

5-1-1996

Middle East

Dr. Fath El-Rahman Abdalla El-Sheikh

Follow this and additional works at: <http://elibrary.law.psu.edu/psilr>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Abdalla El-Sheikh, Dr. Fath El-Rahman (1996) "Middle East," *Penn State International Law Review*: Vol. 14: No. 3, Article 10.
Available at: <http://elibrary.law.psu.edu/psilr/vol14/iss3/10>

This Article is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Penn State International Law Review by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Bank Secrecy and Confidentiality Law In Practice — A Middle Eastern Perspective

Dr. Fath El-Rahman Abdalla El-Sheikh*

I. Introduction

The purpose of this article is not to provide a detailed explanation of the secrecy and confidentiality laws of Middle Eastern countries. Such an exercise would require extensive efforts and research culminating in a voluminous work. Instead, general remarks are made on bank secrecy only to whet the appetite for discussion; focusing on the practical side of the subject.

What is most important for any researcher faced with such a subject as bank secrecy is first defining the geopolitical dimensions of the term "Middle East." The definition is essential to understand the area covered by the survey in this article. It is easy to be trapped into precisely defining the area comprising the Middle East. There is, however, a common understanding shared by many political commentators acknowledging the term "Middle East" as certain Arab countries situated East and West of the Red Sea.

Most Arab countries more or less apply legal systems originating from the Continental system.¹ Yet these countries consider Islam a basic source of legislation in their constitutions.² Accordingly, this article focuses on the concept of bank secrecy and confidentiality under Islamic jurisprudence.

The article then examines the laws of certain Arab countries on a selective basis. Since it would be impractical to study bank

* Assistant General Manager for Legal Affairs, Qatar Islamic Bank, formerly the Counsel for Legal Affairs, Kuwait Investment Authority, Kuwait (1985-1990) and Head of the Department of Int'l & Corporative Law, University of Khartoum. The views expressed in this article are the views of the author and not those of Qatar Islamic Bank.

1. The Continental legal system was first introduced in the Arab countries when Napoleon occupied Egypt and imposed his legal code. The Egyptians later replicated the codes into their legislations.

2. See, e.g., EGYPT CONST., KUWAIT CONST., YEMEN CONST.

secrecy in all Middle Eastern countries, this article endeavors to make the selection of countries as broad as possible to reflect the understanding shared among Arab countries. This focus provides an application of the concept of bank secrecy and confidentiality in an area enjoying some strategic importance in the world economy due to its huge oil resources and reserves. As such, this article concentrates specifically on the Gulf countries³ and Lebanon, a country emerging from civil war as a new, major economic player in the world economy.

II. Bank Secrecy and Confidentiality Under Sharia (Islamic Law)

A. *Privacy and Bank Secrecy*

There is a basic norm in Islam enshrining the inviolability of private property. As long as public interest is not endangered or the rights of others are not impaired or adversely affected, private property retains fundamental rights.⁴ Even if public interest outweighs the needs of private property, the owner of private property should be compensated for any injury suffered in relation to this property.⁵ Furthermore, Islam protects the privacy of the individual.⁶ The Holy Quran prohibits explicitly any spying into the private life of an individual, including the individual's economic and banking affairs.⁷ This basic right cannot be contested in any court except when the enforcement of this right affects or encroaches on the rights of others.⁸ In such an instance, disclosure would be mandatory.⁹

This view is widely adhered to by many Islamic jurists and scholars despite their varying opinions on other controversial issues; a common phenomenon of Islamic jurisprudence (*fiqh*).¹⁰ However, the main question of bank secrecy and confidentiality laws in

3. Saudi Arabia, Kuwait, Sultanate of Oman, United Arab Emirates, Bahrain, and Qatar.

4. This norm is enshrined in the Holy Quran, the Teachings of the Prophet, and writings of all Islamic Jurists. See generally ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION (1990).

