



Relevant Aspects of Banking Secrecy in Angola

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Abstract: *The bank account and other banking operations that follow it by echoing privacy aspects of those who practice it has been subject to a sort of professional secrecy – bank secrecy – to which are subject the financial institutions, their directors, agents and employees. This private and confidential nature of banking operations has been subject of attacks, which have prospered on a tendency to further opening of global financial systems; provided that private and confidential nature of banking operations have been increasingly harnessed to hide criminal activities such as, money laundering, the financing of terrorism and other acts. An equal major role has also been assigned to banking secrecy in the domain of public interest, the interest of the financial system itself, whose structure of strength must not be jeopardized by the lack of trust in financial institutions. Although the recent experience that shook the world financial system has been showing us that trust is a value that is in crisis. This article aims to establish the legal framework of this institute in Angola, starting from a purely theoretical raid on the meaning, purpose and nature of the institute of banking secrecy and conditions, which are considered to be relevant at the level of the creditor and debtor. It establishes a tenuous comparison between the systems of some countries, and later outlines the legal regime of banking secrecy under the current regulations in Angola.*

Keywords: *Bank Secrecy; banking secrecy; the legal regime of banking secrecy in Angola; money laundering and terrorism financing vs bank secrecy; vs taxation bank secrecy.*

I. Introduction

The institute of banking secrecy or bank secrecy as has also been named in the legislation, doctrine and jurisprudence of countries where it is legal established, is not a creation of the modern world. The beginnings of this institute date back from ancient Babylon, with indirect references to it in the Code of Hammurabi.

The history of banking reveals that the embryos of this institute were found in the Hebrew, Egyptian, Greek and Roman civilizations, with emphasis in the Middle Ages, period that was created in 1118 in Jerusalem, the order (religious and military) of the Templars, whose activity was the exercise of banking operations. In the Renaissance, was evidenced in the banking business, based institutions in Italy, particularly in the city of Florence, which was the birthplace of greater relevance of private banking.

It was, however, in modern times that this institute gained its materiality, more specifically, after the World War I, on the occasion of the first conflict that has triggered due to the banking activities between Nazi Germany and the Swiss, leading this country to legislate on banking secrecy, establishing criminal punishment of those who violate this secret, to protect not only the depositors customers and their dully deposited amounts, but also the employees themselves serving the banking institutions.

The banking secrecy must not, however, be seen only as an institution that protects the interests of individual order, it is also directed to the protection of the economic interests of society, necessary for the development of the functions of the State. So, at least, it is seen in most legal systems that establish it.

It can be said that through the performance of banking activities relationships of various kinds were formed, which give rise to the emergence of rights or legal situations of subjective and objective in nature, aiming at one hand the private interest and on the other the public interest. Sometimes these interests do not always coincide, settling conflicts between them, having, therefore, to sacrifice one of them depending on the value and justice of the other interest.

The objectives that initially aimed to the establishment, in various jurisdictions, of the duty of banking secrecy, were focused both on economic grounds (public interest) and in order to preserve the privacy of banking customers (private interest). However, in recent times it has been seen, in countries that have accepted the defense of banking secrecy, the imposition of limits on the duty to guard bank secrecy, making its protection milder, due to the fact that it has been developed to cover up activities of a criminal nature at the expense of its activities, such as hiding of funds obtained in actions of war, trafficking of war material, drug operations, and

other products that endanger the environment and human survival and other species in our planet, organized crime and political secrets.

And these are the activities that have amply justified that in the presence of a conflict between the values of privacy and higher values of justice, the latter prevails.

The banking secrecy is hosting in the Angolan legal system, although it is not always complied by the persons who are obliged to it, by law, and those who are foreign to the concrete relation, customer/bank, have not always understood its meaning and scope.

It has been understood that the word secret in the generic sense has to do with a confession made by one person to another, under the conviction or commitment not to disclose this. Whereas the expression professional secrecy is the prohibition to disclose facts or events that they knew or entrusted, in reason and in the exercise of professional activity.

The present study on banking secrecy in Angola is divided into seven parts: after a brief introduction is followed by reflections on the meaning of the institute of banking secrecy (1), its purpose and nature (2), the models of banking secrecy systems (3), the exceptions to bank secrecy (4), bank secrecy and taxation (5), the Angolan provisions that establish it (6) and finally, bank secrecy crimes of money laundering and terrorist financing (7).

II. Meaning of the Duty of Banking Secrecy

Banking secrecy is the observance of a duty of discretion by the financial institutions (1) (bank and non-bank supervised by the Central Bank) relating to its customers, which arises from contractual or pre-contractual relationship, even without coming to fruition, which is established between them. Is that by virtue of entering into this type of relationship, those institutions are in possession of information that fall under the sphere of the privacy of clients, and they wish to keep in reserve.

