

Saudi banks' credit responsibility in the light of Simah company's credit report



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ARTICLE INFO

Article history:

Received 8 October 2021

Received in revised form

3 January 2022

Accepted 5 January 2022

Keywords:

Bank responsibility

Credit information report

Simah Saudi credit bureau (SIMAH)

Credit information law

ABSTRACT

The bank seeks to avert responsibility for itself, that responsibility that may arise towards it from several quarters, within the framework of the exercise of one of its functions on the occasion of granting it financing. The person requesting the financing may be asked about his refusal to grant the financing, and he may ask the creditors of the client requesting the financing about the damages caused by that financing to the client's financial liability, and other cases of the bank's responsibility. Saudi banks, like other banks, seek to avoid their responsibility for granting credit. Therefore, the Saudi legislator issued the Credit Information Law, according to which Simah Saudi Credit Bureau (SIMAH) was established to provide credit clients with a report that includes much information that is undoubtedly of interest to the credit decision-maker in making his decision to grant financing or not. The study used the comparative analytical method, so that the study addressed an analysis of several judicial rulings, whether Saudi Arabia or issued by the United States of America, in order to show the impact of the credit information report on the responsibility of the bank, in addition, the study reached many recommendations that would affect the responsibility of banks.

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1. Introduction

Trading is generally a hectic activity with risks, and the bank, as a merchant, is exposed to the usual risks to which merchants are exposed. In addition to these risks, the Bank is exposed to special risks in the course of carrying out its fiduciary function. Credit, in essence, means granting money to a person (called the borrower) in return for its return along with its interest in a specified period. Whatever the forms of credit facilities, they will not deviate from that simple concept of credit. There is no way for the bank to face these risks, and confronting them does not mean at all staying away from that activity, for credit is the right of the life of the banking business. The bank always seeks profitability, and the basis of the bank's profitability is in its credit activity. The higher the risk, the greater the profitability potential. The observer of the banks' activity is absolutely certain that there is no credit without risks, and the

reason for this is that whatever the form of the credit facility granted by the bank to the client, the common denominator between them is that they are term contracts, meaning that time is included in the basic composition of those contracts.

The bank grants sums of money at the present time and retrieves them in the future with the interest of operating that money. The time difference between the date of granting the credit and the date of the bank's recovery of that money is in itself a risk for the bank, given that obligating the bank to be aware of the borrower's financial situation in the future so as to be able to ascertain that the borrower will fulfill his obligations is an impossible task.

If you are the basic rule that governs credit that there is no credit without risks, but those risks can be reduced to the smallest limits. To reduce these risks requires basic knowledge of the limits and dimensions of these risks and the bank's balance between them, research that the bank can assess whether or not it accepts these risks. Banks seek to collect as much information as possible about the borrower (Financial obligations-the amount of financial liquidity, assets, the extent of the obligation to fulfill financial obligations, checks that were rejected due to insufficient balance, total loans granted to the borrower from all banks... etc.) and other information that contributes to the bank's

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<https://doi.org/10.21833/ijaas.2022.03.013>

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formation of its opinion on the extent of the client's creditworthiness. Because judging the extent of the client's eligibility to obtain credit from the bank is essentially judging the extent of the bank's confidence in that client, and the trust must be based on foundations, therefore, any information about the borrower's financial transactions in general or his credit transactions, in particular, will undoubtedly contribute to the formation of the opinion of the credit decision-maker.

One of the most important basic principles of the Basel Committee is to oblige banks to set the necessary controls to manage credit risks, and one of the ways to prevent credit risks is credit inquiries about borrowers from sources that provide the information necessary to form the conviction of the credit decision-maker.

Because of the harms of bad credit, it will reflect negatively on the national economy. In order to reach moderate credit in terms of risks, the Saudi legislator issued the Credit Information Law with the aim of making the largest amount of information available from its official sources related to financial and credit transactions for natural and legal persons. For this reason, the Simah Saudi Credit Bureau (SIMAH) was established to act as the credit information company that issues these reports.

The study aims to show and analyze the data that appears in the credit information report issued by the Simah Saudi Credit Bureau (SIMAH) in order to show the extent of its impact on the bank's responsibility. We previously explained that the credit decision, whether granting or not, may raise the responsibility of the bank, whether on the part of the borrower himself/herself or on the part of his/her creditors, as well as the bank's clients who have deposited their money with the bank as a trust and will demand the bank to recover it when it is due. The study answers the following questions:

- What is credit information?
- What are the sources of credit information?
- What is the importance of credit information?
- What is the legal system for the credit information bureau?
- What are the contents of a credit information report?
- What information is prohibited to be included in a credit information report?
- What are the aspects of the banks' responsibility regarding the credit information report?
- What is the basis of the bank's responsibility for its credit decision?
- What are the cases of avoiding the responsibility of the bank as a result of the information included in the credit information report?

This study can be divided into three main topics as follows:

- The Nature and Importance of Credit Inquiry.
- The Impact of Credit Information Bureau on Banking Credit Industry.

- The Impact of Services Provided by Saudi Credit Bureau (SIMAH) on Saudi Banks' Responsibility.

2. Previous studies

A study by [Daisy \(2016\)](#) in which the researcher discusses the study and analysis of the information generated by the credit information report issued by the Credit Information Bureau in India and its economic importance as well as its significance and economic impact, given that banks seek to verify the creditworthiness of the borrower. The credit information report offers accessibility, hence verifying based on the historical information of the financial and fiduciary transactions of the borrower. Although the aforementioned study discussed the credit information report issued by the Credit Information Bureau in India, however, its importance stems from the fact that the foundation on which the credit information report is based upon is almost fixed. The study concluded that it is important to include the information obtained by insurance and communication companies in the credit information report, in addition to including information on returned checks. The culture of individuals' interest in increasing the finance-ability index that is issued in the credit information report must be spread, in addition to the study's affirmation that the decision to grant credit or not is a decision only for the bank to make and the credit information company hold absolutely no responsibility regarding it.