5. *Sura Al-Bagra, the Holy Quran.*

6. *Id.*

7. *Sura El-Nisa No. 29/4, the Holy Quran.*

8. *Id.*

9. *Id.*

10. There are at least four schools of *Fiqh*: the Maliki; The Hanafi; The Hunbali; and the Shafie. All of these schools are Sunni.

the Middle East remains: Who is competent to order the disclosure of bank information regarding the account or accounts of individuals or firms in practice? Can disclosure be mandatory through administrative decisions in compliance with certain legal provisions or by the order of the competent court with jurisdiction in the matter? More specifically, can the Ruler or the Head of State order the disclosure of bank information without the authority of an enabling legal provision? Even if there is an adequate power or authority whether judicial, legislative, administrative, or other government unit to order the disclosure of bank secrets, what are the criteria for exercising such power? These questions lead to the parallel rule of duty to disclose.

B. Duty to Disclose

Islam, like all modern systems, does not entrench absolutism. In Islam for every right there is normally a corresponding duty which should be carried out as stipulated.¹¹ Thus, the right of bank secrecy and confidentiality is not always absolute.¹² This principle finds support in the verses of the Holy Quran,¹³ the teachings of the Prophet Mohammed (p.b.u.h.)¹⁴ and his followers (Hadith),¹⁵ and the writings of Islamic jurists (figh).¹⁶ Despite the supported principle, there are some exceptions to the right of bank secrecy. In certain instances, secrecy cannot be upheld and consequently disclosure becomes mandatory. Such instances are, for example:

(a) . . . when public interest dictates that law and order should be maintained.¹⁷ This may happen when a serious crime was committed or is about to be committed.¹⁸ Here, the preservation of public tranquility overrides the protection of the right of privacy and secrecy. In such cases there is a duty on the bank to disclose the required information if it is ordered to do so by the competent authorities in the particular case.¹⁹ However, disclosure of the relevant information should be made in

11. *Sura El-Nisa No. 29/4, the Holy Quran.*

12. *Id.*

13. *Id.*

14. *See THE SCIENTIFIC AND PRACTICAL ENCYCLOPEDIA OF ISLAMIC BANKS* 33-47 (1982).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *UNION OF ARAB BANKS, ISLAMIC BANKS 25-34 (Beirut, Lebanon 1989).*

accordance with due process of law.²⁰ Situations where disclosure becomes mandatory in criminal cases are numerous, especially in economic crimes such as fraud, drug trafficking, and money laundry.²¹

Under the traditional Islamic system, the concept of Hisba,²² certain economic rights of the individual may be interfered with or restricted for the benefit of the general society. These interferences or restrictions may extend to several economic activities conducted by individuals or legal entities.²³ It is interesting to note that the concept of "Hisba" has developed throughout the Islamic history to apply to controlling market prices and combating monopolies. To the astonishment of many Islamic scholars and jurists the concept has been unwarrantly applied to cases where no interest or right is affected. For all intents and purposes it is a misinterpretation of Islamic concepts and principles — an exercise which really distorts the good image of Islam which is flexible enough to accommodate diversification, tolerance, and modern modalities in economic activities. Islam aims at respecting the dignity of mankind and the fundamental human rights in a healthy and productive society.

(b) When an individual's right has been denied or encroached upon, the right of privacy and secrecy related to bank accounts would not be upheld.²⁴ In such cases the bank would be under a duty to disclose the information to the appropriate authority whether in compliance with a judicial order or a legislative provision.²⁵ Clear cut examples in this respect are succession cases and matrimonial causes.²⁶

(c) Disclosure of bank information could be made to non-official applicants in response and implementation of contractu-

20. *Id.*

21. ALI AL-SALOS, MODERN FINANCIAL DEALINGS IN SHARIA 85 (Kuwait, 1986).

22. On the origin and development of the concept of "Hisba" throughout Islamic history, see AL-FADL SHULG, THE NATION AND THE STATE (in Arabic) 135-1193 (Beirut, 1993).

