

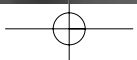


**BANKING SECRECY IN LEBANON**

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**FIGHTING MONEY LAUNDERING  
AND TERRORIST FINANCING**

**A LEGAL AND BANKING STUDY**





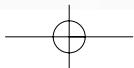
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## **BANKING SECRECY IN LEBANON**

# **FIGHTING MONEY LAUNDERING AND TERRORIST FINANCING**

### **A LEGAL AND BANKING STUDY**

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*In light of*

- The Banking Secrecy Law
- The Law on Fighting Money Laundering
- The Central Bank Regulations

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*With juristic and judicial interpretations and an overview on*

- The Resolutions of the International Security Council
- The Recommendations of the FATF and the Standards of the BASEL Committee
- The USA Patriot Act

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*In addition to practical examples*

By

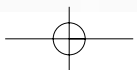
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Legal Department, 2003





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## Preface

In 2001, thousands of copies of a first booklet that only dealt with fighting money laundering ran out. The present booklet is issued to include topics relating to banking secrecy, fighting money laundering, and terrorist financing.

The following reasons made it necessary for the present booklet to be published:

- The applicable rules and regulations for fighting money laundering have been amended and new provisions have been added.
- The notion of fighting money laundering has steadily and surely expanded to include combating terrorist financing, especially with the issuance of Security Council Resolution 1373/2001.
- The work of the “Special Investigation Commission” (SIC) to fight money laundering started out and was fruitful. The Commission’s referrals to the Prosecutor General had legal results represented in the issuance of several resolutions which could be considered the firstling of judicial opinions in the domain of fighting money laundering, a domain which is of recent date in Lebanon. It is to be noted that the jurisprudence related to fighting money laundering in Lebanon was almost nonexistent until recently.

So the present booklet came more comprehensive and updated with the latest legislative and judicial developments, not to ignore the development of the subject itself.

But the most important reason for publishing this booklet lies in that: **Lebanon has succeeded** in having its name removed from the list of Non-Cooperative Countries and Territories (NCCT) in the domain of fighting money laundering (also known as the Black List) issued by the Financial Action Task Force on Money Laundering (FATF), a panel originating from the G-7 Summit<sup>1</sup>, due to:

1. The enactment of both a law on fighting money laundering (referred to hereinafter as the “Law”<sup>2</sup>) and regulations on the control of the financial and banking operations for fighting money laundering (referred to here-

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1) Lebanon’s name was included in the list on June 22, 2000 and removed on June 21, 2002.

2) Law 318 of April 20, 2001; amended by Law 547 of October 20, 2003.

inafter as the “Regulations”<sup>3</sup>). The “Regulations” perceived restraining procedures to avoid money laundering operations in banks and financial institutions.

2. The establishment of the “Special Investigation Commission” (SIC) for fighting money laundering and the efficient start of its work.
3. The strong cooperation of monetary authorities, banks and other financial institutions concerned with fighting money laundering<sup>4</sup>.
4. The enactment of a law prohibiting offshore companies from carrying out banking activities. But despite the existence of the legal possibility to establish such institutions in the prevailing legislation of the time, the possibility never materialized in Lebanon<sup>5</sup>.
5. The enactment of a law, in 1999, known as law of “Illicit Enrichment”<sup>6</sup>.

Therefore, in legislation as well as in practice, Lebanon’s readiness in the context of fighting money laundering has become very satisfactory especially if we take into consideration two factors: the first is Lebanon’s ratification of the international treaties relating to the principal crimes that could form a source for money laundering; and the second is Lebanon’s persistent efforts to adapt its legislation to these international regulations.

**However**, removing its name from the “Black List” does not mean that Lebanon exited the sphere of danger, for:

1. Lebanon remains within the sphere of general political incurrence.

3) Attached to the above mentioned Regulations is intermediary Decision 8488 of September 17, 2003 issued by the Central Bank’s Governor through the intermediary Circular 35 of September 17, 2003 (previously: Decision 7818 of May 18, 2001 amended by the intermediary Decision 8142 of May 31, 2002). Law 318 and its regulations are published on the website of «Banque du Liban» <www.bdl.gov.lb>.

4) On August 16, 2001, BBAC s.a.l. (Bank of Beirut and the Arab Countries s.a.l) started training its managerial staff on a program

related to the methods and procedures for fighting money laundering established according to The “Law”.

5) Offshore banks are companies that are established in Lebanon and that perform banking, financial, and intermediation services outside the Lebanese territory. The establishment of offshore banks in Lebanon has been banned by virtue of Law 253 of December 30, 2000 which amended the decree-law 46 of June 24, 1983 concerning offshore companies.

6) Law 154/99 of December 27, 1999.

2. Lebanon still enjoys a “stringent” banking secrecy system despite the new exception introduced in order to fight money laundering. This system is used as a pretext – still having international reverberation – to re-stimulate accusing Lebanon<sup>7</sup>.
3. Recently, the striking headline was “fighting laundering operations”. Today, it has become combating terrorism and stifling its sources of financing. Tomorrow, the headline might become the fight against corruption, or other headlines<sup>8</sup>.

**What are the means** to preserve Lebanon’s achievements, keep it away from suspicions, and increase its immunity against pressures?

And what has really changed in Lebanon as a consequence of introducing fighting money laundering to the Lebanese legislation following international standards and requirements, knowing that fighting money laundering was previously controlled by an agreement signed among banks under the supervision of the Central Bank of Lebanon?

Is there still, in Lebanon, a banking secrecy in the real sense, a secrecy to be relied on by depositors and trusted by investors?

Following is a summarized answer. It is necessary though to mention that its content has not been prepared as an academic research, but aims merely, in a simplified reading, at giving an objective understanding and rising a meaningful awareness.

7) The banking secrecy system was established by virtue of the law of September 3, 1956.

8) For more information refer to:

- The annual report of *Transparency International*, whose office is in Berlin, about “corruption” in countries of the Middle East and North Africa in 2001-2002, published in *An-Nahar* newspaper on February 6, 2003, p. 13.

- The sample law related to corruption drawn up by the United Nations Office in Vienna, and the draft law adapted from it by Lebanon for the fight against corruption in both its private and public sectors published in *An-Nahar* newspaper on July 11, 2002, p. 5 and 12.

