, Publishing Ghanebineh, 1392, Dr. Jafar Langroudi, Mohammad Jafar, Mortgage and Peace, Fourth Edition, Publishing Ganj Danesh, 2009, Zanzibar, Nasser, Banking Law, First Printing, Ruzbehan Publishing, Winter 2012, Soltani, Mohammad, Banking Law, Second Edition, Publishing Rate, Autumn 2014, Which is used in this research.

### Hypotheses

1. It seems that any beneficiary can demand for issuing execution about bank contracts.
2. In the view of contract, it is possible to demand for cancelling bank contracts.

### Methodology

In the present descriptive-analysis research, at first author made a reference to previous research on the subject and then, taking note and collecting data were performed.

### Demand for issuing execution from debtors

The two parties of commitment

Each commitment has the two parties. There are some phrases in this domain which are special to one party. When the operative of the act and reaction are located in a commitment relation, in one side we have creditor, that is obligee and on the other side we have debtor that is obligor.

The "pacta sunt servanda" principle in article 219 of the civil law definitely states that, one side towards the other, or the two parties towards each other make a commitment. Therefore, the obligor must perform their commitments and there are some legal alternatives, in case of contravention. As a result, obligation to perform commitment or doing them at the cost of obligor has been predicted in the law. So, the obligor must compensate obligee for the loss or delay. As there is a consensus among jurisconsults and existent legal principles about demand for commitment from obligee, so it is commonplace that, obligee can demand for performing the commitment in different ways when there is lack of commitment from the obligor.

According to article 2 of the provision of executing indispensable content of official deed, when there is demand for execution from the agent, company's director, guardant or other legal assignees of the obligor, it is necessary to attach documents which confirm position of applicant.

### Reasons and alternatives of issuing execution from the obligor and avoiding late payment damages to the debtor

1. official written announcement about starting proceedings to the obligee through a declaration form

According to article 156 of the Civil Code, "everyone can officially notify others about their remarks related to transactions and commitment through a declaration". Therefore, the debtor can use two sheets of declaration via a registered mail to issue an announcement to the bank and avoiding from day-by-day compensation, in spite of sending a written letter about starting executive operation. Therefore, when the debtor make announcement, compensation doesn't accrue to the debtor. Also, according article 522 of the Civil Code, receiving payment of damage is permitted, when the debtor cannot afford to pay.

However, when the debtor officially mention in the contract that, due to various reasons subject of the contract is not extendable and its continuation causes more loss for the two parties, so according to the abovementioned article, receiving payment of damage is not permitted.

2. Lack of execution from the obligor because of external accident

As mentioned before, there is a mutual partnership in most of the bank contracts. So, when the obligor due to external reasons which is outside of their authority fail to execute the commitment, according to articles 227 and 229 of the Civil Code, they are not obliged to compensate.

In various articles it is remarked that, issuing execution for deeds and regulations must perform by stating the term "demand" by the creditor and the obligor, so according to article 47 about regulation of the office of the notary public, demand for issuing execution must perform through a declaration from the beneficiaries, deputy etc.

As it can be seen, the term "beneficiary" in the article mentions to all people including debtors, creditors, warrantors, guarantors. So forenamed people even the third beneficiary can demand it and they can take legal actions to avoid wasting their rights, in the case of rejection.

3. Rule of "prohibition of detriment":

In summary, the rule indicates that, to cause loss to others is illegal neither in the lawmaking nor in the execution stages. In all Islamic countries, there is consensus about the proof of the principle of harm. So,

bank as obligee cannot cause a loss to the debtor because of being creditor.

4. Regulation about the quality of transferring inessential assets and recreational places of banks

According to article 8 of regulation about the quality of transferring inessential assets and recreational places of banks approved in 2008/10/20-sunday by board of ministers, it is definitely remarked that, bank is not permitted to receive addition interest or late payment damages when the client officially announce they cannot afford to pay. So, banks are obliged to sale client's assurances through making a bid and they must return probable excess money to the client after deducting bank's financial claims in the due date of loan repayment when the client provide the bank with a written request.

When the client has good reasons to complaint about the bank or financial credit institutions and does not receive acceptable response, they can provide the supervisory assistance of the central bank with necessary documents. It should be said that, orders of this sector for banks and financial credit institutions need to be performed in 10 days.

### Conclusion

In Islam, according to Quran it is illegal for Muslims to practice usury. Islamic banks like all economic institutions obey the principle. Therefore, according to Iranian constitution (article 44) banking is in the framework of governmental sector. Banks are obliged to perform credit policies and removing monetary and non-monetary dilemmas. Moreover, all members of the society, in particular, social foundations are obliged to remove credit and facility dilemmas.

As in the early years of Islam, usury and barter transactions were illegal and there was no stock exchange, goods and services were the only active economical market. One important point to create Islamic banking is to transfer actual experiences

among Islamic credit and financial institutions. However, showing figures cannot solve any problem, but actual measures must be taken for practical performance of the Islamic contracts and to show observable results in the economic situation of the society.

But this time consuming and expensive process will be possible if banks and financial institutions undertake to pay money. In every Islamic country the central bank must create policies for financial institutions and to supervise them so as to perform an actual Islamic banking. In the future Islamic banking will probably face various challenges. One problem is that we will probably lack an accurate Islamic banking in the world. The next challenge is that, although Islamic banking has been welcomed in the world but it is still limited and its working capital compared to traditional banking is low, so its future position in the Islamic banking will probably weaken.

### References

1. Bank rights, Mustafa Alsan, 1<sup>st</sup> edition, 2000, SAMT.
2. Bank rights, Mohammad Soltani, 2<sup>nd</sup> edition, Mizan legal foundation .
3. Bank rights, Nasser Zangbar, 1<sup>st</sup> edition, 2012, vol 2, Rouzbehan.
4. Collection of monetary and banking laws, Alireza Mirzaeri, 1<sup>st</sup> edition, 2000, Behnami.
5. Civil law, Alireza Mirzaeri, 7<sup>th</sup> edition, 2012, Behnami.
6. Regulation of performing contents of indispensable official deeds and the process of dealing with complaints about executive operation, Sayyed Mahdi Kamalan, 3<sup>rd</sup> edition, 2012, Kamalan.
7. Civil law in the recent legal system, Nasser Katouzian, 42<sup>nd</sup> edition, 2014, Mizan legal foundation.