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Bank's Duty of Confidentiality under Cameroonian Law: Absolute or Qualified?

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Abstract

The idea of people keeping or entrusting their money (finances) and other precious items with financial Institutions was as a result of the reliable and secured nature of these institutions. These are aspects which instilled confidence and trust in the minds of the customers dealing with financial Institutions. The situation, however, gets worrisome when these same bankers and personnel of Financial Institutions carry to the public information concerning their customers and the state of their finances which were and are at all times expected to be secret. The disclosure of customers' information have often been seen as a breach of the bank's duty of confidentiality and to an extent has affected the rate of financial inclusion by the unbanked and under banked in certain societies around the world and in some Cameroonian localities. This situation has even worsened with the advent of electronic banking coupled with the movement of illegal funds from Money Laundry and Cyber Criminality putting in question and jeopardy the trustworthy nature of Financial Institutions by some customers. These criminal issues during court proceedings most often warrant that information about banking customers and the state of their finances be release so as to unveil criminal acts and punish fraudsters, which often have been considered by customers to constitute a breach of the bank's duty of confidentiality which the customers vehemently castigate. This paper thus aims at investigating if the bankers' duty of confidentiality is an absolute duty.

Keywords: *Bank, Banker, confidentiality, customer, financial institution, secrecy, trust, illegal funds, criminal issues*

INTRODUCTION

As the years unfold, customers of Financial Institutions have witnessed their financial information been exposed by these institutions and their personnel's thereby causing them to lose confidence and trust. This situation has even worsened with the introduction of sophisticated technology in the banking sector (e-banking)bringing to place banks and non-banking institutions both providing financial services. This has thus impacted legislators around the world to have a rethink of the respect of banking secrecy and how to reinforce it especially with the rapid proliferation of e-banking given that banks play a very essential and inevitable role to the growth of every economy. Banking secrecy has thus become a fundamental right that merits protection [1]. In this sense, it guarantees the private economic sphere of the bank's customers. With the duty of banking secrecy, customers are assured of the possibility of being protected against the indiscrimination of others and even the authorities.

The duty of banking secrecy emanates from an existing contractual relationship between the banker and the customer. Fundamentally there exists a dual classification of contractual obligations between the parties to a contract. These obligations are either expressed or implied. Express obligations are either verbal or written, while implied obligations are those applicable to the contract by facts of law or way of the conduct of the market. The bank's duty of secrecy is an implied contractual obligation that the bank enters into qualified

obligations not to disclose information concerning the customer's affairs without his consent [2] or prior authorization by way of law. In Cameroon the duty has been consecrated by statute but is exercised within defined limits making it qualified as such. The latter makes it worrisome and complex, giving the fact that most customers rely on an absolute nondisclosure to third parties of their financial information to entrust and safeguard their funds with Financial Institutions. It is worth noting that the CEMAC legislator has also consecrates the duty of confidentiality, [3] but whose sphere has been expanded by the national legislator.

CRYSTALLIZATIONS OF THE NOTION OF SECRECY UNDER CAMEROONIAN LEGISLATIONS AND THE NEXUS WITH ENGLISH CASE LAWS

Banking secrecy was introduced in Cameroon by Section 45 of the 1985 Ordinance [4] and is today regulated by Law No/2003/004 of 21 April 2003 [5].This law places the banker under the obligation to keep the customer's affair secret. This is by way of an implied duty of confidentiality. This duty is simply explained on the bases of economic policy. In effect the bank's duty of secrecy is enhanced by the fact that the banker has very detailed knowledge of the customer's financial affairs. All these details are acquired by the bank while acting as its customer's pay master and receiver of amount due to him and frequently in its rule as the major or sole financier.

The notion of secrecy in banking is closely related to security to the extent that when a company's system lacks adequate security, customer's privacy is threatened. In countries like the United States of America, some states by way of legislations require companies to notify consumers when there is a data breach. In a sense, these laws are a bridge between security and privacy. Once a customer has knowledge of a security breach, the customer knows there is the risk that his or her privacy may be compromised. The customer can then try to take measures to protect personal information.

Secrecy consists of the obligation of confidentiality imposed on a Credit Establishment in relation to acts, facts and information concerning their customer's which comes to their knowledge in the cause of exercising their function. There however exist exceptions to the latter whereby persons who are not part of bank personnel might get customers' information. A reading of Article 4(2) [6] clearly depicts that persons not being part of the personnel of credit establishments and obtain confidential information about customers must keep confidential such information. This generally turns to demystify the mystery behind the concept of secrecy and its very essence. Given that the duty of secrecy is born from the contract between customer and banker and of which such contracts are intended to create a legal relation and thus enforceable these customers are then faced even with the puzzle of what legal redress will the customer have against a third party having access to his financial information thus making more complex the whole issue.

