

The breach of banker's duty of confidentiality within the Economic and Monetary Community of Central African States (CEMAC Zone): The case of Cameroon

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Abstract: Banks are at the heart of every nation and the need to regulate this sector with a lot of care, since they are pivotal in catalyzing economic growth and development. Proper regulation of banking institutions would guarantee maximum and effective protection of its customers and the enhancement of economic growth and development. Adopting the doctrinal and analytical research methods, this paper sets out to determine the legal mechanisms established to ensure the protection of confidentiality, the information which falls within the ambit of secrecy, the ambiguity surrounding the disclosure of customers' private information, the penalties imputed on violators of the laws and the qualifications of the duty of confidentiality. This paper reveals that clients still face divulgement of their secret information, though legislation guarantee the protection of their right to privacy. Thus, it is imperative for bankers to scrupulously respect their obligation of secrecy so as to instill clients with confidence in order to guarantee a sound banking environment in the CEMAC zone and Cameroon specifically. Furthermore, the optimization of banking secrecy would adequately protect customers since the underlying element governing banker-customer relationship would be cemented. In addition, there is high need for sensitization of bankers through seminars, workshops and conferences in order to guarantee a proper respect of banking deontologies when exercising their profession.

Keywords: Banker, Breach, Cameroon, Confidentiality, Duty of confidentiality, Duty

1. Introduction

From time immemorial, it has been upheld that bankers are under a legal duty to keep their client's confidential data in camera. With this, the CEMAC legislators and that of Cameroon in particular have been putting in efforts to compel bankers to act within the legal framework guaranteeing banking confidentiality. This duty covers all information and acts of customers obtained by banks despite the source, must be kept secret even after the termination of the banker-customer contract. This is because privacy is an element of agency contract and banking is not exempted. However, the world is experiencing a rapid advancement of

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information transfer and storage by electronic devices. This enables banks to render sophisticated transactions of clients' deposits and withdrawals, since information is not stored and transmitted only on papers but by electronic means. This facilitates breach of bankers' duty of confidentiality rather than guaranteeing it, due to the distance between bankers and clients.

Banking secrecy under section 3 of Law No. 2003/004 of 21st April 2003 relating to Banking Secrecy in Cameroon is the obligation of confidentiality on financial establishments concerning transactions with their clients which come to their knowledge in the exercise of their functions. The duty is based on the principle of professional secrecy, as it considers some professions like bankers and doctors to act as their clients "confidants". Banks elevated to the position of "confidants" in relation to personal details which a customer is obliged to a bank in order to establish a business relationship, and needs to be certain that the information remains private at all times (Msimango, 2019). This includes all information regarding the customer's assets, financial situations and the existence of a relationship between the bank and a customer as parties to a banking contract (Ellinger & Lominicka, 1994). The obligation to preserve its customer's information secret signifies a contractual obligation of a legal origin. This is because banks and banking transactions are fundamental pillars of the financial world. To maintain confidence and credibility in banks, the protection of customer's secret is imperative (Uysal, 2013). This is because secrets are fragile things (Clover, 2001).

The entrenchment of the bank's duty of confidentiality is motivated by economic and historical considerations. Economically, a person whose calling involves confidential work has to be able to assure those engaging him –at law and in fact-that his discretion can be relied upon (Uysal, 2013), as the case with solicitor and clients. Historically, the confidential nature of banker and customer contract from which the duty emanates comprises elements of agency. An agent is consistently regarded to be in a position of trust and he is bound to safeguard the principal's interests and confidences. As a general rule, some of the duties of an agent to his principal are the duty of care loyalty and confidentiality (Tumushabe, 2016). This is so regardless of whether the agent is a solicitor, an estate agent or a company director. The bank's duty of privacy is to protect clients from attempts by an outsider to know the state of his financial situation. But the scope of the duty varies from one type of agent to another and in the relationship of client and solicitor, the duty is absolute (Ellinger & Lominicka, 1994).

In modern times, the policy consideration on economic factors gained momentum. This explains why there is a variance in the extent to which the law recognizes the obligation of confidentiality of different types of agents (Akenroge, 2015). The connection that exists between the banker's obligation of secrecy as well as that imposed on an agent was stressed on by Lord Diplock L.J in the case of *Parry Jones v. Law Society*. Thus, indicating that privacy which emanates from banker-customer contract is paramount and must be respected. As such, a banker is duty bound to maintain customers' financial securely (Abdulah, 2013), at all stages of the banker-customer relationship. This is easily explained on the basis of economic policy that financial institutions have detailed knowledge of their customers' financial levels. All these details are required by the bank, whilst transacting as pay master and receiver of deposits from customers and its role as the customer's major or sole financier (Ellinger & Lominicka, 1994).

English law (Spearman, 2012) which governs the financial duty of confidentiality was enunciated in the case of *Tournier v. National Provincial and Union Bank of England* (1924) 1 K.B.461 in which the three Lord Justices despite some divergence of opinion as to the type of information which is covered secrecy, opined that the bank was guilty to have breached the duty of secrecy and awarded damages against the defendant bank. Motivated by English law, this duty in Cameroon was given legal recognition in Cameroonian by article 45 of Ordinance No. 85/002 of August 31, 1985, on the Operation of Credit Establishments. Today, the main legal instrument governing banking secrecy in Cameroon is Law No. 2003/004 of 21st April, 2003 on Banking Secrecy. This law clearly prohibits unauthorized disclosure of customers' confidential information in circumstances where the law so warrants and spells out sanctions for defaulters of the law, as well as elucidates instances of authorized disclosure where the banker would not be liable for disclosure since he acts

within the ambit of the law. To protect unauthorized disclosure of customers' confidential data, at present day, banks often include in their passbooks and brochures, a statement that officers of the bank are bound by secrecy as regards transactions with their customers (Holden, 1970).

Notwithstanding the obligation to respect banking secrecy, the rapid spread and access of information today due to technological advancement is seen as a leeway that facilitates breach of the duty rather than protecting it as a result of the distance between the banker and the customers. This technological revolution has brought in many alterations hence, creating a modern world where information is mostly saved using electronics and it is accessed by means of a monitor screen rather than on papers. In the financial sector, the development of transferring funds by electronic means brings about the possibility for banks to save huge information about their customers' information. On the same side of the coin, banks are liable to their clients as concerns privacy, the breach of which the law imputes penalties on the law breaker. This calls for improvement on secrecy measures since investors will not appreciate to invest in a country that is unable to guarantee their investments.

However, the duty of privacy owed by banks to customers is subject to limitations, as it is not respected in situations where the interest of the state is at stake or would be at stake and in connection to the actual degree to which it is desirable to enable the principal to place his full trust in the agent. Thus, a bank official may be ordered by the court to testify against the interest of the bank where the law warrants such a disclosure. The duty is subject to, and overridden by, the duty of a party to a contract to reveal secret facts in defined where circumstances so warrants, the party is forced to disclose. In cases where the contract expressly states that there is no disclosure despite the circumstance, it will be void.

