



## Lebanon Banking Secrecy Amendments Assessment

**Banking secrecy law amendments adopted on July 26 represent a substantial reform of banking secrecy regime in Lebanon, bringing it closer to international standards and global good practices.**

Importantly, the numbered accounts were abolished and the access to banking information broadened, but few key deficiencies remain, pertaining to: (i) access to banking information by the Banking Control Commission, the Banque du Liban and the National Institute for the Guarantee of Deposits; (ii) access for performing administrative functions; (iii) mechanism for the law enforcement access; and (iv) criminal liability for breaching the financial secrecy.

1. While the adopted banking secrecy amendments provide access to banking information to the judiciary authorities, anti-corruption commission and tax administration, the **access should be also granted to the BCC, BdL and the NIGD**. The banking secrecy law should grant powers to access banking information to all relevant authorities, including explicitly listing all relevant agencies and scope/mandate for access. In addition to the references to access of BCC and BdL to banking information in the sectoral laws (i.e. Money and Credit Code) as outlined in the adopted amendments, the list of the agencies with powers to request direct access to banking information and the grounds should be included in the banking secrecy law, as a specialized law with primacy in regulating banking secrecy. Moreover, the current mechanism for regulating the access by the BCC and the BdL requires the approval by the Council of Ministers (with proposal from Minister of Finance after consultations with Central Bank and BCC), which may limit the operational independence of the BCC and the BdL and result in undue delays.
2. The grounds to access banking information were extended to a broad range of financial crimes, but the new article 7 appears to focus on the banking information access as part of criminal investigations. The banking secrecy law **should provide for the access to banking information for relevant administrative functions**, which entails adding administrative agencies (e.g. Banking Control Commission) to the list of agencies empowered to access financial information as well as establishing in the law the mechanism for administrative access, including possibility of production of information protected by banking secrecy without specifying a particular account or a client (e.g. a general order regarding all accounts and clients that satisfy certain criteria; reporting of information protected by banking secrecy on a periodic or systematic basis). For example, the access for tax administration should cover not only purposes of combating tax evasion (criminal justice), but also administrative functions, such as conducting tax audits and other measures to strengthen tax compliance.
3. While the adopted amendments rightly provide access to banking information to the judiciary authorities, the reform package should establish the **mechanism for the law enforcement access**, including the roles and powers of public prosecution and investigative judges as was proposed in the Government's amendments to the Criminal Procedure Code. Notably, it should include the right of investigative judges to access the banking information directly. The mechanism for banking information

access by law enforcement is a critical part of the banking secrecy reform and should be included in the legislative package, as it will determine the effectiveness of the reformed regime in ensuring transparency and effective detection and investigation of crimes.

4. The adopted amendments preserve strong **criminal liability for breaching the financial secrecy** – the sanction of imprisonment of between 3 and 12 months (doubled on recurrence) appears disproportionate and may have stifling effect on detection and disclosure of criminal or suspicious activity. We suggest to the authorities to remove criminal sanction of imprisonment for breaching the financial secrecy from the draft law, as the high amounts of available fines seem to provide a proportionate and effective remedy.

We also suggest to the authorities to consider returning to the general provisions on information exchange between all relevant authorities that were removed from the Government's draft (Article 7.3), which are important to ensure effective detection and investigation of illicit activity. Establishing the possibility of the information exchange between the tax authorities and the law enforcement in the adopted amendments is a step in the right direction.

The adopted amendments establish that all banks refusing to provide banking information should be referred to the Higher Banking Commission, which can be efficiently replaced by the right of regulatory, supervisory and judiciary bodies to apply the fines directly.

Abolishment of the numbered accounts is a welcome development and we suggest prohibiting withdrawal of funds from the numbered deposit accounts and safes until the application of the full scope of AML/CFT measures, including customer due diligence and record keeping, and conversion of numbered accounts into regular accounts is completed by banks.

We also suggest to the authorities to consider reinstating the provisions on establishment of a bank account registry. We consider the bank account registry a useful tool, including for law enforcement and supervision of financial sector in Lebanon, and propose to the authorities to consider retaining introduction of the bank account registry in the law as a general strategic direction of the financial sector oversight

Retroactivity of the adopted amendments is being actively discussed by the policy makers and civil society. In our preliminary view, provisions referring to retroactivity are not required to be explicitly outlined in the banking secrecy law amendments, as the banking secrecy reform does not represent retroactive application of new requirements, but broadening administrative powers to access the data that is already being kept by the financial institutions. We would be glad to discuss this understanding of retroactivity applicability and whether any revisions to the text of the amendments are needed to ensure access to banking information from the earlier periods. If according to the Lebanese legal regime retroactivity clauses are required to provide access to past transactions, all earlier customer due diligence files, account balances at certain points in time, etc., the period covered by the access to the banking information should be equal to at least the number of years that the financial institutions are regulatory required to keep the records.