Dirty money in the banking sector

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Abstract

Purpose – The purpose of this study is to analyze the Lebanese anti-money laundering (AML) paradigm in light of banking secrecy law. The phenomenon of money laundering that was first associated with the crime of drug trafficking developed a lot since the early 1900s to become a major threat to the world's economy today. The fight against this ever-growing crime, with multiple sources and origins, has been the centre of attention of the biggest countries in the world. Thus, the need for international AML standards was required, by which countries must abide, to ensure an effective fight against this crime. The issue of banking secrecy regulations was important to study along with the AML framework as the principles of the first totally contradict those of the latter.

Design/methodology/approach – The scope of this study first entails a qualitative technique. It will start with analysing existing legal provisions on money laundering and studying the AML framework internationally and in accordance with the Lebanese banking system. For that, websites such as GoogleScholar and HeinOnline were used to collect many scholars articles. Additionally, Laws, Regulations and Directives have been examined for the purpose of establishing the legal basis for the fight against money laundering. Moreover, an interview was conducted in 2018 with the Lebanese Financial Prosecutor, which served as data related to the operations of the Special Investigation Commission (SIC) in Lebanon, which is the Lebanese Financial Intelligence Unit. Second, quantitative research has been done. Reports of the Association of Banks in Lebanon, Financial Action Task Force Report and Annual Reports of the SIC of Lebanon have been used to gather information related to the AML/combating the financing of terrorism framework, such as customer due to diligence provisions and know-your-customer requirements and to collect statistics of suspicious reports.

Findings – The question of "How to balance the confidentiality of the Lebanese banking sector with the interest of the international community in the fight against money laundering?" was interesting to study, as it turned out that the existence of such professional secrecy does not affect the effective implementation of the AML guidelines by banks and other financial institutions. This can only happen when there is a special judicial organ to which banking secrecy is not opposable at any time, and which is the sole organ entrusted with lifting off this professional secrecy and allowing the disclosure of information to the competent authorities. Thus, the Lebanese banking system can ensure total compliance with the AML framework while still adopting banking secrecy regulations.

Originality/value – The choice of Lebanon was compelling because of the special level of protection its banking secrecy law offers.

Keywords Banking secrecy, Money Laundering – Banking Secrecy – AML/CFT

Paper type Research paper

1. Introduction

The concept of money laundering first saw the light in the USA in the early 1930s. In fact, the term money laundering initially originated in the 1920s with Al Capone and Bugsy Moran's Chicago's launderettes, by giving a clean appearance to their dirty money (Saltmarsh, 1990; Morcos, 2006). The development of the crime of money laundering pushed the international community to enact anti-money laundering (AML) standards for countries to adopt. The guidelines mostly address banks and other financial entities, through which laundering of proceeds deriving from criminal activities can occur.

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Nonetheless, adopting these AML standards was not easy to achieve in all countries, and one important issue was the presence of banking secrecy regulations. Banking secrecy requires total confidentiality of bank records and clients' information, which contradicts with the AML framework. In fact, the AML regime requires banks and other financial institutions to keep records of financial transactions, report suspicious transactions or accounts, and most importantly, to disclose information to law enforcement officials and the judiciary when an investigation is conducted regarding those transactions. Thus, the restriction on banking secrecy led many countries to abolish such laws.

None-withstanding, other countries such as Switzerland, Luxembourg or Lebanon still adopt banking secrecy laws. A study of the Lebanese AML framework in the presence of the Banking Secrecy Law of 1956 is interesting to conduct, due to the special level of protection provided by this law, and to the special judicial organ responsible of conducting investigations on accounts and transactions related to money laundering, the unique organ entrusted with lifting off this professional secrecy. In fact, banking secrecy is one of the most important principles on which the Lebanese banking sector relies ever as its law was promulgated on 3 September 1956. All Lebanese banks operating under the Central Bank is known as *Banque du Liban* (hereafter BDL) and branches of foreign banks located in Lebanon, must abide by the law of 1956. According to this law, managers and employees of these banks are bound by confidentiality over clients' names, accounts and transactions. They cannot disclose any information to any individual or public authority unless authorised by the client's written statement or by law in specific circumstances. Accordingly, banking secrecy was criticised as it can ease up the way to commit money laundering activities by deposing proceeds resulting from illegal activities in banks while hiding their source and the depositor's identity from the public and the judiciary (Morcos, 2006). For this reason, Lebanon faced important international pressure, especially from the USA, aiming at abolishing the banking secrecy law. However, knowing that banking secrecy plays a crucial role in the development of the Lebanese economic sector, where banks are the pillar of the country's stability (Association of Banks in Lebanon, 2013), the Central Bank of Lebanon and the Association of Banks in Lebanon enacted several laws and circulars that are binding to all banks and financial bodies, to keep up with international standards on AML (Association of Banks in Lebanon, 2013). These legal provisions' goal was to balance the confidentiality of the banking system while adopting AML regulations.

Looking at the development of the AML regime, from originally being a tool to fight the crime of drug trafficking to its recent application to combat the financing of terrorism, it is evident that this notion is persistently high on the political agenda today (Pieth and Aiolfi, 2004). Due to the inconsistent and different implementation of rules and insufficiency in harmonising AML provisions on the national level, it is still questionable whether domestic AML frameworks practically meet international standards (Pieth and Aiolfi, 2004). I decided to conduct this research on the effectiveness of the Lebanese banking sector in complying with the AML framework, although banking secrecy is adopted. It is interesting to deeply study the AML requirements and highlight the restrictions on banking secrecy in countering such criminal activities. The research question to be answered is the following:

RQ1: How to balance the confidentiality of the Lebanese banking sector with the interest of the international community in the fight against money laundering?