The duty of confidentiality on the data of the clientele, which rests, directly, on the bank institutions and counterparts, obviously extends to their bodies (owners) and employees, and even to those who provide them services, on an occasional basis, for elements whose knowledge has been obtained through the exercise of their functions.

And such an extension of the duty is justified either because the will is manifested through the establishment of their bodies, whose organic relationship are established with their holders, and that makes these acts to be considered as acts of the bank itself, since it acts through them, either because the action of the bank also gains consistency, through its employees or who provide services to it, bringing to them consequences of their activity.

The duty of discretion rests with all that comes to the notice of the establishments, either by revelation, by its customers, either by the occasion of the transactions that performs, in all that relates to these transactions or on the status of accounts and the information regarding its organization and operation (2).

With this breadth, this duty also applies to all of those who, through the exercise of the functions or services providing gain knowledge about the data of the financial institution itself.

Are, therefore, entitled to the right of banking secrecy (3), the financial institutions themselves and their clients.

According to Francisco Amaral Neto: "banking secrecy is, thus, the legal institute that governs the existing relationship between the credit institutions and their customers, imposing a duty of secrecy as one of the typical obligations that form the content of the established relationship, in the context of the activities mentioned above. Consists on the compliance, by the bank employees of a serious discretion, as they are obliged to maintain professional secrecy "(4).

The duty of secrecy is applicable to all persons providing services on a permanent or occasional basis to the financial institutions. Thus, being considered subject to the banking secrecy: the board members, directors, employees and agents or consultants of financial institutions (5).

People forced to the duty of secrecy, it is, for facts or elements, which have come to its knowledge, by virtue of the exercise of its functions and provide services in financial institutions (6).

The duty to observe secrecy about those elements or facts and the above mentioned-conditions, is enforced, even after termination of service or services (7).

It becomes clear that the duty of secrecy that is imposed on the persons subject to it, aims to protect the information of its customers or about its institution from third parties' knowledge, outside of the banking legal relationship (8) or the function of the provision of service. It may be, however, the case of having those who direct or indirect intervene in the relationship between bank and customer, as is the case of depositors, co-holders of bank legal relations, secured bank loans, agents and proxy holders and other holders with respect to whom the duty of secrecy should not be observed, but in the strict limits of the legitimate interests of these or powers belonging to them or have been entrusted to them (9).

III. Scope and nature of the duty to banking secrecy

The object of the duty of secrecy must be analyzed either from the point of view of the bank's

relationship with its customers, and from the point of view of the bank's relationships with people who are subject to duty of secrecy.

In the relationship between banks and their customers is applicable the provisions of the Law of Financial Institutions, are covered by the secrecy obligation of professional that are subject to it or are the subject of this duty, the names of customers, the deposit accounts and its transactions and the banking, foreign exchange and financial transactions. The law specifies the data subject to a duty of secrecy on exemplary manner, employing for this purpose, the adverb "particularly" (paragraph 2 of article 59). The persons subject to this duty are prohibited from both disclosure of information and like using them, for their advantage or others, relating to offenses or elements relating to its customers, whatever they may be, provided that their knowledge has been obtained exclusively in the performance of functions or the provision of services (paragraph 1 of article 59).

By customer of the bank should be understood not only the person who regularly perform banking operations, but also who established it in pre-contractual relations, even without coming to fruition, as we have said, but through which the institution has been in possession of relevant information pertaining to the private sphere of the client, namely, deposits, business, etc.

In the relations between the bank and the persons subject of Secrecy, mentioned on the article 1 of the corresponding article on Financial Institutions Law, that we have been citing, the object of the duty integrates, as the law specifies, the facts or elements relating to the life of the institution.

The banking secrecy, as a personal legal duty not to disclose or not to exploit the legal good of relevant information, required by the common law upon persons who, given the profession or the provision of services to banking, encompassing this expression all institutions subject the legal regime of financial institutions, and that by virtue, solely, of these functions, it became aware or put on more synthetic form, as simple duty of professional secrecy, lies plea on that fundamental right (the right to privacy).

The nature of the obligation of banking secrecy has been the subject of much controversy among doctrinal, in jurisdictions that host it. Various theories on this subject, the target of numerous criticisms have, been built, which we will try to translate here on a synthesized fashion.

Many authors have considered the banking secrecy, as a legal institute of a subjective nature of the right of personality, absolute, unavailable, imprescriptible and inalienable, understood as a manifestation of the right to privacy, which corresponds to the professional duty of confidentiality, that banking secrecy is a species (10).

Carlos Covello advocate of this position states that "banking secrecy exists to protect the privacy of the citizen. This is its cause of existing. Its final cause." (11)

At the opposite pole, and another quadrant appear authors as Benjamim Rodrigues and Maria José Roque, the latter profiling is rather forcefully against this current of opinion which considers that banking secrecy has the nature of a subjective right of personality.