## How are operations of money laundering and terrorist financing conducted?

The crime of money laundering and terrorist financing, through the recourse to banking operations, could be defined as an act through which the bank's client seeks to conceal or disguise the real source of the funds that have been illegally obtained, either directly or indirectly, whether from criminal acts or other illicit activities, and to provide a legal cover for these funds that become thus difficult to track.

Contrary to common belief, this crime is not restricted to proceeds resulting from drug trafficking, but it also involves numerous illegal activities; knowing that drug trafficking is the most substantial source of money laundering due to the huge monetary profits it generates.

Money laundering is therefore a subsequent crime that follows the occurrence of an original crime, which is the illicit source of the funds intended to be laundered. The purpose behind differentiating between the two mentioned crimes is to help understand how the client, through money laundering, attempts to hide the original crime from which these funds have resulted. This is known as the "Concealment Act". Then the client tries to fake a legitimate source for the above-mentioned funds by including them, for instance, in the core profits of a company established in compliance with the law where they appear as legal profits resulting from the legal activity of this company. This is known as the "Disguising Act".

There are three main phases of money laundering. They may take place either consecutively in a short period of time, or separately extending over a longer period. The phases are even more complicated and less obvious upon



How are operations of money laundering and terrorist financing conducted?

implementation, which makes their detection more difficult (especially the third phase, since the funds would have been subjected to several levels of circulation), taking into account that the perpetrator surrounds them with a number of fabricated elements and circumstances that are difficult to refute on first consideration.

### Phases of money laundering\*

Money Laundering Phases	Phase ONE	Phase TWO	Phase THREE
	Placement	Layering ( <i>Laundering</i> )	Integration or recycling
<b>Objective</b>	Inject dirty funds into the financial cycle	Conceal funds to be laundered by dissociating them from their suspicious origin and giving them a legal cover	Allow the convenient and easy use of funds
<b>Plan</b>	Dispose of large amounts of cash through the financial cycle	Prevent the possibility of discovering the source of the deposits	Give a legal aspect to illicit funds
<b>Mechanisms</b>	Convert the large amounts of cash into fictitious revenues, profits and bank deposits	Intensify the series of complicated financial operations, most of the times among different countries	Invest in various economic activities and blend laundered money with legal funds

\* This table is taken from Abdel Aziz Nader, Money Laundering, El-Halabi Publications, Beirut, 2000.

\* Some modifications were made on the contents of this table.



## **Does the Banking Secrecy System provide a cover for money laundering and terrorist financing?**

It is indisputable that the strict banking secrecy in Lebanon attracts deposits from abroad<sup>9</sup>. If this feature, that differentiates Lebanon from other countries in the surrounding region and the rest of the world, comes to disappear, then the amount of the capitals deposited at Lebanese banks would be largely affected. The owners of these “fleeing” capitals – and quite a number of whom is of great international influence – will then have no more interest in the remaining of Lebanon away from any structural dangers.

Talking about the particularity of the strict secrecy adopted in Lebanon, that secrecy opposing every public administrative, military, or judicial authority<sup>10</sup>, leads us to shed light on the original exceptions leading to lifting banking secrecy, before they have expanded with the issuance of the Law on fighting money laundering. In brief, these exceptions are:

1. The client’s approval to lift the banking secrecy.
2. The declaration of the client’s bankruptcy.
3. The initiation of a lawsuit between the bank and the client.
4. The exchange of information, among banks, relating to debit accounts.
5. The lawsuits related to illicit enrichment.
6. The bankruptcy of banks and the Special Banking Court<sup>11</sup>.

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9) This is due to the banking secrecy system established by virtue of the law of September 3, 1956.

10) As stipulated in Article 2 of the law of 1956.

11) Law 2/67 and Law 110/1991.

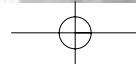


Does the Banking Secrecy System provide a cover for money laundering and terrorist financing?

These exceptions did not include revealing information (and thus breaking the banking secrecy) to the concerned authorities in case of money laundering. This is attributed to the fact that the crime of money laundering, committed by recourse to banking operations, has not been common in 1956 when Lebanon adopted the banking secrecy system. It goes without saying that this system aimed (and still does) at attracting legal funds, and at no time has it intended neither protecting dirty funds nor transforming Lebanon into a haven for criminals. Switzerland itself – which is one of the trusted pillars in Western civilization – was also adopting a strict banking secrecy system at the time.

However, the strict banking secrecy in Lebanon, which could have hypothetically granted money launderers cover, has not been the only obstacle to hinder fighting money laundering. There are several indicators showing that banking secrecy has absolutely not created a reason for laundering to take place as could be argued, ignorantly or intentionally. We mention two indicators:

1. The countries that rank first as to the volume of money laundering operations taking place on their territories have not been adopting a strict banking secrecy; rather, they may not be adopting a banking secrecy system at all, a fact that refutes the existence of a definitive link between banking secrecy and money laundering. This becomes more evident when we make a quick comparison between the huge amount of laundered funds in the United States of America and the moderate amount of such funds in Switzerland which, unlike the United States, adopts a relatively strict banking secrecy system.
2. Money laundering operations, around the world, take place outside the banking system and without the need to recourse to banking operations. Accordingly, money laundering operations are not inherent to banking operations.





## **Why was Lebanon's name put on the "Black List"? And how was it removed?**

In spite of the previously mentioned considerations, Lebanon's name was included in the lists of countries accused of nurturing money laundering operations. The lists are issued by the U.S. Department of State. The last list was in June 2001.

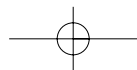
It was in the late eighties that the international indictment authorities have started to develop and frame their work, after they were requesting and pressuring Lebanon, in a separate manner, to abandon banking secrecy or at least reduce its scope. This pressure fluctuated according to the alterations of the political relations with this small country and its surroundings. Thus, in 1989, what is known today as the "Financial Action Task Force on Money Laundering" (FATF), originating from the G-7, was established. This work group includes 29 countries and 2 regional organizations. The FATF expanded the scope of its work, especially after the September 11, 2001 events in the United States of America, to include combating terrorist financing in the frame of fighting money laundering. The paradox is that an Arab countries' conglomeration is a member of the FATF organization, while its Arab members either lack the anti-money-laundering legislations or have followed Lebanon in its legislation<sup>12</sup>.