Banking secrecy is a banking practice or norm which is used by banks in the CEMAC sub region, thought he strict respect of such practices will turn to favour obnoxious activities such as Money Laundering and Cyber criminality. Due to such norms which are at variance with the fight against banking corruption, because the source of such funds could at times be illegal, the annex to the Convention on the Harmonization of Banking Regulations in the Central African State requires in its Article 12 that in the exercise of banking activities by these institutions, local laws shall be applicable to banks having their headquarters abroad as defined in Article 4 of the said law [7]. This therefore means that, local laws which protect customers' services shall be applicable to other branches of the banks operating within the member states of the CEMAC sub region [8].

English law on the subject has been clearly and comprehensively laid down in the landmark case of *Tournier V. National Provincial & Union Bank of England* [9]. In that case the plaintiff whose account with the

defendant bank manager was heavily over drawn, failed to meet the payment demand made by the branch manager. On one occasion, the branch manager noticed that a cheque drawn to the plaintiff's order by another customer was collected for the account of a bookmaker. The branch manager there upon rang up the plaintiff's employer ostensible to ascertain the plaintiff's private address, but in the course of the conversation he disclosed that the plaintiff's account was over drawn and that he had dealings with book makers. As a result of the conversation, the plaintiff's contract was not renewed by the employer upon its expiration. Consequently, therefore, the plaintiff brought an action for damages for slander and for the breach of an imply term of the contract between him and the banker that the bank will not disclose to third parties the state of his account or any transactions relating to it. Judgment was entered for the bank. On appeal three members of the court of Appeal Bankes, Scrutton and Atkin LJ, were unanimous in the view that the bank was guilty of the breach of the duty of secrecy and awarded damages against it. What they differ on is the type of information which is covered by the bank's duty of secrecy [10]. Atkins LJ was of the opinion that:

"The duty goes beyond the state of the account that is whether there is a debit or a credit balance, the amount of the balance must extend at least to all the transactions that go through the account and to the securities if any given in respect of the account and in respect of such matters it must I think, extends beyond the period when the account is closed, it ceases to be an active account. It seems to me inconceivably that neither party would contemplate that once the customer had closed his account the bank was to be at liberty or divulge as it pleased the particular transaction which it had conducted for customer while he was such. I further think that the obligation extends to other sources than the customer's actual account, if the occasion upon which the information obtained arose out of the banking relation of the bank and its customer, for example with a view to assisting the bank in conducting the customer's business or in coming to decisions as to its treatment of its customers."

From the above submission of Learned Judge of the House of Lord, one can deduce that the duty of confidentiality is absolute. The position is further reechoed and given more impetus by another judge of the House of Lord in the person of Scrutton LJ.

He advocates that the duty of the banker to keep the affairs of the customer secret did not apply to (a) knowledge which the bank acquired before the relation of banker and customer was in contemplation or after it ceased or (b) knowledge derived from other sources during the continuance of the relations. Bankes LJ, nevertheless, agreed with Atkins LJ in holding that the duty of secrecy extends to knowledge acquired in both (a) and (b). Their opinion must there for be considered as authoritative. These submissions of the two judges of the House of Lord epitomized clearly that the bank's duty of confidentiality is absolute.

However, another very crucial matter which the members of the court of appeal in Tournier's case had to address their minds to was whether the duty of secrecy is absolute or whether there are circumstances where the bank can feel justified in making disclosure concerning its customer's affairs. Of this crucial matter, Bankes LJ laid the precedence through his submission where he said "At the present day I think it may be asserted with confidence that the duty is a legal one arising out of contract, and that the duty is not absolute but qualified. It is not possible to frame any definition of the duty. The most that can be done is to clarify it qualification and indicate its limits…in principle I think the qualification can be classified under four heads, (a) where disclosure is under compulsion by law, (b) where there is a duty to the public to disclose, (c) where the interest of the bank requires disclosure, (d) where the disclosure is made by the expressed or implied consent of the customer."
Even if the duty of secrecy was to be absolute or qualify, it will be determined by a number