For Benjamim Rodrigues, the duty of confidentiality (12) corresponds the right to secrecy, which someone has, it is not an emanation of the fundamental right (established in the Portuguese Constitution) to the absolute privacy of his or her life. This author admits that the right to confidentiality may function as an instrumental right to guarantee that right, and because of that having a intimate connection with it, but only occasionally, as the duty of confidentiality is on that basis that the profession of banking is linked to events generated in the exercise of this right (of absolute privacy) and should, therefore, be considered as merely relative right.

Maria José Oliveira L. Roque criticizes the theory of affiliation of banking secrecy to the nature of personality right, starting by saying that the personal rights are born with, such as the right to life, health, name, honor, privacy etc..., but nobody is born with the right to banking secrecy, given that there are people that can not afford to be bank customers. On the other hand, continues the author, as is well known the personality rights are opposable *erga omnes* and indispensable, which does not happen with banking secrecy, which allows exceptions and is even waived by its holder. Finally, according to this author, "it is not possible, under penalty of subversion of the very conception of law, be accepted absolute banking secrecy, under the canopy of the rights of privacy, when you know that even the most lawful, banking operations involve more than two people: the client, the bank and a third party, which at least is the Treasury. This without taking into consideration that all sorts of shenanigans, trickeries, money laundry take place in banks and are used to commit financial crimes, prejudice creditors and circumvent the Tax Authorities..."

The contractual theory based banking secrecy in the contract between the bank and the client, with the implicit ancillary obligation of secrecy by the banking organizations, due to professional secrecy. Authors who oppose this theory say that the bank contracts do not always contain a regulatory clause of secrecy and, even though it's implied, this theory dies, in particular, where there is not a contract between the bank and its clientele since, even so why the obligation of secrecy no longer arises, and the same happens after revocation or declaration of invalidity of the contract.

For customary or costume interpretive theory, the foundation of banking secrecy lies in applying

standard rules of universal validity which are based "on the nature of the banking contract as a trust."

Like its predecessors, this theory has been criticized, since it is valid only for jurisdictions that do not legislatively establish banking secrecy, and secondly, it confused the legal foundation of the duty with the approach of the criteria for interpretation and enforcement of the obligation of discretion (13).

Another theory that has many advocates is that that postulated treating the banking secrecy as a type of professional secrecy. Because the information that is obtained by financial institutions has originated in the course of a professional activity, there is no doubt that it is professional duty, on their part, not to disclose or use the data and information that comes to its attention. This duty is safeguarded, it is said, the social necessity of confidence in certain professional in the case of bank confidants are required of their clients, getting therefore obliged not to reveal the elements that relate to their private matter (14). Banking secrecy seems to lie in the same plane as other duties of secrecy, called professionals, such as doctors, lawyers and journalists (15). For Maria Célia Ramos, in the light of the Portuguese Constitution, banking secrecy appears under a "dual protection," first as a "fundamental element of the right of privacy," and by another as "the foundation of maintaining public confidence in the banking system" (16).

This theory has suffered some criticism on the ground that only partially relates to the nature of banking secrecy, dealing only just, the secret guarded by professional banking.

But also in the Portuguese doctrine there are those who believe that there is not possibility of an association between banking secrecy and the right to privacy, as is the case of Saldanha Sanches, for whom there is a distinction between the privacy of personal and family life and the reserves that can accompany privacy. Thus, the privacy only covers "clearly intimate issues towards issues related to the choices and more mixed experiences of subjectivity of any citizen," it excludes aspects that relate to issues of equity nature. Thus argues that the banking secrecy "is not, can not be the embodiment of the constitutional principle of the right to privacy" (17).

Taking into account the theories that tend to uncover the nature of bank secrecy, it seems that the one that fundamentals, as a sort of professional secrecy is, in our opinion, the more realistic.

If well evaluated, professional secrecy is rooted in a relationship of trust, which may underlie a number of interests, which fall directly or indirectly the right to privacy. In the first case, the interests that are based on human personality and expressing values of dignity of man as man, seen as the exclusive owner of your body, your spirit (18). In the second case, are concerned interests that lie in a wider framework of the sphere of privacy of man, that means, interests that are no longer part of that personal jurisdiction, but they still lack legal protection because they are part of the economic life and assets of a particular legal person.

I review here the position advocated in my first approach to the issue of banking secrecy under which regarded it as having the nature of the right to privacy, like the secret of doctors and lawyers. I argue now that data from a customer which relate to aspects of one's privacy, as a disease, for doctors, an act or omission with legal repercussions, in the case of lawyers, as the financial situation in the case of banks not only have nature as fall within the concept of the right to privacy.

