

THE LEGAL EFFECTS OF CLOSING THE CURRENT ACCOUNT

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ABSTRACT

This study deals with the legal effects of closing the current account. It is one of the topics that are important in banking transactions, whether for banks or customers, where the legal effects of closing the current account to liquidate the current account to extract the balance and closing the current account for interest calculation. The closure of the current account will result in the interruption of any new transactions with the account, which will exclude the entry of any new payment in the current account. The closing of the account will result in the discontinuation of the compound interest because the balance becomes a normal debt after the account is closed.

Key words: Current Account, Bank Contract, Closing Bank Account

INTRODUCTION

The regular account and the current account are among the most common banking transactions. The regular account has several titles, including simple account, deposit account and check account, in which the credit amounts of the client who aims to save them are recorded. It is originally a credit not a debit account while being a debit account is the exception, this regular account may be opened to any client in general, whether merchants or otherwise, in order to restrict banking operations that have nothing to do with commercial activity, therefore, current accounts do not include opening a letter of credit in favor of the client, unless in form of loans secured by cash deposits in the possession of the lender bank. As for the current account, the bank opens it mostly to his client and for purposes related to commercial activity, for it represents the merchant's deposits and financial operations.

As banks seek to attract clients to increase bank's resources, through services, as is the case in banking contracts such as the current account contract, which is subject of this research, and other contracts, so that the method of settling the process or operations that takes place between the bank and the client differs depending on whether the relationship between them is transient or continuous, so if the relationship is continuous, it is not limited to one single operation or to several separate operations, but rather to many, recurring and continuous operations, then the settlement of these operations takes place through the bank account.

Research problem

The problem of this research lies in the statement of the legal effects of closing the current account, in terms of liquidating the current account to extract the balance, and in terms of explaining the effect of closing the current account on the calculation of interest.

Research importance

The importance of this research is summarized in the following matters:

1. What is a current account contract?
2. What are the characteristics of the current account contract?
3. What is the difference between a current account contract and a deposit contract?
4. What is the difference between a current account contract and a bank transfer contract?
5. What are the legal effects of closing the current account?

Research objectives

The objectives of this research are to answer the previous study problem.

Research Methodology

1. Descriptive approach: in terms of all the information and aspects of the research topic.
2. Comparative Approach: In this research, a comparison is made between Jordanian legislation and Egyptian legislation, in order to clarify the legal effects of closing a current account.

The first section: The concept and characteristics of a current account contract

First of all, we say that the current account has assets and rules that distinguish it from other accounts, as each payments loses identity and forms an integral part of the current account, and often relied upon if the exchange operations are numerous and repeated and intended to be liquidated and closed. This section will explain the concept of current account contract in the first topic, and address the characteristics of the current account contract in the second, as follows:

The first requirement: the concept of a current account contract

Article (106) of the Jordanian Trade Law No. 12 of 1966 AD defines the current account contract as: “The agreement between two persons that what each of them delivers to the other with different payments of cash, funds and debenture bond is recorded in one account in the interest of the payer and a debt on the clerk without either of them shall have the right to demand the other of what has delivered to in each payment separately, so that the final balance alone becomes, upon closing this account, a debt due and ready for payment.

Article (361) of the Egyptian Commercial Law Law No. (17) Of 1999 defined it as: “A contract whereby two parties agree to be entered into an account by means of reciprocal payments and overlapping debts that arise from the operations that take place between them so that they are unable to settle these debts in turn one settlement shall be made on the account when it is closed ”.

Mustafa Kamal Taha defined it as: “A contract whereby two persons undertake to transfer all the rights and obligations that arise from their mutual operations, into items in the account, which are cleared between them respectively, so that the position of either of them is not determined except by closing the account and extracting the final balance which is considered to be the debt owed to one of them on the other ”.

Elias Nassif defined it as: “A contract between two persons: the recipient or the deliverer and the recipient or, according to which it is agreed upon, following repeated intertwined operations that require exchange of funds, to transfer their debts under these operations into simple clauses of credit and credit that lose their self-entity and merge In a single account, which is closed at specific times, by clearing the reciprocal payments, so that the final balance alone becomes an outstanding debt ready for payment ”.

From the foregoing, the researcher notes that the concept of a current account contract is the agreement between two people that what each of them delivers to the other with different payments of cash, funds and proprietary commercial bonds is recorded in one account for the benefit of the payer and a debt owed by the clerk without either of them having the right to claim the other for what he delivered in each payment separately, so that the final balance becomes alone upon closing this account, a debt due and ready for performance, and this is what is defined by the Jordanian Trade Law.