In the first part of this paper, the development of the Lebanese AML regime will be analysed in light of the restrictions on banking secrecy. In addition, an emphasis will be put on the level of protection offered by the Lebanese Banking Secrecy Law. In the second part, the role of the Special Investigation Commission (SIC) will be analysed, as it is the only organ to which banking secrecy is not opposable and that has the exclusive competence to

lift banking secrecy off suspicious accounts. The procedure of lifting banking secrecy will be described to demonstrate that the Lebanese AML regime can coexist with banking secrecy while meeting the international AML standard.

1.1 The Lebanese approach to money laundering and banking secrecy

During the past half a century, Lebanon and on a wider sphere the Middle East and North Africa (MENA) region, have gone through economic instability and political crises (Association of Banks in Lebanon, 2013). Yet, despite the crisis in the international banking sector, the Lebanese banking sector kept its stability and resisted political challenges and economic difficulties. With the increase in money laundering activities worldwide, Lebanon has been criticised for its attachment to the Banking Secrecy Law, and many international initiatives were brought against it, mostly by the Financial Action Task Force Report (FATF) and US instruments such as the Foreign Account Tax Compliance Act (FATCA) regulation of 2010 and the US Act of 2015 (Association of Banks in Lebanon, 2013). In response to these external interventions, the Central Bank and the Lebanese Government established AML guidelines (Special Investigation Commission, 2016).

The purpose of this paragraph is first to explain the history of the adoption of banking secrecy in Lebanon. Second, to analyse the crime of money laundering under Lebanese law, as the relationship between money laundering and banking secrecy is crucial for the development of the Lebanese AML/combating the financing of terrorism (CFT) framework. The problem faced by the Lebanese authorities when it comes to the disclosure of clients' information and bank records will be examined as well because it is part of the AML guidelines, which is opposed to the principles of banking secrecy. Thus, the restriction on banking secrecy due to the disclosure of information and reporting in special circumstances is important to analyse. Third, an emphasis will be put on the special way Lebanon complies with the AML/CFT regime, which is very different from other countries bound by the Vienna Convention of 1988, by exploring the level of protection offered by its banking secrecy law. Accordingly, a comparison will be conducted between the requirements of the SIC to lift banking secrecy and the European Court of Human Rights' case law on search and seizure of lawyers' offices, which requires very strict conditions to disclose information about attorney's clients due to professional secrecy.

1.1.1 History of banking secrecy in Lebanon. Lebanon has been distinguished for its special and unique features in its banking system in comparison with other Arab countries (Morcos, 2006). One of these features is Banking Secrecy. The Lebanese Banking Secrecy Law was issued on 3 September 1956, and was one of the most exhaustive, and clear legislations regarding banking secrecy in the world. Laying the foundation of the adoption of such a law is important to understand why the Lebanese government and the Central Bank of Lebanon refuse to abolish it, and express a firm long-standing position in maintaining it. These grounds are the provisions of the law itself, the geopolitical location of Lebanon, and its political liberal regime.

1.1.2 The banking secrecy law provisions. The Banking Secrecy Law of 1956 has a special and strict scope of application, which oversteps the classic framework of professional secrecy (Morcos, 2006). In fact, professional secrecy is not a professional privilege. The first entails a legal obligation for different types of persons with certain occupations such as banks employees in countries adopting banking secrecy laws, whereas professional privilege is mainly recognised for only specific professionals such as lawyers, journalists or doctors. The latter may not disclose information about their clients or patients. These principles of confidentiality lie in the ethics of their professions, as divulging such information entails a violation of the respective codes of conducts of these professions, and could end up in the prohibition of practicing the profession.

The Bank Secrecy Law of 1956 offers a high level of protection, as any information disclosed about bank clients or their assets or properties, by any employee or manager of a financial institution, could lead to civil and penal sanctions (Morcos, 2006). What characterises and distinguishes the Lebanese banking secrecy law from other laws, is that it provides strict *professional secrecy* to banks, which is very close to the *professional attorney-client privilege* for example. The Association of Banks in Lebanon clearly stated that the purpose of banking secrecy law was "to uphold the *secrecy of the profession*" (Association of Banks in Lebanon, 2013, p. 32), taking the professional secrecy to the next level. The essence of this professional secrecy of banks was established and elaborated in the text of Article 1 of the Law of 1956:

> Banks established in Lebanon in the form of joint-stock companies, and banks that are branches of foreign companies, are subjected to *professional secrecy*, provided that the said Lebanese and foreign banks obtain, for this purpose, a special approval from the Minister of Finance.

Hence, Article 1 of this Law makes it clear that banking secrecy in Lebanon almost offers the same level of protection as the professional privilege of lawyers. This is expressly confirmed by the principle of opposability of banking secrecy to law enforcement authorities and the judiciary. This means that information about banks clients cannot be disclosed unless in very strict circumstances and under specific conditions. Exceptions, where banking secrecy can be lifted, are thus, strictly limited and enumerated in the law itself (Morcos, 2006; Special Investigation Commission, 2017).

1.1.3 Geopolitical location of Lebanon. Another reason, which explains the attachment of the Lebanese Government to the Banking Secrecy Law is the geopolitical location of the country. Lebanon is located in the heart of the Middle-East region and its geographical location on the mediterranean sea makes it the link between the east and the west, especially due to the fact that the Lebanese coast was first inhabited by the Phoenicians (Morcos, 2006). In fact, Lebanon connects Europe, Africa, the Far East and the Middle-East. This is important because the number of Lebanese immigrants is three times higher than its actual residents, almost 12.4 million immigrants, compared to 4.5 million residing in Lebanon (Naba, 2014). Most of the Lebanese diaspora depose their assets in Lebanon, which attracts a lot of foreign investments because of the fact that the Lebanese economy is a free-market-economy (Morcos, 2006; USA Department of State, 2014). In addition, there is an advanced banking system with well-built financial integrity indicators, which attracts capitals (USA Department of State, 2014).