Using a ruling of the Portuguese Constitutional Court (judgment no. 278/95), which focused on the prerogatives of examination by inspectors of finance, information in the possession of public services, public and private companies, which encompass banking institutions, such as customer names, deposit accounts and their movements, banking, foreign exchange and financial transactions, this court held that "the economic situation of citizens, mirrored in its bank account, including borrowing and lending transactions recorded therein, is part the scope of protection of the right to privacy, condensed in article 26, no. 1, of the Constitution, the emerging banking secrecy as an instrument guarantee this right."

In fact, and as it relates to individuals, an analysis that make the movement mirrored a bank statement lets get to know each other salient steps of the privacy of its owner. In this line of understanding, that court considered that "in modern society, a checking account can be a" personal biography in numbers," coming to the conclusion" that the evidence held by banking institutions relating to deposit accounts and their movements, as well as other elements such as banking, exchange rate and financial integrate an essential part of the right to privacy of private "life, so adopting a broad definition of the right to privacy (19).

The interests that bank secrecy is to protect, rooted in the ownership of the institutions and their customers, not only have attained that fundamental right, as included on it. The exceptions that are likely the right to a privacy, also occur when the holder of intimate data reveal them when so wishes.

However, as we have seen, authors of countries whose Constitutions also establish this right expressly found him plea to fit the scale of this fundamental right, banking secrecy, because they already understood as a kind of professional secrecy, whose foundations are based on the principle fundamental inviolability of the human person, the dignity and privacy (20). Position that is not embraced by other authors admitting, though, that bank secrecy gravitate around this fundamental right, understand "the privacy of that speech is no longer sitting inside the space saved by the right to reserves to the privacy recognized by the Constitution, but only to its door, behaving as a sort-first guard who favors that defense." (21).

Bank secrecy, in the Angolan system, as they appear portrayed in ordinary law, is considered a type of

professional secrecy, which aims to protect on one hand the need for some privacy means of revealing the fortune of customers and on another aims to provide customer confidence in financial institutions, facilitate and increase the performance of these activities. With these contours must be returned to that fundamental right, which happened to have sitting in the constitutional text. Later, when talking about the legal and regulatory framework of banking secrecy, the Angolan system, return to this issue.

As we said above, the host of banking secrecy varies from jurisdiction to jurisdiction, even at present there is a strong current, at the level of international organizations, in favor of the lifting of banking secrecy is not only when in the presence of criminal activity, but also regarding cooperation with the tax authorities. The non-dedication of an absolute duty of bank secrecy has not constituted an obstacle, for if not to give legal protection to the data that banks get from customers, and the exercise by virtue of its activity.

IV. Models of banking secrecy systems

Three model systems, among which fall under the Anglo-Saxon countries, not normatively regulate banking secrecy, admitting, however, as a rule, the civil sanction the breach of bank discretion (22) have been aligned as a way of defense of the confidentiality, particularly in the UK and the right to privacy (the right to be let alone) in the United States.

Confidentiality or secrecy to preserve the banking system is considered a duty that extends to all non-bank members of a banking group, such a duty is not limited to information pertaining to the client, but also relates to any information generated by the bank. A breach of this duty can happen in the following circumstances: when the exemption is required by law (to the public interest in the administration of justice, for reasons relating to banking supervision, tax evasion, corporate fraud, drug trafficking, among others); when pursuing the public interest; when the interests of the bank require the exemption of duty and; when the derogation results expressed or implied consent of the customer (23).

A right to privacy or the privacy in the American system does not receive any express reference in the Constitution. However, the doctrine and the jurisprudence give to this law constitutional dignity. However, this constitutional dignity does not go to the point of it being extended to situations that go beyond issues of personal jurisdiction, it being excluded matters relating to financial and capital, here field standing the information covered banking secrecy, which does not benefit from any constitutional protection. Moreover, the weak manner that is treated with banking secrecy, the relationship between bank and customer, going so far as not even to be able to be likened to the privileged relationship that rages between the client and his lawyer or between husband and wife.

Such understanding around the customer/bank relationship and banking secrecy arises from a decision that was rendered in 1924 in the celebrated case *Tournier v National Provincial and Union Bank of England*, which came to be accepted by U.S. courts. In that decision, it was concluded that banking secrecy has a legal basis implied contractual clause, according to which the banker is obliged to observe discretion in relation to the account and transactions of the customer, but this duty ceases when it is determined by law, while it is in question the performance of public duty, when interests are at stake and when the bank account holder consents to the disclosure of data.

In addition to these situations, and as large weight factor for the configuration of banking secrecy in American law puts the safety of the national economy, which it noted as an obstacle or a harmful element to the national economy, which justifies its limitation to minimum required (24).