A study by [Monye et al. \(2020\)](#) in which the researcher displays the Nigerian Credit Information Law, where the study discusses the objectives on which said Law was established, as well as the most important procedures that Nigerian banks must adhere to regarding granting credit. The aforementioned law requires banks to issue a minimum of two credit information reports prior to issuing the decision to grant credit, as well as requiring all financial institutions subject to the provisions of the abovementioned law to provide specialized credit information companies with the information it holds.

The study considered the Nigerian Credit Information Law to be a proper reforming method to the Nigerian economy through what these reports offer of information. The study concluded the need to promote access to credit reports' platforms, improving the technological infrastructure to enable the achievement of the objectives of the aforementioned law, as well as the obligation to ensure the security of information to ensure that it is not hacked or illegally accessed. The study also reached an important result, namely, the improvement of the Nigerian financial sector after the adoption of the Credit Information Law, where Nigeria moved up from 73rd to 52nd in the National Bank report for the year 2018.

3. The nature and importance of credit inquiry

There are many reasons for the bank's responsibility regarding its credit function. The money that the bank gives to the borrowers is basically not the bank's money, but rather the money of its depositors, and the bank is obligated to return it. The basis for the bank to recover these funds is to ensure that the borrower's transaction history does not indicate that the future of his financial dealings is fraught with risks. To verify the borrower's transaction history, they shall be inquired seeing that such query will accomplish benefits for the bank in regards to the banks' responsibility for its decision to provide the credit or not.

3.1. Defining credit inquiry

Credit Inquiry is defined as The process of attentive examination and evaluation of credit offer and other information from various perspectives for the purpose of gathering information and evidence that will help in forming an opinion on whether or not to grant credit, and credit investigation greatly helps in the process of selecting a high-quality borrower.

Commitment to the inquiry is a positive action represented in collecting information from its various sources in order to form a clear and complete picture of the client requesting financing and the process subject to financing (WBG, 2016). One of the main jobs in credit management is credit inquiry, where it is assigned to gather information on clients, extract effective information from them, then send the information to the credit decision-maker, as it is not possible to make a sound decision on credit unless provided with sufficient information on the client and their financial status (NACM, 2017).

The areas of activity of the inquiry unit in credit departments vary, up to collecting information about clients. It began with US courts have recognized the legality of what is known as commercial inquiry, in which traders in commercial fields gather information of potential partners, where many decisions recognized the legitimate business interest in exchanging factual credit information between companies of lawful interests. One of the important cases supporting the right to collect business and commercial credit information in the United States is a 1925 Supreme Court ruling that states: "... The gathering and dissemination of information which will enable sellers to prevent the perpetration of fraud upon them, which information they are free to act upon or not as they choose, cannot be held to be an unlawful restraint upon commerce, even though, in the ordinary course of business, most sellers would act upon the information..." (JUSTIA, 2021).

The U.S. Court of Appeals for New York also commented on the exchange of credit information as follows: "... Unlike exchanges regarding prices which usually serve no purpose other than to suppress competition, and hence fall within the ban of the Sherman Act ... the dissemination of information

concerning the creditworthiness of customers aids sellers in gaining the information necessary to protect themselves against fraudulent or insolvent customers. ... Given the legitimate function of such data, it is not a violation of the Sherman Act."

Credit inquiry aims to assess the client's creditworthiness (Pinto, 2006), or in other words, to answer the following question; is whether the client is worthy or not of receiving the trust of the bank or the financing intuition? (Monye et al., 2020). To answer this question, the Inquiry Department of banks and finance companies seeks to inquire about their clients from several sides in order to have information about the client concerning five areas known as 5C's, which represent the client's character and capacity, capital solvency, collateral provided by him, and the conditions surrounding the borrower's activity (Freeland, 1958; Monye et al., 2020).

3.2. Legal significance of credit inquiry

Credit infrastructures, including credit reporting systems, secured transactions and collateral registries, and bankruptcy and insolvency systems, are essential in any economy to expand access to finance, expand financial inclusion, and support the development of stable financial systems. Once a comprehensive, efficient, and trustworthy credit infrastructure is available, the banking risks decreases and financial products and services are readily available to larger numbers of borrowers, and the borrowers and investors will be more trusting of their ability to assess risks, as the information accessed through credit reports systems are necessary to ensure stability in financial markets. (Graafland and Ven, 2011).

Time, indubitably, is largely significant in credit, as credit was defined by some as; "the trust the bank places in its client by providing a certain amount of fund to be used for a specific purpose in a certain time and shall be paid per specific conditions for an agreed-upon return" (Daisy, 2016; WBG, 2019). Therefore, there is a time difference between the date on which the bank grants its clients the funding and the date on which the client pays their dues to the bank. The possibility that the financial position of the client may fluctuate, rendering them unable to fulfill their liabilities to the bank is the true meaning of risk; where the bank might lose, not only the return anticipated due to granting funding, rather the bank might not be able to retrieve the capital provided to the client (Deschanel, 1977).

Risk is an essential part of credit decisions, from a practical point of view, it is difficult to the point of impossibility to find a credit decision free of risks. The credit decision is in its essence, an attempt to control these risks and limit them to the lowest possible level, scale it down, or definitively neutralize it in the cases where it is possible (Boutelet-Blocaille, 1995).

Therefore, the bank seeks inquiry to protect its interest through confirming the client's creditworthiness to be granted credit (Monye et al.,

2020) as gathering information enables it to study the risks of the banking transaction and work towards reducing it. However, it became clear that the results of the information collected by the bank may exceed the limits of the private interest of the bank, which change the inquiry into a professional obligation that the bank must undertake (Monye et al., 2020). The information the bank can obtain is not intended only to protect the privacy interest of the bank or the financing intuition rather it goes beyond to protect the funds of depositors who hold deposits that the bank or the financing company uses to finance its operations.