2. The objective of the study

The aim of this study lies in the fact that, banks are essential and an inevitable aspect of every nation, and the need to regulate this sector with a lot of care or rigour. The banking sector being the corner-stone of every economy has to be properly regulated in order to guarantee maximum and effective protection of its customers and also to enhance economic growth and development. This protection offered to banks' customers would go a milestone to attract investors and hence, investments since investors would not appreciate investing in a state which cannot effectively guarantee their investments. Thus, proper regulation of these institutions would greatly attract investments in that progressive investments and development today cannot be achieved without a secured legal and commercial environment.

3. Research methodology

This paper adopts purely the doctrinal and analytical research methodology. Information is gotten from written works of various authors and also legal texts relevant to the topic under consideration which the author analysed to gather vital information to permit the realization of this paper. The research therefore, dealt with secondary and primary sources of materials for the realization of this target.

4. Results and discussions

4.1. The rationale for bankers duty of confidentiality

The concept of confidentiality which customers expects from banks places importance on the private sphere of an individual (Chaikin, 2005). As such, laws impose obligations on the banker to respect the duty of secrecy and failure to do so is at the banker's peril, as it exposes him to either civil, criminal and disciplinary sanctions. Several logical reasons exist for banks to keep customers' private data behind "closed doors" before, during and after the termination of their relationship (Abdulah, 2013). The reasons among reasons among others include the following;

Information provided to the bank at the beginning of the contractual agreement is possibly the same information that is provided by the customer when the agreement has been instigated, consequently, such information falls within the scope of confidentiality. Furthermore, Information received by banks during the banker-customer relationship is considered to fall under banking privacy, based on common law definition of confidence. In addition, practically, nothing will prevent banks from submitting an explicit duty to the customer prohibiting disclosure regarding specific information, even if such information theoretically is not within the ambit of the bank's duty of secrecy. More so, a most important aspect of a person's rights is to keep his or her information private. Banks keeping clients' affairs securely is therefore, an act of respecting their privacy. Lastly, the disclosure of any secret information after the banker-customer relationship comes to an end may have negative impacts to the person, who within the context of this paper is the customer. A customer's private data is commercially sensitive in nature, and disclosure might have some repercussions in connecting with his or her subsequent business activities. Mindful of these reasons, secrecy should be maintained indefinitely. This duty covers all customer's information which the bank obtains in the course of business with the customer, and extends to information which banks obtained from other sources outside the banking contract. To Venzian in the Tournier's case, duty extends to information of general nature. As concerns the timeframe or duration of confidential nature of the duty, it is during the currency of the contract, and extends to the period when the customer dies, since the law is silent as to the duration which privacy duty will come to an end.

4.2. Debtors of banker's duty of secrecy

This examines the category of persons who are duty bound by secrecy. This duty falls on bank personnel of all categories and other persons. In this regard, all bank personnel are duty bound by legislation to make compliance of this duty a priority. This is enshrined in article 45 of the 1985 Ordinance relating to the Operation of Credit Establishment in Cameroon, which is to the effect that: Each member of the Board of Directors and any person who takes part in the running, management or supervision of any credit establishment, or who is an employee thereof is bound by professional secrecy. Section 4(1) of the 2003 law which is the main legal text on banking secrecy in Cameroon, stipulates that: *"Whoever in any capacity regardless of the duration or conditions thereof, is involved in the management, administration, liquidation of a credit establishment or is employed by it, shall be bound by banking secrecy"*.

In Cameroon, the debtors of the secrecy is not only limited to bank's personnel. It goes beyond the limit of bank's staff to other people. This is elucidated under section 4(2) of the above 2003 on banking secrecy. This section is to the effect that, *"the same obligation shall apply persons who, without belonging to the staff, have unduly obtained or gained access to the secret of a credit establishment by virtue of their status, technical and intellectual proficiency or their office"*. The obligation includes individuals who are not bank personnel, but receives such confidential facts which could be of a commercial sensitive nature to the customer. The desire of the legislator to make this duty a legal obligation is aimed at protecting banks' depositors and the banking sector which is fundamental for economic growth and development. This is due to the repercussions which an unauthorized breach of the legal duty may bring to the customers, the banking industry and the economy at large.

4.3. Repercussions of revealing bank secrecy

Customers expect high standards of good conducts from their banks. Discovering that, their private information has been made known to a third party, they can become unhappy-even if the disclosure resulted to minor frustration or embarrassment. However, minor mistakes made by banks can result to significant problems, especially if the customer is engaged business. This is on the basis that, simple clerical errors can lead to serious business losses. It is thus, vital that banks should take into consideration the effects of their actions on customers, in order to make a clear distinction between "loss" and "distress" and "inconveniences". But banks fail to do this properly. Where banks are at fault, the matter in most cases is often settled by offering

small amount of money to victims whose secrets have been exposed without assessing; whether they have experienced a true (and reasonable foreseeable) financial loss; or the real extend of the customers' distress, embarrassment and inconveniences. This section examines the consequences of unlawful breach of confidentiality which banks owe their clients. Banks as well as customer need to take a realistic look at losses emanating from banks violation of their legal duty to instill clients with high degree of confidence. Banks should be liable for losses that it could have reasonably foreseen when they disclosed information connected to customers' secret data.

Investigations show that they fail to pay attention to the cost that customers can incur as a result of breaching confidentiality. It is therefore, left for both parties to analyze and understand the effects of the bank's actions. Occasionally, customers who have witnessed little or no financial loss feel that their reputation has been damaged beyond repairs by the disclosure of their accounts. They may go ahead to claim huge sums of money as compensation, by quoting high-profile court cases. However, a balance should be taken into consideration. The above discussion illustrates that the maintenance or respect of the duty of secrecy by the bankers is an integral part of a good banking business practice, and effective compliance with this duty is a lee way to the enhancement of a vibrant banking environment within the CEMAC Zone as a whole and Cameroon specifically. The respect of this duty is also pivotal in enhancing peaceful co-existence between bankers and their customers and a smooth functioning of the banking industry. Thus, it is imperative for the optimization of banking secrecy would adequately protect banks' customers, since the underlying element governing their relationship with the bank is cemented. Furthermore, there is high need for sensitization of bankers within the CEMAC sub-region through seminars and conferences on the need to respect their duties owed to their clients in the exercise of their functions, especially that of confidentiality. This would guarantee a proper respect of banking deontologies and the protection of customers' rights.

4.4. Sanctions or remedies for breach of confidentiality

The soundness banking industries in every nation greatly depends on the establishment of appropriate norms and the respect of such norms. Non-respect of banking norms by the banker entitles the customer to bring legal measures and other sanctions imputed on the violator, to prevent or minimize the occurrence of such an unauthorized disclosure at the detriment of the customer. The preventive measures are aimed at attributing liability on the banker for failure to act in accordance with the terms of contract with its customer. These measures are relevant because the disclosure may lead to bank instability if it affects potential shareholders or a greater majority of customers who close their bank accounts. Also, a bank that faces constant breaches of the duty it owes to its customers losses its reputation and customers. Thus, resulting to the dysfunctioning of the banker-customer relationship (Alquyem, 2014) and the collapse of the banking institution if the sanctions are not properly implemented. The sanctions are instrumental in guaranteeing a favourable banking environment, and justify the continuous existence of banks in the CEMAC Zone and Cameroon in particular. To maintain banks' reputation and customers' trust in banks, the Cameroonian legislator through a plethora of laws compels debtors of confidentiality to comply with the legislative and regulatory dispositions when carrying out their banking functions. Failure to respect the obligation of secrecy as customer's right which is expressly guaranteed by law enables him to bring an action against the victim of such a breach, based on the right of one's cause of action to be heard.