In the second model fits in France, which was the first western country to sanction the violation of professional secrecy, and where banking secrecy, built from rules and regulations that pertain to professional secrecy, appears under the aspect of obligation confidentiality and the duty to cooperate with justice, while the secret of doctors and priests have full protection.

In the third model, which is at the end opposite to the first model, the banking secrecy appears with greater substance, as in the case of Switzerland, Luxembourg and Lebanon.

The Swiss, unlike Lebanon where there is a full legal protection to banks, which are free from the requests of the judiciary, admits the duty of cooperation in criminal matters (except for the cantons of Neuchâtel and Valais), but no longer the duty cooperation with the tax authorities (with the exception of the canton of Fribourg, who admits he does). Banking secrecy in this country was born more than 300 years, is seen as a manifestation of the right to privacy and professional and business secrecy. Constitute an obligation for banks, their bodies and employees of non-disclosure to third parties of data on their customers. Therefore, be sure that the tax authorities wish to obtain data on the fortune of a client, should address itself to the customer and the bank in some case for such information.

Banking secrecy stems from the civil law, article 27 and article 28 of the Civil Code, which governs the protection of personality. These articles admit one protection against intrusion on the protection of privacy by individuals or the State sphere. The articles 143 and 143 bis of the Penal Code shall ensure the protection of personal data of customers and banks. Turn to article 47 of the Law of banks and savings banks directly addresses the breach of banking secrecy is regulated by criminal law.

But the Swiss poses no part whatsoever in the cooperation on tax matters, where there is an order of a judicial authority or supervisory authority. In respect of the crime of tax fraud or scheme information exchange is allowed. The Swiss as Luxembourg and Liechtenstein distinguish between tax fraud and evasion.

The lifting of bank secrecy in Switzerland is expected in the case of money laundering, funds of criminal origin or provenance of funds linked to terrorist activities. Since 1990, this country establishes rules on these matters, and its implementation as envisaged in article 305 again of the Penal Code.

In Luxembourg, too, only in very few cases, the secrecy may be lifted.

In Italy there is no general rule about the secrecy. In this country, bank secrecy can not be invoked, in general, the tax administration.

In Belgium, the relationship between banks and tax authorities does not apply to banking secrecy. Are imposed, however, limitations with regards to income tax, may not request that management elements to the banks on this tax. You can only do it when the taxpayer claims the tax assessment. In this case, the bank can provide all the information to the tax authorities, working the claim as a means to authorize the bank to provide information, freeing them from the obligation of secrecy.

But do not forget here the so-called tax havens, which since 1960, do not permit the exchange of information with foreign countries protecting data on funds from their non-resident clients in designated off-shore accounts.

The attacks on banking secrecy became fiercer after the global financial and economic crisis that occurred in 2008. According to data obtained and tested two OECD countries that appear on the white list, the United States and Great Britain are the countries, which enjoy greater financial opacity (25).

The Swiss became the 58. ° signatory country (15 October 2013) of the Convention on Mutual Administrative Assistance in Tax Matters. Lacking it of ratification by the Swiss Parliament and the conclusion of bilateral or multilateral agreements.

Belgium, meanwhile, has not yet ratified all bilateral treaties and runs the risk of going back to the OECD gray list. In principle, from January 2015, the Luxembourg banking secrecy will disappear from the landscape.

V. Exemptions to banking secrecy

The duty of secrecy, by banking institutions is not absolute, provided that in certain circumstances it is liable to undergo certain exceptions, i.e. yield in values that overlap those it wishes to maintain.

And it is in this area of the exceptions to bank secrecy that doctrine has been quite controversial and, on the one hand there are those who pugne by the total yield of confidentiality, when at issue is the performance of the tax administration (26) or the police authorities (in the case searches and seizures), and on the other hand, who in defense of secrecy just admit its lifting when there is a court order, and it is concerned a higher interest as provided by law.

The rules governing the legal regime of banking secrecy, has established itself as exceptions to the duty of secrecy: a) the authorization of the recipient (customer of the bank or banking institution itself); b) Decision of the public administration by administrative act (when it comes, namely, to put the interests of the tax authorities in the category of dominant interest); c) the duty to cooperate with the justice system, namely the courts.

a) In regards to the authorization by the beneficiary of the duty of banking secrecy, there are some who understands that it is not exactly a waiver or exception to the general principle of confidentiality by virtue of whether it is a grant of waiver of confidentiality by the holders of interests covered up for it (27).