The second requirement: the characteristics of the current account contract.

The text of Article (106) of the Jordanian Trade Law No. 12 of 1966 AD states that the current account contract is: "The agreement reached between two persons that what each of them delivers to the other with different payments of cash, funds and a property able commercial attribution is recorded in one account in favor of the payer and a debt on the clerk. Without either of them having the right to demand the other of what delivered in each payment separately, so that the final balance alone upon closing this account becomes a debt due and ready for performance.

Likewise, Article (361) of the Egyptian Commercial Law stipulates that the current account is a contract whereby two parties agree to be entered into an account through mutual payments and overlapping debts that arise from the operations that take place between them, so that they replace the settlement of these debts in turn with one settlement that falls on the account when it is closed. Based on that, the characteristics of the current account contract are shown as follows:

First: the current account contract is a binding agreement on both sides:

A current account contract is a consensual contract between two parties and it is not required that one of them to be a bank because the current account may be between individuals, which is stipulated in Article (106) of the Jordanian Trade Law, and paragraph (3) of Article (361) provided that "The provisions of this clause shall apply to every checking account even if one of the parties is not a bank." Under it, they agree to register the operations that take place between them in the calculation, and the contract is concluded as soon as the will of each of them avoids that, and the consent of the two parties may be explicit or implicit, but it is not assumed, rather it must be extracted from circumstances that discontinue categorically the intention of each of the parties to take its effects.

The entry of the payee into the account is considered an effect of the current account contract and not an essential element in its formation for the contract is completed as soon as the wills meet and before any payee enters the account.

Second: The current account is a subordinate contract:

The current account is described as a subordinate contract, that is, subordinate to the operations that are entered into it, given that it assumes the existence of previous operations, and that the link is not completely discontinued between the entry that is included in the account and the process that led to it, by saying that the current account aims to settle obligations arising from different contracts that enter the account without completely losing their link to the contracts from which they arose, it is not correct to view the current account as an independent contract that can be established and arranges its effects by itself, but rather a subordinate contract intended to facilitate the settlement of the implementation of other contracts by melting them all together in a single crucible by unifying the methods of fulfillment and implementation.

The current account contract is a subordinate contract because as long as the contract is concluded without requiring the existence of previous operations on it, this leads to say that it's a subordinate contract, the legislator took this consideration of what is stipulated in Article (363) that (Registering the debt in the current account does not preclude the use of rights related to the process that created this debt). The dependency here is not between the current account contract and the process in which it is attached, rather, it's between the payee and the process itself, in the sense that the payee is related because of it, that is, to the process resulting from it.

Third: The commercial or civil nature of the current account contract:

If the current account is one of the banking activities carried out by banks, then it also exists between merchants or others, the legislator in the new Trade Law was keen to stipulate that in Article (3/361) that “The provisions of this branch shall apply to every current account even if one of the parties is not a bank”.

Fourth: Opening a current account is a permanent business for the bank:

The current account system originated in a merchant environment, it is an authentic commercial system and far from the rules of civil law, but its scope has expanded to the civil environment, and thus it is possible for non-merchants to settle their transactions through the current account, Hence, the question arises about the description of the current account contract in this case, the current account is considered a permanent commercial account for the bank in accordance with the provisions of Article 5 of the new Trade Law No. 17 of 1999 that the following businesses are considered commercial if they are practiced professionally (a) (f) banking and money exchange operations.

This is stipulated in the fifth paragraph of Article 2 of the annulled commercial regulation, which considered all bank operations to be commercial with respect to the bank even if it took place alone, that is, with a person who is not a dealer, bank operations are part of the spectrum of commercial businesses by their nature because they are related to mediation in the circulation of wealth and with the intention of making a profit.

The third article of the new Trade Law No. 17 of 1999 stipulated that "If the contract is commercial with respect to one of the two parties, then the provisions of the commercial law shall not apply except to the obligations of that party alone, the provisions of the civil law shall apply to the obligations of the other party, unless the law stipulates otherwise.

Fifth: The current account contract is considered commercial or civil for the client according to the personal sect or the material sect of business:

As for the customer, the commercial or civil character of the current account contract varies according to whether it is taken by personal sect or material sect in determining business, so according to the personal sect, the account is considered commercial if the customer is a merchant, as the status of the merchant is a presumption of the character of the contract, even if it is a simple presumption that accepts proof of the contrary. If the client is not a merchant, the account is considered civil in relation to him. Whereas if the material doctrine is applied, then in this case the commercial or civil character is determined by looking at the operations that are included in the calculation, If some of these operations are civil and others are commercial, then their commercial or civil character is determined according to the dominant character in them, so the account is considered civil if most of the operations recorded in it are civil, and the account is commercial if it is the most commercial.

