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The Impact of Banking Secrecy on Economic and Financial Crime in Romania

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I. Introduction

Radical economic and political transformations have occurred in Romania since the Revolution of December, 1989. The aftermath of the Revolution led the country toward a market economy and to citizens' demands for basic rights and liberties according to international standards. Likewise, the return to a market economy represents a large structural reform, including institutional and organizational changes.

The main directives for economic and financial reform are: (1) the privatization of property; (2) the reform of fiscal, financial and banking systems; (3) the liberalization of pricing and tariffs; (4) the liberalization of foreign trade; (5) the unification of currency rates of exchange; and (6) reform at the micro-economic level.

II. Banking Reform

The banking reform system is organized on two levels: The central bank and the commercial banks. According to Romanian law, beginning in November 1990, the National Bank of Romania serves as a central bank of the Romanian state. Thus, it is the only bank which establishes and monitors monetary credit, currency, and foreign payments. This ensures the supervision of activities of all banking societies in the country.

The supervision of commercial banks is important because of the vital role of the banks in creating a market economy in the banking and financial fields. These banks are the main depositors, besides the CEC,[1] of all available funds and savings of the popula-

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1. National Saving House.

tion. The loss of this function would mean the loss of control of the inflation process and would result in social and economic turbulence. Likewise, the banks administer the payment system of the national economy, ensure the financial intermediation between the population's money and business, and check the spending of money.

Considering the importance of the banking system in the reform process, it has become necessary for the role granted by Laws No. 33[2] and 34/1991[3] to the National Bank to survey banking activity and to concentrate efforts on fighting illegal actions, as well as relating to specific banking and financial activities. In this respect, the National Bank, the Court of Accounts, which is authorized by the law under article 236 of the Penal Code[4] and the police units which specialize in fighting economic and financial crime play an intricate role in fighting money laundering.

Under the governance of the laws, every banking society is able to find particular ways of acting in the banking field, however there are compulsory standards to be adhered to. These standards include the following: the banking societies work only with National Bank authorization and cannot be set up as societies with limited responsibility; the subscribed capital must be paid in full within two years from the date of creation and the minimum quota at the moment of subscription must be 50%; and finally, it is forbidden for the banking societies to conclude contracts or agreements, or to adopt practices which could ensure them leading positions on the monetary, financial, or currency market.

The banking societies are obliged to open current accounts at the National Bank and to maintain minimum compulsory reserves within the limits established by the National Bank. The borrowing of money is an important activity of the banks and is made upon a contractual basis. After the repayment term, the credit terms available are short term, lasting for a period up to 12 months; medium term, lasting between 1 and 5 years; and long term credits, lasting for a period of over 5 years.

When banks grant credit, they are obligated to check the safety of repayment on the settling day. They are also permitted to ask the applicant to guarantee the loan with immobile and mobile goods.

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2. Law No. 33, 1991 (Rom.).
3. Law No. 34, 1991 (Rom.).
4. Penal Code, art. 236 (Rom.).

The following operations are forbidden by banks; transactions with mobile and immobile goods;[5] granting credits to customers, provided that they buy or sell the shares of the bank; receiving property deeds, deposits, or other values when the bank is in a position of stopping the payments; performing deposit operations if most of the deposits belong to the bank's employees; holding shares in a company, which activity is not linked to banking activity over 20% of the social capital; granting credits to one customer in excess of 30% of the capital and reserves of the bank; staff use of the depositor's name, or the name of the owner of the account, for personal use or to transmit the data to other rival companies. The banking societies are obliged to periodically present to the National Bank a balance sheet and an account of profit and losses, which are then confirmed and published only after approval of the censors' commission of the banking society. Similarly, the individual banks are obligated to present to the National Bank a monthly report on their financial situation.