1.1.4 Political liberal regime of Lebanon. According to the Lebanese financial prosecutor, Justice Ali Ibrahim (2018), the major reason behind the Lebanese banking secrecy law is "the political democratic regime of Lebanon and its importance in the Middle-East region back then and up until today". In fact, Lebanon has a democratic regime based on the separation of powers, and the respect of fundamental human rights and liberties, whereas the rest of Arab countries' political regimes are of pure dictatorships (Ibrahim, Justice and Financial Prosecutor, 24 March 2018). This strict political regime governing the countries surrounding Lebanon incited the Lebanese Government, after acquiring its independence in 1943, to adopt the bank secrecy regulation, in the period of Arab revolutions, military dictatorships and *coups d'Etat*. These totalitarian states imposed restrictions on the freedom of their citizens, and an important amount of these subjects' properties and assets were acquired by the dictators. For this reason, citizens of Arab countries were turning to the Lebanese banking sector to depose their assets and properties in a safe and liberal political and banking system (Ibrahim, Justice and Financial Prosecutor, 24 March 2018; Morcos, 2006). Accordingly, the Lebanese banking secrecy is thus *linked to the national identity* and is one

of the specificities of the liberal regime of Lebanon amongst Arab countries (Ibrahim, Justice and Financial Prosecutor, 24 March 2018; Morcos, 2006).

For this, it is impossible to abolish banking secrecy, as banks are bound by this professional secrecy. Now that the reasons behind the attachment to the Banking Secrecy Law in Lebanon have been identified, it is crucial to study the evolution of the Lebanese AML framework.

1.2 Evolution of the anti-money laundering framework in Lebanon

Due to the Banking Secrecy Law of 1956, and the absence of AML regulations in Lebanon, Lebanon's name was first put on the Non-Cooperative Countries and Territories list (Al Khoury, 2013; Morcos, 2006) put in place by the FATF. Accordingly, the banking system has been criticised for its deficiency in regulations against illicit and organised crimes such as drug trafficking, money laundering and terrorism financing, especially that the banking secrecy law can ease up the way for the first phase of such illegal activities. In fact, Article 2 of the Banking Secrecy Law of 1956 explicitly states that not a single information may be disclosed about clients, funds or accounts held by them, except when; it is authorised by the clients themselves; or if a client is declared bankrupt; or if there is an illicit enrichment lawsuit; or a lawsuit involving banks and their clients (Association of Banks in Lebanon, 2013). According to the Association of Banks in Lebanon (2005), non-compliance with this law leads to serious repercussions. Civil and penal sanctions are imposed on those who violate the banking secrecy law, whether a financial institution, a bank or its personnel (Morcos, 2006). Moreover, Article 208 of the Lebanese Code of Money and Credit, gives the power to the Central Bank of Lebanon to disbar any non-compliant bank from its list of Banks operating under its supervision if non-compliance with the provisions of banking secrecy occur (Morcos, 2006). Consequently, this law provides total confidentiality of the banks' clients and information.

For this reason, Lebanon faced a lot of pressure due to international interventions, especially the USA instruments, requesting the abolition of the Banking Secrecy Law. Nonetheless, the Lebanese Government and the Central Bank and the Association of Banks in Lebanon responded by enacting new laws and regulations, which meet international standards. In 1995, Lebanon signed and ratified the 1988 United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Morcos, 2006; Association of Banks in Lebanon, 2013). In 1996, the Association of Banks in Lebanon (ABL) issued a Due Diligence Convention on the commitment by banks to Combat the Laundering of Illegal Drug-Trade Funds, which effectively entered into practice on 20 February 1997 (Association of Banks in Lebanon, 2013; Morcos, 2006). According to the Association of Banks in Lebanon (2013), this Due Diligence Convention highlighted four major objectives, namely, mitigating the risk of money laundering activities through the adoption of *Know-Your-Customer* procedure; controlling the reporting of suspicious transactions; vetting and assessing transactions amounting to $10,000 or more; and providing professional training for banks' personnel and raising awareness among the staff for combating money laundering.

This convention was then followed by Law No. 318 of 20 April 2001, issued by the Central Bank against money laundering (Morcos, 2006; Association of Banks in Lebanon, 2013; Special Investigation Commission, 2017), which defined the crime of money laundering in its Article 2 as such:

> Concealing the true source of illicit funds or giving a false justification to this source, by any means, knowing that the funds involved are illegal. 2-The transfer or use of funds to purchase movable or immovable property or to carry out financial transaction with the aim of concealing or

> disguising their illicit origin or with the intent to assist any person involved in the commission of any of the offences set out in article 1 to avoid prosecution, knowing that the funds in question are illegal.

Following Law No. 318 of 2001, the Central Bank of Lebanon issued Basic Circular No. 83, Regulations on the Control of Financial and Banking Operations, addressed to banks and other financial institutions. Its main objective was to reinforce the Due Diligence convention and Know Your Customer requirements, and thus, it stated in its Article 3 (3) that:

> Regardless of the amount involved, the employee in charge of performing the operation must check the customer's identity when noticing that, on the same account or on multiple accounts held by the same person, several operations are being carried out for amounts that are separately less than the minimum specified in Paragraph 2 of this Article but totalling or exceeding USD 10,000 or its equivalent. The same identity checking must take place if the employee suspects one of the customers of a money laundering or terrorist financing attempt.

Law No. 318 of 2001 also created in its Article 6 a new independent legal body known as the SIC:

> The Central Bank shall have an independent body of a judicial nature, enjoying a moral personality, not subject to the authority of the Bank in its business practices, the "Special Investigation Commission" or "The Commission".

The Commission's task is to investigate cases, which are suspiciously linked to money laundering activities or to the financing of terrorism and illicit enrichment. It can decide to freeze temporary the suspicious accounts, and investigate, to have sufficient evidence, to take the appropriate decisions as to whether keep it as traceable accounts or to lift the banking secrecy off these concerned accounts, before sending a certified true copy of its decision to the Public Prosecutor of the Court of Cassation.

