



BANKING SECRECY

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All financial institutions are subject to an obligation to observe banking secrecy, which generally means that they are not permitted to cause any information about their clients or any information learnt when conducting transactions with clients leak out. This concerns a variety of information. Financial institutions must also keep confidential the assets and any information concerning the financial position of their clients that was disclosed to them when performing their borrowing activities. In addition, they may not reveal whether a business is a going concern or not, or whether it is profit or loss making.

The observance of banking secrecy itself, prescribed by law, is very important for clients. They are able to confide to the bank. In any case, the relationship between a client and the bank employees must be built on trust.

In foreign countries, such relationships are directly enshrined in the preamble to the general terms of trading for banks and insurance companies, as well as being laid down in the contracts between banks and clients. In some countries there is an absence of extensive legislation relating to banking secrecy (for example in Germany), in others such legislation is more voluminous (for example in Switzerland, Liechtenstein, Austria and similar). This means that the range of both information and persons authorised to provide banking information varies between different countries. There are also differences in the legal arrangements for the protection of data. In some countries the obligation to observe banking secrecy follows directly from the law, while in others it emerges from the contract with the client. There are countries without a legal obligation to provide predetermined entities with information, and strict sanctions are available for cases where bank employees divulge banking information. There are so-called offshore zones such as The Bahamas, Cayman Islands, Isle of Man and so forth, where, mainly because strict sanctions may be imposed due to the disclosure of banking information, so-called money laundering is flourishing.

It goes without saying that both the bank and their client are interested in keeping information confidential. They really should be in agreement on this point. A bank should always bear in mind that any violation in banking secrecy can cause them to lose one or more clients if the aggrieved client publicizes a bad experience with a particular financial institution.

Legislative Arrangement for Banking Secrecy in the SR

Under the latest version of the Act on Banks, No. 21/1992 Zb., banking secrecy refers to any information and docu-

ments on circumstances relating to clients of a bank or a foreign bank branch that is not publicly available, in particular information on banking transactions, account and deposit balances. A bank or a foreign bank branch must keep this information confidential and take measures to protect against disclosure, misuse, damage, destruction, loss or alienation. Unless provided otherwise by law, a bank or foreign bank branch may only provide information and documents on any facts subject to banking secrecy to third parties with the prior written consent of the client, or upon a written instruction from the client. A client has the right, provided that he covers the associated costs, to inspect the information kept concerning him in the database of a bank or foreign branch and to obtain abstracts thereof.

A bank and a foreign branch is obliged to submit a report on any matters subject to banking secrecy to the following persons:

- persons charged with the conduct of banking supervision;
- persons in charge of auditing the use of state premium for building saving purposes;
- auditors engaged in activities prescribed by law.

A bank and foreign bank branch may only submit a report on matters concerning a client without the client's consent on written request from:

- a) a court of law, for the purposes of civil court proceedings;
- b) an authority involved in criminal proceedings, for the conduct of their business;
- c) financial and customs authorities, for matters relating to taxation and customs procedure in which the bank's client is involved;
- d) a court executor (distrainer) put in charge of execution (distrain) under a separate law;
- e) the Office of the Financial Police of the Police Corps, for the purposes of performing tasks stipulated by law;
- f) a ministry conducting supervision by law;
- g) an administrator and receiver engaged in bankruptcy and forced settlement proceedings in case where the bank's client is involved in such proceedings under separate legislation;
- h) the Deposit Protection Fund after deposits in a bank or a foreign branch become unavailable;
- i) an appropriate authority of the government, where this concerns meeting obligations arising from an international treaty binding on the SR in cases where the discharge of the obligations cannot be refused on the grounds of protecting banking secrecy.

a) Providing data to a court of law for the purposes of civil court proceedings

A bank must notify a court of the facts relating to a client,



which bear relevance to the proceedings and verdict. The obligation to provide the data is set out in § 128 of the Civil Procedure Code.