Thus, the need for banks to inquire about the customer is urgent, as the banks build on the results of this inquiry their confidence in the client (Monye et al., 2020), and become in a position to assess the risks arising from dealing with him more accurately (Chandler and Parker, 1989). If estimating a client's solvency is an easy matter in an immediate relationship that begins and ends in a short period of time, then it is a difficult matter and requires experience and savvy to assess matters in the event of credit being granted, because the assessment focuses on existing elements in the present and the risks that the bank seeks to avoid are future risks. (Heitz and Narayanamoorthy, 2020).

The legal significance of inquiry is also reflected- in addition to enabling the credit decision-maker from building the credit decision based on a realistic basis- in case anyone is harmed by granting the credit to the client. If the bank or the financing company was to grant a merchant credit, this would help the merchant appear prosperous and financially comfortable, even though that appearance does not conform to the truth, so their clients work with them, deceived by this false appearance, (Graafland and Ven, 2011). Based on the merchant appearing financially comfortable due to the credits provided to them by the bank, and upon declaring bankruptcy their creditors start suing the funder claiming that they contribute to the deception which caused them harm by enabling the debtor to continue the business as a result of the bank's financing of it and the consequent loss of the debtors' assets and the increase in their indebtedness. It is usual for the bank to bear the responsibility for granting credit by mistake because it did not know the true position of the client, or because the client himself had deceived it and hid it from him (Gavalda, 1981). In order to judge whether this payment is safe or not, the judiciary considers each case separately to determine the extent of the bank's commitment to the client's inquiry (Gavalda, 1981).

The duty to inquire is an application of a general principle that imposes diligence and care on all, and it is sufficient for the judiciary to rule the bank responsible for granting credit by mistake if the bank knew or was able to know the client's position (Gavalda, 1981). Ruling for an error or not, in this case, depends on the effort needed to find the required information for each case, on the methods available to it, and the conditions of each case.

It should be noted that the banking sector garners a distinguished professional position, as it is trusted by the depositors where they seek it to securely deposit their money in good hands. It is the main source for funding to investors and it possesses the technological, technical, and professional means and capabilities which makes it highly specialized, and banks supposedly possess information sources and methods of obtaining them. Therefore, the bank's ability to obtain information provides it with a wide array for evaluation and enables it to make decisions of which risk is an integral part of it. The distinguished contribution of the banking sector to the economy and the advantages that the bank reaps as a result of practicing its activities and the important means that it possesses; is what justifies the existence and necessity of adhering to the rules of caution and vigilance on the part of the bank and financing companies (Boucard, 2001; Christiani and Kastowo, 2019).

4. Impact of credit information bureau on the banking credit industry

In support of the quality of the credit industry, the Saudi legislator issued Royal Decree No. M/37 on 08/07/2008 related to credit information, as well as the Executive Regulations of the aforementioned law. Thus, there will be a significant impact on the opinion of the credit decision-maker through information guaranteed by the law to be accurate and true regarding the inquired person's credit transactions prior to the date of submitting the inquiry request and issuing the inquired person's credit information report. Accordingly, we will allocate this topic of the study to define the Credit Information Bureau and its legal system, identifying the services provided by the Credit Information Bureau, contents of the credit information report, and finally the impact of services provided by the bureau on Saudi banks in line of providing credit.

4.1. Defining the credit information bureau and its legal system

This topic of the study discusses the definition of Credit Information Bureau then elaborates on the legal system of Credit Information Bureau.

4.1.1. Defining the credit information bureau

According to Article 1 of Credit Information Law, the Credit Information Bureaus are defined as follows; "Credit information bureaus licensed to collect and maintain credit information on consumers, and provide members with such information upon request."

Therefore, Credit Information Bureau is a bureau created with the purpose of pursuing businesses that enable it to issue credit records, which according to Article 1 of Credit Information Law is; "a report issued by the bureaus that contain credit

information about the consumer". Based on Article 1, the record includes "information and data on the consumer in regard to their credit transactions such as loans, installment purchase, rent, deferred sale, credit cards as well as their commitment to paying it."

the credit report is defined as a credit report that is a record of how a person has used credit in the past and the current situation with creditors, and this can be summarized in a credit score (Monye et al., 2020).

According to Article 3, the credit information bureau's providers are the government or private entity that has a contract for exchanging credit information with the credit information company. Article 4 of the Law has discussed regulating the process of collecting, providing, circulating, protecting credit information, and preparing credit records, which is organized based on the controls specified by the Executive Regulations.

The Law and the regulations have determined the liabilities of the entities providing credit information bureaus with information, which is considered the cornerstone for the formation of its information base through which the credit information report will be prepared and issued, as well as the liabilities of the credit report recipient and the liabilities specific to the credit information bureau.

4.1.2. Legal system of credit information bureaus

According to Article 1 of Credit Information Law and its implemented provisions; the Credit Information Bureau is established in order to collect and keep credit information about consumers, as well as provide the members of said information upon request.

The Executive Regulations requires the companies requesting a license to pursue Credit Information Services taking the form of a joint-stock company, with a headquarter inside the Kingdom of Saudi Arabia, a capital of at least fifty million Saudi Riyal, and the bureau shall have the legal personality and the legal capacity necessary to carry out its activity. Although it is not explicitly stated, recognizing the legal personality and the legal capacity necessary to carry out its activity; is considered to be assumed and a natural result of establishing a bureau.

Therefore, the bureau aiming to work in the field of Credit Information shall comply with the provisions of joint-stock company stipulated in the Saudi Companies Law issued by Decree No. M/37 on 10/11/2015, in addition to the conditions stated in the Executive Regulations of Credit Information Law.

4.2. Identifying the services provided by the credit information bureau

Since the person, natural or legal, have the legal capacity to obtain rights and carry out liabilities; and while the capacity of a natural person is dependent on the age and whether or not they have an incident

or impediment that results in incapacity, the capacity of the legal person shall not be determined based on the same factors relevant to the natural person. Thus, it is established that the capacity of a legal person is determined by what it is licensed to practice i.e. the legal person is not permitted to pursue any businesses or activities they chose, rather the legal person's act is required to be within the main purpose the bureau aims to achieve, which is known as; "Principle of Legal Personality Assignment."

