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RECOVERY OF DAMAGE FOR LOST PROFITS IN BANK DEPOSIT

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ABSTRACT. Iraq's banking system is different in that it includes nationalized banks, private banks, foreign banks, Islamic banks, particular development banks, and cooperative banks. Currently, the size of loan defaults in the banking industry is enormous. However, the popular view is that loans and advances have a higher recovery rate. This article aims to explore the problems governing banking operations in Iraq and summarize the provisions of Iraqi legislation relating to the recovery of bank profit losses. According to the study given in this example, lending practices with Iraqi banking instruments are similar to those of traditional banks with comparable products. Moreover, the study identifies critical strategically weak connections in the banking sector's development, which has impeded the country's overall economic progress. The results indicate that the rewards under this legal system in Iraq include insurance against loss of profits resulting from bank interest. This situation is problematic on the ground, especially for non-fixed or non-fixed deposits. In addition, demonstrating earning potential is not an obstacle for the buyer in this scenario. However, when the bank deposit contract carries interest and the customer does not pay the amount of interest due to the bank's bankruptcy. The bank loses an opportunity to recover only by proving that the customer has breached the contract terms.

JEL Classification: G21,
K13, K20

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Introduction

It is not surprising that the attempt to adapt the provisions of the insurance system organized by the civil legislator in general with the requirements of the Iraqi Bank Deposit Insurance Law No. 3 of 2016 (Al-Shimari & Jihadb). It is based on the idea of insurance. The thing insured when the danger is realized on the one hand. On the other hand - the elements of compensation stipulated in Article (169) of the Iraqi Civil Code included remuneration for the loss incurred by the plaintiff and the lost profit (Jangeir, 2014). Therefore, we can argue that the benefit. A bank money deposit is held with a joint-stock financial institution regulated by Regulation No. 3 of 2016 for a specified period (i.e., a fixed deposit) and at an agreed-upon interest rate. According to the contract concluded between the customer and the bank, this bank went bankrupt before the warranty term expired. Therefore, this customer is entitled to interest

on his deposit. A failure to pay interest on a fixed deposit means that the client would miss out on the money he had hoped to earn at its end, or the primary reason for signing the contract. Regulation No. 3 of 2016 aims to protect the rights of depositors towards the bank in the event of its bankruptcy. Is it possible to say that compensation according to Regulation No. 3 of 2016 includes insurance for loss of earnings? When was the calculation or set of the prescribed ratios based on the total amount of deposits, i.e., the original warranty with its interests?

If adopting this view raises difficulties on the ground, especially about deposits that are not fixed or have an indefinite period, how can the compensation for lost earnings be calculated for depositors? Especially since the Iraqi Bank Deposit Insurance Company is not a party to the deposit contract concluded between the customer and the bank, according to which the customer acquired the right to interest. Therefore, we will resort to the analytical approach in an attempt to normalize and harmonize the provisions of compensation for lost profit stipulated in the Iraqi Civil Code, and in light of the development of the insurance system in Iraq for the deposit of bank money through the provisions of the Iraqi Bank Deposit Insurance System No. 3 of 2016. Moreover, to lay a basis for compensating lost earnings for lack of insurance Bank money deposit.

1. The Concept of Lost Profit In The Bank Money Deposit Contract

There is no doubt that the Iraqi legislator has permitted the aggrieved party to claim compensation for the lost profit under the provisions of Article (169/2) of the Civil Code (Saleh, 1994). Generally, within the scope of the damages caused by breach or delay in implementing the contract, as if a person misses the last deal winner (Elsea, Schwartz, & Nakamura, 2008). Hence, in the context of the problem of this research, it is necessary to know the nature, conditions, and scope of compensation for lost profit in the bank money deposit contract through the following demands:

1.1. The Loss of Money In Bank Cash Deposit

For the injury that must be compensated for, the loss of profit must first be realized as the likelihood or predominance of this gain must be recognized. Therefore, this opportunity is lost, and the consequent final profit deprivation becomes impossible after it was possible (Khalaf, 2018). In the hypothesis that we put forward in the introduction to this study, in the event of the bank's bankruptcy linked to an interest-producing money deposit contract for the customer's benefit, the severe and real opportunity to earn was achieved by agreeing on the interest. The fixed deposit is defined as deposits deferred for a specified period. The owner is not entitled to withdraw anything from it except after an agreed period (Iqbal & Molyneux, 2016). Investment deposits are those in which the bank pays an interest rate that has been agreed upon in advance with the depositor (Bello, Yasin, Hassan, & Bin, 2015).

However, declaring bankruptcy of the bank leads to an absolute deprivation of the customer from this gain. Since the probability of a rise is not guaranteed, we are not in a position to profit from this. As a result, its failure does not imply that it was harmed. Only probable harm can be paid since it does not meet the criteria for gaining the compensation that was neglected (Bovens, T'Hart, & Peters, 2002). Accordingly, the income represented by bank interest is accurate and not likely, for its loss means actual harm to the customer and not just a missed gain. For example, it was agreed in advance when concluding an interest-based money deposit contract to determine the interest rate that the customer is entitled to upon the expiry of the term of the bank deposit. Even if the client may have reaped this benefit, the bank is nevertheless entitled to reimbursement because the bank was able to avert the loss that resulted in his

bankruptcy. It means avoiding damage to the customer, and thus, the loss became specific and verified. Thus we face real and duty damage Full compensation (Afriansyah, 2012). Therefore, the lesson and the basis for compensating the lost profit for obtaining the bank interest represent actual harm to the customer. It deprives him of the bank interest, meaning the opportunity to achieve a specific gain. Although the opportunity for the customer to obtain the bank interest is a serious and legitimate opportunity to achieve that gain, the opportunity was missed on customer by the bank. Therefore, we have to know how to achieve this gain and then forget it, and this is what we will discuss in the following requirement.

1.2. The Conditions For Achieving Lost Profit In A Bank Money Deposit

This section will discuss how to make a profit, then prove the opportunity and the conditions for missing it.

1. Realizing The Gain Or Realizing The Bank Interest

It is not enough to realize the lost profit from the bank money deposit in the previous sense. But there must be a legitimate way to achieve this gain represented in the text of Article (243) of the Iraqi Trade Law No. 30 of 1984 from the permissibility of An agreement on interest between the customer and the bank when concluding a bank money deposit contract (Willis, 2005). Thus, there is an excellent correlation between the customer's expectation of obtaining the bank interest and the seriousness of this opportunity. It is the goal that the customer aims to achieve by concluding an interest-bearing bank money deposit contract, meaning the opportunity to obtain interest is earned. Bank upon the expiry of the term of the bank deposit.

The word "opportunity" is used in our vernacular to refer to the method and possibility of achieving a particular thing or event and the verifiable fact (Reyes, 2011). This event often means a pleasurable and desirable event, representing a gain in our field. Earning is not seen as a positive experience. Profit or fines, i.e., generating money or losing money, is the goal (Scott, 2010). Accordingly, the loss of earnings in compensation for not securing the lost profits in the bank money deposit deprives the opportunity to achieve the agreed-upon bank interest. The bonus is to the extent of the opportunity to gain this interest. Thus, it can be said that the opportunity for the customer to obtain the bank interest is a serious, i.e., real, and quantifiable opportunity. Hence, the opportunity in compensation is distinguished from mere hope, which depends on the feeling and psychology of its owner.