23. *Id.*

24. *Id.*

25. *Id.*

26. For example, when a husband of a divorced woman refuses to pay the living expenses of his children by claiming that he is insolvent. In such cases the court may order the bank of the husband to disclose the balance of the account of the husband to ascertain the allegation and vindicate the claim of the woman.
Id.

al provisions.²⁷ This is done when the client authorizes in advance that the bank to provide information to certain applicants.²⁸ The authorization should be executed in compliance with the contractual provisions as under Sharia "the Contract is the law of the parties."²⁹

(d) In many situations financial disclosure is mandatory.³⁰ When there is a duty to make financial disclosure in accordance with due process of law a disclosure occurs. This is normally in cases when there is a duty on the banks to report certain transactions to the regulatory agencies such as the Central banks or similar government agencies such as Stock Exchanges or other agencies for supervising certain economic activities.³¹ The role of such agencies could not be denied or alienated in a modern state and such concepts could not be condemned as repugnant to Islam (Sharia).³² In a world where the exchange of information is an essential vehicle for development and expansion of economic activities, it has become necessary to allow certain deviations from the traditional rules on bank secrecy and non-disclosure.³³ Thus, opening the affairs of business institutions to the financiers and the investors who have become more concerned about these institutions directly or indirectly and enticing them to be involved in the economic activities. As a result the supporters of financial disclosure believe that secrecy and non-disclosure is a relic of the past contrary to the concept of free trade which is based on the exchange of information and international co-operation, the logical pattern of the present time.³⁴

The supporters of financial disclosure are often surprised that certain people still advocate the revival of secrecy and financial non-disclosure. This is especially true at a time when explicit legal provisions demand mandatory disclosure of certain financial

27. SHULG, *supra* note 22.

28. This is usually imposed by special legislation. At the moment, most banking laws of Arab countries contain such a provision to which any Islamic bank is subject.

29. MUSTAFA AL-ZARGA, INTRODUCTION TO SHARIA 45 (Damascus, 1965).

30. Under the Central Banks laws and directives.

31. ISLAMIC INTERNATIONAL BANK FOR INVESTMENT AND DEVELOPMENT, CENTRE FOR ISLAMIC RESEARCH, CONSULTANCIES, AND TRAINING 1-3 (1984).

32. *Id.*

33. *Id.*

34. On the history and justification for financial disclosure, see TWIFIG SHAMBUR, ARAB BANKS J. 53-55 (1994).

statements listing the true financial status of business institutions.³⁵ Not only is this for the benefit of shareholders but also the public.³⁶ This was, however, not the case in the 19th century. At that time the regulation of accounting and financial statements was an internal matter of the business institution and only for the exclusive benefit of its shareholders.³⁷

It should also be noted that upholding the absolute right of secrecy negates and restricts the role of the State today to regulate and supervise the national economy. Such secrecy prevents certain economists from making economic surveys, statistics field work, and financial analysis necessary for monitoring the national growth.

Likewise, disclosure of financial details is essential for the formation and validity of contracts. No contract will be valid without furnishing full information on the subject matter of the contract. Ignorance of the details and particulars of the contract will lead to its invalidity and unenforcement in contractual disputes.

III. The Practice of Islamic Banks

The emergence of Islamic Banks in the Muslim world is a recent phenomenon beginning in the 1970s.³⁸ Each year these banks channel huge funds often exceeding fifty billion U.S. dollars, even by modest estimates.³⁹ They carry on business in accordance with Sharia which prohibits usuary and interest. Despite their short existence, Islamic Banks have developed solid Islamic banking systems of their own. However, they have encountered certain challenges in view of the integration of the world economy which requires more flexibility to accommodate many new investment instruments and products.

In all their investment and banking modalities, Islamic Banks adhere ardently to the concept of banking secrecy and confidentiality. This concept is shared in their dealings with customers and each other.⁴⁰ In the appropriate contract of each deal, it is normally expressly stated that parties treat all communication under the contract as confidential, and under no circumstances shall relevant information be divulged to third parties except by court

35. *Id.*

36. *Id.*

37. *Id.*

38. See generally Sheikh Salih Kamil, *Islamic Banks and Financial Derivatives*, 15 ARAB BANKS J. 43 (1995).

39. *Id.*

40. This is done in adherence to applicable laws and contractual provisions.

order or in compliance with operative law.⁴¹ Non-observance of such a contractual provision amounts to breach of contract, leaving the aggrieved party with the right to take the appropriate legal action vindicating its claim.⁴²