To hold a banker liable for acting in contravention of the law governing his contractual relationship with the customer, the constructive elements such as intention and negligence, of violation of secrecy are fundamental. For a banker to be liable for breach of secrecy, there must be a secret and he must have revealed the secret confined on him or which he had knowledge by reason of his profession or job. The secret must be more of facts and not of opinion. The torts must have been known by a restrain group of persons. The protected information must have an interest worthy of protection. Finally, the owner of the conferred protected bank secrecy expressly or tacitly, that he wishes to make it respected. There must be alien between

the fact or information and the responsibility or function of the author of the crime. The author should have learned of the secret due to his duties or functions, and a distant lien or motivated by chance is insufficient to a closeness or lien. The criminal conduct consists in revealing the secret and the violator renders it accessible to third parties. It is irrelevant knowing if the author has attained his objective fixed or not, by intentionally violating his duty of preserving professional secrecy. However, the breach of the banker's duty of secrecy attracts judicial and disciplinary sanctions even after the termination of the banker-customer contract.

4.5. Judicial sanctions

The Cameroonian lawmaker has not closed its eyes regarding the breach of confidence by some bankers. This is evident by imputing civil and criminal penalties on bankers who break the law. It is expected of every banker to keep the principle of good bank duties imposed by legal texts. Non-observance and compliance can constitute danger and therefore, attracts sanctions. At times nothing really flows from the breach, but consequently it can have major consequences but the law intervenes to hold the banker civilly liable through the award of damages, be it nominal or substantial damages, depending on whether or not the breach resulted to injury to the customer. The integral damage will be compensated whether it is reduction, depreciation in the fortune of the customer or loss of an advantage as a result of the breach of secrecy (Kelese, 2014). Civil liability for non-respect of the duty of confidentiality by the banker attracts compensation in the form of damages which could be nominal or substantial damages.

4.6. Payment of damages as civil sanctions

4.6.1. Nominal damages

This refers to small sum of money awarded to a plaintiff (bank's client) in a lawsuit when he or she was right, but has not suffered any serious harm. Nominal damages also refers to financial token awarded to a person in an action where no substantial injury or loss has been suffered but the person must be compensated. They also refer to damage award issued by a court for a legal wrong, where no actual financial loss is suffered as a result of that legal wrong. For the purpose of this study, nominal damages are minimal financial token awarded against a banker for acting in contravention of the laws governing secrecy in the exercise of banking profession of which the customer has not suffered any financial loss but is compensated for failure to respect his right to privacy by the banker. Nominal damages allowed the injured customer to seek legal redress for a wrong even if the wrong has not caused any out-of-pocket expenses. Such damages can be described as, a peg on which to hang the cost.

A number of reasons are considered why a customer may sue a bank for breach of its duty of secrecy, though no actual loss has been suffered. Some of these reasons are; sometimes the customer wants to prove that he is right; at times awarding nominal damages will help him to obtain punitive damages, rather than to compensate the plaintiff. However, punitive damages cannot be awarded unless the plaintiff is first awarded compensatory, nominal or restitutional damages; and lastly, the customer may be sue because, he is fighting for a cause, if he is convinced that his or her contractual or civil rights are violated. The award of nominal damages reflect a lawful recognition that a plaintiff's rights have been violated through a defendant's illegal acts or wrongful conduct. The amount of money awarded is usually an insignificant sum and varies depending on the circumstances surrounding each case. In awarding damages, courts take into account whether the plaintiff is a trader or not. Where the plaintiff is not a trader, nominal damages are awarded. The judicial recognition of this view in West Cameroon is the case of *Azia Anthony v. Société General de Banque au Cameroun* (SGBU) Judgment of suit No.B.C.A/47/88 (Unreported) This principle was adumbrated in the case of *Evans v. London and Provincial Bank*, in which the plaintiff suffered no loss and was awarded nominal damages of one shilling by the jury.

4.6.2. Substantial damages

These are damages awarded to a customer who suffers actual economic loss as a result of divulging his or her private data by bank personnel. Compensation in this case is substantial because of the economic loss which the plaintiff suffered. Such damages are granted to persons who are engaged in business, who can recover such damages for injury to their commercial credit without proving actual damage. The leading principle of this authority of law is *Rolins v. Williams*(2854) 14 C.B.595. This principle has been recognized and applied in Cameroon in the case of *Lucas Fru v. BIAO Cameroun* Suit No. HCB/88/86 (unreported). Similarly, in *Cameroon Bank v. Paul Senju* Suit No. HCSW 12/17. (unreported), Monekoso J, quoting Justice Taylor in *Ashubio v. African Continental Bank*, awarded substantial damages to the plaintiff without requiring him to prove actual damage. The aftermath of the action for damages may be the cancellation of banker-customer contract, since non-compliance with the duty of non-disclosure frails the customer's confidence in the bank, which is an essential element of the banking contract and the customer may not feel secured dealing with the bank any longer. However, this depends on the discretion of the customer who decides to ask only for damages (*Ashubio v. African Continental Bank 2*, All N.L.R, PP.20-21). Apart from damages, the breach of banking secrecy within the CEMAC Zone is a criminal offence punishable by law with imprisonment and fine, if conditions for such responsibility are clearly established.

4.7. Criminal responsibility of the banker for breach of the duty confidentiality

Criminal sanctions for failure by the banker to keep customer's confidential data behind closed doors was enshrined in the article 45 of 1985 Ordinance relating to the operation of Credit Establishments in Cameroon, and is today provided by the Penal Code of Cameroon in it Section 74, 310 and 311 and the 2003 law^{empty} on Banking Secrecy in Cameroon. According to Teissier, (1999), generally speaking, "it is exceptional that prosecution should be engaged due to violation of professional secrecy". For a banker to be criminally responsible for breach of secrecy, it is paramount to determine the constitutive elements of the offence and the rules relative to applicable sanctions. These elements are the legal, material and moral elements. Firstly, the legal element of an offence is constituted only if provided by the law as per section 74 of the Cameroon Penal Code. However, this legal element disappears in cases of necessity under section 86 of this same code, when divulgement is justified when it is absolutely necessary as permitted by law. Secondly, the material element consists of divulgement of an information covered by secrecy. By material facts are considered "any act of confidentiality that is subjected to public knowledge and has been confided to under seal of secrecy and allows for an establishment of a link between this fact and one or more specific persons" (Teissier, 1999). Thirdly, is the moral element which deals with intention as articulated under Section 74(2) of the Penal Code of Cameroon. However, in Cameroon, disclosure of banking secrecy is sanctionable regardless of whether the breach is intentional or not, except otherwise provided by the law as enshrined under sections 8-25 of the 2003 law on Banking secrecy in Cameroon. These constitutive elements of an offence are pivotal in order to impute criminal sanctions on the banker for acting in contravention of the law regulating banking confidentiality.