In contrast, the opportunity under our study is characterized as an objective assessment. And not a person. The Iraqi legislator's "lost profit" suggests that he wanted to limit compensation to material benefit, not to moral benefit. The term benefit or loss of benefit can include the material and moral benefits under its scope. Still, the intangible benefits cannot often be estimated, meaning they do not fall within the evaluation of assessors and experts. They relate to the human self in the same way as the moral damage inherent in the soul. The material advantages may be assessed if the creditor and debtor's circumstances are considered in the same contractual connection. From here, we find that the Iraqi legislator, by stipulating the term lost profit, suggests that he wanted to limit the material benefits and exclude the moral benefits that cannot be counted. Thus the Iraqi legislator is more accurate in the linguistic and idiomatic meaning than others. As a result, we believe that the court will consider the importance of the opportunity when determining compensation for the loss of interest earned by the bank. It is often easy to suggest that the customer will not lose the case if it continues to be considered and that it (the court) does not refuse compensation. Still, it is looking for a legal basis for the reasoning Judgment, being an opportunity of the past realizing fall and seriousness.

2. Proof of opportunity

In this situation, establishing that the consumer can generate money does not pose a problem for the customer. Bank money deposit contracts with interest are terminated when a bank goes bankrupt, and the claim is not paid to the consumer. Therefore, it reveals the chance for the bank to pay only if the consumer who caused bankruptcy can be proven to have made a mistake. The bank Since the bank's bankruptcy scenario is so unusual or unexpected. It is hard to know what to expect. The consumer is to blame for the bank's failure or for attempting to harm the bank's financial or economic standing. Thus, the extent of verification of missing earnings and their seriousness is a matter of facts subject to the discretionary authority of the trial court and not an oversight by the Court of Cassation (al Saedi, 2008). The direction of the Court of Cassation is limited to the legality of this lost earnings, which of course, is legitimate because its source is the interest-bearing bank money deposit contract. Between the customer and the bank.

3. Missing the Opportunity

The amount of interest estimates this compensation for the plaintiff's lost profit (the customer) was expecting. It had been previously specified in the bank deposit contract, which the aggrieved party missed, given that it represents the real damage that he sustained. Therefore, it is sufficient for compensation. From here, it was necessary to miss an opportunity. Gain has two main conditions: certain and final loss of profit, and damage is achieved.

- **The First Condition: The Confirmed and Final Loss of The Potential Gain**

For the opportunity to earn bank interest to be missed resulted from real damage that must be compensated, the chance to achieve the gain must have been definitely and finally missed by the aggrieved (customer). So, he will never get the attention. Denoting that there is no change shortly to the current state of affairs. When the bank was declared insolvent, facts and occurrences that may have resulted in profit or loss were halted by the bank's bankruptcy. In the implementation of this, the French Court of Cassation decided that the insured who, following the advice of the insurer, concluded an insurance policy that allows the insured company to hold before him specific reasons for the forfeit, cannot claim compensation, as long as no accident has occurred yet. Therefore, the damage remains hypothetical or purely theoretical, not sufficient to compensate (Qsair, 2018).

However, is it possible to assume in this case that this lost interest gain could be contingent and thus go beyond the limits? Therefore, we set to compensate for it on the assumption that the customer may not continue to hold the bank deposit until the expiry of the agreed-upon term. Therefore, a weak percentage is probable. Before the expiry of the deposit term, the customer could terminate the deposit contract at his own will by resorting to a request to dispose of the deposit. It is known as breaking the fixed promise, and thus the customer loses the interest initially agreed upon with the bank.

However, this narrow view of the loss of profit is limited to considering the uncertain possibility of the damage that deprived the aggrieved (customer) of the opportunity to realize the interest (Fayyad, 2019). It is critical if there is no confirmation that the customer will continue to hold the deposit until the end of the agreed-upon term. There is nothing to confirm the opposite, i.e., what ensures that the deposit will not be broken. The possibility of earning exists, and the opportunity to obtain interest is realized. The aggrieved (customer) is not always based on mere hopes, dreams, and imaginations, but maybe realistic and accurate, which is what happens in The hypothesis of this study. Therefore, what follows from the probabilistic characteristic of the final damage is the loss of profit. The benefit that the customer was waiting for and denied is not to measure verification and certainty in this damage complete. But instead, weaken it and reduce it without eliminating it. otherwise, the opportunity would not exist for the victim. (Customer) in its meaning above. It necessarily includes a sufficient probability of

making a profit to make it probable. As long as the aggrieved party (the customer) had a good or reasonable possibility to achieve a particular gain, i.e., an opportunity was found for him for this gain. This opportunity was real and severe, then deprivation of it represents actual harm represented in the value and importance of this opportunity and the extent to which it can be achieved for gain, and from it, the law does not prohibit counting in the lost profit. It is an element of compensation, what the injured party hoped to obtain, as long as this hope has reasonable grounds (Margulies, 2008).