This international organization, which is not connected to the United Nations Organization, has started classifying countries considering 25 standards it has established, and according to these countries' cooperation or non-cooperation in the domain of fighting money laundering. Lebanon's lot was to have its name included in the list of "Non-Cooperative" countries in the scope of money laundering due to different reasons, the most apparent of which was the existence of a banking secrecy system and the capability of establishing off-shore banks. Lebanon's name remained on the list for two years, interposed

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12) For more information about the FATF decision to include the combat against terrorist financing within its jurisdiction, refer to pages 1 and 20 of issue n° 9045 of *As-*

*Safir* newspaper on November 2, 2001 and to other newspapers issued between November 2 and 3, 2001. FATF's website is: [www1.oecd.org/fatf/](http://www1.oecd.org/fatf/).



by praises from the FATF for the efforts Lebanon was exerting, especially through its ratification of the Law on fighting money laundering and the Central Bank's Regulations. Lebanon has been the first, among the Arab countries, to pass a law on fighting money laundering.

As a result of the exerted efforts, Lebanon's name was removed from the list on June 21, 2002.

### **The FinCEN Financial Advisories**

These efforts of Lebanon were crowned after less than a month, by the U.S. Treasury Department withdrawing, on July 8, 2002, the "financial advisories" with respect to financial transactions involving Lebanon, after being the first to impose the restraints on it. Withdrawing the advisories was represented by the abolishment of the FinCEN (Financial Crimes Enforcement Network), a network related to the ministry, of its previous Advisory Issue 18 addressed to American banks and institutions, limiting dealing with Lebanon. This was a result of the efforts Lebanon exerted by ratifying the new Law and implementing it in accordance to international standards, and in conformity with the FATF's decision aforementioned. This American decision led to reducing the restraints on clearance operations and opening accounts between Lebanese banks and correspondent banks abroad.

### **Lebanon joining Egmont**

Lebanon became a member of the Egmont Group of Intelligence Units since July 23, 2003, just after it was removed from the FATF's list. The Egmont Group of Intelligence Units deals with the international cooperation to fight money laundering and includes more than 84 countries.

### **Lebanon out of the FATF's surveillance list**

One year after being removed from the "Black List" of the FATF group, Lebanon was also removed from the group's annual surveillance list through the group's decision of October 3, 2003, following a field visit to Lebanon by its specialized delegation during which the latter verified the implementation of the recommendations it calls for.

## How did Lebanon fight money laundering?

In 1995, Lebanon ratified the United Nations' Convention of 1988 on "Fighting Illegal Trade of Narcotics and Psychotropic Drugs" (known as the Vienna Convention). However, it had reservations on a number of its provisions out of precaution of violating banking secrecy. But though Lebanon had reservations on a number of international conventions of financial and banking impact, yet it was never reserved on those aiming at fighting the main crimes leading to money laundering like drug trafficking, arm trade, children trade, slavery, abuse of women, and other crimes generating golden sources for money laundering.

Then at the end of 1996, the Lebanese banks took the initiative of signing the "Due Diligence Convention on the commitment to fight the laundering of illegal drug-trade funds" (referred to hereinafter as the "Convention"). This was an agreement concluded between the Association of Banks in Lebanon (ABL) and member-banks. Of course, this "Convention" did not have the mandatory force that laws enjoy and did not include deterring sanctions. Furthermore, it was restricted to fighting money laundering resulting exclusively from drug trafficking and not from any other crime<sup>13</sup>.

In March 1998, the Lebanese Parliament approved the law on "Narcotics, Psychotropic Drugs, and their Raw Materials" in implementation of the Vienna Convention. The law perceived severe sanctions on those who violate its provisions. However, this law was also confined to money laundering operations resulting essentially from drug trafficking<sup>14</sup>.

The Governor of the Central Bank of Lebanon issued, at the beginning of the year 2000, a decision requesting "all" banks operating in Lebanon to "comply with" the provisions of the Due Diligence Convention. This step constituted a distinguished precedent in the complementarity of the efforts of the banking sector, ordered in the Association of Banks in Lebanon, and the official efforts, on one hand; and the official recognition of the "Convention" after entrusting it an advanced status, on the other hand<sup>15</sup>.

13) In this respect it must be referred to circular n° 30/98 issued on April 25, 1998 by the ABL, which completed the provisions of the Due Diligence "Convention" since it contained the unified monitoring measures adopted in the "Convention". The website of the association is: [www.abl.org.lb](http://www.abl.org.lb)

14) The Law on "Narcotics, Psychotropic Drugs, and their Raw Materials" n° 673 of March 16, 1998.

15) Decision 7511 issued by Central Bank's Governor on January 21, 2000.

The above-mentioned decision authorized the Banking Control Commission to issue the regulatory texts, but it did not mention the sanctions for the violation of its provisions. Nevertheless, the convention was more of a mutual understanding than a legal requirement.

The last step that preceded the approval of the Law on fighting money laundering added an official dimension to the "Convention". The step was the issuance, by the Banking Control Commission, of a circular addressed to banks' external auditors a few days later requesting each of them to draw up a special annual report dealing with the extent of banks' compliance with the procedures stipulated in the "Convention"<sup>16</sup>.

As for the facts: in auditing the origins of the funds transferred to them, Lebanese banks, generally, used to adopt the same standards that became applicable today, and that were undoubtedly developed as a result of the studies performed by the international organizations and institutions concerned with this matter. The main interest of these banks was to attract clean capitals so that the depositors would open bank accounts in Lebanon, for they would find in its existing banking secrecy system a protection of the privacy of their businesses in the frame of a secure legal immunity. This immunity was, in most cases, either not available or at least not secured enough in their homelands or the countries of their residence.

Lebanese banks have always practiced internal control on the opening of accounts, as well as on their transactions. And it can be said that Lebanese banks would not have allowed, even before signing the "Convention", the opening of any account or the depositing of any amount whose legitimacy of origin was suspicious. Hence Lebanese banks were not waiting the issuance of the Law on fighting money laundering in order to decide to fight suspicious banking operations, which are originally illegal operations that go against public morality, social principles and the public system. The banks have even started on their own, before this bane formed a disturbance to the complaining countries, to distance themselves from the suspicion of laundering because first it harms them, and second it harms the reputation of the whole banking sector.

Lebanese banks have no benefit in injecting dirty funds into the financial cycle. In addition, there is no benefit for Lebanon to live on the economy of

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16) The Banking Control Commission's circular  
n° 26 of January 25, 2000.