of factors from a technical apprehension of the submission of the Learned Judge. However the key determinant factor which needs to be addressed before taking into cognizance the submissions put forth by Bankes LJ and other judges of the House of Lord to qualify the banks duty of secrecy as qualified and/or not absolute will depend on determining firstly the nature of information under disclosure and that to be contained in the duty of secrecy and if this information has been the subject of unlawful exposure. The duty of secrecy thus brings to mind the puzzle of what information could and should be considered as secret when it comes to the bank's duty of secrecy. This worry has been addressed by a prominent French writer in the person of Jack Vezian who offers a short list of what information is covered by the duty of secrecy. He contends that it is information which generally contains figures (contents of balance sheet, customer's credit balance, loans etc.).He excludes from the duty of secrecy information of a general nature. This therefore connotes that if the information in question is not of a general nature but falls within the category of information to be considered as secret the courts will need to look at the circumstances under which such information was release. If these circumstances fall under the categories provided for by the law as earlier mention, then it will be wrong for the customers to raise a breach of the duty of secrecy by the bank. With the analysis of the learned judges in the Tournier's case it has been comprehensively laid down under English law that the bank's duty of secrecy though from the contractual overview is absolute, there exist exceptions that might cause the bank to divulge some of the customers information when the need arises thus making such a duty to be qualified. This position under English law is that adumbrated by the Cameroonian legislator under the 2003 text on Banking Secrecy.

That the duty is not absolute but qualified is the duty expressed by the Cameroonian legislator when he states in the proviso of article 45 [11] relating to the operation of Credit Establishments that:
However, except in cases provided for by the law, professional secrecy may not be raised in respect to the minister in charge of currency and credit [12] the Supervisory Board, the National Credit Council, nor the Bank of Central African State.

This position of the law there connotes that the bank's duty of secrecy is not an absolute but a qualified one. This qualified nature of the duty of secrecy is reiterated and even given more impetus under the Cameroon the Penal Code [13].

Reasons for Non-disclosure of Customers Confidentiality

In looking at the reasons for secrecy, the question that puzzles our mind is: can we live without secrecy? [14]. This is the question that is often asked by many scholars in the world because this duty is considered an aspect affecting one of the most fundamental rights of banks' customers that must be respected by the bank. It has been used in history by Switzerland in the protection of the Jews from Nazism, as Switzerland reinforced the duty of protection of secrecy in 1934, to protect those whose rights have been violated. As such, this duty has assured the citizens the possibilities of protecting their information against other people and even the authorities [15]. Through this style, it gives sphere of guarantee of economic privacy to citizen and also keeps them away from the fraudulent activities and impacts of fraudsters since their information may be of a nature of which disclosure is likely to affect them negatively. Given that secrecy turns out to attract customers to the bank. Hence, more customer or people will be pleased to safe their money in the bank in a country which assures the protection of information by making them confidential. As such, the customer will fill secured and have lots of confidence in the banking expertise, which will go a long way to encourage international investment in the country and the end result is economic development. This is evident in the fact that investors also regard amongst their objects for motivating foreign investment the policies of the host country the political situation and amongst others the reliability of the banking sector.
The dramatic proliferation of e-banking has put in a critical situation the duty of secrecy.

This is evident by the fact that hackers and other cyber criminals through diverse software can now possibly access customers' accounts without any legal authorization. In fact, e-banking though highly applauded has even boosted the rate of cyber criminality and has favored the growth in the rate of money laundry. This is obvious given the difficulties to check the origin of the funds and even the owner of such funds given that parties to e-banking contracts may be in different jurisdiction and the fact that the parties many at times have no physical contacts in the conclusion of their contracts. With the fast growth of technology, the speed at which internet banking has become popular and the rise of fraudulent cases such as the proliferation of cybercriminals and cyber criminality, it has become a priority for many financial services providers to strengthen their means of protecting their customers' information [16]. This is because every customer expects financial privacy from their financial institution. Usually depositors seek the assurance that the bank will not disclose account information to curious tax inspectors, anxious creditors and curious relatives [17]. However being in the digital age which is heavily characterized by the use of electronic money, encouraging strict and absolute confidentiality will only favour dubious and fraudulent activities such as cyber criminals and money laundry thus a need for a relaxation of the strict application and respect of the duty of secrecy. Hence in most cases of cyber criminality or money laundry information concerning the customer's state of account is put into issue as the state of his/finances is made available to the Legal department to tender as evidence or facts during the hearing of a suspect in court on issues relative to Money Laundering. The exposure of such information makes the bank's duty of secrecy to be seen as qualified.