- **Second Condition: Check The Damage**

Departing from the general rules in compensation for lost profit requires realizing the damage (Farber, 2006). The damage is done once the bank is declared bankrupt, which is the reality of the scenario in our research. The purpose of the chance is to win the victim (the client) in a good way, which is agreed upon since the position resulting from the loss of profit is a position that is harmful to the customer. Then, it is sufficient to prove the loss of profit for compensation. Accordingly, the damage is presumed capable of demonstrating the opposite, except in the case of proving the fault of the customer who caused the bank's bankruptcy or contributed in one way or another to a negative impact on the financial and economic position of the bank.

1.3. Scope of Compensation For Loss of Profit In A Bank Money Deposit

The scope of compensation for loss of profit in the bank money deposit is limited because the bank's responsibility is contractual. It can fall under the concept of premature breach of contract, intended for one of the contracting parties to publicly affirm that the contractor will not perform his obligation when it becomes due. This contractor declares before The date set for implementation has come about his intention not to implement his commitment when the implementation date comes (Elsea et al., 2008). The idea of a premature breach of the contract exists in future contracts. The obligations of the two parties are not implemented immediately after the conclusion of the contract. Instead, the two parties agree to set a date for implementation, as the contracting party, who has not yet decided the deadline for implementing his obligation, issues an indication, explicitly or implicitly, that he will violate the contract. It refrains from implementing it when the time for implementation is due. In this instance of the breach, it becomes clear that the creditor has missed again what he hoped to obtain from him so that he can claim compensation for it (Nesheiwat, 2012). The breach of the obligation is foreseeable when concluding the contract. If he does not expect it, he is not responsible for it. The criterion of foreseeing harm is an objective and abstract criterion that is the standard of the usual person if the debtor is found in the same circumstances in which the contract was concluded in particular. But according to Article (169) of the Iraqi Civil Code, The debtor shall be liable for the expected and unexpected damage if he commits fraud or a grave mistake. The debtor shall be responsible for all direct, expected, and incidental damage (Stigall, 2009). Hence, it was necessary to examine the scope of compensation for lost earnings by searching for the possibility of limiting compensation to the number of lost profits and estimating the lost earnings?

To limit compensation to the amount of lost profit, the general rule in estimating payment is equalizing and compensating for the damage. The bonus equals all the damage incurred by the injured party; otherwise, the injured would have been enriched at the defendant's expense. According to the research hypothesis, the opportunity was finally lost by declaring the bank bankrupt, so the judge will have no choice but to resort to compensation. After the judge is particular and makes sure of the seriousness of the opportunity and its realization in a

sufficient amount so that its loss would result in actual harm, he shall rule for compensation for all the damage resulting from the failure of earnings and its non-realization (Hassan, 2020).

However, the general rules for reparation in such a case indicate that when estimating compensation for loss of earnings. The injured person should be placed in the situation where he would have been if this opportunity were realized and not compensated for its value. Otherwise, this is considered a situation for the injured in the center or situation. So it would be if he sold this opportunity, not if it was realized (Edwards, 2005).

However, these general rules are limited to fully compensating the customer for the lost profit represented by the bank interest agreed upon with the bank before declaring his bankruptcy. In this sense, we face a particular situation, such as the judge compensating for potential damage. It is represented in the exemplary gain hoped or expected by the victim (the customer), in total compensation described in the value of this profit that he was denied. We mean the amount of the bank interest. Then the judge has considered this harm as actual harm and not just potential damage. Therefore we do not have a mere opportunity (Khalaf, 2018).