The violation of banking confidentiality is criminally reprehended. This is appreciated at the levels of principal and accessory penalties. This is because banking secrecy is generally considered based on general interest, and the institution of penal sanctions is not based on prejudice suffered by the plaintiff. The law sanctions both disclosure that is prejudicial and not prejudicial to the customer as secret owner and disclosure favourable to him. This is founded on the fact that, a penal offence is committed against the state, and is punishable whether or not it causes prejudice to victim because the prosecution is not conditioned by the existence of a prejudice.

4.7.1. Principal penalties

These penalties are imprisonment and fine or both imprisonment and fine, are clearly spelt out in sections 26-29 of the 2003 law on banking secrecy in Cameroon. Section 26(1) of this same law punishes violators of the

duty of banking secrecy with imprisonment term of 3 months to three years or with a fine from 1 million to 10 million CFA Francs or both imprisonment and fine. Section 26(2) of this same law doubles the sanctions in aggravating circumstances if the disclosure is made in a press organ, or through a computer network, with six months to six years imprisonment or a fine from two million to twenty million CFA Francs or both. The 2003 law on Banking Secrecy does not only punish disclosure, but also non-disclosure by virtue of sections 27, 28 and 29 of this law. The breach of banking secrecy is also punishable under the Cameroonian Penal by virtue of sections 74, 310 and 311. Section 310 of this code punishes any violator of this duty with imprisonment from three months to three years and, fine from twenty thousand to one hundred thousand francs. Subsection (1) shall apply neither to statements to the prosecutions or police concerning fact which may amount to a felony or misdemeanor, nor to answers in court to any question whatever^{empty}. Section 311 of this same code goes further to impute sanctions on anyone who fails to respect the legal obligation of confidentiality solely by the reason of employment in an industrial or commercial undertaking with imprisonment from 3 months to 3 years or a fine from 100.000-5.000.000frs, or both imprisonment and fine. Upon conviction, the court may order the forfeitures provided under section 30 of this same Penal code of the Republic of Cameroon.

4.7.2. Accessory penalties

The class of these sanctions are stated under section 30 of the Cameroon Penal Law. These include forfeiture which amongst others include: removal and exclusion from public service, employment or office; prohibition on wearing any decoration; prohibition from serving in the armed forces; prohibition from keeping a school, on teaching in any educational establishment, and building any post in connection with education just to name but few. In conformity with section 30 of the Cameroon Penal Code, the above 2003 law on Banking Secrecy in Cameroon also provides accessory penalties in addition to the sanctions under the same law. the accessory penalties by virtue of this law are; the confiscation of the corpus delicti; loss of civil rights; suspension from public duties or from serving in a credit establishment; closure of the credit establishment; and publication of the decision taken.

The imposition of the above civil and criminal penalties shows how fundamental confidential duty is in the smooth functioning of banker-customer relationship and a sound banking atmosphere in the CEMAC Zone as a whole. To guarantee this duty, there is need for the CEMAC Member States to fully accelerate the supervision and implementation of banking secrecy legislations for proper protection of consumers of banking services. This is due to the fact that, insufficient supervision and implementation of the duty would serve as a gateway in favour of violation of the legally imposed duty and accessibates criminal activities like money laundry, corruption etc that are carried out through the instrumentalist of banks. To combat these ills, banking secrecy in the CEMAC sub-region and Cameroon particularly should be protected with great rigour, to enhance a sound banking environment and economy. To ensure proper protection of customers in the domain of confidentiality, the system of numbered bank account practiced by the Swiss as an integral security measure which protects bank's customer from unauthorized disclosure of secret facts should be adopted by the CEMAC Member States. This limits bank staff from revealing secrets, or threatening to reveal clients confidential information in possession of the bank personnel.

4.8. Disciplinary sanctions impute on bankers for breach of confidentiality

Disciplinary sanctions may also be imputed on bank personnel for non-compliance with secrecy. It is aimed at setting and maintaining high standards of conducts in the banking sector and to encourage all bank employees to maintain satisfactory conducts in the exercise of banking profession. Instituting laws on secrecy, the lawmaker is not only interested in the security of depositors but also in the banking system as a whole, since the security of depositors is the basis for the success of the banking system and the failure of one has repercussions on the other (Kelese, 2014). As such, the whole system is bound to collapse, since the underlying

element confidence that guarantees dealing between the institutions and customers disappears, leading to the various perils that may occur (Kelese, 2014). Thus, disciplinary measures are protective mechanisms to guarantee the banking system.

At times, the violation of banking secrecy gives rise to disciplinary sanctions rather than legal action in that, firstly, the potential banker may be unable to pay any damages, where the amount of damages awarded are exorbitant, secondly, the amount likely to be obtained may not be worth the time and efforts involved and lastly, taking legal action against an individual employee is not conducive for harmonious industrial relations, since the mere fact that the banker has violated contractual duty does not necessarily mean that mutual confidence has evaporated since disclosure of the customer's state of account is unintentional and the fact that nothing resulted from such a disclosure. To determine the scope of application of disciplinary sanctions, references are made to collective agreement for bank's personnel within the CEMAC Zone of which Cameroon is a Member State. The sanctions are provided by the 1990 Convention Regulating Credit Establishment in the CEMAC sub-region as set out below.

4.8.1. Disciplinary sanctions that will affect the banker in their honour and reputation

These are referred to as moral sanctions, and they do not have any direct influence upon the salary or professional activity of the banker and they also play the role of intimidation. These are warning and serious warning. The bank is warned by writing if informal means to resolve its misconduct is reached. The details of the complaint and improvement required time scales are stated in the warning. The warning informs bank's employees that a final written warning will be considered if there is no satisfactory improvement or change of conduct. It is given to bank personnel if the offence is serious or there is an unspent warning already on file. This gives the details of the complaint while stating the improvement required with timescale. It also states that in case of further misconduct, or following review, there is continuous unsatisfactory conduct, the employee stands the risk of being dismissed. In circumstances where an employee's conduct is satisfactory throughout the period when a warning is in force, but has limited time to lapses, or where there is no evidence of both satisfactory and unsatisfactory conduct, it will be considered in deciding how long any future warning should last.

4.8.2. Disciplinary sanctions that will affect the banker in their patrimony

This category of sanctions affects the defaulting banker in his wealth like the reduction of allowances, mostly in cases of warning for repeated faults and it does not constitute a fine. This is based on the point that an employee cannot be sanctioned through the payment of fines.

4.8.3. Disciplinary sanctions that will affect the banker in their function

The class of these penalties affects the banker's tasks such as demotion. It could pave the way for a reduction of salary, if it leads to modification of function and post. These consist of suspension and dismissal, which form the topic of discussion below.

Suspension

This is dealt with under section 30 of the 1992 Cameroon Labour Code. It stipulates that: employers are prohibited from imposing fine. The only disciplinary measure entailing loss of wages which an employer may inflict is suspension from work with loss of benefits. Such a suspension shall be null and void unless some conditions are simultaneously met as provided under section 30(3) of the same Labour Code such as; a duration of 8 working days from when the sanction is inflicted; a written notification of the suspension and the reasons thereof and notifying the Labour Inspector in the locality of suspension within the limit of 48 hours. If the reasons for suspension are deemed insufficient by the court, the said worker who is suspended

is entitled to compensatory allowance corresponding to the lost wages. Where applicable, damages if he shows proof that he suffered further damages, into his lost wages due to the suspension.