III. Legal Stipulations Concerning Bank Secrecy

Bank secrecy is stipulated in articles 46-48 of Law No. 33,[6] concerning banking activity, as well as article 54 of Law No. 34, from March 29, 1991,[7] concerning the Romanian Bank status, which characterizes the banking operations as "opaques."[8] In order to understand why the banking operations are called "opaques," it is useful to examine the relevant portions of the law, which are listed here:

> Art. 46. The staff working in a bank which is subject to the stipulations of Law 33/191 is not allowed to use or disclose, neither during nor after the working day, facts or data which, if disclosed, could damage the interests or the prestige of a banking society or customer of one.[9] The above provision also concern the persons obtaining this information from reports or formal documents.[10]
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> Art. 47. Any member of the Board of Directors, as well as any person participating in banking activity, is obliged to

5. Except the ransom for their own shares for diminishing social capital.
6. Law No. 33, *supra* note 2, arts. 46-48.
7. Law No. 34, *supra* note 3, art. 54.
8. *Id.*
9. *Id.* art. 46.
10. *Id.*

> keep professional secrets[11]. The disclosure of professional secrets can be done only within a judicial procedure, based on the approval of the Board of Directors to whom this has been relegated.[12]

The staff of a banking society cannot use banking information discovered through the course of their employment for personal purposes. The stipulations of paragraphs 1 and 2 are also valid for persons who get such information from control and surveillance activity, as well as from reports or other official documents.[13]

> Art. 48. The name of the depositor, or of the account owner, as well as the operations registered in his accounts represent professional secrets.[14] These stipulations refer to banking staff from the commercial banks, who work in commercial societies, according to Law 31/1990 concerning the commercial societies.[15]

According to article 57, the staff of the National Bank and the members of the Board of Directors, "are obliged to keep secret any information which is not to be published, about which they have been informed during the fulfillment of their duties and they are not to use this information for personal gain, any misbehavior is punished according to the law."[16] The severity of the penalty in such cases is evidenced by the possible prison term ranging from 6 months to 5 years.[17]

IV. The Impact of the Existing Legal System

Unfortunately, the existing legal system lent itself to actually promoting illegal banking operations. Between 1990 and 1994, 1,147 offenses were registered under the law.[18]

The offenses committed within the banking system are classified into several categories, such as swindling bank employees; the employee's use of banking deposits in a fraudulent way favoring private economic agents over state economic agents; using the bank assets in the interest of the bank employees; committing

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11. *Id.* art. 47.
12. *Id.*
13. *Id.*
14. *Id.* art. 48.
15. *Id.*
16. *Id.* art. 57.
17. *Id.*
18. *See id.* arts. 97, 255, 309, 313. The number of offenses are on file with the author.

acts of corruption in granting credits; and committing fraudulent actions against the bank in complicity with other persons. In a period from 1994 to March 1995, 301 banking employees have been involved in corrupt acts. In 1995, Marcel Ivan, president and shareholder of the Credit Bank brought attention to the problem.

The incriminated former president, together with the bank directors, organized and carried on fraudulent bank bookkeeping operations, which led to a swindling of the shareholders and called into question the existence of banking capital. The commercial society Credit Bank S.A., a shareholder society, began the covert activity with 157 actual shareholders.

Beginning in 1991, Marcel Ivan, president and administrator of Credit Bank, aimed for a fictitious increase of the social capital, and proceeded to perform a reevaluation of the existing capital by carrying out a fictitious increase, from 2.7 billion lei to 3.4 billion lei.

He proceeded in the same way in 1993, carrying out a new fictitious increase of the social capital, this time by registering in the society bookkeeping two checks valued at eleven million U.S. dollars. The false balance sheet has been rejected by the National Bank and the Minister of Finances.

The eleven million U.S. dollars were, in fact, deposited in a bank from Tel-Aviv, representing 33 million shequels, currency which is not agreed upon in banking operations. This amount represented a deposit, not an increase of the social capital. Furthermore, it was immediately transferred as credits to four foreign companies.

On September 8, 1994, Credit Bank concluded a guaranty contract with Queen Investment Inc., a society registered in the Marshall Islands, but having headquarters at Bucharest. The contract guaranteed the payment of 12.83 million U.S. dollars that was loaned to four companies. The difference of 2.83 million U.S. dollars represents expenses, commissions, and duties.