Subsequent to this Law of 2001, Lebanon's name was removed off the NCCT list. According to the Lebanese Financial Prosecutor, Justice Ali Ibrahim (2018), "the SIC, which is the Lebanese Financial Intelligence Unit, is the only entity to which banking secrecy is not opposable. Every individual working within the Commission can have access to any information about any account in any bank operating in Lebanon, within the scope of hihe/sher job". This is an important and special feature of the Commission as it increases the control over bank accounts and gives it access to all clients information and transactions, without the need for an suspicious transaction reports (STR). In addition, Circular No 83, in its Article 5, declares that banks must notify the Governor of the Central Bank, who is the Chairman of the Commission when it possesses evidence or is suspicious about a potential or executed transaction or operation involving money laundering or terrorism financing. Thus, it enhances the AML guidelines, through effectively applying due diligence requirements, as it obliges banks to report suspicious transactions to the competent judicial authority after the investigation has been conducted by the Commission.

Lebanon became one of the first countries from the Middle-East and North Africa region to join the Egmont Group represented by the SIC in 2003, especially after the enactment of Law No. 553/2003 on the criminalisation of terrorist financing (Special Investigation Commission, 2016). Lebanon became a member of the MENA-FATF in 2004 (Morcos, 2006) and was awarded the first year presidency (Special Investigation Commission, 2016). Subsequent to that, the Lebanese legislator added Article 316 (bis) to the Lebanese Penal Code, on the criminalisation of the financing of terrorism (Financial Action Task Force, 2009). In 2008, Law No. 32 expanded the SIC's competence to include corruption as an illegal source of proceeds, which can result in money laundering, in accordance with the

United Nations' Convention of 2004 against Corruption (Special Investigation Commission, 2016). In 2011, The Central Bank issued Circulars 273 and 274, which impose restrictions on financial intermediation entities that engage in the cross-border movement of funds and currency, making sure it complies with the AML regulations. Lately in 24 November 2015, Law No. 44 amended Law No. 318, to become "Fighting Money Laundering and Terrorism Financing", which added the counter-terrorism financing regulations. This Law No. 44 added several other crimes as a possible source of illegal proceeds resulting in money laundering, and a specific one was tax evasion, in compliance with the American FATCA of 2010 (Special Investigation Commission, 2017). Thus, law No. 44 in its Article 4, obliges banks, leasing companies and all other financial entities, which are licensed by the Central Bank of Lebanon to implement the Customer Due Diligence requirements, to check the identities of banks' clients and of the beneficial owner, on the basis of official certified documents. In addition, it required these financial bodies to keep a record of clients' documents and transactions for a period of at least five years (Special Investigation Commission, 2017). In addition, adding the risk-based approach regarding the reporting of suspicious transactions was an important step towards complying with the FATF's recommendations (Financial Action Task Force Report, 2016; Special Investigation Commission, 2017). In 2016, Law No. 77 amended Article 316 bis of the Lebanese Penal Code related to terrorism financing to meet the international standards of AML/CFT (Special Investigation Commission, 2016). After this law, the Lebanese AML/CFT was finally fully established, in compliance with the FATF's recommendations, especially that the SIC is also complying with the mutual legal assistance requirements as it is the Lebanese FIU (Special Investigation Commission, 2017).

After establishing the Lebanese AML framework, it is important to first study its relation to banking secrecy, as these two paradigms have contradictory principles, and second, to compare the professional secrecy of banks established by the Law of 1956 and the professional privilege of lawyers in light of the ECtHR's caselaw.

1.3 Relation between banking secrecy and the anti-money laundering standards.

1.3.1 Banking secrecy and anti-money laundering guidelines: two opposed paradigms. According to Article 3 of the Banking Secrecy Law of 1956, the identity of the account holder should only be divulged to the bank's manager and his deputy. This provision provides total confidentiality of the bank's clients and the information regarding their assets and accounts (Morcos, 2006; Ismail,2005; Association of Banks in Lebanon, 2013). The article adds three exceptions allowing the disclosure of clients' information. One exception to this secrecy occurs upon the written statement of the account holder(s), allowing the disclosure of their information and assets to their legatees (Morcos, 2006; Ismail, 2005). This fundamental principle of confidentiality is opposed to the core principle of the AML framework. In fact, the latter imposes an obligation on banks and their personnel to report suspicious transactions and to disclose informationabout their clients regarding suspicious transactions, to the competent public authorities (Financial Action Task Force Report, 2016). On another hand, the Banking Secrecy law of 1956 states clearly that any disclosure of information regarding the bank's clients information and assets by bank personnel, consists of a violation of the Law, and leads to criminal and civil sanctions (ABL, 2005; Morcos, 2006). On the contrary, the FATF's 21st Recommendation, states that banks and financial entities' personnel have to be protected "by law from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision" (Financial Action Task Force Report, 2016, p. 19). This recommendation is totally in contradiction with Article 8 of the Lebanese Banking Secrecy

law of 1956, which punishes the violation of the confidentiality by bank personnel. However, Law No. 318 of 2001, amended by Law No. 44 of 2015 on fighting money laundering and terrorism financing, in its Article 4, especially Articles 4(6) and 4(7) imposes on banks the duty of reporting suspicious transactions to the SIC. This provision establishes the starting point of the restriction on banking secrecy in Lebanon. In fact, this legal instrument ensures that the AML framework is met, as it reduces the confidentiality offered by the Banking Secrecy Law of 1956 through the reporting of suspicious transactions and accordingly, disclosing information to the competent authorities. Another provision of this law is Article 6, which expressly states that the SIC is the only independent judicial entity authorised to deal with money laundering activities in the banking sector, to which banking secrecy is not opposed (Special Investigation Commission, 2016, 2017). This is another strong hit to the banking secrecy law, because this judicial entity is not bound by secrecy, and thus, is monitoring all financial transactions and has access to all clients' information and assets. This ensures total compliance with the 26th and 27th FATF's Recommendations, as these two recommendations compel countries to have a specific regulatory authority entrusted with conducting inspections and investigating suspicious transactions (Financial Action Task Force Report, 2016). This duty falls within the scope of work of the SIC, as it is the only judicial entity, which is eligible to conduct inspections and to investigate transactions after receiving suspicious transactions reports from banks and other financial entities (Special Investigation Commission, 2017; Ibrahim, 2018).