Dismissal

This is recommended if the banker is guilty of gross misconduct in disclosing clients secret facts if proven that there is continuous unsatisfactory behaviour. Generally, a loss of confidence in a banker is a real cause of termination of his employment from the banking institution. The breach of professional secrecy is likely to cause a serious loss of trust or confidence in the banker thus, resulting to his dismissal. This constitutes a termination of contract of employment by the employer (bank). Dismissal could be without notice or with notice as per Section 34 of the Cameroonian labour code.

Concerning dismissal without notice, as a general Common Law rule, it requires the employer to notify the employee before terminating any employment contract. But circumstances at times resulting, from employee's bad conduct warrants dismissal without notice. In this case, the employer is not in breach of contract^{empty} of employment. This is termed summary or instant dismissal. The law regards untrustworthy attitude like disclosure of a customer's confidential data as impermissible conduct which warrants dismissal without notices as in the case of *Sinclair v. neighbour* [1967] 2QB 279. Gross misconduct does not call any notice, dismissal allowances and compensation for paid leave, since such a gross misconduct has been proven to be intentional. For a justifiable dismissal for fault, the employee must be responsible for grave misconduct, and where the relationship between the employer and employee is broken, there must be genuine reasons for dismissal. When the employer dismisses because of misconduct, he must satisfy the court that the alleged misconduct is well-founded reason for dismissal^{empty}. The sanction is implemented whenever, the banker's unwelcomed attitude warrants it, since breaches of duty of secrecy justifies instant determination of the banker' contract. This was the decision adumbrated in *Ross v. Aquascutun Ltd* [1973] IRLR 107.

Fault of gross misconduct is always applicable to bankers that do not comply with banking secrecy. Where the misconduct is serious and well-founded reason for dismissal, the employer is within his legal rights to dismiss without giving any notice, (Anyangwe, 1983) and any action by the employee for wrongful dismissal or failure to give notice will be bound to fall on the ground. A banker having voluntarily disclosed professional secret is punishable for gross misconduct which warrant instant dismissal and automatically, accompanied by pecuniary sanction in the form of damages. The pecuniary sanction is based on the fact that, the parties are lined with a contract intuitu personae (do it yourself), and the need to have full confidence towards each other. Disregard of the duty of loyalty and confidence through divulging professional secrets, destroys the bases of the contract and renders the termination of the banker's contract acceptable, on the grounds of breach of trust.

In protecting employees the law has made clear provision to the effect that, termination of employment contracts by banks should be effected with notice. This with, employees receive notification in writing in advance, stating clearly the date of termination. The notice is found in the contract, but it can be ousted where the employer is given less than the statutory limited period of notice to be effected. In situations where the employee (banker) accepts payment in lieu of notice, the contract of employment then terminates before the expiry of the notice immediately on the receipts of the wages. In the context of our study, the banker loses the right to payment in lieu of notice in case the right has been waived. This was the ruling in *Trotter v. forth Ports Authority* [1991] IRLR 419, and the decision was also arrived at in *Baldwin v. British Coal Corporation* [1995] IRLR 139. From the above discussion, it is believed that, imputing sanctions on the bankers for falling short of secrecy obligation as provided by the laws would make them to exercise their professions with due care thus, instilling their clients with confidence, honesty and trustworthiness in which banking industries are built and the aftermath would be a sound banking atmosphere in the CEMAC sub-region and Cameroon specifically. However, the duty of secrecy is subject to limitations thus, making such a duty not absolute in all circumstances.

5. Limitations of banker's duty of privacy

The legal obligation imposed on banks to keep their customers' confidential data in "cameras" is not absolute but qualified. The qualified nature of the duty stems from the fact that, there are exceptions to such a duty. In such situations, the banker will not be considered to have acted in contravention of the law, by disclosing customer's information of which he has knowledge since he is acting within the ambit of the law and cannot be sanctioned. As such, the banker is not in breach of the duty imposed on him by law. These are instances of authorized breach of the duty, as the law in some circumstances provides instances where disclosure of the customer's secret facts would be lifted under compulsion by law or in the interest of the parties as seen below.

5.1. Disclosure under compulsion by law

The qualified nature of banking secrecy in Cameroon is an expressed one. This could be in favour of judicial proceedings and public interest at large. This is evident under article 45 of the above 1985 Ordinance, which is to the effect that; *"However, except in cases provided for by law, professional secrecy may not be raised in respect of the minister in charge of currency and credit. The supervisory board, the National Credit Council nor the Bank of Central African State"*. Same spirit has been taken by sections 310 and 311 of the Cameroon Penal Code and the 2003 law on banking secrecy in Cameroon.

5.2. Disclosure to judicial authorities

The bank's obligation to disclose customer's confidential facts to judicial authorities in Cameroon and other jurisdictions is made expressly by legislations. The legal provisions regarding disclosure to judicial authorities in Cameroon are articulated under sections 8-25 of the 2003 law on Banking Secrecy. Disclosure to these authorities could be as a means of initiating criminal proceedings, disclosure in the course of judicial proceedings and disclosure in the course of execution of judgment as elucidated below. As per the law, the banker's duty of confidentiality would be in operational, if made to public authorities of the judiciary. The objective is to prohibit crimes like Money Laundering, corruption, Financing of Terrorism, drug trafficking etc. This is provided by the 2003 law on Banking Secrecy in Cameroon which stipulates that: *Whoever takes part in controlling of financial establishment or persons employed by the said establishment and fails to declare to the state counsel or Monetary authority operation relating to money which he knows or suspects are derived from illegal activities such as drug trafficking, activities of criminal organizations or money laundering is punished with imprisonment from 1-5 years and fine from 1 million to 20 million^{empty}.*

A careful reading of this section makes us to understand that this law punishes both unauthorized disclosure and failure to disclose in suspicious circumstances. The above provisions compels a banker to disclose to judicial authorities any act appears to be suspicious when dealing with its customer, to initiate criminal proceedings against such a customer. The provisions of this section is in conformity with sections 6, 8, 28 and 29 of this same law. Section 8 for example is to the effect that: *"Banking secrecy shall not be invoked against a judiciary authority acting within the framework of criminal procedure and investigating officers acting on the basis of a rogatory commission^{empty} of the state counsel"*. From a perusal of these sections, it is a clear evidence that banker's duty not to divulge clients' private data is lifted by law when disclosure is made to public authorities of judicial nature.

Bank's duty of privacy is also waived during criminal proceedings. The aim is the provision of evidence during trial to establish facts to enable a bank established facts to the satisfaction of the tribunal. Under the Bankers Books (Evidence) Law, the court can make order for the inspection and copy taking of entries from a bank's record. This has been embraced at the global level via the use of "letters of request" or "letters rogatory". Letters rogatory is a request for the provision of evidence made by a court in the country which seeks the information to a court in a place at which the records are maintained. This method enables the requesting court to abating information without committing directly or indirectly infringement of the sovereignty of another state. The convention establishing COBAC in it article 9 indicates that: *"It may require*

credit institutions, any information or evidence relevance to the exercise of mission” and the current national piece of legislation, the 2003 law on Banking secrecy stipulates: “The fact following a court order, of a credit establishment allowing its books to be examined under the conditions laid down by OHADA Uniform act relating Commercial Law” in its section 6(v). The disclosure of information by the bank to judicial authorities under the Banker’s Books Evidence Act contained in article 9(1) definitely cover banker’s records use for ordinary business of a bank and books used for reference and not for the purpose of making daily entries are included. Hence, for the purpose of evidence in proceeding, a bank may be requested by the court order to provide evidence or allow its books or records to be examined for this purpose.