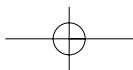


crime. Needless to say that the origin of the suspected funds that may pass within the Lebanese banks is external. For this reason, it's more appropriate to reinforce the efforts for fighting the original crime from which these funds resulted in the place where the crime was committed, before accusing Lebanon of laundering the dirty funds ensuing from this original crime.

We notice that the authorities in the place where the laundering crime happens – and here they are controversially and hypothetically the Lebanese authorities – are as much the victims of illegal operations as the authorities in the location of the original crime. If the authorities, in the place of origin of the crime, succeed in preventing this crime from the start, they would consequently prevent the crime of laundering from happening.

Perhaps it would be more suitable to reverse the question and ask: if we hypothetically consider that money laundering operations actually took place in spite of the legislative and regulatory procedures the Lebanese monetary and banking authorities are taking, then who would logically and legally be responsible for the amounts of money that might be laundered in Lebanon? Would they not be the authorities in the location of occurrence of the original crime from which these laundered proceeds resulted? Or would they be the Lebanese authorities?!

Consequently, would it be fair and just to punish Lebanon at the time when this country, small in terms of its economy and its domestic income, is exerting exhausting efforts to fight against money laundering and to try to revitalize its economy at the same time?!



## What has changed in banking operations following the Law on fighting money laundering?

### Funds considered illicit

Lebanon approved the special Law on fighting money laundering which has expanded the previously-in-effect definition of illicit funds. Thus, it has considered illicit funds to be all funds resulting from any of the following crimes:

1. The growing, manufacturing, or trading of narcotics.
2. Acts committed by association of wrongdoers, which are specified by Penal Code, and internationally identified as organized crime<sup>17</sup>.
3. Terrorist acts as specified in the Lebanese law<sup>18</sup>.
4. Illegal arm trade<sup>19</sup>.
5. Stealing or embezzling public or private funds<sup>20</sup>.
6. Counterfeiting money or official documents.

17) Evil associations are associations created with the aim of assaulting people, taking over funds, or committing organized crimes. It is worth noting that article 338 of the penal code stipulates the expropriation of the funds of the secret association after its dissolution (since its objective is unlawful) in addition to a series of other measures.

18) In order to learn more about the Prosecutor General's definition of the notion of terrorism in the Lebanese Law, refer to the report of the press conference by the Prosecutor General published in the Lebanese newspapers of October 11, 2001.

19) For further details, refer to the penal code, and the law on arms and ammunitions (n°137 of June 12, 1959).

20) Stealing is stipulated in article 635 and following articles of the penal code; embezzlement is mentioned in article 670 and following articles of the penal code, embezzlement of

public funds is mentioned in articles 359 and 360 of the penal code; however, tax evasion is not mentioned. In addition, the deliberations that accompanied the ratification of the Law went in this direction. Consequently, issues like commissions or tax evasion that occur through bending the rules and violating the taxation rules and systems and the depositing of the practitioners of those violations to their profits in the bank away from the control of the tax department, are issues not included in the expression "embezzlement" of public funds.

On the other hand, another decision of the Prosecutor General stated that it is not enough to claim that a bank transfer of funds is the result of illicit enrichment in order to apply the Law on fighting money laundering on it "without proving the nature of the crimes that generated these funds" (published in *An-Nahar* newspaper, issue n°21568 of April 1, 2003, p. 15).

But many of the provisions of this law have their clarifications left to practice<sup>21</sup>. This is why the Law on fighting money laundering and the penal code were amended on October 20, 2003. Thus the crimes of forgery of credit cards, debit cards, commercial documents, cheques and terrorist financing were added to the Law on fighting money laundering; also the description of “criminal” penalty as a condition to consider the two crimes of theft and embezzlement among the crimes that generate illicit funds was removed, so the concept of the two crimes was widened. In addition to this, the concept of terrorist financing was also added to the penal code<sup>22</sup>.

Furthermore, financial institutions and institutions practicing exchange businesses, financial intermediation, financial leasing, and trading of high-value commodities such as gold, and even insurance and real estate, are all subject to the Law on fighting money laundering particularly with respect to keeping records pertaining to operations that clients conduct with amounts that exceed ten thousand US Dollars, and with respect to reporting suspected operations. Hence, banks and their clients are not solely concerned with the new law even though they are the most concerned<sup>23</sup>.

21) In application of the principle of non-retroactive effect of laws, “it is not possible to consider that the concerned persons have committed excessive criminal acts that may be called (...) money laundering since the accounts mentioned were closed before the enactment of the Law (on fighting money laundering)” (decision of the Prosecutor General published in *An-Nabar* newspaper of November 19, 2002, p. 12). The examination of a file referred to the Prosecutor General by the SIC for the crime of money laundering was also stopped like other previous cases, because “the file documents did not show criminal proceedings for fraud or stealing or forgery performed by the owner of the accounts inside or outside the Lebanese territory... while reserving the right of pursuit... in case his criminal actions were proved by a decision issued by the US

justice or by a complaint presented to the Lebanese justice by the injured party” (decision of the Prosecutor General published in *An-Nabar* newspaper, issue n° 21245 of April 27, 2002, p. 11).

22) The amendment of the Law on fighting money laundering came pursuant to the Law 547 and the penal code pursuant to the law 553, “since the FATF ... has re-established a number of remarks related to the matter,” according to the head of the Parliamentary Committee for Administration and Justice (as published in *An-Nabar* newspaper on January 9, 2003).

23) According to the SIC’s report for 2002, there were 531 institutions subjected to the Law in 2001, not to mention real estate companies and the traders of high-value products (statistics of both the companies and the traders are not available). The website of the committee is: [www.sic.gov.lb](http://www.sic.gov.lb)



## **How does suspicion of money laundering arise? And how is it traced<sup>24</sup>?**

Banks' obligations, in the "Law", revolve around monitoring operations with the clients to avoid the banks involvement in operations that may hide money laundering. We will list some indicators and specifications of the requirements, mentioned for indicative purposes rather than restrictively, classified in frame of:

1. Checking the client's identity.
2. A written statement about the identity of the "economic right's owner" (the actual beneficiary regarding the intended banking operation).
3. Reporting the checking periodically.