Normally, Islamic banks perform their contractual obligations in accordance with the Glorious Sharia under which the sacrosanctity of a contract is respected because the "contract is the law of the parties."⁴³ In cases where an Islamic bank considers disclosure of certain information requested by a third party, the consent of the customer should be obtained.⁴⁴ Because Islamic banks are subject to the supervision of regulatory agencies such as the Central banks in the countries where they carry on business, they are bound to disclose or report certain transactions as requested by these regulatory agencies in accordance with operative laws in the jurisdiction concerned. This disclosure is in addition to the execution of court's orders under normal circumstances.

IV. Bank Secrecy and Confidentiality in Certain Arab Countries

This article classifies the Arab countries selected for analysis into two categories — those which have adopted liberal views on bank secrecy and confidentiality and those which do not believe in such a concept for some reason peculiar to the prevailing political system and the economic situation of the country.

A. *Liberal Views*

1. *Lebanon*— Perhaps the most liberal regime on bank secrecy and confidentiality in the Middle East is Lebanon. A democratic country with a multi-party political system, Lebanon was once the financial nerve of the Middle East before the oil boom in the Arabian Gulf.⁴⁵ To enhance its regional economic prestige at the time, Lebanon promulgated the *Bank Secrecy Act, 1956*.⁴⁶ The basic provisions are summarized as follows:

- (a) By virtue of section (1) of the Act, all banks established in Lebanon as closed companies and branches of foreign banks

41. This is a standard clause which is adopted by all Islamic banks.

42. This is the current procedure available to all banks under municipal law, Islamic banks are not an exception.

43. See AL-ZARGA, *supra* note 29.

44. Such a condition is usually contained in a contractual provision.

45. Kamil, *supra* note 38, at 36.

46. Bank Secrecy Act (1956) (Lebanon) (on file with author).

and licensed by the Minister of Finance to do business in Lebanon are subject to the Bank Secrecy Act.⁴⁷ Strangely enough, specialized banks such as the agricultural, industrial, and real estate banks are excluded from application of the Act.⁴⁸

(b) Section (2) of the Act explicitly prevents the managers and all employees of banks subject to the Act from divulging by any means whatsoever any information, secret, or particulars related to any account, transaction, or banking correspondences of the customers.⁴⁹ The section goes further to prevent the disclosure of the names of the customers, their account balance, and properties and anything related thereto to any person or public authority whether administrative, military, or judicial without the written permission of the customer, his heirs, legatee or in cases of bankruptcy or by the order of the court in cases of litigation between the banks and their customers.⁵⁰

(c) Under section (3) of the Act, banks are authorized to open deposit accounts with special numbers in the names of their customers.⁵¹ These identities will only be known to the manager of the bank.⁵²

(d) The most liberal provision in the Act on the protection of banking accounts is section (4).⁵³ This section prevents any blocking or seizure of all funds in the accounts without the written permission of the customers owning these accounts.⁵⁴

(e) To utilize their funds properly, Lebanese banks are authorized by section (6) of the Act to exchange information among themselves without prejudice to observing the secrecy of the accounts of their customers.⁵⁵

(f) The most controversial provision of the Act is section (7).⁵⁶ This section provides that under no circumstances shall banks subject to the Act be permitted to plead observance of

47. *Id.* § 1.

48. *Id.*

49. *Id.* § 2.

50. *Id.*

51. *Id.* § 3.

52. *Id.*

53. *Id.* § 4.

54. *Id.*

55. *Id.* § 6.

56. *Id.* § 7.

professional secrecy provided for under the Act as a shelter to refuse to respond favorably to applications made by competent judicial authorities in case of unjust enrichment initiated under the Legislative Decree No. (38), 1953 and the Law No. (14), 1954.⁵⁷ The wisdom of this provision is to guarantee a clean government and combat political corruption.

