

# Bank Bankruptcy Lawsuit Procedures for Branches of Foreign Banks in Iraq

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## Abstracts

The cessation of the merchant from paying his commercial debts entails entering into financial hardship that leads to the possibility of declaring bankruptcy, and ruling in the case of bankruptcy, so there must be a competent court that considers all bankruptcy affairs, and in the event that the court announces the bankruptcy decision, this decision is absolutely authoritative, whether in terms of funds or persons, so most legislation at the present time assigns the task of declaring bankruptcy to specialized courts that differed in their rulings, whether in terms of jurisdiction or in terms of The entity that administers the bankruptcy and in terms of the impact obtained from the bankruptcy decision and the parties to appeal those decisions, the origin is that there is only a relative authority of the judgments, so their effects do not occur except for those who were a party to the litigation, and they are related only to the subject matter of the dispute. As for the bankruptcy judgment, its argument is absolute, when the judgment of bankruptcy is issued, the debtor is not considered bankrupt in view of the creditor only who requested the bankruptcy month, but it is also considered bankrupt for everyone and other creditors, even if they are not a party to the bankruptcy lawsuit, and the bankruptcy judgment deals with the entire liability of the merchant, as the bankruptcy month is considered as a general limitation of the trader's funds, whether they are related to his trade or not, and also includes existing (present) funds and future funds. It is possible to exist later as the goal here is to carry out a collective liquidation of the bankrupt's money. However, the bank tries to stand on its feet before carrying out any bankruptcy declaration procedure through the guardianship system or banking reorganization means in order to try to avoid the bank entering into more dangerous procedures of bankruptcy and liquidation and try to avoid declaring bankruptcy.

**Keywords:** lawsuit, banks, bankruptcy, procedures, branches of banks in Iraq, bankruptcy.

## Introduction

The cessation of the merchant from paying his commercial debts results in entering into difficult financial hardship that leads to the possibility of declaring bankruptcy, and the ruling in the case of bankruptcy must be from a competent court that considers all bankruptcy affairs and in the event that the court's decision to declare bankruptcy, this decision is of absolute authority,

whether in terms of money or persons, so we find that most legislation at the present time assigns the task of declaring bankruptcy to specialized courts that differ in their rulings. Whether in terms of jurisdiction or in terms of the entity that administers the bankruptcy and in terms of the impact obtained from the bankruptcy decision and the parties to appeal those decisions, the principle is that there is only a relative authority of the judgments, so their effects occur only to those who were a party to the litigation and they are only related to the subject matter of the dispute.

As for the bankruptcy judgment, its authority is absolute, when the bankruptcy judgment is issued, the debtor is not considered bankrupt in view of the creditor only who requested the bankruptcy month, but it is considered so in view of all and all other creditors, even if they are not a party to the bankruptcy lawsuit, as well as the bankruptcy judgment deals with all and in full the merchant's liability, as the bankruptcy month is considered as we see: It is a general limitation of the trader's funds, whether they are related to his trade or not, and also includes the existing (present) funds Future funds can exist later, as the aim here is to conduct a collective liquidation of the bankrupt's property in which each creditor receives a share of his debt.

The adjudication of bankruptcy does not reveal a pre-existing position, but rather establishes a center, so that the debtor shall not be considered bankrupt unless a judgment is issued declaring him bankrupt.

The bankruptcy lawsuit of banks shall be filed before the Financial Services Court by the Central Bank or by creditors if one of the reasons stipulated in the Banks Law that requires the filing of a bankruptcy lawsuit is achieved in order to study and know the mechanisms for considering the application for bankruptcy of the bank by the competent court leading to the bankruptcy of the bank by the competent court leading to the rejection or acceptance of that application and the filing of a bankruptcy lawsuit and the subsequent procedures, whether a judicial guard is appointed or In terms of the effectiveness of the bankruptcy decision and the judgment based on this access, it will need to divide this section into two requirements, the first requirement includes the formal procedures for the bank bankruptcy lawsuit and the second requirement includes the substantive procedures for the bank bankruptcy lawsuit.