In the new Trade Law No. 17 of 1999, the legislator combined the personal and material doctrines of business with what was stipulated in the first article of it that "the provisions of this

law shall apply to commercial businesses, and to every natural or legal person for whom the character of a trader is established."

Sixth: The current account is considered a commercial act as an application of business theory, by extension:

Meaning that the current account opened between two merchants is considered a permanent business if for the needs of their trade, even if includes some civil works. If the origin is that the theory of commercial dependency is a personal theory, then its scope is not limited to the business of the merchant's activity, rather, extended and applied according to the real theory in the sense that the work is commercial by extension if it is affiliated with a single commercial business carried out by a person who is not a merchant.

Nevertheless, the legislator adopted in the new trade law the origin of the theory of commercial dependency as a personal theory as stipulated in Article (8) that 1- The actions that the merchant carries out for matters related to his trade are considered commercial business. 2- Every act performed by the merchant is deemed related to his trade, unless proven otherwise.

The second section: Distinguish the current account contract and other banking contracts :

The discussion in this topic revolves around distinguishing the current account contract and other banking contracts in the following two requirements:

The first requirement: the distinction between a current account contract and a deposit contract.

The bank is distinguished from exchange companies in practicing all banking activities, including accepting bank deposits, managing individual accounts, mortgages, and loans. The bank provides banking services and transactions through contracts such as: a deposit contract, and the loan contract, the bank's client may resort to "depositing his money with the bank with the intention of preserving it from loss or theft, or to obtain compensation in return for not demanding the bank for these amounts during a certain period or to achieve both purposes.

The bank's customer may often resort to borrowing from the bank according to conditions and controls included in the loan contract. Current deposits are usually associated with the opening of a deposit account, which allows the client to withdraw the deposit by transferring from this account to another account opened in his name or in the name of another person with the same bank, This is instead of withdrawing the deposit in cash, as the loan is linked to the interest agreed upon between the bank and its customer.

Depositing is a contract by which the owner authorizes someone else to preserve his money, and others are obligated to preserve this money and return it in kind, and the deposit is the money deposited in the hand of a trustee to keep it for the validity of the deposit contract, it is required that the place of the deposit is money capable of being proven by the need.

Bank deposits are divided into two main parts: cash deposits, which are called "cash deposits", and non-cash deposits, so that cash deposits are divided into multiple sections according to the economic function they perform or the purpose that the business and the bank are aiming for from them, so the cash deposit may be due to be fulfilled as soon as the request is made, and it is associated with a term and is not due to be paid until the deadline expires. The client's right to request it may also be restricted by observing certain dates and procedures, Non-cash deposits also vary into different types depending on the purpose that the customer aims to deposit with the bank. The customer may wish to deposit them to save his financial instruments and deliver them to the bank. The bank, in addition to that, may manage these promissory note

and collect their interest or profits or sell them to the account of their owner, and the bank may also accept the promissory note deposit, whether it is financial or commercial papers as a mortgage for loans and credits granted by the bank to its customers, the purpose of the deposit may be to store the client's general documents and jewelry in metal safes that the customer leases from the bank.

The bank's customer resorts to depositing his money with the bank with the intention of preserving it from loss or theft, or to obtain compensation in return for not claiming the bank for these amounts within a certain period or to achieve both purposes, the bank's clients' deposit is based on one of the general rules regarding the existence of a contractual relationship with which the customer entered into with the bank when their will to achieve the effect of the contract containing the obligations of each of them", so that "the bank cash deposit gives the customer the security and psychological stability resulting from the client's assurance that his money is safe from theft or loss". Pursuant to the provisions of Article (115) of the Jordanian Trade Law, the bank receives by way of a deposit an amount of cash that becomes its owner, and it must return it with a value equivalent to one payment or several payments upon the depositor's first request or according to the terms of the dates or advance news specified in the contract. The bank deposit includes all the money the customer has in the bank's possession. Work is underway that the bank opens an account when the customer enters with him in transactions called a deposit account or a check account, all that the customer has in this account takes the ruling of a cash deposit, and the customer has the right to dispose of it as he dispose of a bank deposit.

From the foregoing it is evident that the bank deposit has a fundamental characteristic, which is the bank's acquisition of ownership of the deposited money, so that it has the right to dispose of it and exploit it for the needs of its own activity, provided that it is committed to returning its value to the depositor.