Confidentiality is also lifted when proceedings have been conducted and the customer is not ready to comply with the decision of the court by actively resisting. With this, the successful party (the bank) must take further steps for the execution of the court’s judgment (Huleatt & Gould, 1996). This permits the bank to divulge any customer’s information deemed to be of a confidential nature that would be necessary in the execution of the judgment.

5.3. Disclosure to public authorities

The categories of public authorities to whom the banker is free to disclose his client’s confidential facts without infringing on the law could be at the regional and national levels.

5.3.1. Divulgement to regional public authorities

The authorities at the regional level could be those in charge of supervision and control and those with specific functions as seen below. The motive here is for regulatory purposes and to meet up with the regulations put in place regulating the banking sector. The regulatory motive in Cameroon are left in the hands of BEAC and COBAC. For example, under articles 7(a), 9(c-d) Annex of the Convention Establishing a Banking Commission of Central Africa COBAC is entrusted with the powers of ensuring general compliance of banking regulations by CEMAC Member States. BEAC is principally in charge with the control of banking profession of the Member States. The function is performed through COBAC but banks are obliged to by legal norms to disclose information to BEAC regarding their activities and that of their customers’ account and transactions. This provision is reinforced by other provisions of article 10, Title 11, powers of the annex to the Convention on the Establishment of Banking Commission in Central Africa and the Cameroonian law of 2003 on banking Secrecy when it elucidates that: Banking secrecy may not be invoked against sworn officials of the public treasury, monetary authority, National Credit Council, COBAC and BEAC. As such, any disclosure made to any of the authorities specified by this law will not amount to a breach of the banker’s duty of secrecy.

As to COBAC, its creation in 1990 as a legislative organ is charged with the powers to legislate regulatory norms and the implementation of such norms in the banking sector within CEMAC. This commission is vested with administrative, regulatory, jurisdictional and control functions in the banking sector and the banker’s duty of secrecy cannot be invoked against it in the exercise of its functions as enshrined in article 11 of the COBAC Convention which clearly states: “*Professional secrecy is not binding on the commission*”. Thus, any disclosure to this commission within the ambit of the law is not contrary to the duty of bank’s secrecy. Regional authorities charged with specific functions are those responsibility for combating financial crimes in the banking milieu and the disclosure of customers’ personal data for this purpose will not amount to an infringement on the customers’ right of privacy. Such authorities include; Action Group against Money Laundering in Central Africa (GABAC) and Deposit Guarantee Fund for Central Africa (FOGADA) which are worth examining below. The creative skills used by criminal in the financial milieu to carry out clandestine transactions has made CEMAC Member States not to sleep on their memories. To eradicate these ills, CEMAC has integrated this vision in her fighting strategies and the end result has been the creation of GABAC. GABAC was created in N’djamena by an additional Act No. 09/00/CEMAC-086/CCE of 14 December 2000 to set up the Action Group against Money Laundering in Central Africa.

Its mission is the coordination of strategies in the fight against money laundering in the CEMAC sub-region. GABAC is charged with the task of promoting anti-laundering legislation within the CEMAC Zone and to initiate and coordinate evolution actions to stamp out money laundering. It also undertakes an action aims at protecting financial and banking systems from attacks that are linked to money laundering, and to put in place principles in the community, recommendations and norms in the framework of international cooperation. Article 4(5) of the regulation of April 14, 2002 on the organization and functions of GABAC. Since the practice of money laundering is carried out through the instrumentalism of banks, calls for the need to legalise the disclosure of banking secrecy to the authorities who are signed the mission of combating this crime such as GABAC. Thus, disclosing customers' secret data to this organ is sanctioned by law as a breach of secrecy since it has the goal of protecting financial crimes and the banking system as a whole. To further strengthen the struggle in combating financial ills, FOGADAC was created in 2009, with the responsibility to guarantee and safeguard the deposits of savers within the CEMAC community. Its creation was aimed among other things to restore the credibility of banking system and sustaining public trust in the functioning of banks. Mindful of the objectives of its creation, any disclosure by a bank personnel to the organ is not treated as an infringement on the customer's right of confidentiality, since such a disclosure is permissible by law.

5.4. Disclosure to public authorities at the national level

The bank's duty of authorized breach of secrecy extends to public authorities in Cameroon such as, national authorities in charge of control and supervision, those in charge of fighting against crimes and those responsible to recover funds as discussed below.

5.4.1. National authority responsible for control and supervision

Under this category we have the Monetary Authority and the National Credit Council, whose roles are worth discussing. This is the highest authority as concerns finances and banking profession in Cameroon and is responsible for controlling and supervising banks at all stages. The Monetary Authority controls and supervises banks during entry into the banking profession, when the bank is in operation and during liquidation. This is one of the principal authorities to which banking secrecy cannot be invoked against. Thus, in her external supervisory functions such as administrative, regulatory jurisdictional and control functions of banking institutions is bound to demand any information in the performance of its duty. Hence, banks are under compulsion at law to divulge any information regarding the state of their customers' accounts and transactions and will be in breach of their legal duty they owed to their customers, by virtue of section 12 of the above 2003 law on Banking secrecy. This is in conformity with section 27 of this same law which empowers the bank personnel to disclose clients' information deemed to be secret in cases of suspicious circumstances like organized criminal activities, money laundering and drug trafficking. The duty to disclose to the Money Authority is not a novelty of the 2003 law, as it was long echoed in article 45 of the 1985 ordinance on the operation of credit establishment in Cameroon.

The National Credit Council (NCC) established in 1993 by administrative Order No. 86 of October 8, 1993 is one of the government agencies under the Ministry of Finance, and it is the primary credit policy-making body of the government. Its creation was to rationalize and optimize credit policies. It is the direct metal for the transformation of information between credit institutions and the Monetary Authority, COBAC, and BEAC. As such, the NCC has direct contact with credit establishments and by virtue of the laws and regulations in force, banks are left with no choice than to make available any transaction of private nature to this body not leaving out information relating to clients' confidential data. This is qualified in the following terms: *The National Credit Council are advisory organizations with national jurisdictions, responsible for issuing opinion direction on monetary and credit policies and the banking regulations in conditions defined by this article 30(a)*^{empty} *and "They study the operating conditions of the credit institutions, especially in their relations with clients, and offering all measures they deem appropriate"*^{empty} *"National Credit Council received all credit institutions, at*

intervals and in the manner determined by the Monetary Authority of information relating to their activities and in particular to their sources and their jobs”.

These articles point to the fact that bank secrecy does not apply to NCC when acting within the legally recognized duties in the performance of its functions. Hence, banks are duty bound to reveal any information to the NCC when so demanded under compulsion by law not as a matter of choice and will not be considered to have acted ultra vires to their legal obligation of secrecy, as pointed out in clear terms by section 12 of the above 2003 law.