Thus, it is now clear that the Lebanese AML framework is complying with the FATF's recommendations and the international standards on AML/CFT. Restrictions on the confidentiality offered by the Lebanese Banking Secrecy Law of 1956, are essential for it to coexist with AML guidelines. It is thus essential to study the level of professional secrecy offered by this Law of 1956 to banks operating in Lebanon, in comparison with lawyer's professional secrecy in light of the European Court of Human Rights (hereafter ECtHR)' caselaw.

1.3.2 Professional secrecy of banks and professional privilege of lawyers. As it has been demonstrated, the restrictions on the Lebanese Banking Secrecy law occur in specific circumstances, and thus, lifting off this secrecy cannot occur under normal conditions, and information cannot be disclosed to the judiciary unless authorised by the SIC. Thus, restrictions on the professional secrecy elaborated by the Banking Secrecy in Lebanon takes this notion to the next level, by providing a higher level of protection than a normal Bank Secrecy law existing in Switzerland or Luxembourg. For that, it can be said that this professional secrecy in Lebanon leads to a similar level of protection offered by the professional privilege of specific professionals such as lawyers, journalists or doctors. Hence, it would be interesting to compare and analyse the level of professional secrecy in Lebanon in the light of restrictions imposed on the attorney-client privilege in the ECtHR's caselaw.

Professional secrecy of lawyers covers every aspect of the client's information and files shared confidentially with other professionals. Thus, all these files cannot be disclosed because it is considered as privileged (Pedraza and Andrés, 2016). Nonetheless, in exceptional circumstances, the professional privilege does not apply:

- if a lawyer knows the client's intention to commit a future crime;
- if keeping confidentiality leads to an innocent person's conviction;
- when the lawyer has to defend himself against a client's accusation; and
- when disclosing information can benefit the client (Pedraza and Andrés, 2016).

The ECtHR also added other circumstances under which professional secrecy of lawyers can be restricted, which will be examined in the following case law.

A. Case of André and other v France (Application 18603/03)

In the case of André and other v France, The European Court of Human Rights has stated in its 2008 judgment, that "searches and seizures at the premises of a lawyer undoubtedly breach professional secrecy, which is the basis of the relationship of trust existing between a lawyer and his client". In fact, the offices of a law firm were searched by tax inspectors who were looking for evidence against a corporate client of the firm suspected of tax evasion. The lawyers (applicants) appealed after the authorities seized documents, pleading professional privilege, as this information has been obtained through attorney-client privilege and should not be disclosed. The lawyers also claimed that the seizure has been made in the aim of proving the tax authorities' case, in a crime that does not involve the lawyers, thus violating Articles 8-1 of the ECHR, as it amounted to the searching of their houses, and thus, the interference with their right to respect of their homes. However, the Court of Cassation has rejected their appeal. The ECtHR found that the search and seizure was legitimate by law, that it has been conducted in the presence of the President of the Bar Association, and that there was a legitimate purpose for this action, that of convicting a corporation for the crime of tax evasion. However, collecting files and information about a lawyer's client to make a public case goes against this client's right not to incriminate himself. In fact, at no time were the lawyers accused of tax evasion or any other crime, and thus, the search and seizure was in the sole aim of getting evidence to prove the tax inspectors' case. For this reason, the Court decided that there was a violation of Articles 8-1 of the ECHR as the search and seizure expended beyond its normal legal context and was thus out of proportion to the aim followed. Once again, the ECtHR decided to impose a restriction on the search and seizure of a law office, highlighting the importance of the professional privilege with which lawyers are entrusted.

B. Case of Robathin v Austria (Application no. 30457/06)

In the case of Robathin v Austria, the European Court of Human Rights imposed in its 2013 judgement a restriction on the search and seizure of a lawyer's office, in light of Article 8 of the European Convention on Human Rights.

The Austrian prosecution conducted an investigation against an Austrian lawyer suspected of committing important crimes such as fraud and embezzlement. The investigative judge issued a warrant allowing the search of the office of this lawyer and the seizure of all files, bank saving books, statements and documents and his personal computer and files related to two of his clients, Mr. R and Mr. G. The Austrian court allowed the screening of all the files found on the computer of the lawyer, getting information about all his clients and not only those related to Mr. R and Mr. G. The applicant (the lawyer) thus, asked the ECtHR whether this constitutes a violation of Article 8 of the ECHR. According to the Court's reasoning, the files had been seized during an investigation targeting the lawyer himself, and thus, he is not bound by his duty to confidentiality. In addition, it stated that there was a legitimate purpose for the seizure of the files, that of the fight against crime as there was sufficient and precise allegations against him and that his actions had caused damages. However, the Court found that in light of Article 8 of the ECHR, there was not sufficient explanations from the Austrian court as to why it did not only examine the electronic evidence against the two clients but also with whom the lawyer was suspected to commit crimes. For this reason, the Court decided that the seizure of all the data of the computer was not necessary in a democratic society, and thus, restricted the use of that information, limiting by that the search and seizure of a law office.

The above-mentioned ECtHR's caselaw thus, show that to impose restrictions on attorney-client privilege, some conditions must be met. First, the warrant allowing the search should be issued by a judge based on reasonable suspicion with a limited scope. Second, the search should be conducted in the presence of an independent observer who generally is the President of the Bar Association as the search involves a lawyer's office. Finally, the search must be in accordance with the law, serving a legitimate purpose and necessary in a democratic society.