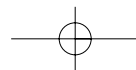
This does not mean that the role of the banker has necessarily become detecting money laundering operations and thwarting them; however, what he is required to do is to work on preventing and keeping these operations away from his daily work through increasing the procedures that make them more difficult.

### **The USD 10,000 matter**

It must be emphasized that what's being told about lifting banking secrecy from every account exceeding the balance of USD 10,000 is absolutely not true. All there is to the matter is that the obligation of verifying the client's identity becomes more serious when, for example, the cashier's operations – i.e. the cash payments that the client conducts at the bank counters – exceed the amount USD 10,000 or its equivalent in other currencies. This is translated specifically in taking the client's signature on a sample written statement, known as the "Declaration about the identity of the 'economic right's owner' ", in which the

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24) Refer to the study of Abbas El-HALABI and Paul MORCOS entitled "How do bankers fight money laundering?" (published in *An-Nabar* newspaper on October 10, 2001, p.10).





client indicates the actual beneficiary from the banking operation he is about to execute, whether the beneficiary is the client himself or someone else. The bank keeps this declaration and never discloses it to any other party unless the bank has serious doubts that the client was performing money laundering, or if the “Special Investigation Commission” (SIC) asks for that declaration according to serious information.

For example, doubts arise in the following instances:

- When a power of attorney is given to a non-professional person (who, for instance, is not a lawyer, a fully authorized representative, or a financial intermediate) and it becomes clear as it appears that there is no relationship to the client and does not justify the proxy operation; or when the business relationship is conducted through nominees or numbered accounts, or through umbrella institutions or companies.
- When the financial status of the client intending to conduct the operation is disproportionate to the operation’s value.



Indicators of the occurrence of money laundering operations are for instance:

- Exchanging big quantities of small-denomination bills with large-denomination bills.
- Depositing large amounts in the client's account and operating an account for the main purpose of transferring to or receiving from foreign countries large amounts of money, while it appears that the client's activities do not justify these operations.
- Exchanging cash funds for bankers cheques.
- Cashing bearer cheques issued abroad and endorsed by people prior to the depositor.

### **The immunity of bank employees and the rights of acquitted clients**

In return for the responsibilities laid on their back, the "Law" has granted bank employees a distinguished immunity that prevents their being sued or prosecuted for any civil or penal responsibility that relates to the discharging of their duties, except if they disclose banking secrecy.

This regulation is beneficial in that a client cannot file a claim or a penal pursuit – slander for example or demanding indemnity for damages – against the bank employee who has wrongly accused him of conducting money laundering operations, even if this suspicion has been proved wrong.





### **The penalty for money laundering**

Any person who undertakes, intervenes or participates in money laundering operations is punishable by imprisonment from three to seven years and by a fine not less than LBP 20 million. The “Law” considers that “helping a person involved in the ‘crime’ to dodge responsibility” falls within the category of money laundering crimes.

As far as bank employees are concerned, if they violate the obligations of monitoring the operations that they conduct with clients and which may hide money laundering, or if they violate the obligation of reporting them, then they are punishable by imprisonment from two months to one year and a fine not exceeding LBP 10 million, or by either penalties.

In addition to penal sanctions resulting from the personal involvement in suspected operations, the bank employee’s disregard to verify operations that hide money laundering leads to sanctions of conduct that lead to his dismissal from the entire banking business. This is so because the negligence of verifying operations that hide money laundering is not considered to be less dangerous than revealing banking secrecy, and both are intolerable violations in the Lebanese banking business<sup>25</sup>.

Needless to say that un-vigilance, in the domain of fighting money laundering, leads to both involving the name of the concerned banking institution, as a whole, in such activities that conflict with the banking profession, and to offending its reputation in the financial and banking quarters. This affects the banking institution with enormous damage and could lead to avoid dealing with it internally and externally.

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25) It must be noted that the deputy-manager of a branch is responsible for complying with the rules applicable in the branch, by virtue of Circular 46/98 issued by the Association of Banks in Lebanon on April 21, 1998.





### The “Special Investigation Commission”

The establishment of the “Special Investigation Commission” (SIC) has formed the principal characteristic of the “Law” and has given it an additional tendency for implementation. Thus the commission is now an official reference that has not been previously available; it is entitled to receive complaints, incoming particularly from abroad, about the existence of money laundering cases.

Neither of the Lebanese Ministries of Foreign Affairs nor Justice, nor even the judicial authorities, were entitled to discredit such international claims due to having banking secrecy hindering the investigation, and for originally being unqualified to lift the banking secrecy from the client suspected of conducting money laundering operations.

As a matter of fact, some international requests reached Lebanon through the Lebanese Ministry of Foreign Affairs, asking to investigate the accounts of suspected individuals. The requests came either directly from the accusing countries or via the Interpol, but they were rejected due to the existence of banking secrecy.

The SIC is an independent legal entity with a judicial aspect to it. Its establishment was stipulated by the “Law”. In fulfilling its duties, it is not subject to the authority of the Central Bank of Lebanon, though its chairman is the Central Bank’s Governor. The SIC has a special body of auditors to control the implementation of banks’ obligations. Banking secrecy cannot be a pretext in the face of these SIC auditors<sup>26</sup>.

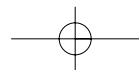
The SIC’s second annual report for 2002 declared that banking secrecy has been lifted from 79 cases out of the 103 investigated cases. 24 other cases have been referred to the concerned judicial authorities, whereas 35 cases remained under investigation<sup>27</sup>.

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26) The SIC takes a temporary decision of freezing the suspect’s account for a few days until proper investigation is conducted either directly or indirectly through delegates (against whom banking secrecy does not hold). Then it issues a final decision of either un-freezing the account or lifting banking secrecy while keeping the freezing

of the account. In this latter case, the Commission notifies the Prosecutor General.

27) Excerpts from the SIC’s annual report for were published on March 27, 2003, in *An-Nabar* newspaper (p.6) [in Arabic] and in *L’Orient-Le Jour* (p.11) [in French].





The number of cases reported in 2002 as “object of suspicion” reached 138 cases distributed as follows:

- 13 cases resulting from drugs.
- 24 cases resulting from terrorism.
- 7 cases resulting from embezzlement of public funds.
- 27 cases resulting from embezzlement of private funds.
- 20 cases resulting from fraud.
- 1 case resulting from illegal arm trade.