Accordingly, the legal person services shall align with the purposes for which it was established, and in regard to the Credit Information Bureau, the legislator has identified its purpose which represented in; "collecting and maintaining credit information about the consumers, as well as providing the members with said information upon request"[†].

Credit Information Law and the Executive Regulations had also identified the bureau's purposes, which can be divided into main purpose and supporting purposes.

Among the bureau's purposes is; issuing credit records[‡] and it is the main purpose of the bureau based on Article 4 of Credit Information Law, which has mentioned many of the tasks assigned to the bureau where they all serve one goal and results in one conclusion which is issuing credit records.

In fact, the analysis is consistent with the purpose for which the Credit Information Bureau is established. The objective for establishing the bureau is to inform its clients (members)[§] of the capacity of the inquired person through a set of information collected from several sources that are analyzed and finalized in a record that offer a complete understanding for the requester (member) about whether the inquired person has legal capacity.

Another matter that is among the bureau's purposes is what aids the bureau in achieving the aforementioned main objective. Where the bureau is able to; receive, keep, exchange the consumers' credit information with the members^{**}, as well as the credit assessment of consumers^{††}, and trading credit information^{‡‡} to create a record of the credit information for each person^{§§}.

Therefore; the objective and purpose of the bureau are to issue credit information reports by preparing a credit information record for each person. That record contains all the information that the bureau obtained from its information providers (members) through the bureau's request to provide it with information about their clients based on the

[†] Paragraph 3, Article 4, Credit Information Law.

[‡] Article 1, Credit Information Law.

[§] Articles 21, 22, and 27 of the Executive Regulations of Credit Information Law.

^{**} Paragraph 1, Article 12, of the Executive Regulations of Credit Information Law.

^{††} Article 22 of the Executive Regulations of Credit Information Law.

^{‡‡} Paragraph 1, Article 12, of the Executive Regulations of Credit Information Law.

^{§§} Article 23 of the Executive Regulations of Credit Information Law.

agreements that the company will conclude with members. Through collecting, maintaining, analyzing, and disaggregating said information; the bureau is able to prepare a credit record then issue a report of the credit information. Take into consideration that the Saudi Credit Information Law equated the credit record with the credit report, where it defines the credit record in Article 1 of the regulations items as; "a report issued by the bureau containing credit information about the consumer." On the other hand, the comparative laws differentiate between the credit record and the credit report, where the credit report results from the information stated in the credit record.***

4.3. The information included and excluded from the credit information report

The Executive Regulations of the Credit Information Law; stated in its Article 16 the necessity that the credit record includes specific information related to the Consumer Solvency (First Branch), which fulfill the purpose of the record and through which the creditworthiness of the consumer can be assessed. The credit information report shall exclude some information that is decidedly are irrelevant to the subject and purpose of the credit information report (Second Branch) and could be detailed as follows.

4.3.1. Contents of the credit information report

For the bureau to be able to issue the credit report; it is required, as by prior mention, to prepare a record of credit information^{†††} and this record can only contain the following:

- First: The governmental authorities obtain credit information through credit information records which these authorities are in possession of. Examples of such records are mentioned in the text of Article 1 of the Credit Information Law, such as the records of funds and banks that provide government loans, judicial authorities, government committees, and bankruptcy and insolvency files. These authorities are obligated to provide credit information under their control to the credit information bureau as a legal obligation based on the explicit text.
- Second: Which is dubbed the "member" by the legislator and it includes the governmental authorities other than the ones mentioned above- and as stipulated in Article 1 of Credit Information Law- as well as the specific legal persons that associated with a bureau for credit information in

an information supply contract. Those authorities have expressly mentioned Articles 1 and 5 of the Credit Information Law and Article 21 of the Executive Regulations.

After the credit information bureau receives the credit information from government authorities and members, it prepares the credit record so that it can finally prepare and issue credit reports.

The Executive Regulations has specified the information that shall be included in the report which is represented as follows (NACM, 2017).

1. Name, ID Number, current and previous workplace, marital status, academic qualifications, and personal data of the natural person consumer.
2. Name, license to practice the activity or commercial registration number and address, any other information of the legal person consumer.
3. Information on existing or prior credit recognized or disputed; regardless of whether the credit is current, deferred, if there is default or late payment, or the debt has been written off or settled and in addition to any guarantees granted to the consumer.
4. Any lawsuit of a fiduciary nature brought against them and the judgments issued therein.
5. Any insolvency, bankruptcy, or liquidation lawsuit filed against the consumer, the judgments issued therein, the name of the liquidator or trustee, the value of the assets and debt, the dates of payment, and the liquidation expenses.
6. Any dishonored checks issued by the consumer, their value, their dates, and any actions made regarding it.
7. Any unpaid claimant issued by an official authority.
8. Number and names of members requesting access to the credit record of the consumer, throughout the previous two years to the date of the record issuance request as well as the number of credit records issued and their conclusion.
9. Any other information of fiduciary nature that affects the consumer's solvency.

Upon reading the credit information report issued by the Saudi Credit Bureau (SIMAH); whether it was the individuals' report or the companies' report, we concluded that it includes a significant amount of information that assists the credit decision-maker in the decision they make. These reports include the following information:

- a. Personal Data (NACM, 2017): Personal data for a natural person is represented in the following; client's name, sex, nationality, date of birth, contact number, marital status, ID number as well as its date of expiry and place of issue, date of birth, nationality, employer, job title, date of employment, basic and total salary, employer's address, total annual income, their address whether inside or outside the country. Personal data for a legal person is represented in the

*** See the UAE Credit Information Law No. 6 of 2010, as well as see the rules regulating the work of credit information and rating companies issued on January 17, 2006.

††† Noting that it was previously pointed out that the Saudi legislator in the credit information law used the term credit record to denote the credit report, in which we pointed as the credit record is the customer's credit file and results in the credit report, the evidence for this is that what the Saudi Credit Bureau (SIMAH) issues is stated under the title of a credit report, not a credit record.

following; company's name, the legal form of the company, company's license number, license issuer, date of establishment, company's capital.