On the basis of a written request by a court commissioner, who may also be a notary, a bank must disclose the balance of funds deposited in a passbook, current or other account, other deposits, and/or other forms of savings. The court commissioner must supply suitable data that allows for the identification of the account, passbook or other deposit. The obligation to disclose the data under this scope is set out in Decree No. 66/1992 Zb. on Rules of Administrative Procedure for District and Regional Courts.

b) Providing data to authorities involved in criminal proceedings for the purposes of conducting their business

Banks may only disclose data subject to banking secrecy for use in pre-trial proceedings in cases where they are requested to do so by a prosecutor. An investigator or police authority requires the prior consent of the prosecutor for such a writ to be made. The presiding judge can request such data during a court trial (§ 8 of the Criminal Code).

c) Providing data to financial and customs authorities in matters relating to taxation and customs proceedings involving the bank's client

Following notification from the customs authorities, banks must disclose the number of bank accounts of persons (clients) involved in taxation and customs proceedings. The scope of the data is prescribed in the Customs Act. On a written request from a tax administrator, banks must disclose information on the number of bank accounts, their holders, account balances and their changes, data concerning borrowings, loans and saving deposits. Tax administrators are understood as appropriate tax offices and municipalities. The scope of the data provided is governed by the Tax and Fees Administration Act.

d) Providing data to court executors responsible for execution under separate legislation

Under the Execution Procedure Act, banks must disclose to an executor, at his written request, the number of bank accounts, their holders, account balances and their changes.

e) Providing data to the Office of Financial Police of the Police Corps for the purposes of performing tasks prescribed by law

A bank must provide information on the request of the financial police. Also, pursuant to Act No. 249/1994 Z. z. on The Fight Against Laundering Money from Most Severe, Especially Organized Forms of Crime and Decree No. 181/1997 Z. z. on Abusive Banking Operations, banks must notify the police authorities of any abusive banking operations. This is why the discharge by a bank or a foreign branch of their obligation to notify abusive banking operations or their advising of an authority involved in criminal proceedings of their suspicion that a crime is being prepared, happening or has been committed is not considered a violation of the banking secrecy obligation, even if the crime concerned has to do with matters otherwise protected by banking secrecy. Failure to prevent or report such a crime is punishable.

f) Providing information to a ministry conducting supervision by operation of law

This mainly concerns data required by the Ministry of Finance of the SR for the conduct of supervision over compliance with the Act on Banks, the Act on Securities, the Act on Bonds, and so forth.

g) Providing information to an administrator and receiver in a bankruptcy or forced settlement proceedings involving a bank's client under separate legislation

A bank shall disclose the number of accounts of a debtor, account balances and their changes and information on the custody of securities and deposits on the basis of a written request under § 9d of Act No. 328/1991 on Bankruptcy and Composition.

h) Providing data to the Deposit Protection Fund after deposits in a bank or a foreign branch become unavailable

A bank is under an obligation to disclose the data pursuant to Act No. 118/1996 Z. z. on the Protection of Deposits.

i) Providing data to an appropriate authority of the government in order to meet obligations arising from an international treaty binding upon the SR in cases where the discharge of such an obligation cannot be refused on the grounds of banking secrecy protection

Such an international treaty would for example be UN convention against illegal trade in narcotics and psychotropic substances.

A written request must contain data by which the bank is able to identify the matter in question. The bank is entitled to recover costs incurred for supplying the information to an auditor, court or, for the purposes of civil lawsuit, court executor, as well as administrator and receiver appointed under the Bankruptcy and Composition Act.

A bank must disclose, even without the client's consent, his identification data and data on his account to any person who is able to prove that – as a result of an error in executing a payment or clearing operation – they suffered damage to their property in that funds belonging or managed by them were credited to the client's account and the client has not issued a reversal payment order to transfer the incorrectly credited funds within seven calendar days when prompted to do so by the bank. This obligation for banks has only been incorporated in the latest amendment to the Act on Banks.

A bank is authorized to release data on a client, his account and other circumstances to an attorney at law, commercial lawyer and executor in connection with enforcement of the bank's claims. Furthermore, a bank is entitled to inform other banks, without the client's consent, in cases where a client is in default on an obligation for more than 90 days, or has repeatedly violated his obligations arising from his debt owed to the bank or broken some other specific obligations.

If despite a written notice the client defaults for more than 120 days, the bank may assign its claim to another entity, including an entity that is not a bank, on the basis of a written agreement.

Persons who must comply with banking secrecy include



employees of a bank or foreign branch, members of the statutory authority and supervisory board, mortgage administrators and his assistants, and persons conducting banking supervision. This obligation to observe banking secrecy also endures after the work contract or similar labour relationship has been terminated.