Furthermore, the Egyptian Court of Cassation ruled that nothing in the law prevents from including in the elements of compensation. Therefore, the aggrieved party had from the preponderance of his loss to the unlawful act. Because the opportunity is a probable matter, missing it is a specific matter that must be compensated for) (R. H. Ali, 2020).

2. The Legal Foundation For Repaying Interest Losses Due To Bank Failure

The banking sector is keen to support and enhance confidence in it so that banking institutions can attract the stagnant financial resources of individuals. Then turn them into financial assets that are easy to trade and use in financing productive economic activities that benefit the general national economy. But, on the other hand, when the customer deposits his money in a bank and his efforts to save these funds, he seeks to obtain additional benefits, perhaps the most important of which is getting the bank interest. But, unfortunately, the bank's insolvency means terminating the contractual tie between the bank and the client misses the customer's profit. Therefore, the bank needs to focus on the interests of its customers, notably their trust and their objective to secure a cash deposit contract with interest. However, if the deposit contract between the bank and the customer had stipulated the interest in the customer's interest at the deposit expiry date, but the contract does not state interest. It is a subject of the insurance contract that the bank is supposed to have concluded with the insurance company in the interest of the customer? Thus, the customer can refer to the insurance company to compensate for the lost earnings within the limits of the claim agreed upon with the bank in the bank deposit contract initially.

2.1. The Conditions For Verifying The Insured Risk

According to the usual standards, the insurance contract is like a contract exposed to risk. in both its existence and absence, as well as three factors that define its insurance risk:

- 1) A probable event, i.e., it may or may not happen. Therefore, it is impossible to insure against a risk that is impossible to occur if insurance is related to an unimaginable risk according to natural laws. Then the contract is considered void and if it is relatively impossible to occur, such as the absence of its place. Likewise, it is impossible to insure against a specific risk of occurrence (I. Z. Ali, 2018). As for the interest in question and the risk of missing out on earning it, missing out on reaching

is a possible thing that can happen or, no, because the bank is doing business based on the possibility of profit and loss, and the bank's exposure to bankruptcy is a possibility, not sure to happen. At the same time, it is not impossible.

- 2) The danger is involuntary, meaning that its realization is not intentional and does not depend on the parties' will to the legal relationship because this removes the element of possibility (Aziz, Ayub, & Mohamed, 2017). Therefore, it is a risk and not imagined within the contractual relationship between the bank and the customer.
- 3) The risk must be legitimate, and finally, in the place of insurance, it must be a project that does not violate public order and morals (Kourides, 1970). Article (984) of the Iraqi Civil Code refers to the legality of the risk by saying: benefit from the absence of a particular danger. Therefore, as far as the issue is related to the deposit contract concluded between the bank and the customer, the benefits that the customer expects and the possibility of securing it are legitimate benefits for the customer in the deposit contract.

Accordingly, according to the general rules of the insurance contract, once the above conditions are met, the lost profit can be considered an insurance risk that must be insured. Legally, the bank is not required to cover the customer's interest loss. Precisely as in The scope of harm and not mistake the loss of profit and the compensation problem were discussed. It means that every harmful act entails the perpetrator's liability is sufficient to compensate for the damage resulting from the loss of profit, regardless of whether it was a mistake or not.

In this regard, Just as the likely potential gain could be a basis for compensation, here is a loss that was likely to be avoided, which occurred by the defendant's action. So the injured party has thus missed the opportunity to prevent this loss, any chance to avoid possible harm. Only then does it become specific and verified, or else we would not be faced with a mere loss of profit, but then we would direct unavoidable damage that must be fully compensated. Also, it is not sufficient for this loss to be avoidable only, whatever the extent of that, but rather the degree of its avoidance must reach a reasonable time so that it is possible with it. This loss would have been likely to have been avoided had it not been for the defendant's mistake or negligence. Only here is the possibility of gain for the victim realized, and depriving him of it would be a loss of the opportunity to achieve it (Al-Mawla & Al-Mawla, 2021).