However, according to liberal views, banking secrecy should be maintained indefinitely because it guarantees the private sphere of customers' trust. As such, in order to maintain confidence and credibility in banks, the protection of customers secret is imperative since secrets are fragile things [18]. A vital component of efficacy is the customer's belief that the banker is honest and will comply with the customers with their instructions, including returning secret money when requested [19].Clients placed a large trust on their bankers especially when their money is hidden from third parties.

The nexus between Secrecy and Trust

Secrecy and Trust are independent variables but generally interconnected with respect to the duty of confidentiality in banking. Secrecy generally upholds a certain degree of respect and confidence which all culminates in instilling trust and once there is trust the parties then can comfortably divulge their information to-one-another. This interconnectivity between secrecy and trust could be juxtaposed by the following factors or reasons:

- Secret money often involves cash or negotiable instruments, which is vulnerable to loss theft and fraud. Thus, the safest place the customers find to keep such funds is with credit institution because of their high standard of reputation for the respect of the duty secrecy that instilled trust in the mind of customers.
- Clients are often reluctant to enforce their contractual rights in cases where their money is supposed to be secret. In some jurisdiction like Switzerland, the identity of the parties in banking dispute is generally not disclosed in court documents; this nondisclosure eventually creates trust in the minds of their customers, couple with the fact that the liquidity requirement for the operation of banks make them confident that at all times their money is safe. However, in notorious cases the anonymity of parties cannot be preserved. This situation is not the case in Cameroon as there exist a good number of cases wherein the names of the parties have been made known to the public such as the case of *Ngwa Peter Ambesi v Banque Internationale pour le Commerce etl'Industrie du Cameroun (BICEC) [20]* and *Vicent Ndango Tayoung v Société Camerounaise de Banque (SCB) [21].*

- There is the risk that customers may loss control over their money as a consequence of the non-respect of the duty of secrecy by the banker or other bound by this duty [22].
- Also, secret money creates a new temptation for bank managers who are not subject to the same degree of clients monitoring as the case with non-secret money [23]. Thus, when there is appropriate secrecy, there is trust in the customer-bank relationship.

Banks' duty of confidentiality covers all customers' information about themselves and their acts obtained by them irrespective of the information source and as long as the banker customer's relationship exists, and even after the termination of the banker's customer's contract [24]. Therefore, the further possibilities of disclosure of any confidential information after the termination of the banker's customer's relationship may cause loss or damage to the person. A customer's confidential information could equally be of a commercial sensitive nature and disclosure might adversely affect his or her subsequent business or commercial activity thus the need for secrecy to be absolute.

Nature of the Duty of Secrecy (Express or implied)

This is a contractual term either expressed or implied which prohibits the banker from divulging confidential information during and after employment. That is the duty continuous even upon the termination of the contract of employment of the banker in the Financial Institution. It prevents only the disclosure of information under circumstances that are likely to put the interest of the customer and banking institutions at jeopardy provided such a disclosure is illegal. Two aspects can be observed from the above analyses. That is the non-disclosure must be reasonable between the parties and reasonable in the public interest. In this case the customer must have a recognizable right to protect. He must show that he has some secret proprietary rights to protect of which the disclosure could destroy his interest. The banker on his part must also ensure that, by disclosing customer's secret, it will not affect dealing with other customers since confidence which is considered as the engine in the smooth functioning of bank relationships has evaporated.

The prevention of ex-bankers not to release secret information of his former customer is based on the grounds that banks are public institutions and play a primordial role in economic growth and development of every country. Breached of this duty by the ex-banker will negatively affect the sector since public interest will be at stake. This is so because banks are the major financiers of every developmental project in every nation, and their disruption or malfunctioning would likely bring about economic stagnation since social and economic facilities will come to a standstill [25]. Hence the bank is under the obligation to keep his customers data behind closed doors. This duty arises out from the banker-customer contractual relationship [26].

The Nature of Information Covered by Secrecy

The major question has always been to know the type of information covered by confidentiality. The information protected include facts and information obtained in the performance of employees' duty, the management of control authorities, of a credit establishment and in particular operations related to bank accounts, discount transactions, hard currency supplies, and the result of controls or inspections conducted by Monetary Authorities [27]. The above view relative to the nature and content of information required under secrecy is that acquired under Cameroonian legislation and the same is the case under English case law [28]. Jack Vezian offers a short list of what such protection to customer's services will be. He contends that "this information contains figures, contents of balance sheets, customers' credit balances and loans etc." This position is in consonance with that under 2003 Law relating to Banking Secrecy in Cameroon in its article 5(1).Information contained within those fundamental to the bank's duty of secrecy to its customers is reassured by the Cameroonian Penal Code in its article 310 and 311 [29] providing sanctions

strictly to individuals who fail to protect customers' financial services information.

