

Cameroonian Laws

All regulatory and legislative texts of Cameroon

Saturday, September 28, 2013

LAW N ° 2003/004 OF 21 APRIL 2003 RELATING TO SECRET BANKING

The National Assembly deliberated and adopted

the President of the Republic promulgates the law, the content of which follows:

Title I s.t : General Provisions

(1) This law establishes the rules relating to banking secrecy.

(2) It applies to credit institutions as defined in article 2 below.

Article 2 .- For the application of this law, the following definitions are accepted:

1- " **Surety** " : person who undertakes to guarantee the performance of an obligation in the event that the debtor would not fulfill his commitment.

2- " **Curator** " : person responsible for assisting an adult placed under the curatorship regime in due to physical disabilities or altered mental faculties.

3- **Credit institution** " : legal person who performs as a regular profession banking operations or any entity having for object the trade of money or securities.

4- " **Legatee by special title** " : person who benefits from a legacy relating to one or several specific or determinable goods.

5- " **Universal legatee** " : person who benefits from a legacy relating to a quota share of the property left by the testator upon his death.

6- " **Bare owner** " : holder of the right of ownership over a thing and who retains the right dispose of it.

7- " **Guardian** " : person responsible for representing a minor or an adult placed under the regime guardianship.

8- " **Usufructuary** " : person benefiting from a dismemberment of the right of ownership on a thing and which gives him the right to use it and to perceive its fruits.

9- " **Donee** " : person benefiting from a transfer of property within the framework of a donation.

Article 3.- Banking secrecy consists of the obligation of confidentiality to which credit institutions in relation to acts, facts and information concerning their clients, and of which they are aware in the exercise of their profession.

Article 4 .-

(1) Anyone who, in any capacity whatsoever, and whatever the duration or the modality, participates in the direction, management, control or liquidation of a credit institution or is employed by it, is bound by banking secrecy.

(2) The same obligation extends to persons who, without being part of the staff, have had knowledge or access in an improper or authorized manner, to the secrets of a credit institution by their quality, their technical and intellectual aptitudes or their function.

Title II : Violation and unenforceability of banking secrecy

Chapter 1 : Violation of banking secrecy

Article 5 .-

(1) Constitutes a violation of banking secrecy:

a) disclosure, communication by any means whatsoever of facts and information known in the performance of their duties by employees, management bodies or control of a credit institution and in particular operations relating to accounts banking, discount operations, foreign exchange supplies, the result of inspections or checks carried out by monetary authorities;

b) disclosure, disclosure, communication by any means whatsoever by third parties, information received or obtained from a credit institution;

c) operation for its own purposes as well as communication to third parties by an establishment credit or by its staff of facts, studies, projects and other information entrusted to it by a customer.

(2) Is assimilated to the violation of banking secrecy:

a) the fact of proceeding even recklessly to an automated processing of information registered bank accounts without taking all necessary precautions to preserve the security of procedures and likely to result in distortion, damage or communication to third party;

b) the fact of accessing or remaining fraudulently in all or part of a automated processing of data from a credit institution;

c) the fact of fraudulently entering data into an automated processing system data from a credit institution or to fraudulently delete or modify the data it contains.

Article 6 .- Does not constitute a violation of banking secrecy:

a) communication by any means of general information in particular any information that it is customary to, provide third parties, whether customers or not, the credit institution;

b) the communication by any means whatsoever of information or information about authorization of the client or his heirs;

c) the exchange of confidential information between credit institutions during the financial year their profession;

d) the declaration made to the Public Prosecutor or to the monetary authority by the managers of a credit institution for transactions or information relating to sums money that they know or appear to have come from drug trafficking, drug trafficking, criminal organizations or money laundering;

e) the fact that a credit institution allows its books to be examined by order of the court, under the conditions defined by the OHADA Uniform Act relating to general commercial law.

Article 7 .- The secret nature of information is presumed. However, this presumption is not irrebuttable.

Chapter II: The unenforceability of banking secrecy

Section 1 : The unenforceability of banking secrecy against public authorities

Article 8 .-

(1) Banking secrecy cannot be opposed to the judicial authority acting within the framework of a criminal proceedings and to judicial police officers acting on rogatory commission from District Attorney.

(2) Banking secrecy can only be lifted in civil, commercial or social matters in cases provided for by law.

Article 9 .- Banking secrecy is unenforceable against higher institutions for the control of public finances.

Article 10 .-

(1) Banking secrecy cannot be opposed to sworn tax officials, acting in the under a written communication procedure as provided for by the General Code of Taxes.