After examining those strict conditions that might lead to the restriction of professional secrecy of lawyers, it turns out that the Lebanese Banking Secrecy law is thus trying to offer the same level of protection as the professional privilege when it comes to disclosing information to the competent authorities and the judiciary. In fact, only if the SIC, after conducting its investigations in relation to suspicious transactions and reports, finds that there are enough evidence linking such transactions to a criminal activity, that it allows the disclosure of information to the Court.

For this, it is crucial to study in depth the competent judicial authority that is entrusted with lifting off banking secrecy and conducting investigations concerning suspicious transactions and accounts in Lebanon in the second part of this paper.

2. Competent judicial authority and the limitations of banking secrecy in Lebanon

The first part of the paragraph will study the role of this special organ, and the second part will explain the limitations of banking secrecy in Lebanon.

2.1 The special investigation commission

The Banking Secrecy Law of 1956 expressly mentions its limitations in Article 2. In fact, it is opposable to any individual and/or public authority:

> [. . .] except when authorized in writing by the concerned client hihe/sher heirs or legatees, or in case the client is declared bankrupt, or there is a lawsuit involving banks and their clients over banking operations.

To lift bank secrecy off suspected accounts, a special organ, the SIC, has the competence to do so (Morcos, 2006; ABL, 2013; SIC, 2016), as it is expressed in Article 6 of Law No. 44 on the fight against money laundering. Thus, the role of the SIC will be examined in depth in this paragraph and the SIC's units, and the procedure followed to lift off banking secrecy.

2.1.1 Role of the special investigation commission. Law No. 44 described the mission of the SIC (Special Investigation Commission, 2016). In fact, the SIC is the entity, which receives STR and requests of assistance from banks and financial institutions to investigate operations or transactions suspected to be a money laundering or terrorism financing crime. The SIC has to evaluate the seriousness of the evidence gathered, then take the decision as to whether temporary freeze the suspicious account/transaction. The length of this precautionary measure differs depending on whether the request of assistance is local or foreign. If it is a foreign request, the maximum period of assets freezing is one year, renewable once for six months (Special Investigation Commission, 2016). However, if it is a local request, the maximum period of assets freezing is six months renewable once for three months (Special Investigation Commission, 2016). The difference in the periods is explained by the fact that if the request of assistance or the STR is foreign, extra time is needed to conduct the investigation, and cooperate with the institutions issuing those requests or reports, whereas if it is local, the cooperation with those entities is less complex.

In addition, the SIC has to ensure compliance of banks, financial institutions and all entities dealing with huge amounts of money, expressly mentioned in Article 4 of Law No. 44 of 2015, with the Due Diligence Convention, such as checking clients' identities on the basis of reliable data or information, and by retaining copies of these documents, information or data for a period of at least five years after performing transactions or any operation. Moreover, Article 17 (2) of the same law excludes lawyers, notaries and certified accountants from such compliance. According to Article 4 (6), these measures should apply not only to permanent clients of these institutions but also to transient customers whenever there is a doubt on the client's information or if there are suspicions of money laundering or terrorist financing activities. Thus, the SIC has the task to collect and keep possession of the information received from the above-mentioned parties and any other information provided by the Lebanese or foreign competent authorities (Special Investigation Commission, 2016).

Therefore, the SIC can lift the banking secrecy off concerned accounts and/or transactions in favour of "the competent judicial authorities and the Higher Banking Commission" (Special Investigation Commission, 2016, p. 18), when there are imminent reasons to believe that it is linked to money laundering or terrorism financing. It can keep these suspicious accounts as traceable if there is not enough evidence to lift banking secrecy.

However, if an account is under investigation, the SIC can affix an encumbrance on the records concerning immovable and movable assets, and cannot be erased until doubts have vanished or until a final decision has been taken in this regard. With respect to the latter situation, the SIC has to request the Public Prosecutor of the Court of Cassation to take precautionary initiatives concerning these assets, which have no records or entries and prevent its use until the final judicial decision is made.

After briefly examining the role of the Commission, it will be interesting to discuss its units, which are responsible of the effective and correct application of the AML framework.

2.1.2 Units of the special investigation commission. The SIC is composed of four units: the Audit and Investigation Unit, the Compliance Unit, the Financial Investigation Administrative Unit and the IT and Security Unit.

2.1.2.1 Audit and investigation unit. When carrying out its tasks in relation to the filed STRs, the Audit and Investigation Unit executes analysis and financial investigation on the matter in question and on the related transaction (Special Investigation Commission, 2016). The unit gathers information provided from law enforcement authorities and the reporting entities. Once the data collected and analysed, the unit has the duty to submit to "the Commission, through the Secretary General, reports on both auditing accounts and investigations" that relate to operations suspected of constituting money laundering or terrorism financing activities (Special Investigation Commission, 2016, p. 22). Moreover, it has to provide the Financial Investigation Administrative Unit with these reports, in order for it to store the information in its database. Finally, it has to inform the Compliance Unit of these reports, for it to take it into account when conducting assignments at the concerned reporting bodies.

2.1.2.2 Compliance unit. This organ is responsible of supervising and monitoring the compliance of banks and other entities with Law No. 44 on AML/CFT, Circular No. 83 of the BDL and its amendments related to the Control of Financial and Banking Operations for AML/CFT, the circulars of the SIC and the BDL's prospective Circulars on AML/CFT (Special Investigation Commission, 2016). In addition, this unit has the task to prepare reports and statistics about banks and financial entities' compliance with the AML/CFT measures, and to request these reporting bodies to "take corrective measures when instances of non-compliance or partial non-compliance are noted" (Special Investigation Commission, 2016, p. 23) and to monitor the effective implementation of the corrective initiative. The Unit

should also supply the Financial Investigation Administrative Unit with its compliance reports to be entered into the database. Moreover, it should advise the Audit and Investigation Unit of the compliance status of banks or other financial institutions if investigations are launched in these entities concerning money laundering or terrorist financing (Special Investigation Commission, 2016). Thus, its main task is to discern and report suspicious transactions and examine the effective implementation of AML/CFT regulations.