Banking secrecy consists of keeping secret the information gathered by the banker on his customers whilst acting in his profession. Any action of the banker contrary to this requirement will be considered as a violation to the duty of banking secrecy. The question is whether all customers information is covered by secrecy? In France for example, only confidential information is covered by secrecy. Confidential information here consists generally of precise information and figures, thus, making the duty of secrecy to be qualified because other relevant information not within this category could be the subject of exposure without the violation of any Law. Britain on the other hand has adopted a broad notion of banking secrecy, in that the field of banking secrecy covers all information registered on the customer's account that has been received by banker in the relationship with the client [30]. The duty of secrecy also extends to the information obtained by the bank from other sources [31]. Thus, in Britain credit worthiness of a customer is covered by confidentiality [32].

The Cameroonian legislator has equally expanded the domain of information protected and the position is closer to that of Britain. The information protected according to article 5(1) of the 2003 law, "covers facts and information acquired in the exercise of their functions…notably operations relating to bank accounts, discounting operations, furnishing currency, results of inspections or controls carried out by Monetary Authorities. Thus the legislator does not only limit the information to functioning of the account of financial transactions of the customers; it makes of it a loyal confident" [33] as the information even extends to knowledge acquired from other sources which the banker obtains about its customers. This clarification as per the 2003 text gives clearly the impression that the duty of secrecy is absolute from the reading of article 5(1).
The legislator even further reaffirms its seriousness by stipulating that the secret character of the information is presumed [34]. This presumption however is very important; the bank must in principle consider all information on their clients as confidential. This information extends to those concerning personal status of the customer [35]. However, information of a general nature, any inquiry which is customary to give to third parties, whether or not they are clients of the bank does not constitute a breach of the duty of secrecy [36].

The above presumption happens to be a rebuttable one as the 1985 Ordinance in its article 45 [37] do provide for exceptions making the duty to be qualified. Article 8 of the Bank Secrecy law No/2003/004 of April 21st, 2003 equally rebuts this presumption by stipulating that bank secrecy may not be claim as an obstacle to criminal prosecution. Act 20 of November 16th, 2016 gives CONAC the *locus standi* to lift bank secrecy without the need for a court order under the CONAC decree.

The legislator is however silent on the duration of the duty of secrecy. The question is, does the duty continues even after the termination of the contract or the closure of the customer's account? The English case law held that the obligation continuous even after the termination of the relationship between the customer and the bank [38]. However, the duration can depend on whether the duty concern family relations or business relations [39]. If it concerns business relations, the continuation of secrecy is justified because the purpose of secrecy is to protect the patrimony and the project of the customer. If it were, otherwise, the bank will even provoke the rupture of the relationship with customers in order to exploit projects they confer on them when they were still such [40].

When it concerns family relations, the bank is not held to the duty of secrecy, where the information is revealed in family interest, such as revealing information to heirs of a deceased. At the death of a customer, the principle is that the heir continuous the person of the defunct and the bank cannot plead professional secrecy against him. However,

the banker cannot seek him out and must be certain of the customer's death [41].

Persons Bound by the Duty of Confidentiality

According to the provisions of law No/2003/004 of 21st April 2003 Relating to Banking secrecy, Credit Establishments have to abstain from divulging certain information on the customer. The violation of this obligation constitutes a crime and attracts sanctions. The duty of secrecy is not only placed on the banker and its agent. In effect, the Cameroonian legislator has extended the scope to include persons who are not bank personnel [42].

Bank Personnel

Generally, the bank is a moral person and cannot act on its own but can only act through its agents or personnel. The legal provision on bank personnel to respect secrecy is embodied in article 45 of the 1985 Ordinance [43] relating to the operation of credit establishments. This provision is to the effect that: Each member of the board of directors and any person who in any capacity takes part in the running, management or supervision of any credit establishment, or who is an employee thereof shall be bound by professional secrecy.

Section 4(1) of this same text [44] on its part provides: Whoever in any capacity regardless of the duration or condition thereof, is involved in the management, administration or liquidation of credit establishment or is employed by it shall be bound to professional secrecy.