First topic: the formal procedures for the bank bankruptcy lawsuit for branches of foreign banks

The merchant's cessation of payment of his commercial debts, the confusion of his commercial and financial business and his entry into financial distress result in the possibility of declaring bankruptcy by virtue of a judgment issued for that, so we must indicate who has the right to submit a bankruptcy petition application and who are the parties to the bank's bankruptcy lawsuit, and we must indicate the competent authority to consider submitting a bankruptcy application, so we will divide this requirement into two branches, in the first branch, we show the submission of an application for bankruptcy petition, and then we explain in the second branch, the court Competent to consider the petition for the submission of the application.

First Requirement : Submit an application for bankruptcy declaration

The petition is the petition that is submitted to the court to obtain its approval to declare the bank bankrupt, which means it is the commencement of the procedures for the bank bankruptcy lawsuit, and the bank bankruptcy lawsuit differs from other lawsuits because it is restricted by

what is stated in the Iraq Banking Law No. (94) of 2004 in Article (70) thereof, which stipulates that "the General Insolvency Law does not apply to banks and the bankruptcy law does not apply to banks or any provisions amending or dissolving the bankruptcy law." replaced it in whole or in part."

The procedures for declaring bank bankruptcy, like any other action taken in any other lawsuit, must be submitted by the concerned parties in the lawsuit and the application must be submitted by those who meet the conditions that must be met by law.

With reference to the Iraqi Banking Act, we find that the legislator limited the application for bank bankruptcy to two bodies, namely the Central Bank, as the highest monetary body in the country, and because it plays the role of inspector and controller of banks and has the authority to audit and follow up on the financial position of the bank and the extent of its compliance with the provisions, regulations and laws it issues through the exercise of its activity .

The second party granted by the Banking Act the right to petition were three or more creditors of the bank, but the law required that their debts amounted to four billion Iraqi dinars payable and accompanied by supporting documents .

We find that the Iraqi legislator deviated from the general rules of the request for bankruptcy bank entrusted the first right to the Central Bank of Iraq as the highest monetary body leading the monetary policy of the country, if there is a violation of the foundations and rules stipulated in the Banking Law, which the bank must comply with, the Central Bank is allowed to file for bankruptcy.

The Iraqi legislator did not give the bank the right to file for bankruptcy, but upon reference to chapter V of the repealed Commercial Law, the debtor may file for bankruptcy and is obliged to file for bankruptcy within fifteen days from the date of cessation of payment .

Article 722 of the Iraqi Trade Law also obliges all or some of the directors of the board of directors or joint managers to pay the company's debts if it is found that the company's assets are not sufficient to pay, which is permissible for the court at the request of the bankruptcy judge.

Except for those who prove that in managing the affairs of the bank he has exercised the care of a careful man, and this is a departure from the general rules that builds a greater guarantee for the bank's creditors .

When referring to the Banking Act, it does not contain a provision that allows the possibility of applying for bankruptcy through the bank itself, while it can request its liquidation, as we find in article 68, Item 1, of the Banking Act .

This means that the members of the bank's management have the right to request the liquidation of the bank, but they do not have the right to request bankruptcy, and Item (third) of the same article obliges the Central Bank to appoint a trustee to liquidate the bank if the Central Bank realizes that the bank is not complying with the orders or does not liquidate properly.

As for the right of creditors to the bank, as we said earlier, their number must be more than three people and the debt must be more than four billion Iraqi dinars, and perhaps the purpose of determining this amount was to have a real deficit in the bank's debt.

An example of submitting a petition application is the application submitted by the Central Bank of Iraq, where a petition request was submitted to declare the bankruptcy of Dar Al-Salam Investment Bank submitted by the Governor of the Central Bank in addition to his job, where the plaintiff's agent claimed in addition to his job, as for this court, that based on the decision of the Board of Directors of the Central Bank of Iraq No. (171) of 2016, which includes imposing guardianship on Dar Al-Salam Investment Bank, and the decision of the Board of Directors of the Central Bank of Iraq No. (38) of 2022 Bankruptcy of Dar es Salaam Bank, and the letter of the Central Bank of Iraq / Legal Department / Claims Section No. (16/1592) dated 20/4/2022 and attached to the report submitted by the appointed trustee of the bank (Hazem Mohamed Mahmoud), which includes Due to the applicability of the principles stipulated in Article (71) of the Banking Law No. (94) of 2004, and for the reasons mentioned in the report prepared by the guardian, the plaintiff's department requests the filing of the above bank bankruptcy lawsuit in order to complete the liquidation procedures duly and based on what was stated in the letter of the Central Bank of Iraq / Legal Department / Claims Section referred to above and the report attached thereto is an application for the acceptance of the petition submitted for the purpose of initiating proceedings for filing a bankruptcy lawsuit Dar Al Salam Investment Bank in accordance with the provisions of the Banking Law No. 94 of 2004 .