2.2. The Legal Foundation For Compensating For Bank Bankruptcy Interest Loss

What is raised here is the issue of referring to the bank to redress the damage caused by the lost profit to the customer. Suppose the court is resorted to by the depositors to compel the bank to pay compensation for the lost profit. Do we assume that the bank ensures the lost profit, despite the absence of the text Legislative? If not insured, is the bank considered negligent, and is its responsibility assumed? Because every harmful act entails the perpetrator's responsibility, it is sufficient to pay compensation for the damage ¹.

¹ Articles (204 and 207) of the Iraqi Civil Code are offset by articles (1,382 French civilians) and (221 Egyptian civilians).

To answer this question, we will review two foundations that can be ascribed to or two principles with which we can try to fill the legislative void that was supposed to oblige the bank to ensure the lost profit. Can we make one of them a basis for compensating the customer or combine them, and this is what we show through Two basics are as follows.

- **The first basis: the principle of good faith in contracts**

Good faith means ignorance of a specific factor of a particular circumstance that is the basis for arranging a legal effect. The following legislative provision differs in conflicting differences depending on the realization of ignorance or knowledge of that fact or circumstance. To put it another way, the culmination of confidence of comprehending this situation, that reality, or that potential or ability of knowledge is poor faith. It assumes the place of its completion until its opposite is proven. It is based on a legislative assumption and thus is closer to lousy legal faith. And the entrance too good or bad faith is the same person whose behavior is required to be judged. Therefore, we should search that subject for the reality of the voluntary direction and determine one of the two descriptions according to its evidence. However, if integrity in contracts is the necessary complement to contractual justice, according to the previous concept of good faith in executing the agreement, to disclose good faith in the legal person represented by the bank. The quest to know the bank's good faith may not stop from its lousy faith about failure Insurance or loss of earnings insurance. Faced with this state of impotence, we move to the second principle.

- **The Second Foundation: Principles of Justice**

The principles of justice are defined as the principles implied by the judge and the wisdom of legislation. Justice is an absolute value, trying to reach what should be, and law is reality. Therefore, in the lack of a legal language that expresses the actuality of the notion of protecting loss of revenues. The principles of fairness are then invoked, i.e., insurance against loss of income as it should be. We also note the absence of a legal text in the Iraqi Bank Deposit Insurance System No. 3 of 2016. It indicates compensation for lost earnings or obligates the contributing banks to pay insurance premiums for the customer's assumed bank interest. The only risk mentioned in this system is bankruptcy. Bankruptcy in and of itself can create harm regardless of whether or not the bank made a mistake or not. This damage is represented in the loss of profit that may appear to the customer not obtaining the benefits of the cash deposit, or it may be represented by not getting the remainder of the amount when referring to the bank, at least not getting it at a specific time after the claim. From the above discussion, we can show the following conclusions:

- The absence of a legal text ensures the loss of earnings in general and the failure of bank interest. However, it does not mean the loss of the customer's right - who was waiting to obtain that interest at the end of the deposit term.
- It can be said to declare the bank's bankruptcy, place it under guardianship, and stop its dealings with customers. The contractual relationship between the bank and the customer is considered a judgmental expiration of the cash deposit contract with interest on the part of the bank. The term of the deposit comes to an end. Thus the customer deserves the claim agreed upon with the bank Starting.
- Also, by referring to the provisions of Article (13) of the Iraqi Bank Deposit Insurance Law, the Deposit Insurance Company, upon declaring the bankruptcy of the contributing bank, will pay the depositors part of the deposit according to the specified ratios, and not the entire deposit, and this harms the customer. This damage could be avoided if the whole amount of the promise was paid to the customer. This damage includes the loss of the financial gain that the customer was waiting for than if his deposit continued to remain in the bank.