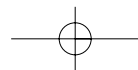
The mentioned report did not record any freezing of account balances, contrary to the first report of the SIC that noted the freezing of approximately LBP 7.9 billion (what is equivalent to USD 5.2 million) in 2001. This same year, banking secrecy was lifted, to the benefit of the concerned authorities, from 22 accounts out of 29 suspected of hiding money laundering operations at that time<sup>28</sup>; knowing that the value of the operations classified as “object of suspicion” for 2002 reached around USD 18.8 million<sup>29</sup>.



28) Excerpts from the first SIC’s annual report were published on May 3, 2002, in An-Nahar newspaper [in Arabic], and on May 8, 2002, in *L’Orient-Le Jour* (p.10) [in French].

29) - In Luxembourg, the value of “suspicious” operations in 2002 exceeded USD 3.5 billion.  
- In Switzerland three financial institutions were closed in 2002, and 215 sanctions

against money laundering were applied, according to the first report that the swiss SIC published in Switzerland on April 3, 2003 and which was published in the economic news page of *L’Orient-Le Jour* newspaper the following day.



## What is the fate of banking secrecy in Lebanon?

Setting and regulating procedures to fight money laundering in Lebanon do not mean, at all, that banking secrecy is no more existent, since the legislator abided by permitting the disclosure of the suspected bank account's secrecy within exceptional and restricted limits.

The SIC has the exclusive right to lift the banking secrecy from a bank account suspected of hiding money laundering, after investigating the information and deciding on the seriousness of the evidence and presumptions of committing the money laundering crime. This is done restrictively for the benefit of two parties: the specialized judicial authorities and the Higher Banking Commission<sup>30</sup>.

Consequently, it could be said that the status of the bank's client and the secrecy related to him were not affected by the "Law". The issue becomes contrary to this only when serious indicators to suspect his conducting money laundering operations hover. In another more simplified way, there is no violation of the banking secrecy – starting from the client's identity and all the information related to his person, to the transactions of the account – except in case of serious suspicion that he is conducting money laundering. Even in this case, the banking secrecy is not totally lifted from the account since the legislator abided by permitting the inspection of the suspected bank account to a certain extent as described above.

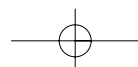
30) After the enactment of the Law on fighting money laundering, Lebanese newspapers published decisions, issued by the Prosecutor General, which included a list of names of persons having bank accounts, as well as, a number of bank names and the account balances. These decisions decreed the non-prosecution of the suspects accused of money laundering. Among these decisions is the one published in the newspapers on January 30, 2002, that mentioned the name of an accused company in a suspended pursuit in its right and another one published on February 1, 2002 that triggered

a reply published in *An-Nahar* newspaper on March 28, 2002 from the attorney of a client whose name had been mentioned in the newspaper. Some jurists' opinions supported the reservation on the mechanism of publishing the names, in order to safeguard the banking secrecy. Refer in this matter to the comments of lawyers Akram Azouri and Badawi Abu Deeb, published in *An-Nahar* newspaper on June 2, 2002, and on February 7, 2002. And indeed, since then, the full names of suspects are no more published and initials are used instead most of the times.



Without entering into technical and financial details beyond our scope here, we consider the mechanism, that the legal text stated, sufficient to guarantee fighting money laundering. It succeeded in harmonizing between the requirements of fighting money laundering and the considerations of banking secrecy effective in Lebanon for almost half a century and still constituting the principal pillar of its modest economy which is falling under heavy burdens.

The criminals or the assumed “launderers”, if found, are not able to hide anymore under the cover of banking secrecy in order to prevent the uncovering of their money laundering operations, by virtue of the new Law’s inclusion of funds resulting from their crimes. So we do not find a justification for adding a new exception to the banking secrecy system.



## What is required of Lebanon in the context of combating terrorist financing<sup>31</sup>?

The slogan combating terrorism has taken a new dimension manifested in the international efforts in general, and the American in particular, to stifle the sources financing organizations classified as terrorist. The classification is done according to set standards that have not taken long before they became part of an overwhelming international campaign in the frame of which the International Security Council issued Resolution 1373. This resolution aims, at least apparently, at prohibiting terrorism from using the techniques and tools of the financial system. It also represents the most apparent financial consequences of the September 11, 2001 events in the U.S.A., since it neglects defining terrorism in an extensive manner while at the same time imposing combating terrorism on countries. The word terrorism was mentioned in the body of this resolution's text more than 35 times without giving it any specific definition that could be relied on in order to implement this obligatory international resolution; and in implementation, resides the most apparent problematic issue.

In fact, this exceptional Security Council Resolution was issued on September 28, 2001, at the end of the night session number 4385; it obtained the consensus of the Council's fifteen members.

The Resolution's preamble assured the Council's determination to "criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts". This preamble contains explanation of the long Resolution's all nine provisions.

31) Refer to:

- The study of Abbas EL-HALABI entitled "The Globalization of the Combat Against terrorism and Lebanon's Position After the Security Council Issued Decision 1373" published in two consecutive parts in the "Cases" page in *An-Nahar* newspaper on December 6 and 7, 2001, issues n° 21124 and 21125.

- The minutes of the common seminar for Abbas EL-HALABI and Paul MORCOS held upon invitation of BBAC s.a.l. and The Chamber of Commerce, Industry, and Agriculture in Tripoli at its head office on February 15, 2002. The minutes were later published in newspapers.

### **The Resolution's uniqueness in comparison to other international resolutions**

According to the order adopted in classifying the results and deliberations of the Security Council's meetings, its Decision 1373 ascends to the level of a "resolution". Most importantly, it falls under Chapter 7 of the Charter of the United Nations. This makes the mentioned resolution immediately obligatory to all 189 members of the international organization, and it imposes on them the obligation of concordance of their internal legislations with its texts.

According to Article 41 of the Charter of the United Nations, the Security Council can request countries, for the purpose of implementing its Resolution included in Chapter 7, to interrupt, completely or partially, economic relations, in addition to "rail, sea, air, postal, telegraphic, radio, and other means of communication", with countries that do not comply with its Resolution and refrain from taking procedural steps to combat terrorism in their regions, as well as to sever diplomatic relations with the latter countries. This is what has been taken to be named the "embargo".



However, if the Security Council sees that the pointed-out measures are not satisfactory, it could, by virtue of the Article 42 of the Charter, use military force. Herein lays the essence of the Resolution, i.e. its compulsory nature.