5.4.2. National authorities with the duty to combat crimes

In Cameroon, bankers are not penalized for violating the contractual obligation of secrecy, if unveiling secret facts relating to its transactions with its customers is made to public authorities who are empowered to fight against crimes. Hence, the law relating to the Prevention and Suppression of Money Laundering and Financing of terrorism in Central Africa has provided a positive obligation on financial institutions to report knowledge of suspicion in any transactions conducted by a bank's client. The category of authorities under this head include the following;

The desire to fight and stamp out financial related crimes within the CEMAC Zone and Cameroon in particular is through the National Agency for financial Investigation (ANIF), as provided in article 18 of CEMAC Regulation N°. 02/10-CEMAC-UMAC on the Prevention and Suppression of Money Laundering and Financing of Terrorism in Central Africa. It obliges financial institutions to report to ANIF any suspicious transactions in cases where; the amount or other goods in their keeping that can be connected to a crime or offence to be considered as money laundering; Transactions involving money or goods that could be derived from crime consider as money laundering as contained in article 18 of Regulation No. 02/10-CEMAC-UMAC relating to the Prevention and Suppression of Money Laundering and Financing of terrorism in Central Africa. The preventive motive set forth by this regulation is supplementing that if the Cameroonian Penal Code which in its entirety is a preventive tool against the commission of crimes. This is also the spirit taken by the above 2003 law relating to Banking secrecy in its section 27. It is evident here that, the prevention of crimes is the principal reason for disclosing by banks and other professionals in any field with confidential duty. As such, any disclosure of customers' secret data to ANIF for this reason amount to an authorized breach of the banker's duty of privacy and not punishable.

Corruption is an endemic in Cameroon and in order to terminate this “virus,” National Anti-Corruption Commission (CONAC) was created in 2006 by decree No. 2006/088 of March 11, 2006, creation the National Anti-Corruption Commission in Cameroon. Its mission is to monitor and to evaluate the degree of effective in implementing government's anti-corruption program. It coordinates regularly national anti-corruption measures in the country. It is also empowered with the capacity to investigate, gather and analyse allegations and information on practices pertaining to corruption in Cameroon. Be it a public institution with the principal goal of eradicating financial malpractices, banking secrecy is waived against it in cases of suspicion of funds.

Banks are regarded to be the “perfect engines” for the catalyzation of financial crimes and a hideout for corrupt practices like embezzlement and misappropriation. Since banks are the safest place where money is kept for present and future use whether for good or evil, it is the desire of the government of Cameroon to set up institutions like the supreme state audit Created by decree No. 098/273 of October 1998, to fight against financial ills. Its creation has the goal of winning a threefold battle, dealing with the ethical behaviours of managers and public affairs, and combating corruption, the court of Auditors of the Supreme Court is competent to review accounts of certified public and other practicing accountants. To permit this institution carry out its duty effectively, the banker's duty of secrecy is waived towards its members as banks are free to disclose any information to this organ when circumstances so warrants as per the law, when section 9 of the above 2003 law states inter alia that: Banking secrecy shall not be against public finance supreme control

institutions. As such, banks disclosing information to this institution is not a matter of their very volition but under compulsion at law.

5.4.3. Obligation to disclose to national authorities in charge of recovery

The banker's duty of secrecy will not be applicable if disclosure is made to sworn tax officials, sworn custom officials, sworn treasury officials, National Social collectors, debt Recovery corporations, and money market commission. But within the context of this article, our discussion would be limited to the first three. Tax payers are under legal obligation to file a tax return indicating all the elements needed to established tax dues. Upon request from the tax authorities, they must provide all relevant documents to their assessment (Masshardt, 1989). Therefore, tax payers shall provide the tax authorities with all necessary documents certifying their relations with other parties. While third parties, and banks inclusive have the mandate to deliver to tax payers all such documents in their possession. Where tax payers fail to deliver sufficient and satisfactory documents relevant to tax assessment, the tax authorities has a legal right to obtain from any third party parties including banks all such documents required for a proper tax assessment of the said taxpayer. Giving the important and very special nature and objectives of taxation such as raising of revenue, redistribution of income and wealth, economic price stability and economic growth and development, under compulsion by law, any information including clients' secret data must be disclosed for taxation purposes.

The principal source of authority is Section 10(2) of the above 2003 law on Banking Secrecy when it indicates that, The authorities in charge of taxation are entrusted with powers to obtain any accounting not excluding banking documents which they need to access and collect taxes. It goes further to states that: *"Banking secrecy shall not be invoked against sworn tax officials acting within the framework of a written communication procedure as provided for in the General Tax Code"*. By this provision, banks are bound to divulge any information of whatever nature to tax authorities, to enable them assess actual tax dues of a fraudulent taxpayer trying to evade payment of taxes. This view has also been supported by the 2009 General Tax Code of Cameroon in its section 179 which has as objective the prevention of crimes relating to tax evasion and tax fraud. This then obliges bankers to disclose any information to sworn tax official for the purpose of tax recovery and prevention of crimes as well.

Custom duties form a significant part of state income in Cameroon. Before the importation or exportation of goods, the importer or exporter must complied with all required documents and fees needed. This requires importers or exporters and other parties clearing goods at any entry points to present vital documents for proper assessment of custom duties and must pay the assessed due custom tax. Failure to comply with these conditions, the custom officials have been empowered to trace such documents and finances even in the possession of third parties and banks inclusive. For them to smoothly carryout their duty, they are exempted from professional secrecy. This in Cameroon is elucidated by in clear terms when Section 11(2) of the 2003 Law on Banking Secrecy in Cameroon provides inter alia that: *"Banking secrecy shall not be invoked against sworn custom officials undertaking the assessment and recovery of duties and taxes within the framework of a written procedure in compliance with the custom's code"*. The custom's services shall have the right to consult banking documents on the spot (Irukwu, 1941). This is clear evidence that banks are compelled by law to reveal to custom authority their clients' account and transactions where and when need arises without any objection.

Treasury officials are responsible for the collection and safe keeping of public finances derived from taxation and other public funds intended to be used for public interest. To exercise their duty of collecting and safe keeping of public funds smoothly, the law accords them the powers to take all measures towards the realization of public funds. As such, the duty of professional secrecy is lifted against them in the performance of their task as per finance laws and banking secrecy law of 2003 under section 12 to the effect that: *"Banking secrecy may not be invoked against sworn officials of the public treasury ..."* By this provision, banks are bound to

reveal to these authorities all the vital information even customers' personal data which will enable them to effectively carry out their duties imposed on them by laws.