Ivan granted large loans which exceeded the level of 20% of its own funds. The same conditions of granting credits to the founding members, without the National Bank approval, were valued at 135.3 billion lei. At the same time, buildings, cars, and ships at underevaluated prices had been purchased. For example, Ivan purchased a building at the price of 150,000 U.S. dollars and registered 300,00 U.S. dollars. Also, Ivan and four other directors had asked for, and received, bribes for granting credits in disadvantageous conditions for the bank.

Among the stipulations of the above mentioned articles, only that which "reveals the banking secret" is mentioned in art. 47.[19] After that, in Law 87/24.10.1994, art. 3, it is stipulated that "[a]t the request of the control bodies, the banks are obliged to inform about the accounts opened by customers, but not their use."[20] Although, "the revelation of the banking secret" is possible, it is a difficult procedure. The information refers to an operation registered as a procedure; an operation registered at a county branch; or the Board of Directors meetings which take place monthly and, at the private banks, quarterly. In order to start a judicial procedure and to obtain the Prosecutor's authorization, it is necessary to have strong evidence.

The only control body of the commercial banks is the National Bank, which can examine the evidence, accounts, and operations, exclusively for carrying out the aims of banking supervision and, in case of serious offenses of the banking rules, the National Bank of Romania can decide, on a case by case basis, specific measures of surveillance and preservation of the banking society in order to "keep, improve and reestablish the financial position of the respective banking society."[21]

The legislation in force in Romania is relatively camouflaged. The investigation structures have at their disposal, the data received from the economic agents or employees when they dispute illegal profits, as is the case with Credit Bank, when the National Bank still had the opportunity to effect financial verification.

V. Money Laundering In Romania

In Romania, the appearance of zones of criminality, high violence, drug trafficking, and economic financial offenses, make the whole phenomenon of money laundering very difficult to combat. This has been attributed to a lack of legislative framework and specialized bodies for neutralizing such phenomenons.

One feature of money laundering in Romania is the operation of converting dirty money. Transactions and commercialization of certain goods and values are usually done outside financial banking and credit structures.

It is noticeable that the preoccupations of some strong mafia networks from western countries carry out Romanian laundering of

19. Law No. 34, *supra* note 3, art. 47.
20. Law No. 87/24.10. 1994, art. 3 (Rom.).
21. Law No. 34, *supra* note 3, art. 32.

funds by their placement here, and by acquiring buildings, lands, art objects, and commercial companies. In Romania, there is no value exchange which represents, according to experts' opinions, institutions intensively used in money laundering. At present, less sophisticated methods for obtaining dirty money and its recycling are being used.

The illegal activities, which are most profitable, are the acts of large scale smuggling and fiscal escaping. The most frequent methods used for money laundering in Romania are the smuggling of foreign means of payment across the border traffic with false currency and smuggling of radioactive substances. Another method of money laundering is the placement of large amounts of money obtained from low offenses, in the so-called CARITAS type lotteries. All the illegal activities are hidden under the cover of the "banking secret," the confidentiality of the operations, and of illegal business.

VI. Proposal For Improving The Legal Frame

The legal measures have to aim for the improvement of the judicial system, the reinforcement of the financial and credit structures, and real strengthening of international co-operation. It is possible that in the future, legal settlement will have to be broadened. This means the inclusion of all serious infractions and those which generate important material advantages.

The proposals for criminalizing the infraction of money laundering consider the Conclusions and Recommendations of the European Council Conference on Money Laundering in the states in transition, which took place at Strasbourg. It is possible that the recommendations included in these international documents may be applied, not only to the banks, but also to other nonbanking institutions (populations, borrowing companies, pawn houses). The legal regulations which are specific to the financial banking system will prove their efficiency only when operating specialized structures in fighting against money laundering. The necessity of a National Office of Coordinating the Fight against the Phenomenon of Money Laundering has to be directly subordinate to the government, using experts from financial, banking, and judicial systems. In the meantime, at the Conference of Strasbourg, it was recommended that states analyze the possibility of setting up an interministries body for co-operation and coordination of economic crime fighting.