2.1.2.3 Financial investigation administrative unit. This unit is responsible of managing the database of the SIC. It keeps records of the STRs, return on assets (ROAs), and spontaneous disclosures received from both the local and foreign sources (Special Investigation Commission, 2016). Data is reviewed and updated periodically to keep up with the accuracy of the information. This data contains investigations' information in relation with suspicious transactions and/or accounts and the names of potential or involved individuals in money laundering or terrorism financing (Special Investigation Commission, 2016). It also has the task to coordinate with the IT and Security Unit to update the SIC's website. Finally, it submits recommendations to the Commission on methods to "introduce internal auditing procedures to all sectors" (Special Investigation Commission, 2016, p. 24) to prevent from introducing money laundering practices in those sectors.

2.1.2.4 Information technology and security unit. This unit's main task is to manage and update the hardware, software and the applications and infrastructure of network communications related to the day-to-day functioning of the staff (Special Investigation Commission, 2016). This also helps in securing the communication and information exchange between the SIC and the reporting bodies. It is also responsible of establishing security stratagems for data to ensure its efficiency. Furthermore, it is the organ whose task is to build a website to highlight the Lebanese AML/CFT policies (Special Investigation Commission, 2016).

After reviewing the units of the SIC, it is now important to study the procedure of lifting banking secrecy off suspicious accounts, and thus, elaborating more on the limits of banking secrecy.

2.2 Limitations of banking secrecy in Lebanon

2.2.1 Procedure of lifting banking secrecy off suspicious accounts. As the Financial Prosecutor is a member of the SIC, along the Governor of the BDL, the Chairman of the Banking Control Commission, and two other members appointed by the Council of Ministers, I conducted an interview with the Lebanese Financial Prosecutor Justice Ali Ibrahim in March 2018 to gather concise and accurate information about the procedure of lifting off banking secrecy when there is a suspicion that an account or transaction is linked to money laundering or terrorism financing.

After receiving STRs or requests of assistance from banks, financial institutions or any other body, the SIC sends its report to the Public Prosecutor of the Court of Cassation. The Public Prosecution's office has the choice to either:

- start investigating the case and then forward the file to the Financial Prosecution's department, for it to continue the proceedings; or
- to directly transfer the report to the Financial Prosecution, which will automatically start investigating the case, and later, continue with the proceedings before the Court.

In fact, after cooperating and receiving information from Lebanese and/or foreign official authorities and assessing and analysing the data related to the case under examination, the Commission should decide to either conduct the required investigation or to take notice of the suspicious assets.

Article 8 (2) of Law No. 44 of 2015, expressly mentions that the Banking Secrecy Law *is not* opposable to the delegated person conducting the investigation:

> "The Commission" shall conduct its investigations through a delegated person chosen amongst its members or its concerned officers, or through its Secretary General or an appointed auditor. All these persons shall perform their duties subject to confidentiality obligations, and without being opposed to the provisions of the Banking Secrecy Law of September 3, 1956.

Frequently, it is the Financial Prosecutor who conducts these investigations. If the investigation shows that the evidence is serious and undoubtably link the accounts or assets to a money laundering or terrorism financing activity, the SIC decides to lift banking secrecy off these accounts and freeze it temporary or prohibit its use (Article 8(4) of Law No. 44 of 2015). A certified copy of this decision should then be sent to the Public Prosecutor and to the Higher Banking Commission, in addition to the concerned person and to the Lebanese or foreign entity, which provided the STR or request of assistance in the first place. Then, the proceedings before the Chamber of Accusation of the Court of Cassation start, and the Court should rule on the case and issue a final decision. If the Court's decision is to dismiss the case, no prosecution will take place and the judgment will state the innocence of the frozen assets/account holder(s). In addition, the judgment should be notified to the SIC through the Public Prosecutor, and it is then the SIC's responsibility to notify the decision to the financial institution and concerned party.

However, if the final ruling of the Court was to prosecute the account holder(s) for the crime of money laundering or terrorism financing, the frozen assets or accounts should be "confiscated to the benefit of the State" (Article 14 of Law No. 44 of 2015), unless the owner or account holder can prove his or her legal rights on these assets.

Article 14 of Law No. 44 adds that:

> The confiscated assets may be shared with other countries, whenever the confiscation results directly from coordinated investigations or cooperation between the concerned Lebanese authorities and the concerned foreign body(ies).

The penalty is imprisonment from three to seven years, and a fine, which can reach three times the amount laundered.

2.2.2 Effective implementation of the anti-money laundering/CFT framework in Lebanon. According to the Special Investigation Commission (2016), the number of received STRs in 2016 was 470 of which 363 local and 107 foreign cases. From the local ones, out of 363, 141 STRs were dismissed, which is equivalent to 30 per cent, whereas the number of investigated cases was 161, which is equivalent to 34.3 per cent. Thus, these statistics show that Lebanese banks, financial institutions and other bodies are effectively complying with the AML/CFT regulations despite the application of the Banking Secrecy Law, by reporting suspicious transactions to the SIC, after applying due diligence requirements and *know-your-customer* provisions (Figure 1).

As for the 32 per cent of pending cases, which consisted of 97 cases in 2015, the SIC has passed on 61, dismissed 31 and has only five pending cases left (Special Investigation Commission, 2016). This shows that the SIC has lifted Bank Secrecy off suspicious accounts, after studying the information provided by local and foreign authorities and conducting exhaustive investigations.