5.5. Public duty to disclose

Public duty of divulging customer's confidential data is considered the least specific and most controversial of the four exceptions of banker's duty of professional secrecy. In the above English case of *Tournier's*, Atkin L.J and Scrutton L.J upheld that this duty is limited particularly where it is imperative to prevent fraud or crimes by the customer. Bankes L.J on his opinion with regards to this view opined that, disclosure of confidential information becomes a necessity, where there is duty to the public to disclose. For instance, where danger to the state or public duty may supersede the duty which an agent owes to his principal. Jack Vezian on this point stated that, disclosure is permitted wherever other interests to be protected are equal or superior to the interest of the customer like where a garnishee order has been served on a bank or where information is demanded by the monetary authority or judicial authorities. Bankes L.J in elaborating on this duty of secrecy greatly relied on the words of Lord Finkey in *Skyring v. Greenwood and Cox*[1825]4 GBC 281. which were to the effect that, danger to state security supersedes the duty of secrecy owed by an agent to a principal. This view is upheld by the Cameroonian legislator by the above mentioned 32003 law. Stressing on the necessity of public duty to disclose, has provided sanctioned under section 27 to bank personnel who fail to reveal clients' information which could seriously harm the public. This language of public duty limitations is wide enough to permit bankers act as whistleblowers on customers' secrets when it is connected crimes. Hence, the banker's obligation of privacy is overridden by potential danger to public interest.

5.6. Disclosure with intervention of parties

The bank and the customer are both parties to the banking contract which is highly regulated by rules and regulations. Their relationship is protected by professional duty of confidentiality, which is fundamental to keep the banking industry alive and the economy of every state in proper existence. This duty has taken a different dimension to protect the interest of both parties. That is, where the bank's interest requires divulgement and finally where is with the customer's expressed or implied consent which are worth analyzing under this sub head.

5.6.1. Disclosure for the bank's own interest

This is the third limitation of banking secrecy as elucidated Bankes L.J in the above *Tournier's* case. This happens when the interest of the bank requires divulgement of a customer's secret information for instance, in case of litigation involving the bank and its client and disclosure by the bank is indispensable for the purpose of providing evidence to establish its case to the satisfaction of the court. For example, if the bank sues to recover money it lent to a customer, it has the right to disclose in its pleadings the state of the customer's account and the amount owed by him to the bank. Here, the bank has the right to disclose which ordinary will not be sanctioned for breach of the duty of privacy owed to its client. This principle was arrived at in *Christofi v. Barclays Bank PLC* [2000] IWLR 937.

In Cameroon, article 45 of the 1985 above mentioned ordinance has made it fundamental to protect the rights and interest of the bank by providing situations whereby, the bank will not be held liable for breach of secrecy if the banks' principal goal is to protect their interests against their clients' acts that are tantamount to jeopardize banks' interests. This is also the position of section 6 (3) of the above 2003 law relating to banking secrecy by indicating clearly that, the exchange of confidential information between credit establishments in conducting their business will not constitute the violation of banking secrecy.

5.6.2. Disclosure with customer's authority (consent)

This is the last limitation regarding banks' duty of professional secrecy listed by Bankes L.J in the above landmark case. This view was also acknowledged by Jack Vezains that, customer's consent is vital to constitute an exception to banking secrecy. He opined that, the duty cannot be invoked when a customer expressly or tacitly consent that information on his account be revealed. Thus, giving authorization for the duty to be lifted. This limitation is not novel under Cameroonian penal law as it is stated under the Penal Code which acknowledges the customer's consent as a limitation to professional secrecy. Such a consent must be voluntary and not under duress. The Penal Code of Cameroon in its sections 310 and 311 punishes whoever without authorization from the person interested in secrecy reveals confidential facts he knows or confided on him solely by reason of his profession or duty with imprisonment and fine or both of such penalties.

English law makes a distinction between express, implied consent (Godfrey et al., 2016) general and specific consent which are worth examining. Express consent is when the customer clearly and indefinitely authorizes his bank to disclose his affairs to a third party, for instance giving bank references. Implied consent on its part is when the customer 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. This was the decision arrived at by Parcq L.J in *Sunderland v. Barclays Bank Ltd* [1938] 5 L.D.A.B 163 based on customer's implied consent to disclose the state of her account to her husband, and it was not considered a breach of the duty. Customer's implied consent is inferred from his conduct in which the bank believes it has been authorized to divulge secret facts relating to its client's financial situation. Also, a customer may manifest general and specific consent regarding legal disclosure of the state of his account to a third party. General consent exists when the bank is empowered to divulge the general state of the customer's account (Ellinger & Lomnicka, 1994). As to specific consent, these are cases of specific divulgement where the bank is entitled to supply only specific information as permitted by the client. Failing short by the bank to reveal only such information as warrants by the customer is outside the scope of the law and therefore, attracts penalties for violating confidentiality. Moreover, the bank should not act on the customer's notice, advising his consent, if it has reason to believe that, it was executed under compulsion, for example, in compliance with an order given by a foreign court (*Rc ABC Ltd. [1985] FLR 159 (Grand Ct. of the Cayman Island)*).

6. Conclusion and recommendations

The banking sector is at the heart of every economy due to the primordial roles it plays. The wellbeing of a nation solely depends on the soundness of its banking system, since their activities facilitate the production process, distribution, exchange and consumption of wealth. To achieve these objectives, the CEMAC legislator and that of Cameroon in particular has left no stone unturned by subjecting bankers to comply with the contractual obligation of confidentiality which banks owe to their customers. Such a duty involves all clients' information and acts obtained by banks, regardless of the source, and for the duration which the banker-customer relationship exists and even after the termination of the banker-customer contract.

This is because the banker-customer connection originates from an agency contract and the element of trust and privacy is of paramount importance to their contact. Thus, the violation of the confidential duty by the banker attracts civil, criminal and disciplinary sanctions, since the collapse of the banking sector is disastrous to an economy. As such, if proper regulatory measures and decisions are not taken, it would ruin the bankers, the institutions and losses to the whole economy. To combat these ills, it is imperative to hold the banker liable for acting in contravention of banking regulations as per the Cameroonian laws like the 1985 ordinance, the Penal Code and the 2003 law on Banking Secrecy. This then calls for improvement in security measures, with the objectives of protecting customers and ensuring a sound banking environment. Reason being that, bank's success greatly depends on its ability in keeping and maintaining its good name and inspires its customers with professional privacy in dealing with them. However, banker's duty of secrecy is subject to exceptions in that it has some qualifications since the breach of the duty will not be punishable since

the banker discloses within the ambit of the law. The limitations to this duty was opined by Bankes L.J in English case of *Tournier v. National Provincial and Union Bank of England*, in which it was held that disclosure is permissible under compulsion at law, public duty to disclose, disclosure for bank's own interest and finally disclosure with the customer's authority or consent.

As recommendations, this paper earmarks that, the optimization of banking secrecy would adequately protect customers since the underlying element governing banker-customer relationship will be cemented. More so, banking confidentiality within the CEMAC sub-region should be protected with regour to help achieve a sound banking atmosphere and economy. More so, there is need for CEMAC member states to fully accelerate the supervision and implementation of banking secrecy legislation for proper protection of consumers of banking services. This would serve as a gateway in favour of combating violations of the duty and criminal activities that are conducted through the instrumentalism of banks. In addition, CEMAC Member State should adopt the Swiss system of numbered bank account as an internal security measure to protect clients. Furthermore, severe penalties should be imputed on bankers who act in contravention of their legal obligation in the performance of their duty they owe to their customers. The 1992 Labour Code of Cameroon in its section 39 has failed to provide guidelines regarding the award of damages in cases of breach of banking secrecy. With this, judges do award damages contrary to the case in various aspects of the law. It is therefore, imperative to amend this section of the Labour Code in order to provide guidelines as to the award of damages.

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