(g) To guarantee full adherence to bank secrecy, section (8) of the Act makes it a crime to violate any provisions of the Act.⁵⁸ The punishment includes imprisonment of three months.⁵⁹ Section (9) also gives the Act superiority over any other law.⁶⁰ If there is any conflict between the provision of the Act and other law, the provisions of the Act shall prevail.⁶¹ This reflects the importance of bank secrecy and confidentiality in Lebanon. The intention of this section is to encourage the flow and recycling of money of many Lebanese working abroad into the Lebanese economy by proving Lebanon a safe financial haven.

2. *Bahrain*— This Gulf State has succeeded in replacing war struck Lebanon as the financial nerve of the Middle East. It is interesting to note that Bahrain presently hosts more than fifty off-shore banks from different parts of the world.⁶² In fact, such confidence in the stability of the financial system is connected to bank secrecy and confidentiality.⁶³ Thus, under article (16) of *Bahrain Monetary Agency Law*, members of the Agency's Board of Directors, staff, employees, auditors, and agents are prohibited from divulging data or information relating to the Agency or its customers or the affairs of the banking firms subject to the Agency's control, discovered by reason of the performance of their duties.⁶⁴ As an exception, the prohibition does not apply to cases of performance of official duties, discharge of responsibilities, by order of a court of law, or cases where there is a legal duty to divulge such data or information.⁶⁵ To guarantee compliance with its provisions, the same article imposes a penalty of imprisonment

57. *Id.*; Legislative Decree No. 38 (1953); Law No. 14 (1954).

58. Bank Secrecy Act, *supra* note 46, § 8.

59. *Id.*

60. *Id.* § 9.

61. *Id.*

62. *See generally* Bahrain Monetary Agency Law (on file with author).

63. *Id.*

64. *Id.* art. 16.

65. *Id.*

for a term not exceeding six months and/or a fine not exceeding one thousand Dinars⁶⁶ for violation of the law.

Bank secrecy in Bahrain is further strengthened by article (78) of *Bahrain Monetary Agency Law*.⁶⁷ This article prohibits the Agency from publishing any banking information pertaining to a banking firm or to one of its customers without obtaining, prior to publication, the written consent of each party involved.⁶⁸ More explicitly, paragraph (B) of the same article provides that the Agency shall not, without court order, disclose to any person any information relating to the affairs of a customer of the banking firm, if the Agency has obtained such information in the course of exercise of its function under the law.⁶⁹

On April 10, 1983, the Agency, in exercise of the powers vested in it by its constituent law, issued circular No. 83/5.⁷⁰ This law relates to disclosure of information in individual accounts.⁷¹ It requests all banks not to publish or release information to third parties concerning the accounts or activities of their individual customers, unless such information is requested by an authorized official from the Bahrain Monetary Agency or by court order.⁷²

3. *Saudi Arabia*— The Kingdom of Saudi Arabia (the Kingdom) also adheres in practice to the principle of bank secrecy. There is, however, no express provision in any law or administrative circular or directive respecting bank secrecy.⁷³ The established practice in Saudi Arabian banking is that only the Minister of Finance and National Economy is authorized to lift bank confidentiality and disclose the balances of an individual's account.⁷⁴ By virtue of this authorization, the Minister can direct banks carrying on business in the Kingdom to divulge any information or statement to third parties.⁷⁵ Even the Kingdom courts cannot order disclosure of any banking information without the

66. *Id.*

67. *Id.* art. 78.

68. *Id.*

69. *Id.* ¶ B.

70. Circular No. 83/5 (Apr. 10, 1983) (on file with author).

71. *Id.*

72. Circular No. 83/15.

73. The concept finds indirect support in article (9) of the Banking Regulations (1965).

74. On file with author.

75. *Id.*

intervention of the Minister.⁷⁶ The courts must make such orders through ministerial channels.⁷⁷

4. *Kuwait*— Kuwait could be considered a financial haven of the Middle East. One of the very few democratic countries in the arab world, Kuwait has succeeded in holding onto its bank secrecy code despite the horrible consequences of the Iraqi invasion. Bank secrecy and confidentiality in Kuwait is entrenched in Law No. 32, 1968 on *Currency, the Central Bank of Kuwait and Banking*.⁷⁸ Sections (28) and (80) of this law prohibit every member of the Board of Directors and all managers and employees of the Kuwait Central Bank from disclosing any information obtained by inspectors from the banks, companies, or institutions subject to the supervision of the Central Bank.⁷⁹ Any violation of these sections is punishable by imprisonment not exceeding 3 months and a fine of KD. 100 to KD. 200, or by either of the two penalties in addition to any higher penalty under any other law in the penal code.⁸⁰ Section (83) imposes the same prohibition with regard to deposits in commercial banks.⁸¹