- b. A general summary of the credit status of the inquired person: Includes the date of issue for the first credit product, number of active credit products, total credit limits, total granted credit limits, total remaining granted credit liabilities, number of defaulted credit products, the total value of defaulted credit liabilities.
- c. Credit assessment of the inquired person: An indicator divided into five assessments (excellent-good-moderate-low-very low) that determine the credit score for the inquired person.
- d. Summary of active products: Includes the type of credit products (loan-credit card-Letter of credit... etc.) grantor, credit account number, credit limit, installment amount, remaining amount, credit limit expiry date, and assessment of payment status for each credit product.
- e. Active defaulted products: Includes the type of credit products (loan-credit card-Letter of credit... etc.) grantor, credit account number, default listing date, defaulted amount, default status, in addition to an assessment of credit products (new unassessed product-paid product-the due amount is paid-delayed product and number of delay lays, if the client delays for more than 180 days, the product will be evaluated as defaulted)
- f. Paid defaulted products: Includes the type of credit product (loan- credit card-Letter of credit... etc.) grantor, credit account number, default listing date, defaulted amount, default status.
- g. Active defaulted products: Includes type of credit product, grantor, credit account number, default listing date, defaulted amount, default status.
- h. Paid granted defaulted products: Includes the type of credit product (loan-credit card-Letter of credit... etc.) grantor, credit account number, default listing date, defaulted amount, default status.
- i. Returned checks: includes the name of the bank from which the check is drawn, check number, check listing date, check amount, check remaining amount, check status, and settlement date.
- j. Execution court decisions: includes the date of the decision, the decision number, the date of listing, the amount executed, the remaining amount, the status of implementation, and the date of settlement if done.
- k. In addition to the number of inquiries about the client: includes query date, inquired person, type of products inquired on, claim amount.

4.3.2. Information required to be excluded from the credit information report

Based on Paragraph 9 of Article 16 from the Executive Regulations of the Credit Information Law, the credit record may include in addition to the information stipulated in paragraphs 1 to 8 of Article

16 of the Executive Regulations. Any additional information of fiduciary nature affects the Consumer Solvency of the client, and based on *Argumentum e Contrario*, any information that is not of financial or fiduciary nature shall not be included. For example; the credit record shall not include information regarding the personal life of the natural person nor their opinions, beliefs, or the judicial rulings issued against them that are not based on a financial relationship in general or a fiduciary relationship in particular. Paragraph 4 of Article 16 from the Executive Regulations of the Credit Information Law requires including judicial rulings in the record provided that they are of fiduciary nature or an insolvency, bankruptcy, or liquidation lawsuit brought against the owner of the record. Thus, any lawsuit that is not classified as a fiduciary lawsuit, insolvency lawsuit, bankruptcy, or liquidation lawsuit may not be included in the credit record.

It is also very important that the credit record does not include a recommendation to grant or not grant financing to the client. The purpose of the credit information report is to list the information that helps the credit decision-maker to make his decision. In the researcher's estimation, the Saudi legislator took note of the possibility of misunderstanding the creditworthiness assessment indicator as a recommendation to grant or not. In order to avoid the bureau's responsibility, Article Twenty-nine of the Executive Regulations obligated the credit information company that the bureau must obtain adequate insurance coverage from an insurance service provider licensed to operate in the Kingdom to cover any liability arising from the bureau's work.

No credit inquiry company shall propose, refuse or offer credit in such a way as to create, or appear to arise, any form of agreement with the customer in any manner other than the independent decision of each credit grantor. Doing so could be considered a conspiracy to restrict trade, which in the United States is a possible violation of the Sherman Act, an example of such comments is; "I would not sell (a client) in credit if I were you" (*NACM, 2017*).

5. The impact of services provided by the Saudi credit bureau (SIMAH) on Saudi banks' responsibility

According to the abovementioned; the purpose of the Credit Information Bureau is to issue credit information reports on customers by requesting, collecting, maintaining, analyzing, disaggregating, using, and circulating credit information, and preparing credit records. Therefore, the reports issued by the Credit Information Bureau are of great importance as a result of providing a large part of the information about the person the report was issued on, which undoubtedly benefits the credit decision-maker in forming an opinion, whether or not to grant funding on important foundations.

5.1. Confirmation from Fiqh and jurisprudence that the foundation of credit is a personal consideration and that the bank shall not abuse its right to use it

It is given that banks have extensive authority when it comes to estimating the risk taken when granting credit and based on that they have considerable freedom in the decision whether to grant a credit or not. The bank is not responsible for refusing to grant credit, and this is a common rule dictated by the personal consideration on which the process of granting credit is based. The issue of the bank's refusal to grant its credit does not, in and of itself, constitute an error leading to the bank's tort (Vézian, 1974).

However, the bank's right to reject shall be confined to the purpose for which it used it for the bank's interest and is represented in the method that enables it to avoid risks through the good selection of its clients. In the event that the bank refuses to grant financing seeing that the refusal was not to bring benefit or push-back at harm, this refusal will be detrimental to the interests of the credit applicant, and then the bank has followed a method that is considered an error, which allows the affected person to refer to it to redress the damage incurred by him.

The bank has the right to refuse to grant the requested loan, however, it is a right like all others protected by the law in that the limit is drawn at abusing it. Thus, if the bank exercised its right to refuse arbitrarily, the bank put itself under accountability based on Article 1382 of the French Civil Code (Vézian, 1974). This responsibility is established in Saudi Arabia, which applies Islamic Sharia, based on "No Harming nor Reciprocating Harm," as well as in the rule of "Damage should be Removed."

The bank's relative authority to grant or refuse credit is limited by the professionalism the bank display in its banking business in general and granting credit in particular. The bank is a "professional loaner", and for that, it is particularly prepared to practice this activity and it has its methods to combat risks that are not available to other professionals (Deschanel, 1977).

