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ISSN : 2466-0744



MULTIDISCIPLINE PROCEEDINGS OF
**DIGITAL FASHION
CONFERENCE**



KOREA, REPUBLIC OF

Multidiscipline Proceedings of

DIGITAL FASHION CONFERENCE

May 2024 (*Volume 4, No.3*)

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Available at digitalfashionsociety.org
Published:
서울 합정역
파주출판도시
ISSN 2466-0744
Seoul
Rebublic of Korea (ROK),

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BANKING SECRECY AND ITS LEGAL NATURE

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Abstract: This article examines the notion of banking secrecy and its legal nature. Proposals were made to improve the organizational-legal base of the legislation acts on banking secrecy.

Keywords: banking system, banking secrecy, customer, responsibility, information, third parties.

Banking and commercial secrecy are tightly interwoven. This notion was initially introduced in the Law of the Former Union (1990), "On Banks and Banking Activities" [1]. Banking secrecy protects information about the client's transactions, accounts, and deposits. It should be noted that this includes a rather broad range of operations: attracting deposits (deposits); granting loans; making payments on the client's behalf; opening and maintaining customer accounts; purchasing, selling, storing, and managing securities; guaranty, guarantee for third parties, and other operations within the competence of a commercial bank.

Banking secrecy also protects information on clients, representatives, and other individuals named in contracts with the bank. This customer's (representative's) requirements determine the content of the bank transaction and the paperwork that formalise it.

The general conditions that describe the substance of the banking secrecy are as follows:

1. Banking secrecy is one type of information legal regime; with the implementation of a limited secret information regime, banking secrecy falls under the category of confidential information. Kh.A. Paluaniyazov emphasises that banking secrecy falls under the category of personal secret information [2], but I.I.Nasriev proposes that banking secrecy be included in the rights to privacy [3].

Banking secrecy, we believe, is confidential information that cannot be given to third parties. Article 4 of the Law "On Banking Secrecy" defines third parties as the bank, its client (representative), and all other people excluding the Central Bank of the Republic of Uzbekistan. As a result, banking secrecy cannot be preserved and shared as confidential information. It should be noted, however, that such confidentiality is subject to legal limits. This, in turn, demonstrates that banking secrecy protects only limited confidential information.

2. Banking secrecy encompasses personal, business, and service secrets.

Definitely, the requirements for incorporating bank information in the regime of professional information, rather than commercial secrets, are more reasonable, and the characteristics of the information protected by the regime of banking secrecy indicate that it belongs to professional secrets. Based on an examination of the current legislation and the nature of the information protected by this system, it is illogical to include banking secrets among commercial secrets [4].

It is worth noting that all banks in Uzbekistan are now business organisations. As a result, one would believe that the protection of information relating to banking secrets

should be linked to the regime of commercial secrets. However, the mechanism for protecting information under the financial secrecy regime is fundamentally different from that of commercial information.

Banking secrecy and adherence encompass legal, organisational, and technical factors. The legal component of banking secrecy covers the idea of banking secrecy, the identification of the entities required to maintain banking secrecy, the defining of the content of the clients' abilities and the limits of their implementation, as well as liability for breaching banking secrecy. Banking secrecy is directly tied to commercial secrecy.

Banking secrecy refers to banking operations on client accounts and transactions, client representative accounts and deposits, and information about the client and representative that would violate privacy rights if disclosed, as protected by banks and other credit institutions.

The institution of banking secrecy, like all banking legislation, has a complex legal character [5]. This feature is related to constitutional law, administrative law, civil and criminal laws, but the majority of legal connections relating to banking secrecy are governed by civil law. The first challenge that arises while researching a legal phenomenon is defining the examined idea. Currently, neither science nor legislation provide a clear definition of banking secrecy.

The current legislation includes three normative legislative instruments that address financial secrecy. These are Article 786 of the Civil Code of the Republic of Uzbekistan, and the major "special" law is the law of the Republic of Uzbekistan "On Banking Secrecy". Part 1 of Article 786 of the Civil Code of the Republic of Uzbekistan states that banks guarantee the confidentiality of bank accounts and deposits, account operations, and customer information. On the one hand, banking secrecy protects the client's interests and, in general, bans third parties from obtaining the bank client's sensitive information. On the other hand, the laws governing legal relations involving banking secrecy reinforce exceptional circumstances in the interests of the state, as well as the legislative mechanism for acquiring them.

According to the provisions of the Civil Code of the Republic of Uzbekistan on the obligation to maintain banking secrecy and the bank's responsibility for disclosing information constituting banking secrecy, expanding the information considered banking secrecy does not logically correspond to the interests of banks and other credit institutions. At this point, it should be highlighted that the term "banking secrecy" is not defined in existing legislation. Article 786 of the Civil Code of the Republic of Uzbekistan and Article 3 of the Law "On Banking secrecy" provide some insight into the meaning of banking secrecy. At the same time, the content of the aforementioned norms varies widely, resulting in a variety of issues that lead to judicial disputes. Unlike most European countries, Uzbekistan has a legal limit on banking secrecy information. It would have been more appropriate to allow the option of acquiring banking secrecy information only by a court ruling, as most other countries do (Switzerland, Luxembourg, Liechtenstein, Germany) [6]. This would have strengthened trust in banks and restricted the migration of funds abroad.

Banking secrecy refers to a certain type of legal provision. This provision is thought to deal with business, religious, medical, investigative, judicial, and personal secrets. Banking secrecy processes follow general norms and procedures that are set at the legislative level. There is no consensus in the legal literature regarding the relationship between banking secrecy and the bank's commercial secrets. Then the question arises: is banking secrecy a specific situation, or is it an independent legal institution? In this light, the opinion that banking secrecy is a unique, distinct form of commercial secret is quite striking.

Based on the opinions and analyses of the aforementioned scientists, we may draw the conclusion that the issue of banking secrecy relations is currently relevant in our country. Within this article, the following minor conclusions might be advanced:

Banking secrecy refers to the bank client's personal non-property rights as well as any connected personal secrets. However, the current legislation does not include financial secrecy as part of personal property rights. We believe it is reasonable to add the word "banking secrecy" in Article 99 of the Civil Code of the Republic of Uzbekistan. Banking secrecy as described in Article 3 of Law of the Republic of Uzbekistan "On Banking Secrecy" should be as follows:

"Banking securities are banking operations on accounts and transactions in the interests of the client, accounts and deposits of the client's representatives, as well as information about the client and representative, the disclosure of which would cause a violation of the right to privacy". Definition of the notion of customer, taking into mind that the term "customer" under the Law "On Banking Secrecy" refers not only to the customer of the bank, but also to the customer of the credit organisation.

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