The second requirement: to distinguish the current account contract from the bank transfer contract.

The bank transfer is considered a procedure carried out by the bank and it is done as if the commanding person withdrew the amount to be transferred and then went to deposit it in the account to which the amount was transferred in the name of the same commanding person or in the name of another beneficiary except within the same bank or through another bank it can also be defined as a process of proven benefit that leads to the transfer of financial rights without resorting to the transfer of money and the bank transfer is a contract between the commanding person and the beneficiary, and yet it may be done unilaterally on the part of the commander and without the knowledge of the beneficiary, except that the beneficiary has the right to reject it, in the view of some, the bank transfer is a means of delivering a transferred sum that takes place in double writing, the first on the part of the bank's client for the account of the commander, and the other on the part of the creditor for the account of the beneficiary, and this writing is what leads to the commander's right to be stripped of the amount transferred, The bank transfer takes place between one bank and this is the simplest form of bank transfer, and it assumes that the account of the customer ordering the transfer and the account of the beneficiary are in one bank, so the bank transfers a certain amount from the account of the customer ordering the transfer to the account of the beneficiary, and the beneficiary may be the customer ordering the transfer itself, so that this customer has two accounts with the same bank, and each account was allocated for a specific purpose, And the dominant picture is as if a person keeps two accounts, one for his

personal affairs and the other for his commercial affairs, and he needs to feed one of the two accounts with money from the other account, a bank transfer may also be represented in the form of transfer by two different banks, and in this image the account of the one who commanded the transfer and the account of the beneficiary in two different banks, so it is necessary to carry out the bank transfer process from the intervention of the beneficiary's bank.

Thus, the current account contract is distinguished from the bank transfer contract in that the relationship between the bank and the current account opener is not limited to one discontinuous process rather, it requires that the relationship be continuous between the bank and its customer by opening a bank account with the bank in the name of the customer in which the operations he enters into are recorded as items included in one side of the credit or debit account until they are finally settled by extracting the balance that may be a credit in favor of the bank and we are in the custody of the customer or be a creditor in favor of the customer and we owe the bank, so an account with special rules is known as the current account.

The third section

Effects of closing the current account

The effects of the current account end with the so-called "account closure" and at that time all the legal actions mentioned in the running of the current account end, and then this closure has important consequences for which the Jordanian and Egyptian legislators have singled out texts in commercial legislation.

Upon making a final liquidation of the current account, it is not permissible to review it or dispute the account, and to request it to be reviewed by reviewing it in its entirety and making a new account based on new elements other than those that were the basis for the account before it was closed, which leads to the fact that in order for it to be said that the outcome of the account is settled and closed, this account must be settled, and the bank or customer makes a balance that shows the final balance of this account and the two parties' ratification of the position of each of them.

As the closing of the current account entails the final suspension of dealing with it with the liquidation of its terms in order to extract the balance that is settled by one of the parties in the responsibility of the other, and this also results in stopping the interest.

The first requirement: liquidating the current account to extract the balance

Closing the current account leads to suspension of every new dealings with the account, which means excluding any new payment in the current account, if the two parties want to continue dealing with them under the current account, they must conclude a new agreement, explicitly or implicitly, for this purpose. It is based on the disconnection of the current account and the debtor's acknowledgment of the extracted balance that the original obligation arising from the current account with all its dependencies shall expire and a new commitment to this balance originating from the acknowledgment shall replace it. After disabling the reception of new payments in the current account, the account is settled through a clearing process that takes place immediately and automatically between the credit and debit account items to extract a single balance that replaces all the items recorded in the account.

We consider the clearing as one of the reasons for the termination of the obligation, as it assumes that the debtor has become a creditor to his creditor, as the status of creditor and debtor combines in both parties of the obligation at the same time, so the two debts shall be spent in the amount of the lesser of them, instead of each repaying his debt to the other for example, the bank that is linked to a checking account with a bankrupt customer, although it is a regular creditor, enjoys a privileged position, as the client escapes from competition from the rest of the ordinary creditors, as a result of the clearing that takes place between all account items, he is exempt from fulfilling the debt side within the limits in which he is a creditor, bankruptcy shall be entered according to the amount of the credit balance, so it is not subject to competition from the rest of the bankrupt creditors except within the limits of this amount alone, which is a violation of the principle of equality between regular creditors on which the bankruptcy system is based.