The decisions of the Saudi Banking Disputes Settlement Committee have established that the bank's granting of credit is based on the personal consideration of the client, or rather the client's creditworthiness, which gives the bank the right to use its right not to grant financing to the client who does not have the trust and creditworthiness of the bank. Among the decisions that established this direction are the following:

"The bank's decision to grant credit is based on the on personal consideration of which the most important is the trust in the client and the fulfillment of their liabilities, lack of each consideration permit the bank to terminate the indefinite-term facility agreement on conditions that are the good faith of

the bank and that the termination should be at an appropriate time and notify the client before termination unless the agreement stipulates otherwise. As for the fixed-term facility agreement, it ends with the expiry of its term, and the assessment of the soundness of the bank's decision to stop its dealings with its client is a release of the committee when it is reassured of that." ^{###} Also what was stated in one of the committee's decisions that "the contract for opening the credit or the current debt is one of the contracts based on personal consideration." ^{§§§} It also stated in one of the committee's decisions that "it is well established that the contract of banking facilities depends mainly on the bank's confidence in its customer and the extent of his creditworthiness." ^{****} It was also stated in one of the committee's decisions that "it is established by banking that contracts for banking facilities of all kinds and forms depend on personal considerations and the bank's trust in its client." ⁺⁺⁺⁺

Accordingly, where the bank's decision to grant or refuse to finance is a basis for its responsibility as it is a component of the error element-as one of the pillars of the liability case-and it is sufficient for the bank to absolve itself of responsibility by denying the element of error in its behavior, whether granting or rejecting financing. Considering that the bank's decision is based on the information stated in the credit information report, then the bank is legally not responsible for its decision whether to grant or refuse credit. Considering that the bank's decision is based on whether the client has the creditworthiness requires elements, and those elements are based on the bank's inquiry about the customer. As long as the employee's conviction deciding on the credit is based on correct information, then it is and this denies any error imposed by the bank and consequently denies the bank's arbitrariness in making its decision.

5.2. Bank responsibility in case of arbitrariness and error

The bank's activity in the field of granting credit is characterized by a conflict of interest. The interests of depositors require the bank to be strict in terms of granting credit, while the interest of the applicant for financing requires the bank's flexibility in preparing the restrictions for granting credit, and the bank is between this and that. He must balance the conflicting interests of both as a mediator between them (Heitz and Narayanamoorthy, 2020), considering that the bank has a common interest with both of them. The bank must protect the money of its depositors because first and foremost bank

^{##} Central bank of Saudi Arabia, Banking Disputes, Banking Disputes mediation committee, First ed, 2006. Decision Number 1408/14

^{§§§} Central bank of Saudi Arabia, Banking Disputes, Banking Disputes mediation committee, First ed, 2006. Decision Number 1408/162

^{****} Central bank of Saudi Arabia, Banking Disputes, Banking Disputes mediation committee, First ed, 2006. Decision Number 19/1410, Decision Number 8/1426

⁺⁺⁺⁺ Central bank of Saudi Arabia, Banking Disputes, Banking Disputes mediation committee, First ed, 2006. Decision Number 53/1419, Decision Number 108/1423

must pay it back. Also the bank has a common interest with the borrower considering that the bank's pursuit of profitability will not be achieved except by granting credit that generates a profit margin through which the bank achieves its profitability.

It will not enable the bank to balance these interests so as prevent responsibility, except that taking a decision based on an integrated study of the client Merit who requests the finance, in order for the bank to assess the credit risks that will result from that finance.

The Bank is arbitrary in its right to reject a loan application if the rejection was based on reasons not related to banking, as Rejection was for political, religious, ethnic, or other reasons (Hamel, 1959).

Where the decisions of the Banking Committee for the Resolution of Securities Disputes in one of its provisions decided to "stop the credit facilities by its donor bank at an appropriate time and without arbitrariness, it has a right that is based on the restrictions and principles of granting credit in cases where the customer's business is disrupted and not to pay his dues to grant credit bank^{###}.

It should be noted that the Saudi judiciary does not consider the bank erred or abused to have its right if it issues a preliminary approval to finance the client, and with the completion of the procedures for granting the financing. The bank rejects to finance the client, as long as the study process took place within an appropriate time, and it has not been arbitrary by the bank. It was stated in one of the provisions of the Saudi Banking Disputes Committee that "the letter addressed by the bank to the customer to finance one of its operations and conditioned on the approval of the credit department of the bank is no more than a letter of intent or Unattached by either side and does not entail any legal obligations owed by either of them due to the lack of access to the consensual phase"^{§§§§}, This trend is explained by Saudi judiciary that the credit decision in its fact is a complex decision, which is formed through a set of procedures. For example, if the manager of one of the bank's branches agreed to grant credit to the customer, and transferred the information to the Credit Department, with its higher powers to inquire and verify the status of credit applicants more than the branches, which as a result of the inquiry led them to reject the request for granting credit, and the bank is not any longer wrong, under the centralization of the decision to grant credit by the Central Credit Administration in The bank, and considering that the credit decision is a complex decision, and it is reasonable that the final decision of the credit management will differ from the initial decision.

Among The judgments of the US judiciary in this regard is the judgment issued by the US Court of Appeals from the Bankruptcy Chamber in the case

AT T UNIVERSAL CARD SERVICES, v. Deborah Ann ELLINGSWORTH and The facts of that case are summarized in MRS Ellingsworth obtained a credit card from AT T Universal Card Services, the problem revolves around Ms. Ellingsworth's default, which forced AT T Universal Card Services to file for bankruptcy, however, The main problem is that AT T Universal Card Services did not properly inquire Ms. Ellingsworth before granting her the credit card. Where the company relied on the approval to grant Ellingsworth the credit card according to given information by Mrs. Ellingsworth, through which explained that she had significant assets and financial liquidity that exceeded the credit limit of the card. The court confirmed that the behavior of the bank in approving the granting of the credit card to Mrs. Ellingsworth is not good behavior at all. Where it is not possible to accept the Bank's claim to adopt Mr. Ellingsworth's promise to make the payment. The court judicial judgment also faulted that the bank was not a well follower of the movement of the account linked to the credit card where the bank should have stopped the remaining portion of the card balance when he found balance decreased substantially in a way that confirms the client's inability to pay the amount. The judgment confirmed that U.S bankruptcy law treated credit cards the same as loans. The judgment also referred that the credit rating which can range from 450 to 850 is a supposed scientific method to assess the possibility that a debtor will repay the loan. The computer credit model that most lenders rely on today has been developed in California. The rate is based on all credit-related information in a credit bureau report, but is not a measure of a borrower's income, assets, or bank accounts. AT T Universal Card Services representative acknowledged that as long as you are using a credit card instead of a financial statement for an unsecured loan. You don't have to mention any form of creditworthiness. The court commented that issuers such as AT T Universal Card Services may choose to ignore. The usual criteria for creditworthiness.