For those who consider that this is a waiver of that duty, raises the question of whether such authorization is granted in relative or absolute terms, i.e. it merely intends the suspension for a certain concrete situation, maintaining the obligation of secrecy for the other cases, or seeks the extinction of that obligation, separating from it the banking institution. An agreement or the other or both, that simultaneously both may result from rules that encompass that waiver cover in some cases, both the suspension and extinction.

b) The exception or derogation from the principle of tax administration decision has been countered mainly in English teaching (28), or because the bank secrecy has expressed a restrictive legal protection and administration of this act, in defense of a fundamental right under the Constitution, which is the right to privacy (29). Hence, we do suspend the obligation of secrecy for tax purposes, a court decision where the law does not provide expressly, the unenforceability or lack of that obligation (30).

c) Regarding the derogations justified by virtue of the duty to cooperate with justice, here too there are two opposing confronting theses, one that supports the yield of duty bank secrecy before the duty to cooperate with the court, and the other that claims to be the prevailing duty of confidentiality on the duty to cooperate with justice (31).

The first still has well expressed two parts, one that assigns to the courts the power to suspend the duty of secrecy only in cases expressly provided for in a statutory provision (32) and the one that gives them this power whenever the duty of secrecy conflicts with values justice, depending on its opinion of those organs and weighting (33/34).

With the exception of the exception resulting from the authorization of the beneficiary, the other two waivers (to satisfy public interests of a fiscal nature and cooperation with justice) lie in the plane of the public interest, especially when disclosure of data is concerned resulting from illegal practices such as drug trafficking and other crimes.

This seems to be the path that has been followed by Switzerland, considered the mecca of the banking secrecy, which has been accepting the breach of bank secrecy, wherever proving the illegality of the source of deposited.

VI. Banking secrecy and tax authorities

In our opinion, and before we proceed to the analysis of how the bank secrecy is established in the Angolan system, on a general thesis, it seems advisable that in the absence of a special rule, which expressly grants the Tax Authorities the authority to lift banking secrecy, this prevails only just insofar as they are not concerned with values of justice worthy of superior protection. And when this happens, and here we will be already within the second exception to the prevalence of these values should result from a balancing of the interests at stake, prudently assumed irrespectively of the speed that should govern the decision-making on a procedural arena established in the field of evidence.

Is also important to discuss the possibility of the Angolan legislature establishes in any legal provisions the breach of the bank secrecy when in the presence of conflict with fiscal interests.

The General Tax Code, with the changes that were introduced by Law no. 17/92, of 3 July, states in no. 2 of article 65 thereof, the tax authorities can examine files of government offices, public institutes, public or private legal persons, goods, books and documents of taxpayers, constituting a hindrance to the action of the tax authorities any difficulty that arises or obstruction. Moreover, the no. 3 of this article, states that the tax authorities to obtain material evidence in tax proceedings, may request expert examinations.

It is in article 73 that establishes the sanction (fine, without prejudice to criminal proceedings) to those who cause embarrassment to the action of the tax authorities, hide, destroy, disable, overburden, fake or otherwise impede the action of the tax authorities.

Certainly financial institutions, as taxpayers will be subject to inspection by tax authorities. However, unless the rule that provides on banking secrecy, expressly mention that this would yield to the tax authorities, we believe that financial institutions do not have to reveal, to this administration, facts and elements that are included within the scope of that duty, unless such data or its omission referring to the criminal domain, as is the case of the actions that fall in the types of crime encompassed in the Money Laundering Law, which shall be covered in one of the exceptions in the Financial Institutions Law.

Under the law we've seen indicating, it is referred in no. 3 of the article 65 thereof, the "process of a tax nature", but it seems that this has not judicial nature, on contrary appearing to be of proceedings conducted by the tax administration itself. Not appear in this normative, the power, in case of refusal, have recourse to a judge (district judge or prosecutor) to, in its process, decreeing that the targeted party is put at the disposal of that administration, for the purposes of the inspection required. At most, it is said that the offenders (entities and severally holders of management bodies) are subject to fines and prosecution, where this is the case. Furthermore it mentions that after the decision becomes final the decision that there is a penalty applied, the tax authority has a period of 8 (eight) days to notify the attorney general, for the purposes of article 164 of the Penal Procedure Code.

It seems, however, that the allusion to the final decision concerns the application of a fine, and no longer the inspection process itself, whose initiative comes from the tax administration itself, not from any judicial authority, opposing if so, the requirements that are placed there for a lift or derogation of the obligation of banking secrecy.

However, it has been understood that nothing saying the Law of Financial Institutions, in regards to derogation of the bank secrecy about the powers of the tax administration, in detached legislation came to be attributed to the tax administration specific powers to obtain data from the banking financial institutions, on these customers who are initially protected by that duty, for the purpose of tax enforcement, admitting between procedures to achieve this goal, the seizure of money and other amounts deposited in bank accounts article 44, procedure not provided for in the Code of Civil Procedure in force in relation to sea. It is the ordinary legislator, having gone for this institute, "tax enforcement" forgot to look at the Code of Civil Procedure to check if this had somehow stipulated about money seizure and bank accounts, similar to what happened with the Portuguese ordinary legislator who took care of adding the article 861 thereof, which came to cover this type of seizure. Not having done, the Angolan ordinary legislature approved the scheme system of tax execution, once the seizure of money and amounts deposited in bank accounts takes place, does not have in the adjective right any legal coverage, because simply anything about it this is said.