According to the above provisions, all persons involved in the functioning of a bank are bound by professional secrecy, from the director to the accountant. The confidentiality of these personnel is covered by article 5(1) (a), which states as follows: facts and information obtained in the performance of their duties as employees the management of or control authorities of credit establishment, and in particular operations relating to bank accounts, discount transactions, hard currency supplies, the results of inspections or controls conducted by Monetary Authorities.

A reading of this provision outlines clearly those that are bound by the duty of banking secrecy. This provision in the nutshell connotes that the bank's duty of secrecy is absolute because the category of persons mention definitely cuts across all those who work within the streams of Financial Institutions and get hold of customers' information by their daily dealings and profession.

Other Persons

The proliferation of modern technology has made the Cameroonian legislator to adopt new techniques to observed and comprehend issues. The legislator has broadened its scope of actors concerned with professional secrecy to include those who have links with credit establishments to be bound by the same way as these establishments to duty of professional secrecy. By section 4(2) of the 2003 law, "the same obligations shall apply to persons, who without belonging to the staff, have unduly obtained or gained access to the secrets of the Credit Establishment by virtue of their status, technical and intellectual proficiency of their officers." All electronic providers have as obligation the duty of confidentiality regarding their subscribers in the use of services which they provide [45]. This includes information about the content of Electronic Communication and other use of Electronic Communication. In certain circumstances however the security of the state may permit the police or Judicial authorities to demand information from providers concerning some subscribers in the course of a criminal investigation. Authorities can also request the suspension of Electronic Communications through a suspension of license. This provision seems to have been motivated by the recent technological developments, and the legislator's quest to reinforce the protection of the private economic sphere of the consumers through the fight against cyber criminality [46].

The employee (agents) after termination of contract owes a duty of fidelity to the employer and former client. For instance, the duty not to misuse or disclose confidential

information acquired during active service [47]. At common law such a duty may be expressed or implied in the contract of employment. This duty owed by ex-employees and bankers of Financial Institutions being an absolute one however has exception and defenses that can and do emanate that if relied on will not be viewed as a breach to secrecy thus making the duty to be qualified.

EXCEPTIONS TO THE BANKS' DUTY OF CONFIDENTIALITY

The duty of banking secrecy is not absolute but qualified. Banking secrecy in Cameroon is relativized by several exceptions to it [48].The most important of these exceptions is disclosure to authorities by compulsion of law. Disclosure to authorities concerned with banking supervision and fight against financial crimes is not punishable by the law[49]. These authorities include the Bank of Central Africa (CUBIC), Action Group against Money Laundry in Central Africa (GABAC), [50] the Deposits Guarantee Fund (FOGADAC), the Ministry of Finance, the National credit council, the Credit Establishment Supervisory Board, and the Professional Associations of Credit Establishments, National Anti-Corruption Committee (CONAC). Disclosure could equally be made to tax and judicial authorities.

Compulsion at Law

That a bank can be compelled by the law to disclose the state of its customers account is organized by the proviso of article 45 of Ordinance No/ 85/002 of 31 August 1985 when it states that 'However, except in cases provided for by the law, professional secrecy may not be raised against the Minister in charge of Money and Credit, the supervisory Board the National Credit council nor the banks of the central African States. Instances have been provided for by the Law wherein bankers will be under compulsion to make disclosure [51] such as in the cases of money laundry.

Duty to the Public to Disclose

This is a second limitation of the duty of banking secrecy as postulated by Bankes L.J. in Tournier's case. Jack Vezianre echoes this, when he holds that disclosure is allowed whenever the court realizes that other interest to be protected are equal or are superior to the interest of the customer [52]. In Tournier's case Bankes LJ relied on the word of Lord Finlay in *Weld Blundell V. Stephen* [53] to the effect that danger to the state may supersede the duty of secrecy owned by an agent to his principal. Article 6(d) of the 2003 law relating to banking secrecy in Cameroon adds more to these. This law provides for the fact that statements send to the state counsel, or to the monetary authority by the manager of a credit establishment on operations, or information on sums of money known or presumed to be derived from drug trafficking criminal activity or money laundry could not be raised as a subject for the violation of secrecy. This is obvious by the fact that the aim of the law is its generality and the fact that it works for the interest of general public. Hence if we were to privilege customer's information in the face of such crimes so as to uphold secrecy, it will mean destroying the very ends of justice within the society and destroying the very ends of public policy by privileging and individual interest over general interest.

Disclosure in the Banks' Interest

Whenever there is litigation between a bank and a customer, the bank in order to prove its case has the right to make disclosure which ordinarily will be sanctioned. For example, if a bank sues to recover money it lent to a customer, the bank has the right to disclose it in pleading the state of the customer's account and the amount owed by him to the bank.