Upon reading the above petition request submitted by the Central Bank of Iraq, we note that the application was submitted after the bank was under trusteeship and based on the report submitted by the trustee, the Central Bank of Iraq submitted the petition for bankruptcy of the bank.

**Second Requirement: The Court Competent to Consider the Bankruptcy Application Petition**

According to the general rules, the original that the one who considers bankruptcy cases is the court of first instance and this is according to the qualitative jurisdiction of the court, where Article (573/1) of the abolished Trade Law No. (149) of 1970 "The court of first instance shall be competent to declare bankruptcy."

However, in the Banking Act, the Iraqi legislature has taken a different path, making the Financial Services Tribunal the authority to hear bank bankruptcy proceedings by submitting a written application to the Court (Financial Services Tribunal) to file a bankruptcy action against the bank .

From this, we see that it is the Financial Services Tribunal that has jurisdiction to hear bank bankruptcy proceedings.

The Central Bank shall submit a petition to the Financial Services Court when it deems that all the legal means granted by law to rescue the bank and the means provided for in Article (67) of the Banking Law are unable to save the troubled bank and make it resume its normal activity.

Our Central Bank shall also submit the petition request in the event that the Minister of Finance decides to terminate the restructuring of the troubled bank at any time and requests the Central Bank of Iraq to submit a petition for the declaration of bank bankruptcy on the basis of the provisions of Item (2) of article (67).

Also, the application may be submitted through creditors if the law allows that the application for bankruptcy petition be submitted through bank creditors, but it requires some conditions,

namely that the application must be submitted by three or more of the bank's creditors, so that one creditor cannot submit the application even if his outstanding debts amount to more than four billion Iraqi dinars.

The total debt owed to creditors must be more than four billion Iraqi dinars.

Although the Iraqi legislator has given creditors the right to apply for bankruptcy, article 72, Item 2 (b), stipulates that the participation of the Central Bank must submit an application for petition .

The legislator did not indicate whether creditors first filed the petition and then notified the Central Bank or, conversely, notified the Central Bank and then submitted the petition .

Article 74 of the Iraqi Banking Law refers to the mechanism for considering a bankruptcy case before the Financial Services Court, which is established in the bankruptcy case when the petition is submitted. The law also obliges the court to inform the Central Bank of Iraq of any decision that may affect the bank whose bankruptcy is sought .

As for the period required by law for the consideration of the petition, the law differentiates whether the application is submitted by the Central Bank, as it is indicated in the petition within one week, but if the application is submitted by creditors, it is decided within two weeks .

This is what the law stipulates in the Banking Act for the court to consider the petition, but when we refer to the practical reality, we find that, as is often the case, these periods set by the legislator in the Banking Law are not observed, but are exceeded, since the consideration of the petition application may be delayed for several months, and in some cases a full year may pass without a decision on the petition .

When the court considers the petition request within the period specified by law, its answer is either rejection or acceptance, as the vote is taken by a majority of the votes of the judicial body, and the judgment must be recorded with a document stating the reasons that called for taking the judgment decision and appending the operative part of the judgment signed by the head of the body that considered the judgment, which the court must inform the parties to the lawsuit as soon as possible by sending or giving a copy of the judgment to the parties to the lawsuit and the judgment becomes effective from the date of the blogger. If there is no written date, the decision shall take effect one week after the date of notification to the parties.