We believe that the law that contains these prerogatives to the tax administration, the Presidential Decree no. 2/11 of June 9th, approving the system of simplification of the tax execution, and that repealed the Executions Tax Code, "derogated" in favor of the tax administration the rule on duty to guard bank secrecy, but

filled with the just mention addictions. This law, in the mentioned article 44 thereof, makes a clean sweep of the nomenclature that is used in Angola, regarding the entities bound to the duty of bank secrecy, financial institutions, calling them credit institutions, terminology into disuse in the Angolan legal system.

This law assigns judicial powers to the tax administration, when tax office gives the territorial jurisdiction the direction and management of tax execution proceedings, which "implies the right of choice and the completion of all the steps necessary to satisfy the creditor's rights that are not legally restricted to the court" (article 4, no. 2). Getting materially compete to the court the decision on the opposition to the tax execution, deduced on restrictions of the executed person, opposition to the seizure, the complaints of acts from the tax office, in exercising their powers of management and direction of the process, the subordinate actions of verification and graduate of credits, subordinate actions for annulment of a sale, claims of bills of expense and other actions that by law falling on their competence.

On the regularity, legality and constitutionality even this degree would be to pronounce the Constitutional Court if the enforcing banking institutions, to be important to clarify to what extent the content that appears in a burst, surpassing the general tax law itself, in that banking secrecy concerns, and calls into question the extent to which compliance with banking secrecy under the provisions of the Law on Financial institutions.

VII. Banking secrecy and the Angolan canons that establishes it

After we covered the general thesis, some of the issues that arise in relation to the treatment of the banking secrecy, it has come the moment for us to make, with some detail, reference to how this duty is appears in several rules that alludes to it, in our legal system.

Undoubtedly, the main emphasis will be given to the legal instrument that contains the general rules for the performance and activities of financial institutions, the Law no. 13/05 of September 30. We will not leave, however, to refer to other laws predecessors to it, nor on the other hand, to record the treatment given to banking secrecy by another legal instrument also important, the governmental law of the central bank (Law no. 16/10, 15 July).

We begin, however, by inquiring on the Constitution, if it envisages the establishment in relation to the fundamental rights, the right to privacy, as we have seen, became the subject of protection, and the protection of which seems to be the preservation and observance to guard confidentiality whenever that right should lay before the exercise of activities that come with it in relation directly or indirectly, such as doctors, lawyers and journalists.

Going through the Title II; Chapter II of the Constitution, in articles. 30 to 32, thereof, reference to protection of some personality rights, such as life, dignity, liberty, personal integrity. The constituent legislature makes express reference to the right to privacy, as in some Constitutions of today.

The Angolan Constitution, in the chapter of fundamental rights, enshrines, unlike the Constitution that did not do it, the right to privacy (article 32, no. 1), and therefore it is worthwhile to dwell a little about their consecration and on what terms it should put itself in the light of this legal provision: "1. Everyone is recognized the rights to personal identity, civil capacity, citizenship, good name and reputation, the image, the word and reservation of individual and family privacy."

The same goes with the Civil Code, which established the rights of personality, entitled "right to reserve privacy" (article 80), embraces this right by imposing an obligation on its guard follows: "1. Everyone should safeguard reserves in relation to the privacy of others." One way to safeguard reserves in relation to the privacy is not promoting it, keeping it a secret, so the observance of this is also a right for all.

We conclude that the right to keep privacy has expressed base in our legal system, by virtue of its expressed establishment in the law of all laws. Hence, that right, as we have seen, is a subjective right of personality, such as the right to life, name and others, enjoying special legal protection.

But it is not enough, however, to just recognize to this fundamental right the nature of subjective right of personality, it is also necessary to recognize its content and scope. And it is certainly by searching to define or delimit the outlines of this fundamental right, which recently entered in our legal system, which will find a way to frame situations that enter the field of protection of the legitimate expectations and legal certainty because they are located in the patrimonial and economic forum of the legal subject and as such in need of such protection.

If in the content of the right to privacy fall aspects such as personal and family relationships, domicile, correspondence, telephone, oral conversations (35), is no less true that within this law are the patrimonial relations, the economic and financial situations of each one, knowing that it is from these that the other aspects of personal and family life are largely influenced.