Some other persons to whom a bank must allow access to documents must be mentioned. Such access can, however, be limited. For example, a bank must make it possible for a tax administrator to inspect the accounting records.

Save certain limitations laid down by company bylaws, a bank or its employees must make available for inspection all documents and records required by members of the board of directors and supervisory board. For financial institutions founded as joint stock companies, the authority to inspect documents is governed by the provisions relating to their rights and duties as members of company bodies. The specific procedure to be followed when inspecting documents may, however, be arranged by internal regulation.

A bank must supply data to the Registry of Bank Loans and Guarantees maintained by the National Bank of Slovakia. It must also disclose information on its shareholders if requested to do so by the National Bank of Slovakia and the Ministry of Finance of the SR.

Handling Clients' Accounts Without Their Consent

In this context it is necessary to mention not only those areas where the principle of banking secrecy is abandoned by law, but also the fact that in certain cases a bank may resort to the funds of its clients. This involves disposing of the funds available on the account or handling the account itself without the client's consent. A bank is allowed to do so without the client's approval in cases:

1. Where there are criminal proceedings pending and the presiding judge had issued a writ to block the account or has ordered funds to be debited from the account.

2. Where there are execution proceedings pending. Under current conditions, such proceedings can only be initiated by a petition filed by the creditor making the claim, namely under:

- the Civil Procedure Code (Act No. 99/1963 Zb., as amended);
- the Administrative Procedure Code (Act No. 71/1967 Zb., as amended);
- the Tax and Fees Administration Act, which governs so-called tax execution (Act No. 511/1992 Zb., as amended);
- the Customs Act, which governs so-called customs execution (Act No. 180/1996 Z. z., as amended);
- the Act on Court Executors and Execution (No. 233/1995 Z.z., as amended), which governs execution proceedings.

Parties to execution proceedings number a creditor making a claim in the role of a claimant, a debtor in the role of an obligor and payer – in this case a financial institution. An execution consists of issuing a decision attaching the client's funds in the account at the financial institution. The financial institution in this case is in the position of a garnishee.

A bank becomes a payer only after the following have been served:

- a resolution ordering the execution of a decision through the attachment of claim from the account in the financial institution in cases where execution is carried out by the court under the Civil Procedure Court;
- a decision by an administrative authority proceeding under the Administrative Procedure Act;
- an execution order made by a tax administrator under the Act on Administration of Taxes and Fees;
- an execution order made by a customs authority under the Customs Act;
- an order for the commencement of execution and an execution order issued under the Execution Procedure Act.

As a rule, funds credited to the debtor's account after the serving of the said decisions are also attached. A bank will transfer the funds from this account to the credit of the rightful claimant after such decisions take effect. Until that time, the bank must block the concerned funds. Under the Execution Procedure Act, an executor will first serve the bank with an order for the commencement of execution, for which the bank must debit the funds. This provision is partially ambiguous, as the law does not state to which account the bank is supposed to credit such funds, as the decision is not yet in full force. To this end, banks usually set up a separate technical account bearing no interest in order to comply with the statutory provisions. In this way, a client may lose since he might not finally receive the interest he would have otherwise earned. In such cases, freezing the account would definitely be sufficient.

Only after being served with an execution order and/or decision on the validity of the execution title, will a bank be obliged to debit the funds from the debtor's account to the credit of the rightful claimant. A deposit on a passbook may not be immediately attached by executing a court decision – i.e. by applying the blocked funds in the account of a financial institution to settle a claim, nor by using another attached monetary claim – it may only be attached through the execution of a court decision as laid down in § 334 of the Civil Procedure Code. This means that passbooks must be physically produced and a record must be made therein. The same applies to bills of exchange, cheques and other certificates that must be produced for the right to become exercisable. The court will produce the passbook for the financial institution and collect the amount to which the rightful claimant is entitled. If bills of exchange, cheques and other certificates are involved, the court will require the person who is supposed to pay thereunder to produce such a certificate and to surrender the amount to which the rightful claimant is entitled to the court. The obtained amount will be treated in the same way as proceeds from sale. An analogous procedure is used in the event of tax execution and/or under the Act relating to executors.

3. Where a court commissioner (a notary) requires the attachment of wages.

4. Where it involves the debiting of fees and charges connected with the execution of payments under the provisions of the Commercial Code relating to current accounts.