The referred judgment confirms the impact of Credit Information Report in making a good credit decision, considering as basic pillar which to build client creditworthiness with notice that MRS. Ellingsworth had more than one credit card.

What the court would reach is that the customer's multiple credit cards do not mean that he has the ability to pay, as the payment depends on the income of the cardholder, which is shown in the credit information report, which AT T Universal Card Services ignored reviewing and analyzing, in order to assess the ability of Mrs. Ellingsworth of paying her debts or not with the availability of many credit cards.

5.3. The bank's error resulting from violating the customer's information known to it

If it is impossible to limit the information that the bank must study to assess the creditworthiness of

^{###} Central bank of Saudi Arabia, Banking Disputes, Banking Disputes mediation committee, First ed, 2006. Decision Number 142/1413

^{§§§§} Central bank of Saudi Arabia, Banking Disputes, Banking Disputes mediation committee, First ed, 2006. Decision Number 219/1409

the applicant for bank financing. But, there is a minimum that the bank must clarify and study, for example, information related to the project requesting credit and its financial condition. The risk assessments depend on Amount and Adequacy of Information on the Credit applicant, (Christiani and Kastowo, 2019; Monye et al., 2020).

The bank mustn't grant financing to a client whose past poses a danger to his future, the facts of a case were raised before the French judiciary. The court concluded its preliminary judgment issued by the Carcassonne Commercial Court on March 21, 1953. if, if a bank opens several important loans to a person as a trader and he's actually bankrupt, and trading under a pseudonym, all with the bank's knowledge, so that the bank has enabled this person to engage in trade despite the legal ban. If that practice ended in financial disaster, Carcassonne court held the basis for Bank's Civic accountability. According to its judgment, the bank was free to grant the loan. The bank is obligated towards third parties not to grant it to a merchant whose past poses a danger to his future.

In the previous case, the bank was aware of the reality of the client's situation, through the available information, and therefore the bank, in that case, violated the results of the credit inquiry that was conducted on the client, but the bank violated them, therefore resulted in harm to the client's creditors, which led to the bank's responsibility for its error, as Granting the bank a loan to a person is considered an act that presupposes trust. The Bank does not trust anyone without ensuring him. The Bank has distinct methods of inquiry about credit applicants. The bank must be careful in dealing with persons, especially in granting loans, that's under its responsibility Therefore, the bank is assumed that only deal with people worthy of dealing with it (Buthurieux, 1999).

Granting the bank, a loan to a client whose financial situation is hopeless would raise the bank's responsibility in the face of the client's creditors, who, thanks to the loan granted to him, contributed to the continuity of the client's creditors' confidence in his financial position without any basis. Considering that the loan itself does not protect the client from the risk of stopping payment, it is not necessary that financing is granted to get the client out of the Hopeless financial position for a completely different position. A loan always achieves a function, not necessarily to achieve a second function. The loan always defers the date when the borrower client stopped fulfilling, as there is some cash in the client's hand. However, the function is not necessarily achieved by a loan that the client can use the loan to invest in its activities so that the wheel of the production revolves and the loan be able to serve himself by himself.

The Bank does not exempt from responsibility and must be careful in granting the loan, through guarantees required by the bank for the client. Some argued that the exaggeration in guarantees and the fact that their value exceeds the value of the loan is an indication of the destruction of the bank's

confidence in the project, and thus the danger of The loan, in addition to the fact that the bank, as an important economic project, is not only required to protect itself only but also not to drag others to deal with the client granted the loan in a way that harms their interests, Thus, the guarantees do not deviate from the error of granting the loan for useless financing.

The facts of the case can be summarized in that Mr. David Daugherty previously obtains a Real Estate Finance from Ocwen Company and in 2012 stopped paying the amount of \$ 6000. Ocwen only informed several credit rating agencies about the failure of Mr. David Daugherty. Mr. Daugherty recovered from default and informs Ocwen that the loan is no longer in default and requests to correct his credit status as non-default. Credit inquiry company Equifax corrects only one of Mr. David's Daugherty accounts and kept the other account uncorrected. Ocwen requested the correction of only one out of two accounts of Mr. David Daugherty. Mr. Daugherty David requested Equifax correction, Equifax within 16 months sent 23 requests to verify the fact of the account as the information reported by Ocwen to Equifax shows that the account is current and not an execution debtor account for reasons of foreclosure.

Ocwen responded to 9 verification requests with "Verified" stating that the information entered to Equifax is correct and does not need amendment, Contrary to the fact. Ocwen responded to two requests with "Verification of the dispute", and then corrected the account from "payment is complete after 120 days of due" to "Current Account". However, Ocwen did not correct the wrong entries in the same account stating "Customer has delayed 5 or more payments" and "Procedures for enforcement on foreclosure have begun". Mr. David Daugherty asked for Refinancing from a finance company, and as a result of that wrong information, his application was rejected. Mr. Daugherty filed a civil case against Ocwen for financial compensation for failing to investigate and correct wrong information on his credit report. A jury called Ocwen's action a "reckless disregard" of an individual's obligations under the law.

The jury found that Ocwen intentionally failed to conduct a reasonable investigation as to the true status of Daugherty's account with Ocwen and awarded Mr. Daugherty more than \$6,000 as compensation, and \$2.5 million in punitive damages. Subsequently, the Court of Appeal reduced the punitive damages to \$600,000 (Daugherty, 2017).