The secrecy code has been consistently followed by commercial banks in Kuwait. It is used in employment contracts and internal circulars of each bank and extends to all banking activities and operations.⁸² The status of Kuwaiti bank secrecy, however, has been debated by members of Parliament in recent years. As a result, the Difficult Debts Settlement Program was launched by the Kuwaiti government to tackle the problems of the 1982 Stock Market crash (the Manakh).⁸³ From the debate and program, the conclusion was reached that bank secrecy should be recognized as an important factor in the Kuwaiti economy. Kuwaiti bank secrecy laws encouraged the recycling of billions of U.S. dollars kept abroad to be invested in Kuwait in the ambitious privatization schemes launched recently by the Kuwaiti government.⁸⁴ This was at a time when the country was encountering an escalating deficit

76. *Id.*

77. *Id.*

78. Law No. 32, 1968, *Currency, the Central Bank of Kuwait and Banking* (as amended).

79. *Id.* §§ 28, 80.

80. *Id.*

81. *Id.* § 83.

82. *See generally id.*

83. *Proceedings of Kuwaiti Parliament*, AL-WATAN NEWSP., Apr. 23, 1994.

84. *Id.*

in the national budget. The deficit was a result of financing the liberation of the country from the Iraqi occupation and the reconstruction of its infrastructure dismantled by the war.⁸⁵

5. *Qatar*— The concept of bank secrecy and confidentiality in this country, like Kuwait, is well recognized. Section (57) of the *Central Bank Act, 1993*⁸⁶ authorizes the Central Bank to wholly or partially publish information provided to it by commercial banks carrying on business in the country. Such information is published provided that publication does not lead to disclosure of the financial affairs of a customer of any bank unless publication is approved in writing by both the bank and its customer.⁸⁷

The most explicit provision on Qatari bank secrecy and confidentiality is section (6) of Law Decree No. 15.⁸⁸ Section 6 prohibits the members of the Board of Directors, the employees, the auditors, and advisers of a commercial bank from divulging any information relating to any customer without obtaining a prior written approval from this customer. This approval is done in compliance with provisions of law or in execution of a judicial order or judgment.⁸⁹

In practice, commercial banks often receive administrative directives from the Central Bank to provide information on certain customers. Such requests often derive from police criminal investigation. In such instances, the requirements of national security prevail over the right of bank secrecy, and confidentiality.

6. *Oman*— This Gulf State established a comprehensive system on banking secrecy and confidentiality legally documented in many provisions scattered among several laws. Under article (4.4.07) of the *Banking Law* of 1974, no licensed bank, nor any director, officer, manager, or employee of a bank shall disclose any information relating to a customer of the bank except when such disclosure is required under the laws of the Sultanate.⁹⁰ In a case where a licensed bank is required to make such a disclosure, the bank must promptly give notice to the customer affected.⁹¹ Paragraph (h) of the same article provides that except as noted by

85. *Id.*

86. Law No. 15, § 57, 1993.

87. *Id.*

88. Law Decree No. 15, § 6 (1993).

89. Law No. 15, 1993, § 6.

90. Banking Law of 1974, art. 4.4.07 (on file with author).

91. *Id.*

article (4.4.07 (a)) of the same law, disclosure of information relating to a customer of a licensed bank shall only be made with the consent of such person, provided that the customer of a licensed bank may give general consent to use of the banker's advertisements related to the customer's banking business.⁹²

The Omani banking secrecy code is further strengthened by article (22) of Law No. (9), 1995 on Security Banking Deposit Systems. This article imposes a complete non-disclosure of any information relating to the bank deposits system established by this law except when it is deemed necessary by the Administration, by court order, or law.⁹³ To enhance the secrecy code, the same article makes it an offense to disclose in contravention of the law. Such disclosure is punishable under section (164) of the *Penal Code* or any other laws enacted in this respect.⁹⁴