Disclosure with Customer's Consent

Disclosure with the customer's consent is the last exception to the banker's duty of secrecy. This duty is however not strange. Cameroonian law in Section 310 and 311 of the Penal Code acknowledge consent of a customer as an exception to the bank's duty of secrecy [54]. The French writer Jack Vezien equally adumbrates consent of a customer as an exception to the bank's duty of secrecy. According to him the bank's duty of secrecy cannot be invoked when the customer himself consents expressly or tacitly that information on his account should be disclosed. In this case he gives authorization of the duty of secrecy to

be lifted.

English Law distinguishes express and implied consent and also between general and special consent. A customer is therefore set to have expressly consented when he clearly and definitely authorizes the bank to disclose his affairs to a third party. For instance, bank references. On the other hand, a customer is said to have impliedly consented when he conducts himself in such a way as to lead any reasonable man to believe that he authorized the bank to disclose his affairs to a third party.

CONCLUSION

The strict respect of some rules of law without relaxations or exceptions will in most cases lead to great injustice causing some individuals to suffer at the detriment of others and might also hamper the smooth application of justice. Thus, if banking confidentiality were to be applied *intoto*, then several criminals will hide behind this veil to instigate obnoxious activities such as money laundry, cyber criminality and tax evasion. This situation will even be more complex as bankers will always be liable whenever they are compelled by the authorities to divulge information cornering their customers which are supposed to be kept secret by the ethics of their profession. Hence in order to preserve justice, and uphold public policy and the virtues of banking institutions, the legislator(s) thus thought it wise to implement exceptions to weaken the strength of bank confidentiality making it qualified and not absolute within the Cameroonian Banking Sector.

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13. Section 310 and 311 of Law No 65-LF-24 of 12 November 1965 and Law No.67-LF-1 of 12th June 1967 instituting the Cameroon Penal Code. "Who so ever without permission from the person interested in secrecy reveals confined facts".
14. Tchabo Sontang H.M., Op. cit note 5, p. 48.
15. Ibid.
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17. William Parker W., (1991), "Anonymous Bank Accounts: Narco-Dollars, Fiscal Fraud, and Lawyers", Fordham International Law Journal, Vol.15, issues 3, p.652.
18. Ohn Clover., (2001), « Is breach of confidentiality a fiduciary wrong? Preserving the reach of Judge made law" Legal Studies, Vol. 1. No.4, 2001.
19. Chaikin, D., (2015), "Policy and Fiscal effects of Swizz Bank Secrecy", Revenue L.J, Vol 15, P. 92.
20. Suit No HCB/106/87 (unreported). The defendant bank discovered that the sum of 70.000frs CFA had been fraudulently withdrawn from the plaintiffs account. In fact, cheque No 8174650 had been detached from his cheque book and used to withdraw the said amount.
21. Suit No BCA/39/83 (Unreported), the appellant Vincent Dango was a customer of the respondent bank. He had a credit balance of 2.124849 Frs. CFA in his account on the 27th of June 1980.Since then he had never asked for a loan or an overdraft from the respondent bank. Subsequently the manager of the bank presented him with a statement showing a debit of 328.5890 Frs. CFA. In the face of his statement he presented cheque No 1258916 amounting to 1.112.250frs CFA drawn in the favor of one George Nchinda on the 23rd March 1982 for payment and the respondent confiscated that sum. Justice A.N Njamsi held that there was no justification for the confiscation of the appellant's cheque of 1.112.250frs CFA by the manager of the respondent bank. He therefore ordered that the plaintiff was entitled to his credit balance of 201.240.849 Frs. CFA and the value of the confiscated cheque of 1.112.250frs CFA.
22. Ibid.
23. Ibid.
24. See Weerasoonia, WS., (1997), Law Relating to Banking and Interrelated services, Colombo: Institute of Bankers of Sri Lanka, 1997, p.93.
25. Shey Nchanji J, (2016), "The Breach of Bankers Duty of Confidentiality in the CEMAC Zone: The case of Cameroon" Master's Thesis, Faculty of Law and Political Science, University of Dschang, p.27, unpublished.
26. Oliver Fridman, (2011), «Banking Secrecy in Singapore » les enjeuxjuridique du secret bancaire, vol.5, p.23.
27. See section 5(1) of the 2003 Law Relating to Banking Secrecy in Cameroon.
28. In Tournier v. National Provincial Bank and Union Bank of England, Atkins LJ and Bankes LJ were of the opinion that the duty of secrecy goes beyond the statement of the account, that is whether there is a debit or credit balance, and the amount of balance, it must extend at least to all the transactions that goes through the account and the securities, if any given in respect of the account. it further extends to information obtained from other sources that the customers actual account. If the occasion upon which the information was obtained arose out of the banking relations of the bank and its customers. See further Nah Fuashi T., (2013-2014), Lecture notes on Banking Law, P.42, University of Dschang.
29. Section 310 of law No2016/007 of 12 July 2016, amending the Penal Code of Cameroon provides that whoever without permission from the person interested in secrecy reveals any confidential fact which has come of his knowledge or which has been confined to him solely by reason of his profession or employment in an industrial or commercial undertaking shall be punished with imprisonment for from 3months to 3years or with fine of from 20,000FCFA to 100,000FCFA or with both such imprisonment and fine. Section 311 on commercial confidence provides same as section 310 with the exception at the level of the fine which is 100.000FCFA to 5000.000FCFA.
30. Tchabo Sontang (H.M.), (2010), « Le Regime Juridique du Secret Bancaire en Droit Positif Camerounais » 81 Juridis Périodique, p.51.
31. Shey Nchanji J., "The Breach of Bankers