As a result of the financing agency's error in the client's information entered by the credit bureau, the customer suffered many damages, including the inability to renew the credit, this represents damage that combines with the finance company's error, together, and they are grounds of liability case. The previous judiciary shows the importance of Credit Information Report in achieving credit, the aim of the report was to be a real mirror of clients' dealings.

Among The judgments of the US judiciary in this regard is the judgment issued by the Ninth Circuit

U.S. Court of Appeals in the case, *March Nelson v. CHASE MANHATTAN MORTGAGE CORP* and The facts of this case are summarized that Toby D. Nelson was one of the guarantors of Anthony Proietti on a mortgage loan from CHASE MANHATTAN MORTGAGE CORP and where Anthony Proietti fails to pay, however, Toby D. Nelson only made regular payments on his behalf. Toby D. Nelson turned to the U.S. Bank. Bank of Minneapolis to obtain a loan to buy a truck, but the bank rejected to grant him financing on the grounds that the credit information report issued against him by Experian Information Solutions stated that he had previously been bankrupt. Although Toby D. Nelson had never filed for bankruptcy one of the guarantors during the term of the loan was bankruptcy. Therefore, it is necessary for Experian Information Solutions to correct the error contained in the Credit Information Report. The Ninth Circuit Court of Appeals judges that Toby D. Nelson's credit report should be corrected.

In the previous case, the finance company seriously damaged Mr. Toby D. Nelson as a result of entering wrong information about him, which causes severe damage to him, including refusing to grant him a loan to buy his truck. The reason for refusing to grant financing to Mr. Toby D. Nelson is that his credit information report includes information that the credit decision-maker in the bank relied on upon in rejecting the request for granting financing.

6. Conclusion and recommendations

The study discussed one of the most important issues that concern legal thought, and the reason for this is that banks are one of the most important economic pillars. Whatever the economic system the state follows, the banks must be involved in implementing its policy, considering the Operational arm of the state's financial policies.

The bank, as is the case, enjoys the confidence of individuals and institutions, as not only a vocational but also a professional. The bank, as some imagines as a money dealer. it does not imagine that it takes a random, unthoughtful decision. Therefore, generally the bank's decision always and credit especially are assumed that they are issued by a careful study. This study will not be achieved unless the necessary information is available to the bank about the client requesting financing, through which it assesses the creditworthiness of the client. The Saudi legislature believes in the importance of the banking sector, the importance of making information available to him from different and diverse sources. So that the banks, would be able to know the history of the applicant for credit finance, before making their decision to grant credit, which enables Looking into his future with the Bank. Therefore, it was allowed for the bank and many parties that deal with future financial transactions with their clients to look at the credit financial history of the client, so that the decision can be taken on the basis of her performance.

In this context, we stress that the positive results of client inquiries do not in any way guarantee the borrower's regularity in fulfilling his financial obligations towards the lending bank. The point is, good history predicts a good future and vice versa. it is not imagined that a permanent struggling person and irregular to fulfill his promises and will obligate in the future.

Through the study, we reviewed the contents of the credit information report issued by SIMAH, whether, about individuals or companies, it showed us how much information is available. The reason for available information is the multiplicity of information providers of SIMAH, whether they are concerned entities under the credit information law to provide its Information or entities that will be associated with SIMAH through an information supply contract.

This information provides a very good deterrent to banks from being responsible for their credit decisions. The original principle is that the bank has full freedom in its decision to grant or reject financing, however, the basic rule on the use of the right is that the right may not be arbitrary. So, establishing the bank's decision to grant or reject financing upon the information contained in the credit information report issued by SIMAH prevented the bank's responsibility, considering that the information contained in the report is facts that enable the credit decision-maker to make his decision on realistic grounds.

The bank, as a professional, will not be tolerated by the judiciary in denying responsibility for his decision, whether to grant or not, unless the bank establishes evidence that its decision is based on real grounds. And the credit information report provides those bases for the bank as long as its decision was based on report information about the client.

The study concludes several recommendations can be summarized as follows:

1. Banks must inquire about clients before granting or renewing granting of financing. The Credit Information System and the Saudi Bank Control Act have not contained a legislative text about this obligation. That doesn't mean that banks shall not inquire about their clients when granting or renewing financing. The point is to have a legislative obligation, not the bank practice. This is similar to many countries such as France, the UAE, and Egypt.
2. It shall pay attention to establishing judicial judgments issued by the Committee for the Resolution of Securities Disputes, to spread legal knowledge among dealers in banks. The first and only issuance of judgments issued in banking disputes was issued fifteen years ago, specifically in 2006 AD.
3. Supporting the banking credit information industry by licensing several companies to carry out credit inquiry. the Central Bank of Saudi Arabia has licensed a company named Bayan Credit Information Company under the decree of central

bank governor NO 2/37 on 23/09/1437 AH for practicing the activity of credit information, however its less effective in the Saudi credit information market than SIMAH, and it is known that pluralism in the credit information sector will enhance the quality of services.

4. Activating the societal role of credit information companies with regard to raising awareness of individuals and institutions about the importance of the credit record and the methods for correcting any errors that may be contained therein, considering that the interest of the national economy is achieved through the debtors' fulfillment of their obligations. Therefore, If the culture of cleaning up individuals' credit records and institutions is supported, working to meet late obligations on credit records will achieve a special interest for individuals and institutions by providing access to new financing.
5. Widen the circle of members who provide the credit information company with information enhancing the informational abundance of the credit information report.
6. The necessity of resolute legislative confrontation of the individual's financial transactions through channels that are not subject to oversight, because these people's transactions will not appear in their credit records and perhaps the Commercial Concealment laws issued by Saudi Arabia recently contribute to addressing such a problem.

Acknowledgment

The author gratefully acknowledges the approval and the support of this research study by Grant No.-BA-2017-1—7-F-6955 from the Deanship of Scientific Research at Northern Border University, Arar, KSA.

Compliance with ethical standards

Conflict of interest

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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