In addition to the direct provisions on bank secrecy and confidentiality there are other indirect provisions cementing the secrecy code. For example, section (5) of the *Corporate Income Tax Act, 1987* imposes a general professional duty of non-disclosure.⁹⁵ This duty binds employees of any company to confidentiality of information unless disclosure is ordered by a competent criminal court or deemed necessary for interpreting or executing the law.⁹⁶ Also, article (348) of the *Commercial Code, 1990* provides that no bank is authorized to use the commercial papers deposited with it or exercise any rights arising therefrom except for the benefits of the depositor unless otherwise agreed upon by the customer and bank.⁹⁷ This provision serves as a blanket coverage of the banking secrecy code and covers any possible holes in the bank secrecy of Oman.

7. *Yemen*— There are two legal provisions which govern bank secrecy and confidentiality in the Republic of Yemen. One is section (45) of the *Central Bank of Yemen, 1991*.⁹⁸ This section authorizes the Central Bank to wholly or partially publish information or statements obtained from commercial banks or financial institutions in the course of its banking functions.⁹⁹ The publica-

92. *Id.* art. 4.4.07(a).

93. Law No.(9), art. 22, Security Banking Deposit System (1995).

94. Penal Code (Oman), § 164.

95. Corporate Income Tax Act, § 5 (1987).

96. *Id.*

97. Commercial Code, art. 348 (1990).

98. Central Bank of Yemen, 1991, § 45 (On file with author).

99. *Id.*

tion of such information or statements, however, is not permitted under section (45) if it divulges the financial affairs of any customer of the concerned commercial bank or financial institution unless a written approval of such bank or institution has been previously obtained.¹⁰⁰

The second Yemanese legal provision on banking secrecy is section (78) of the *Banking Act, 1991*.¹⁰¹ This section prevents any inquiry relating to the account of any customer of any bank.¹⁰² Subsection (2) of section (78) prevents the Central Bank or any inspectors appointed by it to require a bank from divulging information about the account of a customer obtained during the inspection.¹⁰³ However, it is permitted if it is required by a court order.¹⁰⁴

8. *Egypt*— The prevailing view among Egyptian bankers is that each bank is bound not to divulge any information or facts acquired while rendering services to a customer if the customer requests secrecy.¹⁰⁵ The origin of this view is found in the contract with the customer. The bank contract is viewed as imposing a passive obligation on non-disclosure.¹⁰⁶ There is no special law, as yet, on this subject though there are several proposals.

There are, however, exceptions to the principle of bank secrecy where disclosure is permitted and, in certain instances, obligatory. These exceptions can be summarized as follows:

(a) When the customer permitted or authorized the bank to disclose the information or facts to third parties.¹⁰⁷

(b) There are other persons who have the right of secrecy. Hence, they have the right to access relevant information or facts related to the contract between the bank and the customer. These persons include the attorney or the representative of a corporate customer and the heirs of a deceased customer.¹⁰⁸

100. *Id.*

101. *Id.*

102. Banking Act of 1991, § 78.

103. *Id.* § 78, subsection 2.

104. *Id.*

105. On this subject see HASSAN HOSNI, *BANKING SERVICES CONTRACTS* (in Arabic) 274-75 (1986).

106. *Id.*

107. *Id.*

108. *Id.*

(c) In cases of restriction imposed on bank secrecy in favor of public authorities or persons. It is well recognized in Egypt that in certain cases bank secrecy could be lifted for the protection of public interest. Where the legislature considers certain considerations override the interest of the customer, banking secrecy is not permitted. However, this exception should have express legislative provisions to be applied for the protection of certain public interests such as establishing the truth by the judiciary¹⁰⁹ or to collect taxes by the Tax Department¹¹⁰ or for protection of the banking sector by the Central Bank¹¹¹ or for the protection of the exchange control by the Exchange Control Supervision Department in the Central Bank.¹¹²

In the above cases, any bank in Egypt cannot raise adherence to bank secrecy as a justification to refuse disclosure of the information requested or ordered by the public authority or person concerned.