This is in the event that the court approves the petition, but there are cases in which the court rejects the petition, so here it is necessary to indicate the reasons that call for the court to reject the petition request, whether the request is submitted by the Central Bank or from creditors, so what are the reasons that call for the court to reject the request for bankruptcy petition?

When referring to the Iraqi Banking Law, we find that the Iraqi legislator differentiated between the cases in which the court calls for the rejection of the petition.

Article (75/1/a) stipulates that: "1. The court shall reject a bankruptcy petition against a bank if: a- If the petition is not supported by the documents required in accordance with Item (h) of Article (72) or it does not concern the requirements of the law", meaning that according to this text, the court has the right to reject the petition application, whether submitted by the Central

Bank or creditors, if they do not provide evidence and documents that support that the bank has gone through any of the cases that call for bankruptcy. which are stipulated in the law and regulated in the Banking Law in Article (71) thereof.

In addition, the court may also reject the petition application if the application is submitted by the creditors and the Central Bank objects to the request if it finds that there is no legal basis specified in Items (a, b, c) of Article (71) of the Banking Law for filing a bankruptcy lawsuit against a bank.

The court may reject the petition on the basis of the objection of the Central Bank if the objection is supported by documents and evidence, as stipulated in article 75, Item 2 (a), of the Iraqi Banking Act .

The court can also reject the petition if the Central Bank submits to the Financial Services Court the decision of the Minister of Finance, taken in accordance with Article 76 of the Banking Law, which stipulates that the continued stability of the banking system requires rehabilitation, and the court can reject the application submitted by the creditors.

We find that according to Article (76) of the Banking Law, the legislator gave the right to the court to reject the petition request if it is trivial?! Article 76 of the Iraqi Banking Law No. 94 of 2004 stipulates that "1. The court may, at any time of filing a petition for bankruptcy proceedings against one of the creditors of that bank, reject the petition in writing, whether or not it considers it, on the basis that the petition is frivolous, in which case the petitioners may be liable for monetary damages, including costs and expenses resulting from the filing of such a petition. The court may decide to award compensation to the Bank and the Central Bank of Iraq."

The second Item of the same article 76 also gives the court the right to sentence the court to imprisonment for six months, pay a fine of up to one billion dinars, or refer the applicants to the Criminal Court to institute a lawsuit charged by the Public Prosecutor .

Article 76 of the Banking Law gives the Financial Services Court discretion to oblige the applicant of the trivial petition to compensate the bank and the Central Bank for the damages resulting from the filing of the petition application and to oblige the applicant to authorize if there is a requirement for it in accordance with the rules of civil liability. 6) months or pays a fine not exceeding one billion Iraqi dinars, or both penalties .

Through all of the foregoing, we find that the Iraqi legislator has stressed the petition request submitted by the bank's creditors in terms of conditions and procedures, unlike the request submitted through the Central Bank when submitting the petition request, whether the ruling is rejection or acceptance by the Financial Services Court, its judicial decisions are by a majority of the votes of the judiciary from the Commission and the judgment must be recorded with a document stating the reasons for the judgment and appending the operative part of the judgment signed by the head of the body considering the petition and the court must It shall inform the parties to the proceedings as soon as possible by giving a copy of their judgment to each of them , and the judgment shall become effective from the date on which it is recorded, and if there is no mention of the date, it shall take effect one week after the date of notification to the parties thereof.

Second topic: the substantive procedures for the bank bankruptcy lawsuit for branches of foreign banks

In the first requirement, we have explained the formalities that must be available in order to file a bank bankruptcy lawsuit for branches of foreign banks, which is to submit an application for petition to declare the bank bankruptcy and the court competent to consider the petition application, so we must indicate the procedures that follow that, which are the objective procedures that are represented in the statement of the enforcement of the bankruptcy decision, which we will show in the first section, and then we show the nature of the bankruptcy judgment and the procedures for appealing it.

First requirement : the enforcement of the banker's bankruptcy decision for branches of foreign banks

The Financial Services Court approves the application for bank bankruptcy if it finds the validity of the application submitted to it, whether by the Central Bank or creditors, and after the court approves the application, it must notify the Central Bank and the bank concerned, but the question that arises here in the event that the bankruptcy application is by creditors, does the court also notify them of the decision to accept the petition application?