Other than characterizing it with the imperative mood, what specifically distinguishes the Resolution is assigning the countries a time limit of 90 days from the date of its issuance to start taking the practical measures and submitting reports regarding that to a “follow-up” committee constituted of all the members of the Security Council. This time limit is strict and relatively short in comparison to the quality and quantity of the required measures.

Based on that, it could be noted that the fate of the Resolution will certainly be different from other resolutions that lacked the executive force since they were issued; even though its execution span will last as long as, or even longer than, the non-execution of the other decisions <sup>32</sup>.

In fact, the first signs of the implementation of this Resolution appeared through the lists of names of suspects that the UN is sending (via the SIC) to Lebanon and to other countries.

### **What is required of Lebanon?**

This Resolution dealt with requirements that are closely related to Lebanon’s action to fight money laundering<sup>33</sup>. The most apparent of these requirements are:

#### 1. Extending local legislation to cover terrorist acts

The Lebanese law appropriates special provisions pertaining to terrorism in Article 314 and the following articles of the penal code, in addition to Article 316 “Repeated” that was added pursuant to the previously mentioned new amendment of the penal code. These articles punish for terrorist financing. Article 314 of the penal code sets an objective definition of terrorist acts in which it includes all acts that aim at creating a state of panic and that are committed by means like explosive tools, flaming material, poisonous or burning products and epidemical-microbial factors that cause public danger. The legislation is also strict with regard to each terrorist act that leads to human

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32) Refer to the “applied standards” of the Resolution published in *As-Safir* newspaper on October 30, 2001, issue n° 9042, p.1 and p.17.

33) Refer to Lebanon’s reply to Resolution 1373/2001 published in *As-Safir* newspaper on January 3, 2002.



death and partial or total destruction of a construction in which a human was present.

It is to be noted that this definition is considered relatively advanced for it allows judicial authorities to elaborate the criminal description and to evaluate the means, used to resort to terrorism, that the Law has mentioned for indicative purposes but not restrictively. This meets, to a large extent, with the Security Council Resolution which points out to weapons, explosions, delicate substances, and weapons of mass destruction. Furthermore, the sanctions stipulated in the Lebanese legislation in this respect are immensely severe and strict.

## 2. International cooperation in the domain of combating terrorism

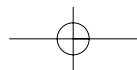
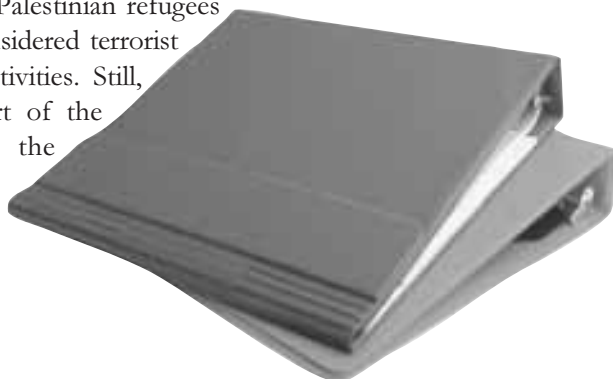
Several international treaties and resolutions are related to combating terrorism. Lebanon has ratified several related treaties. And according to the Resolution, the obligation falls on Lebanon to activate judicial cooperation treaties and bilateral treaties of criminals' extradition.

## 3. Guaranteeing that refugees would not perform terrorist acts

The matter that the Lebanese have not been able to resolve for a relatively long time remains without a promising solution; it is the issue of the Palestinian refugees in Lebanon.

As much as has these refugees' resorting to Lebanon turned into a social and human tragedy for them, unfair to ignore, however the structural, political, economic, social and security repercussions that the case of the Palestinian refugees may generate in Lebanon cannot be undermined. It is unwise to tackle this serious chronic issue – worrisome to the Lebanese conscience – solely from a security point of view as deduced from the spirit of the Security Council Resolution.

Therefore, Lebanon should probably seize the opportunity of the request to implement this resolution in order to express officially, and through the United Nations' diplomatic channels, its incapability to implement the provision guaranteeing the necessary measures for the Palestinian refugees not to perform activities that may be considered terrorist relative to the notion given to these activities. Still, Lebanon desires to implement this part of the United Nations Resolution, if given the



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What is required of Lebanon in the context of combating terrorist financing?

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chance, and should appeal in writing to the international organization for help and to express its determination to spare no chance in order to prevent facilitating these activities or their surge from Lebanon.

Maybe such a direct and open official ratification contributes to draw the light back on the tragedy of the Palestinian refugees, withholding their legal rights and taking into consideration the best interest of Lebanon in regard to rejecting their settlement in Lebanon, a rejection that was stipulated in the act of the National Accord. Perhaps these strategic requirements intersect, though partially, with the interest of the present international community, and thus reflect positively on the Palestinian "cause".

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Finally, it is inevitable to bring up, in this context, the recently issued American legislations that relate to fighting money laundering and terrorist financing, especially the law known as the US Patriot Act, issued on November 26, 2001, and its regulatory texts issued by the American Departments of Treasury and Justice. They entrust the concerned American authorities with extensive power that allows these authorities to request providing them with information relating to clients of foreign banks dealing with American banks, subject to ceasing dealing with these foreign banks if they do not conform.





## **How close is Lebanon to implementing the BASEL Committee standards<sup>34</sup>?**

The BASEL Committee was established at the end of 1974 by the central bank Governors of the Group of Ten countries amongst which are the U.S.A. and European countries. The Committee does not possess a formal supranational supervisory authority, and its conclusions themselves do not have a legal force. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practice in the expectation that individual authorities will take steps to implement them through detailed arrangements – statutory or otherwise – which are best suited to their own national systems.

### **The BASEL Committee’s intention is not to duplicate the FATF’s efforts**

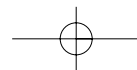
Since Anti-money laundering activities have traditionally been the province of the Financial Action Task Force (FATF), the BASEL Committee’s intention is not to duplicate the FATF’s efforts, but that the standards in the Committee’s recommendations should be consistent with the FATF recommendations. Consequently the Working Group on Cross-border Banking<sup>35</sup> remains in close contact with the FATF, and the BASEL Committee “supports strongly” the implementation of the FATF recommendations. Furthermore, the Committee has recommended collective action to identify and halt terrorist funding as an integral part of combating terrorism. It believes that a close collaboration between the public and private sectors is key to identifying suspected terrorists and related organizations.