(2) The tax administration has the right to communicate accounting documents and banks whose knowledge is necessary for the control of the base and the tax collection. It has no right either to take or to seize the coins and to seize them. carry.

Article 11 .-

(1) Banking secrecy cannot be opposed to sworn Customs officials acting in terms of determining the base and collecting duties and taxes in under a written procedure in accordance with the Customs Code.

(2) The Customs administration has the power to consult documents on the spot. banking.

Article 12.- Banking secrecy cannot be opposed to sworn agents of the Public Treasury, to the monetary authority, the National Credit Council, the African Banking Commission Centrale and the Bank of Central African States.

Article 13.- Banking secrecy cannot be opposed to the Commission des Marchés Financiers acting within the framework of stock market transactions.

Article 14.- Banking secrecy cannot be opposed to the body's prosecution agents national in charge of Social Welfare acting in the framework of the recovery of contributions due by employers.

Article 15.- Banking secrecy is unenforceable against the debt collection company of Cameroon (SRC) acting within the framework of the recovery of debts belonging to legal persons governed by public law.

Section II: The unenforceability of banking secrecy against private persons

Article 16.- Banking secrecy is unenforceable against the agent of a client who has received the power to carry out transactions on one or more accounts of a credit institution. However, the banking secrecy is only lifted within the limit of the mandate.

Article 17.- Banking secrecy is unenforceable:

- to the spouse with the powers of legal or contractual representation;

- the tutor of a minor or of an incapable adult;

- to the curator wishing to be informed about the banking operations carried out on the assets of which he to management.

Article 18 .-

(1) Credit institutions may not oppose banking secrecy against successors universal of their customers. Banking secrecy is however maintained with regard to them for information of a purely personal nature which the credit institution may have obtained knowledge.

(2) Banking secrecy applies to legatees by universal or particular title, as well as to donees.

However, if the donation relates to sums or securities held by the credit institution, the latter is required to communicate to the beneficiary of the donation a statement of account at least for the period after the last statement of »account,

Article 19 .- Banking secrecy is unenforceable against heirs, executors, to the liquidators and administrators of the succession.

Article 20 .- Banking secrecy is unenforceable against the holders of a joint account.

Article 21.- Within the limits set in Article 14 of the OHADA Uniform Act relating to organization of sureties, banking secrecy is unenforceable against the surety.

Article 22 .- By virtue of their rights relating to the use, enjoyment, supervision and possible realization of the pledge, the usufructuary, the bare owner and the pledgee have a direct right to be informed by restoring credit on the goods subject to their real rights.

Article 23.- When, in a banking transaction, the credit institution and the customer have stipulated for a third party, the latter is authorized to request banking information relating to this operation.

Article 24.- Banking secrecy is unenforceable against legal management or control bodies of a company, in particular to the statutory auditors. They have the right to information necessary for the accomplishment of their mission.

Article 25.- In the event of receivership or liquidation of property, all persons or bodies duly authorized and intervening in these procedures can be issued by restoring credit, all documents useful for the accomplishment of their mission.

Title III : Penal provisions

Article 26.-

(1) Shall be punished by imprisonment from three months to three years and a fine of 1,000,000 to 10,000,000 francs or one of these two penalties only the one who violates secrecy banking.

(2) If the offense is committed by means of the press or computer network, the following penalties above are doubled.

Article 27 .- Is punished by imprisonment of one to five years and a fine of 1,000,000 to 20,000,000 FCFA, anyone who participates in the management of a credit institution or is employed by the latter and who does not declare to the Public Prosecutor or to the authority monetary transactions involving sums of money that they know or presume to come from drug trafficking, the activity of criminal organizations or money laundering capital.

Article 28.- In addition to the application of the penalties provided for in Articles 26 and 27 above, the court can pronounce:

- confiscation of the "corpus delicti";

- the forfeiture of civic rights;

- the prohibition to exercise a public function or an activity in a credit institution ;

- the closure of the credit institution;

- publication of the pronounced decision.

Article 29 .-

(1) Without prejudice to the prerogatives of the public prosecutor, the initiative for prosecution belongs also to the monetary authority and to the victim.

(2) Public action is prescribed by three years from the knowledge of the offense.

Title IV: Final provisions

Article 30 .- This law will be registered and published according to the procedure, urgently, then inserted in the Official Journal in French and English / -

Yaoundé, April 21, 2003

The president of the Republic,

Paul BIYA

Posted by [Pegase Ecofinance](#) at **9:03:00 AM**

Labels: [2003](#) , [Economy](#) , [Company](#) , [Law](#) , [Society](#)

Newer Post

Home

Older article