If we refer to the Iraqi Banking Act and the Central Bank Act, there is no legal provision obliging the court to notify the creditors of the bank of the decision to accept the petition application.

The principle of judicial rulings is to be revealing of rights and legal centers and not to be established and have relative authority in terms of persons and funds , but the provisions that are depicted in connection with the bankruptcy lawsuit are their provisions establishing rights and are also characterized by absolute authority, meaning that the judgment issued in this regard applies to everyone and is not limited only to the parties to the lawsuit.

After the bankruptcy decision is implemented, it entails a number of consequences, the most important of which is the liquidation of the bank and the appointment of a judicial guard for the bank, which in turn will carry out a set of legal decisions and procedures such as canceling or invalidating some legal acts previously concluded by the bank.

The receiver is appointed by a court decision and is in the same way as the judge to institute bankruptcy proceedings and also includes the appointment of another receiver as a substitute if there are reasons that necessitate it, such as the resignation or death of a receiver, his inability to act or work, or if he does not perform his duties carefully .

The judicial receiver is considered a legal representative of the Central Bank in the Department of Legal Affairs of the bank, so he must exert the care of the usual man as he has the task of determining the bank's assets and he must maintain them throughout the period of his management of the bank, and he also has to determine the debts that fall on the bank and liquidate it in order to pay the rights of creditors and all this is based on directives, instructions and supervision from the Central Bank of Iraq and these tasks are determined by powers granted to him initially, in order to manage the bankruptcy on the basis of them in exchange for A fee received by the (receiver) determined by the court.

The receiver is also entitled to appoint independent accountants, lawyers and other advisers, but on terms and conditions approved by the Central Bank whenever he finds it necessary .

What is being raised here is why the legislator made the receiver bound to the directives of the Central Bank and not to the directives of the court?

Perhaps the answer lies in the fact that the Central Bank is more experienced in financial matters than the Court and because the Central Bank seeks to straighten the business of banks and prevent their bankruptcy in order to strengthen confidence, and we find that in the text of Article 84, Item (1), it is obligatory for the Central Bank to issue directives to the Receiver, these directives must have been approved by the Financial Services Court .

There are also some works when the judicial receiver deems that they should be stopped and not worked, he submits a request to the Central Bank for approval without the need to issue a judicial decision.

For example, suspending all business carried out by the bank before the entry into force of the bankruptcy decision for a period not exceeding (60) days from the date of the appointment of the guardian in accordance with Article (73) and it is also the third party to whom the right has been transferred if it is affected by any action taken by the Central Bank to invalidate the bank's actions that affected third parties , it (third parties) can appeal by filing a petition to the Financial Services Court within a period of thirty days from the date of issuance of the decision. The court clerk shall then collect the judicial fees and send a copy of the petition to the Central Bank, and a specific day shall be fixed for the consideration of the case and the parties to the case shall be notified of a certain date in order for the court to hear the statements of the parties, and pursuant to articles 67 and 69 of the Central Act, the decision or procedure issued by the Central Bank shall be effective until a judicial decision is issued by the court .

The law also allows the receiver to take some measures, for example, but not limited to, such as donations or financial authorizations that are free of charge to any person, whether from inside the bank or outside the bank, but these payments or authorizations must not relate to the bank's employment of him or to an account held with the bank, or he did not know that the payments or authorizations would harm the interests of the bank's creditors. The receiver can also cancel any act that in his opinion is onerous on the bank, which leads to an increase in the bank's obligations.

From all this, it becomes clear to us that the enforcement of the bankruptcy decision of the branch of the troubled foreign bank is followed by a set of procedures carried out by the judicial receiver appointed by the Financial Services Court, as the decision to declare the bankruptcy of the bank defaulting becomes effective from the date of the judgment and the court, after making its decision, must determine the date of cessation of the bank's payment of outstanding debts.

She referred to the decision of the Cassation Commission in the Presidency of the Baghdad / Rusafa Federal Court of Appeal, as the plaintiff's agent (Governor of the Central Bank / in addition to his job) claimed before the Financial Services Court that on 30/11/2020, the Services Court issued its decision No. (10/Financial Services/2019) approving the request to file a



bankruptcy lawsuit against the Tigris and Euphrates Bank for Development and Investment, and where the Board of Directors of the Central Bank of Iraq had previously agreed.