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34) The information relating to BASEL Committee is taken from the Publications of the Committee found on the Committee’s website: [www.bis.org](http://www.bis.org) by

virtue of a special authorization by the BASEL Committee.

35) A joint group of the BASEL Committee and the off-shore group of banking supervisors.





How close is Lebanon to implementing the BASEL Committee standards?

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## **Know-your-customer (KYC)**

### **Customer due diligence for banks (CDD)**

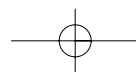
#### **Account opening and Customer Identification**

The BASEL Committee highly focuses on Know-Your-Customer (KYC) practices: banks should have minimum standards and internal controls that allow them to adequately know their customers.

The Committee issued guidance to banks on Customer Due Diligence (CDD) processes. The guidance had the title “Customer Due Diligence for banks”, prepared by the Working Group on Cross-border Banking.

The Committee’s approach to KYC is from a wider prudential, not just anti-money laundering, perspective. Sound KYC procedures must be seen as a critical element in the effective management of banking risks: KYC safeguards go beyond simple account opening and record-keeping and require banks to formulate a *customer acceptance policy and a tired customer identification program* that involves more extensive due diligence for higher risk accounts, and includes *proactive account monitoring* for suspicious activities, in a way that losses could probably be avoided and damage to the banks’ reputation significantly diminished had the banks maintained effective KYC programs.

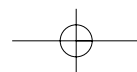
The Committee identified deficiencies in a large number of countries’ Know-your-customer (KYC) policies for banks: KYC policies in some countries have significant gaps and in others they are non-existent. Even among countries with well-developed financial markets, the extent of KYC robustness varies. Consequently, the Committee asked the Working Group on Cross-border Banking mentioned above to examine the KYC procedures currently in place and recommended standards applicable to banks in all countries were drawn up. Supervisory practices of some jurisdictions already meet or exceed these standards.





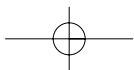
This study neither aims at including all the policies and procedures required by BASEL Committee, nor reflects the methodology or order of the recommendations issued by the Committee. For this reason it is indispensable to refer back to the related details and developments. However, bringing up the topic on fighting money laundering and terrorist financing, seems deficient without identifying and simplifying the major titles of the Committee's work and the most apparent requirements of banks:

1. Banks should develop clear customer acceptance policies and procedures, including a description of customers that should not be permitted to open accounts.
2. Procedures should be in place for verifying the identity of new customers; banks should never enter into a business relationship until the identity is satisfactorily established.
3. Some identification documents are more vulnerable to fraud than others. For those that are most susceptible to fraud, or where there is uncertainty concerning the validity of the document(s) presented, the bank should verify the information provided by the customer through additional inquiries or other sources of information.
4. Banks should take measures to deal with countries that lack sufficient or anti-money laundering measures.
5. Banks should never open an account or conduct a business with a customer who insists on anonymity or "bearer" status or who gives a fictitious name. Banks also need to be vigilant in preventing corporate business entities from being used by natural persons as a method of operating anonymous accounts.



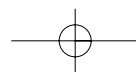


6. Customer identification, which is an essential element of an effective customer due diligence program, is also necessary in order to comply with anti-money laundering requirements and a prerequisite for the identification of bank accounts related to terrorism. Customer identification program should reflect the different types of customers (individual, institution) and the different levels of risk resulting from a customer's relationship with a bank. Higher risk transactions and relationships, such as those with politically exposed persons or organizations when they may be corrupt or misuse of public assets, will clearly require greater scrutiny than lower risk transactions and accounts.
7. Business relationships with individuals holding important public positions and with persons or companies clearly related to them, when these persons may be corrupt or misuse of public assets: such persons, commonly referred to as "potentates", may include related foreign heads of state, ministers, influential public officials, judges and military commanders. Decisions to enter into business relationships with potentates should be taken at senior management level, and banks should be particularly vigilant with respect to monitoring such accounts.
8. A Bank should also undertake regular reviews of its customer base to ensure that it understands the nature of its accounts and the potential risks.
9. For corporations, the principal guidance is to look behind the institution to identify those who have control over the business and the company's assets (shareholders, signatories, or others who inject a significant proportion of the capital or financial support or otherwise exercise control, etc.).
10. In case of confidential numbered accounts, the identities of the beneficiaries must be known to compliance staff.





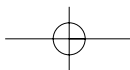
11. Banks offering private banking services are particularly vulnerable to reputational risk. The private banking operation should not function autonomously, or as a “bank within a bank”, but should also be subject to KYC procedures. All new clients and new accounts should be approved by at least one person other than the private banker. If particular safeguards are in place internally to protect confidentiality of private banking customers and their business, banks must still ensure that these accounts are subject to appropriate scrutiny.
12. Customer identification documents should be retained for at least five years after an account is closed. All financial transaction records should be retained for at least five years after the transaction has taken place.
13. The board of directors of a bank should be fully committed to an effective KYC program, embracing policies and procedures for proper management oversight, systems and controls, segregation of duties, training and other related policies, including procedures for reporting suspicious transactions. The banks’ internal audit and compliance functions should monitor the bank’s compliance with these policies and procedures.





### **The BASEL recommendations and the Lebanese achievements**

Many of the BASEL committee recommendations are listed in the Law on fighting money laundering in Lebanon, and in its Regulations, especially the most recent ones. We say that almost all of the recommendations of the BASEL committee are listed in the Regulations on the control of financial and banking operations for fighting money laundering in its present form. This proves, once more, that Lebanon is now accompanying the modern international standards in the domain of fighting money laundering and terrorist financing. It is also to be said that Lebanon is now accompanying the requirements of the BASEL Committee in this regard. There still remains fortifying this immunity continuously.



## **Conclusion**

Lebanon's collaboration with the anti-money-laundering requirements and stifling the sources of terrorist financing are to its advantage. Lebanon has no interest in having its economy flourishing from dirty funds that are means to finance terrorism a state from which Lebanon itself has suffered during war time. We hope that Lebanon becomes observant, out of conviction, of its personal interests that are compatible with the approved international legislations. This pushes us to insistently request the necessity of having Lebanon leading a developmental movement among Arab states that could be a start to additional future administrative modernization added to political, economic and financial guidance.



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