Duty of Confidentiality in the CEMAC Zone: The case of Cameroon", Op. cit, 2016, p.31.
32. Tchabo Sontang H.M., Op. cit, note 26, p.52.
33. See section 5(1) (a) of the 2003 Law on Banking Secrecy, see also Kelese Nshom, Regional Integration Laws and Banking Security in Cameroon, PhD Thesis, University of Dschang, p.130.
34. See section 7 of the 2003 Law on Banking Secrecy.
35. Kelese Nshom., (2014), Regional Integration Laws and Banking Security in Cameroon, PhD Thesis, University of Dschang. p.130.
36. See section 7 of the 2003 Law.
37. Op. cit, note 11.
38. As Akins J opines in Tournier v. National Provincial Bank and Union Bank of England "I think it extends beyond the period when the account is closed or ceases to be an active account. It seems to me inconceivably that either party will contemplate that once the customer had closed his account, the bank was to be at liberty to divulge as it pleased the particular transaction which he had conducted for the customer whilst he was such".
39. Kelese Shom .G. Op. cit, note 31, p.130.
40. Ibid p,131.
41. Ibid.
42. Section 310 of the Cameroonian Penal Code.
43. See ordinance no85/002 of 31st August 1985, relating to the operation of credit establishments.
44. See Law no2003/004 of 21st April 2003, Relating to Banking Secrecy in Cameroon.
45. Guidelines for providers of electronic communication services. Available at https://eng.nkom.no accessed 18th November 2018.
46. Kelese Nshom G., (2014), Regional Integration Laws and Banking Security in Cameroon, PhD Thesis University of Dschang, Faculty of Law Political Science, P, 129, unpublished.
47. Abia Rita Ajoh., 2017: "Banking Secrecy and the Fight against Corruption in Cameroon" Master's Thesis, Faculty of Law and Political Science, University of Dschang, p.27, unpublished
48. The exceptions keep on multiplying with the inflation of certain state organs and even those independent of the State, see TEISSIER (A.), Le Secret Professionel du Banquier, p.27.
49. Since the declaration of the conference of Head of States of the CEMAC in N'Djamena on the 15 December 2000, to solemnly put everything in place to fight against money laundry in member States of CEMAC, these agencies and authorities in the fight against financial crimes have kept on increasing (see for example GABAC and National authorities such as ANIF in Cameroon), and instances where banking secrecy will be waived have accentuated.
50. Voir Règlement no 02/02/CEMAC/ UMAC/CM du 15 Mars 2002 portant Organisationet Fonctionnement du Grouped' Actioncontre le Blanchementd' Argent en Afrique Centrale (GABAC).
51. Article 8 -25 of Law No.2003/004.This law brings out circumstances under which banks will be compelled to do disclosure.
52. This will include cases where a garnishee order is served upon a bank and also cases where information is demanded by the Judiciary or monetary authorities.
53. Weld Blundell V. Stephens, (1920) A.C.956.
54. See 310 and 311 of Law No 65-LF-24 of 12 November 1965 and Law No.67-LF-1 of 12th June 1967 instituting the Cameroon Penal Code provides for the fact that whoever without permission from the person interested in secrecy reveals any confined fact…"

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