#### Second Requirement : The Legal Nature of the Bankruptcy Judgment

In order to declare a bank bankrupt (branch of a foreign bank), a judicial decision must be issued by the competent court to that effect, namely the Financial Services Court, as this decision creates a new situation and a new legal status that did not exist (the case of bankruptcy). The judgment of bankruptcy, even if it creates the state of bankruptcy, shall not have its effects except from the date of its issuance, but the law invalidates all the actions taken by the bankrupt during the period of suspension, and this matter does not lose the bankruptcy judgment of its structural nature.

The bankruptcy judgment shall be absolute in the face of all, as it exceeds the parties to the bankruptcy lawsuit, and is characterized by its comprehensiveness and indivisibility, and the bankruptcy procedures shall apply in the face of all creditors, whether they are before those who filed a bankruptcy lawsuit or others, and the bankruptcy judgment may not be judged on the same bank twice, i.e. it is not permissible to be a bankruptcy judgment on bankruptcy, because the first bankruptcy includes all the debtor's funds and has consisted of it. Bankruptcy property, i.e. the second bankruptcy will be without purpose .

Article 82, in the first Item of the Banking Act No. 94 of 2004, stipulates that "the court's decision to institute a bankruptcy action against a bank shall enter into force from the time such decision is taken."

The court's decision here is the origin of the bankruptcy and not its reveal, and this is unlike most decisions issued by the general courts, which are revealing (rights), and this means that the bank is not bankrupt unless a judicial decision is issued declaring it bankrupt.

As for the Omani legislator, article 580 of the Omani Commercial Law stipulates that: "A state of bankruptcy shall not arise except by a judgment issued declaring bankruptcy.

Article 490 of the Commercial Law stipulates that "bankruptcy shall be declared by virtue of a ruling of the Court of First Instance in whose area the original commercial establishment is located."

Through this, it is clear that Lebanese and Omani law have taken the same position as the Iraqi legislator and have considered that the bankruptcy judgment is a judgment of origin whose effects are from the date of its issuance.

The bankruptcy judgment creates a new legal situation, so the bankruptcy judgment must be published in order to inform everyone who is interested and takes the initiative to take measures to preserve his right.

Article 79 of the Iraqi Banking Act stipulates that "immediately upon the issuance of a decision by the court to institute or a decision rejecting a petition for bankruptcy proceedings against a bank, the Central Bank of Iraq shall be notified and the bank shall be notified of the decision.

This means that the Iraqi legislator obliges the Financial Services Court to notify the Central Bank and the bank of the decision to reject or accept the petition, and then publish the decision in the Official Gazette and newspapers to inform everyone of its decision.

We find that the Omani legislator has taken the same direction in Article (83), Item (c), where it is required that the Board of Governors notify the officials and members of the Board of Directors of the bank concerned personally of any action taken by the Central Bank related to liquidation and publish a notice to all shareholders of any liquidation that takes place under this Law in each issue of the Official Gazette.

The same applies to the Lebanese legislator, which regulates the method of publication of the bankruptcy judgment in article 496 .

From the above, after it became clear to us that the bankruptcy judgment is a general and comprehensive ruling, and it is invoked before everyone, whether they are parties to the lawsuit or not, the legislator allowed to appeal it.

Article 70 of the Central Bank of Iraq Act No. 56 of 2004 stipulates that "the Court of Appeal shall hear appeals against judgments and final orders issued by the Financial Services Court."

Through this provision, the legislator allows the appeal against the decisions of the Financial Services Tribunal to the Court of Appeal, and the appeal must be submitted within the period specified by the legislator, which is (30) days from the date of notification of the judgment issued by the Financial Services Tribunal .

After submitting the appeal, the Court of Appeal may decide whether to dismiss the appeal petition, if the appeal is within a time limit after the expiry of the statutory period specified or if the appeal petition does not include the grounds for appeal, the Court decides to dismiss the appeal in form if it is not based on a legal basis .