Due to the escalation of terrorist attacks on tourists, distinguished writers, and political figures, and the recent crackdown on drug trafficking in Egypt, Egyptian banks have been placed under severe pressure from the security and intelligence forces to divulge information and statements relating to accounts of customers. This is especially true in cases of international transfers of money.¹¹³ In such cases, the security of the country, public tranquility, and safety are considered to override the right of the individual to bank secrecy.

B. Restrictive View

There are some Arab countries which could variably be classified as adhering to the restrictive view of bank secrecy and confidentiality. This view is shared for various reasons peculiar to the systems and regimes of these countries. Some of these countries do recognize the concept of bank secrecy but, at the same time, allow many exceptions that make the rights of the respective regimes more important than the rights of individuals to bank secrecy.

109. See Commercial Code, *supra* note 97, §§ 17, 18. See also section (239) of the Civil Procedure Code.

110. See Income Tax Act, 1981, § 144.

111. See Banks and Credit Act, 1957, § 29.

112. See Regulations in Dealing in Foreign Exchange Act, 1976, §§ 12, 13.

113. On file with author.

Countries which have totalitarian regimes like Libya, Syria, Iraq, and Sudan do not restrict the right of bank secrecy. However, they almost deny the existence of any constitutional guarantees or the right of bank secrecy as an exemption.

The Sudanese military government, for example, has consistently continued its violation of human rights, transcending these violations to the confiscation of properties, freezing of bank accounts, and physical liquidation of political opponents.¹¹⁴ This repressive policy extends as well to authorizing the disclosure of citizen bank accounts to the Tax Department for imposition of outrageous taxes on a discriminatory basis. Such action has left many Sudanese with little confidence in the banking sector. Consequently, many Sudanese have withdrawn their money from the banks and keep it buried underground at home. However, the government in response, changed the circulating Sudanese currency notes. Those who withdrew their money were forced again to bring their money back to the banks to change it into the newly-issued currency notes. When the exchange was made, an exorbitant fee of 2% of the total money exchanged was charged.

It is stated with regret that the present Sudanese military government, though describing itself as an Islamic government, is taking these repressive measures against its own people in the name of Islam. Islam, as mentioned before, ardently calls for respect and protection of human rights including the right to bank secrecy. Not only is Sudan involved in such dubious deals as money laundering, but it has provided shelter for dirty money for a fee.¹¹⁵ The Sudanese government is mixing together all brands of repression, persecution, and corruption while raising Islamic slogans. Such a move clearly distorts the image of a country once known for tolerance and respect of human rights, including an individual's right to bank secrecy and confidentiality.¹¹⁶

114. *Id.* See also REPORTS OF THE SUDANESE ORGANIZATION OF HUMAN RIGHTS (1993-94).

115. It is reported that an unknown Sudanese landed in the Sudan with 6 million U.S. dollars in cash agreed to exchange them for Sudanese Pounds on condition that he should not be asked to disclose the source of such a huge amount.

116. Sudan was well respected for decades before independence in 1956 when it was an Anglo-Egyptian community.

V. Conclusion

As Lord Justice Bingham mentioned in his Inquiry Report on BCCI, more “problems of disclosure and confidentiality relevant to the supervision of banks can arise between a subsidiary and parent company; between regulatory and other bodies within a single country; between regulators internationally; and between regulators and other bodies internationally.”¹¹⁷ This statement confirms the complexities involved in the concept of bank secrecy. Today, no right is absolute where a country’s national security raises special considerations. As this survey indicates, the majority of Middle Eastern countries adhere to the concept of bank secrecy and confidentiality in various degrees. A strategic and resourceful area, the Middle East is bound to respond to changing circumstances making international cooperation a necessity for controlling international crimes. Hence, a legal regime of bank secrecy should be adopted to meet the changing circumstances requiring the exchange of bank information.

117. INQUIRY INTO THE SUPERVISION OF THE BANK OF CREDIT AND COMMERCE INTERNATIONAL 187 (1992).