This legal process is embodied by an accounting procedure that lies in all the credit and debit items separately and then subtracting one of them from the other so that the balance appears for the account and this balance is considered final whenever the other party accepts it so that it is not permissible after that to be reconsidered, except through a lawsuit to correct the account entries. The checking that is not heard in all cases after five years of closing the account.

The final balance is considered a right for the one who appears in his interest and we have a case on the other party, which must be fulfilled immediately unless the two parties agree otherwise, because the current account shows the nature of clearing in the interconnected debts that arise from the same legal bond or from the same contract.

The second requirement: the effect of closing the current account on the interest calculation

If the bank had to compute compound interest before closing the current account, then the balance becomes a normal debt after closing the account, and a small interest is calculated on it starting from the date specified for the closing.

As a result of closing the current account, the debt becomes normal, legal interest shall apply to the balance debt from the date of closing the current account, unless otherwise agreed upon, ordinary debt is subject to simple interest according to the custom. In application of that it was decided that:

"The contested judgment adhered to this consideration and decided to calculate a small interest at the rate of 9% annually, because it has struck the right of the law, which is why this obituary must be rejected. Whereas, the obituary for the second reason is one of the reasons for the appeal against the appealed judgment in which the failure to causation and corruption in the inference and breach of the right of defense to the statement that the expert assigned to the case had neglected to define the position on the date of the suspension of the dealings, and as a result this did not determine the origin of the debt at this date as well as the error in determining the amount of deposits, withdrawals and various interests and not showing the commissions and expenses deducted by the bank, which makes it clear that the figures mentioned in the report are incorrect, and since this obituary is rejected because it is established in the judiciary of this court that the court of the matter has the authority to assess the work of the expert and take it if convinced of the outcome of the result that he has based on, since that was the case and the appealed ruling established his judiciary to bind the appellants to the amount he relied on the report of the delegated expert in the case to assure him of the correctness of the procedures he had taken and the results he had reached for the reasons on which his report was based, in which

the compound interest rates were calculated since the beginning of the dealings on 7-3-1982 on the basis of messages exchanged between The two parties to the appeal then calculate it simple interest at the rate of 9% on the balance of the debt from the date of closing the account, starting from 9/18/1985 until the date of filing the lawsuit, as it has been based on justifiable reasons that are sufficient to carry it and include the implicit response that is waived for what the appellant raised on the expert's report from the contestants, This dispute is nothing more than an argument in the trial court's assessment of the evidence in the case with the intention of reaching a conclusion that contradicts what the court has reassured about, which may not be brought before the Court of Cassation, a matter with which this obituary must be rejected. ”

Thus, the demise of the current account's characteristic is by closing it by agreement or by the will of one of the parties, or by implicitly closing it with the cessation of the account's movement, withdrawal and deposit, and that the interest in the period before the date of closing the account is compounded at the agreed price unless it is agreed upon simple calculation, and the closing of the current account results in the balance becoming The debtor in the account is a regular debt in respect of which the simple interest is calculated at the rate of 9% annually, starting from the closing date until the date of filing the lawsuit, unless there is an agreement to calculate the interest in the post-closing period complex and at the agreed rate for this subsequent period, and this interest It is not the late interest that is due from the date of the judicial claim.

The rules for the passage of time apply to the final balance debt, and civil rules have been applied in this regard, which arranges for the creditor to abstain from hearing the creditor's lawsuit against the debtor over the lapse of fifteen years, while the application of the rules of Jordanian or Egyptian commercial law arranges a better position for the creditor and for the public interest, as the limitation period If it is fifteen years, then the bank is obligated to carry out the necessary investigations to deliver the amounts to the creditor within one year from the date of the expiration of the mentioned period.

CONCLUSION

The most prominent findings and recommendations included:

First: Results:

1. Closing the current account leads to the suspension of every new dealings with the account, which means excluding the entry of any new payment into the current account, and the closure of the account also results in stopping the compound interest because the balance becomes a regular debt after closing the account and a small interest is calculated on it starting from the date specified for closing.
2. The entry of the payee into the account is considered an effect of the current account contract and not an essential element in its formation. The contract is completed as soon as their two wills meet and before any payee enters the account.
3. That the bank deposit has a fundamental characteristic, which is the bank's acquisition of ownership of the deposited money, so that it has the right to dispose of it and use it for the needs of its own activity, provided that it is committed to returning its value to the depositor.

Second: Recommendations:

1. It would be nice if the Jordanian legislator added special provisions related to the lost when the current account was closed.
2. Establishing legal solutions in order to address the problems facing the bank account in relation to closing the current account, its causes and effects, after closing it and showing the final balance.

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