Or, the court decides to accept and ratify the appeal petition, if it is in accordance with the law, and if the judgement is in accordance with the provisions of the law, the court decides to accept it in form and issues its decision to ratify the judgment and dismiss the appeal .

Or the court decides to overturn the appealed judgment, and this is in the event that the reasons set forth in Article (70), Item (3) of the Central Bank of Iraq Law, are available, the Court of Appeal shall have the power to return the judgment issued in the contested cases to the Financial Services Court in order to reconsider it again or to annul the judgment, and this is for several reasons, the most important of which are: Either the Financial Services Court has no jurisdiction to hear the case, or if the Financial Services Court bases its decision on forged evidence such as documents Forged or counterfeit .

In addition, article 63, Item 3, of the Central Bank of Iraq Act No. 56 of 2004 stipulates: "It shall also be within the competence of the court to adjudicate any dispute arising between banks and financial institutions referred to the Financial Services Tribunal by virtue of a written agreement between the parties to the dispute.

This means that if the parties to the dispute agree to appeal to the Court of Appeal, it can be appealed to it.

From all of the above, we must mention that the Iraqi legislator allowed the appeal against the decisions of the Financial Services Court to the Court of Appeal, but at the same time did not specify which court is competent to hear the appeal case, nor did it indicate whether the Court of Appeal considers the appeal in its appellate or discriminatory capacity, and the discriminatory body in the presidency of the Baghdad / Rusafa Federal Court of Appeal has ruled that the phrase contained in Item (1) of Article (70) of the Central Bank of Iraq Law is that The decisions of the FSB are appealed by cassation to the Court of Appeal in its discriminatory capacity and not in its original capacity .

## **Conclusion:**

After all of the above and after we have finished discussing the subject of our research (bank bankruptcy lawsuit procedures for branches of foreign banks in Iraq), which is one of the important topics in our time now, especially with the continuous development and development of trade and economic development, we have reached a number of results and suggestions that we will show successively.

### **First: Results**

1- The bankruptcy of banks in general and the bankruptcy of branches of foreign banks in Iraq in particular are not subject to the bankruptcy provisions stipulated in Chapter V of the Iraqi Trade Law No. 149 of 1970 (repealed), but rather to the Banking Law No. 94 of 2004 in accordance with the provisions of Article 70 of the same law.

2- Bank bankruptcy in general and bankruptcy of branches of foreign banks achieve bankruptcy as in the case of general bankruptcy if objective and formal conditions are met, but the objective and formal conditions in the case of bank bankruptcy are different from what they are in bankruptcy in its general form due to the privacy and difference of the banking system, it is objective conditions that the incorporated company is practicing banking business and activities, and that one of the cases stipulated in Article (71) of the Banking Law No. (94) of 2004, which results in the state of cessation of payment, As for the formal conditions, the bank must obtain a license from the Central Bank, which is considered as the supervisory authority.

3- In the event that the bank is exposed to bankruptcy, the right to apply for bankruptcy is limited to two bodies, the Central Bank of Iraq, in addition to giving the right to creditors, provided that their number is not less than three and that their debts exceed (4) billion dinars, and this is stipulated in Article (72) of the Iraqi Banking Law No. (94) of 2004, and the court of bankruptcy is the Financial Services Court, where it is the judicial authority authorized to consider the case of bankruptcy and bankruptcy affairs.

4- The methods of appeal stipulated in the Central Bank of Iraq Law in Article (70) are cassation of the judgments issued by the Financial Services Court before the Court of Appeal in its discriminatory capacity and not an appeal of judgments.

5- The legislator gave the Central Bank broad authority to control and supervise receivership and the role of the judiciary was very limited.

## Second: Proposals

1- Expanding the role of the Financial Services Court and making it hear all cases and matters related to banking activity and banking financial matters, while expanding its spatial scope so that there are financial services courts in all courts of appeal Iraq.

2- We call on the Iraqi legislator to amend the text of Item (1) of Article (70) of the Central Bank of Iraq Law to be as follows: "The Court of Appeal shall consider in its discriminatory capacity cases of cassation of judgments and final orders issued by the Financial Services Court."

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