- In addition to the damage caused to depositors due to the bankrupt bank's procrastination, it is to pay the debts owed by it to the remainder of the deposit amount that the Deposit Insurance Company did not pay. It returns the depositor as a creditor to the bank. If he had received the remainder of his deposit amount at the specified time when claiming it, this procrastination and delay in paying the deposit amount would miss the depositor a sure profit to make a profit.
- However, if the bank is referred to in all of the above cases, what obligates the bank to pay compensation for the loss of earnings? Who will compel this harm? This is since there is no direct relationship between depositors and the deposit guarantee company.

We conclude that it is inevitable in this case to resort to the principles of justice when the dispute is presented to the judiciary. Professor Charles Rousseau believes that the principles of justice can play a tripartite role when used by the court. One of these roles is the complementary role or Complementing by completing these principles a specific deficiency or filling a gap in the law. Thus, in this case, the judge plays the role played by the Roman judge (the praetor). Therefore, it is fair that no one gets rich at the expense of others and benefits by harming him. the bank had to ensure the loss of earnings so that customers would not be broken. The depositors' resort to depositing in banks may not be to save their money only, but rather to achieve multiple benefits, some of which are related to bank interest. Others are undoubtedly associated with delaying the receipt of these deposits in cash until a certain period is achieved. The customer asked him to engage in a business (such as buying a house), merchandise, factory, etc. The customer pinned his hopes.

Also, the presence of these deposits with the bank before declaring bankruptcy is evidence of the bank's investment in those deposits during the last period. Therefore, the bank made profits from them that are consistent with its activities, and that obligating the bank to pay compensation for lost earnings encourages the bank to perform its commercial and economic role. Accordingly, we see that the missed interest-earning could be subject to insurance. As a result, customers have the right to seek reimbursement from their bank for ending their contract. The consumer also seeks compensation for the bank's insolvency, based on a commitment to justice and fairness emanating from the spirit of justice and fairness. Taking a package of insurance measures to protect the money and rights of depositors in exchange for receiving financial gain from the deposit is not acceptable. It is an investment source for the banks. Here, there must be a call for the Iraqi legislator in this regard to expanding the scope of compensation in the Bank Deposit Insurance System No. 3 of 2016, through:

- Obligating the contributing bank to pay a percentage determined by the Central Bank, less than the percentage specified in Article (4/first) of it, to be saved to compensate for the loss of earnings that befall the depositor, provided. The Deposit Insurance Company pays the depositor compensation for the lost wages according to a percentage determined by the Central Bank. In the case of a claim by the depositor, during a specified period, and when no claim is made, the total of these amounts shall be returned to the contributing bank.
- Suppose the deposit term expires and the depositor receives the deposit amount and interest. Then, the insurance percentage deposited by the bank with the Deposit Insurance Company shall return to the shareholder bank.
- Suppose the above proposal constitutes a financial burden on the participating banks. Then based on the duty of the bank deposit guarantee company to carry out the responsibilities of advancing the banking sector and bear a percentage of risks. To create confidence among depositors and facilitate their order from the judicial review procedures. It can provide for The bank deposit guarantee company pays

compensation for the loss of earnings to the depositor, provided that it replaces the depositor within the limits of that compensation towards the insolvent bank. But, of course, this is without the participating bank initially paying any percentage to secure the payment.

3. The Legal Foundation For Repaying Interest Losses Due To Bank Failure

Good faith and justice dictate that the bank must protect its clients from financial losses, and this obligation is founded on reasonable belief and justice. Therefore, consumers are entitled to compensation in the event of a bank's losses. Since insurance for lost earnings collides with practical reality, no insurance company can insure against lost wages for the benefit of a bank. However, the general rules do not prevent the decision that the damage had not been previously compensated. It is also not permissible to object to this legal analysis that the aggrieved party would thus have combined two compensation for one damage because he only received one payment from the one responsible for the damage he sustained. Insurance, in this case, takes the character of a "compensation contract" because its purpose is to compensate the insured for the damage he may incur if the insured danger is realized. Repairing actual harm, not inflicting punishment on the perpetrator [35]. Also, the contract of insurance on things is a contract of a compensatory nature, so the amount of insurance here is nothing but compensation for the damage that this insured has suffered. Therefore, this insured could not, if the amount of damage was less than the payment amount, only receive what corresponds to the injury he inflicted.