After the enactment of Law No. 44 of April 2015, which added new crimes as a source of the illegal money, the percentage of STRs increased by 27 per cent in Lebanon (Special Investigation Commission, 2017). In fact, the reporting of suspicious transactions related to embezzlement of private funds and forgery were the highest among the list of crimes as the

	Received Cases		Status of Received Cases					
	Number	% of Total	Passed on*	% of Total	Not Passed on	% of Total	Pending	% of Total
Local	363	77.2%	161	34.3%	141	30.0%	61	13.0%
Foreign	107	22.8%	88	18.7%	9	1.9%	10	2.1%
Total	**470**	**100%**	**249**	**53.0%**	**150**	**31.9%**	**71**	**15.1%**

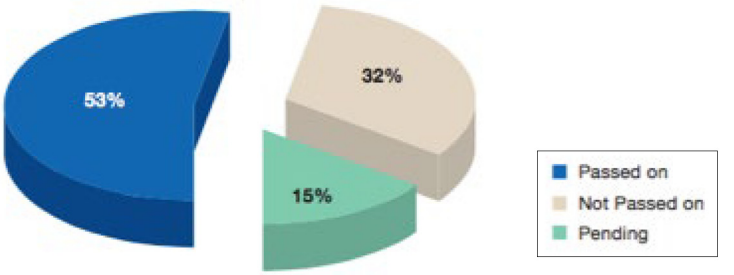

Figure 1.
Statistics of received cases (Special Investigation Commission, 2016, p. 49)

illegal source of proceeds to be laundered by the year 2017 (Special Investigation Commission, 2017). Thus, banking secrecy is not an instrument that stops from prosecuting money laundering activities, as the table below shows (Special Investigation Commission, 2016) (Figure 2).

	Received Cases	Investigated Cases		Passed on				Pending Cases	
				Information Provided (Including covered by Bank Secrecy)		Bank Secrecy Lifted			
	Number	Number	% of Total	Number	% of Investigated Cases	Number	% of Investigated Cases	Number	% of Total
Local	363	302	64.3%	124	41.1%	37	12.3%	61	13.0%
Foreign	107	97	20.6%	83	85.6%	5	5.2%	10	2.1%
Total	**470**	**399**	**84.9%**	**207**	**51.9%**	**42**	**10.5%**	**71**	**15.1%**

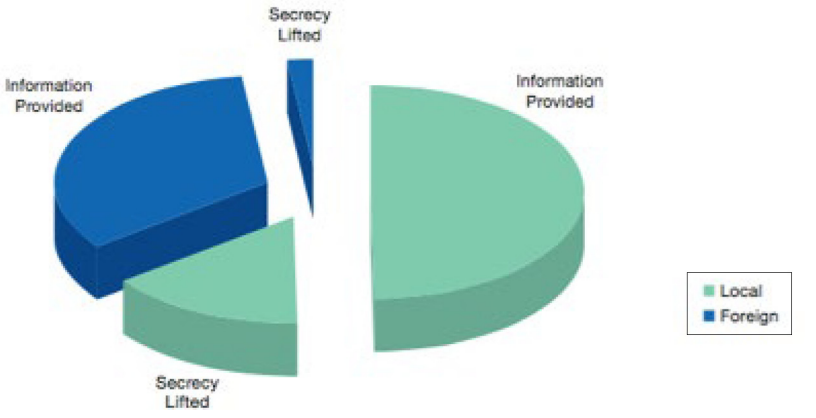

Figure 2.
Statistics of received cases (Special Investigation Commission, 2017)

Concerning the cases passed on, most of them were covered by Banking Secrecy, and thus, it has been lifted in favour of investigating cases and prosecuting the offenders. This confirms that the Lebanese Banking system is effectively complying with the AML/CFT regulations, and the FATF's recommendations, and thus, Banking Secrecy is not an obstacle anymore in the fight against money laundering, and can thus, co-exist with effective AML guidelines.

3. Conclusion

As the scope of laundering of proceeds deriving from criminal activity has expended in recent years, the issue of money laundering and terrorism financing is very high on the political agenda today. This ever-growing phenomenon incited the international community in the late 1980s to act on an international level, by enacting the first international legal instrument in 1988, that of the Vienna Convention, which was then followed by the Basel Statement of Principles. Those instruments respectively set the groundwork for the fight against money laundering and the creation of the AML framework.

On another hand, some countries adopting banking secrecy regulations have been first criticised for adopting such laws because of the confidentiality requirement, which opposes to the AML reporting and disclosure of information requirements. Taking the example of Lebanon in this study, a country located in the heart of the Middle-East region was interesting to examine, due to its special Banking Secrecy Law of 1956. This law offers a high level of protection of banks clients' information, and sets specific conditions under which banking secrecy can be lifted. In fact, the procedure of lifting banking secrecy off suspicious accounts falls only within the scope of work of a unique organ, the SIC, which is the Lebanese Financial Intelligence Unit. This organ is entrusted with conducting investigations related to STR that financial entities provide it with, and is the only one to which banking secrecy is not opposable. In fact, the banking secrecy law in Lebanon offers a high level of protection because banks cannot disclose information to the judiciary and competent authorities unless authorised by the Commission after investigations have been conducted, in opposition with the obligations that AML guidelines impose on bank employees. This special feature imposes thus, restrictions on lifting off banking secrecy as specific conditions should be met to lift it off. This restriction is very similar to the restriction imposed on the professional privilege of lawyers, as there are specific conditions to be met before allowing the search and seizure of law offices, as established by the European Court of Human Rights' caselaw. Nonetheless, it has been proved according to the 2016 and 2017 reports of the Lebanese Financial Intelligence Unit that banking secrecy is not stopping the effective implementation of the AML framework in Lebanon, as STR are being filed to the Commission, investigations are being conducted and when there are enough evidence concerning money laundering activities, banking secrecy is being lifted and information is being disclosed to the competent authorities. Thus, there is no link between the existence of banking secrecy regulations and the effective fight against money laundering as long as there is a special judicial organ to whom the professional secrecy is not opposable and which is responsible of conducting investigations and prosecuting cases. Accordingly, it can be deducted that the Lebanese AML framework is effectively implemented although banking secrecy is adopted, and that these two paradigms can co-exist in the presence of the SIC.

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