The best evidence for this is that the Iraqi legislator, when he decided to secure the origin of the deposit, besides obligating the banks covered by the Iraqi Bank Deposit Insurance System No. (3) of 2016, he referred to the establishment of a guarantor company for this purpose, which is the Deposit Insurance Company in accordance with Article (1) of the system. Accordingly, we can suggest to the legislator to expand the place of bank deposit insurance to include, in addition to the insurance on the cash deposit's origin, the loss of profit insurance in return for percentages that the bank is obligated to pay to the deposit insurance company, as a consideration for insurance and at a rate less than the insurance percentages of the origin of the deposit, so that the deposit guarantee company pays the compensation For the loss of earnings when the bank's bankruptcy is achieved and the customer demands it, and in the event of no claim, the amounts charged by the Deposit Insurance Company for the loss of earnings insurance return to the bank, meaning they are returned to the financial liability of the insolvent bank in application of the spirit of justice. Provided that the customer's claim for the amount of missed earnings is within thirty days from the date of his delivery of the legally due guaranteed amount under the bank deposit guarantee system, provided. The bank deposit guarantee company does not replace the deposit owner within the limits of your paid amounts for the lost earnings. It is a company's contribution, ensuring bank deposits bear the burdens of promoting the banking sector. The principle of compensation governs the insurance contract on things and prevents the insured from returning to the insured an amount more significant than the damage incurred. This concept applies only between the insured and the certified. Thus, the bank deposit guarantee system is the best first aid provided to the banking system in light of the economic developments and their dire effects and financial shocks that negatively affect the banking sector. Loss of profit in the sense of insurance on bank interest to the bank deposit guarantee system. Especially since one of the tasks of the Deposit Insurance Company is to provide a cover to guarantee the public's deposits with Iraqi banks approved by the Central Bank of Iraq inside Iraq ².

² Article (6/1) of the Iraqi Deposit Guarantee System

Conclusions

The Arab legislation that regulates the provisions of the bank deposit insurance system is free of insurance on the customer's lost profit, which is the bank interest. However, the establishment of this system is mainly to achieve economic stability, work to protect the rights of depositors and the peace and safety of banks, and strengthen confidence in them through the preventive role. And since the bank's investment of the amounts deposited with it leads, of course, to the owners' entitlement to bank interests, the declaration of bankruptcy of the bank does not exempt it from paying those interests. Therefore, justice, fairness, and legal logic require compensation for lost earnings based on the guarantee of the deposit system by expanding its scope. Thus, we are in front of a new way to encourage the bank to perform its commercial and economic role when it feels obligated to pay such amounts or percentages consistent with interest rates to the bank deposit insurance system. Therefore, it can be added to bank deposit insurance systems' economic and social advantages. Thus, we provided a suitable climate for competition between financial institutions according to their different sizes. Hence, the contribution of all institutions to insuring and bearing the costs of the financial risks of troubled institutions. This is the legislator's desire to establish the preventive role to confront financial threats and to compensate depositors in the event of their realization. Thus, we have created a new framework to address the problem of paying lost profits for the bank money deposit, which supports public confidence in the banking sector. Therefore, the loss of interest-earning may be subject to insurance. The customer has the right to demand compensation from the bank due to the severing of the contractual relationship to the bank's bankruptcy. It is based on a commitment stemming from the spirit of justice and fairness under the principles of justice, not to take a package of insurance measures to preserve its money and the rights of depositors in exchange for benefiting from The deposit as financial income is an investment source for banks.

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