Assuming this extension of the right to privacy, the protection of patrimonial and economic aspects that are made through the banks as trustees of the savings of his customers, lying under an obligation to keep secret (the correlative right to confidentiality) on operations that take place in the relation-bank customers, to build trust and legal certainty on their part, leads to frame the banking secrecy as a manifestation of the fundamental

right to privacy.

And it is in this right that lies the ground to the right to bank secrecy, since the latter has matters that fall within the sphere of privacy of the subject of the law in its patrimonial and economic aspects, which do not cease to belong to their intimate nature, in view that allow to know the intrinsic nature of the subject itself and connects to the dependence of the other aspects of daily life that keep with these patrimonial and economic aspects.

Indeed, from the unique rule of the Civil Code that we just quoted, it occurs that there must be a duty to safeguard, a duty of confidentiality that applies in relation to the privacy of the life of each person. Here it seems that we can distinguish with some fullness, the protection duty that arises, as stated by Benjamim Rodrigues (36) "at the door" of the subjective right of privacy and not beside this as a right of equal force. It is certain, however, that because this duty has to appear as a means or instrument for the preservation of facts that are part of that intimate sphere, has a more demanding tutelage, should not, however, go up to the point of exacerbating its meaning and scope, because the interests underlying it have different scope either when targeting the customer or the banking institution, considered in itself.

With regards to the client, this by placing its assets in a bank, and by establishing with it a relationship with this confidence, want the telltale means of his wealth to be protected from the gaze of others.

In relation to the bank itself, the custody of secrecy with regards to the financial aspects of the lives of their customers, increases the level of trust between them and the institution, allowing this activity to develop greater strength and performance.

And it is the need to more stringently protect banking secrecy which led the legislature to devote the general scheme of financial institutions to penal protection, when there is a breach of the duty of secrecy: "without prejudice to other applicable penalties, the breach of secret is punishable under the Penal Code and relevant legislation." — article 65 of the law no. 13/05 of 30 September.

As stated above, the banking secrecy is seen as a kind of professional secrecy, violation of which is punishable under article 290 no. 1, of the Penal Code. This was exactly the way that the Angolan legislature embarked when considered in that general system that should be referred to this set of legal rules (Criminal C.), the punishment in case of breach of bank secrecy.

It is crucial, and before we proceed to a brief chronology of the establishment of the banking secrecy in the rules that have governed the banking industry in general, to mention other legal provision which provide for the duty of secrecy. Such is the case of no. 2 of article 217 of the Code of Criminal Procedure, referring to the duty to keep confidential data arrived at the attention of public officials, who by law are bound to this confidentiality, provides as follows: "They are not obliged to depose or to testify: 2 civil servants who are legally obliged to maintain professional secrecy, on the facts that should not reveal."

Although the concept of a public official is not extensive, currently the bank employee, the date of preparation of the penal code, this concept was intended to cover the entire employee who supplied services in order to serve the public interest, which is included in the service or banking.

It is not a burden to accept that this was the understanding, to the extent that professional secrecy is considered on numerous professions, including the banking. Although there is not a reference in the code of bank secrecy, the code also refers to it when it mentions a kind of secret – the professional – one that is kind.

But in the field of criminal procedure is still necessary to cite at least three other provisions that clearly contain what is called a waiver of bank secrecy. It is the article 178 of Criminal Procedural Code and articles 215 and 216 of that same code.

The article 178 that hosts the principle to cooperate with the justice provides as follows: "No one can escape to undergo any examination or to furnish any other things that should be examined when it is necessary for the instruction of any process, allowing the judge (prosecutor) give effect to its orders, even with the aid of force, without prejudice to article 209 and 210." "Turn to article 215 it stipulates: "No one can refuse to depose as a witness, except in cases expressly excluded by law." And the article 216., Paragraph 2nd, revealing that duty of cooperation requires that even to the incompetent to witness statements to be taken when the judge deems appropriate.

We have no doubt that the understanding that can be attained from such provisions may lead to the conclusion that in criminal proceedings, the ordinary legislature intended to establish a duty to cooperate with justice. However, this duty seems to wane, even within the criminal procedure code, when it is determined, as it is in art. 217, which gives the obligation to testify in cases where people are forced to keep secrecy.

There will be, as it relates to banking secrecy, to see to what extent combine these two duties: guarding and cooperation with justice, we will do further analysis.

But carrying on our analysis to the treatment that the various legislation give to the bank secrecy is important to note what the **law of searches, seizures and apprehensions – Law 2/14 of 10 February** – provides about apprehension of title, values or other objects deposited in banks or other credit institutions, provided there is sufficient basis to relate them to the crime, leading to the discovery of truth or serve as

evidence (article 20).

It is therefore, strange that in chapter searches and apprehension, the law does not refer to banks, just come to do so, as to seizures. It mentions about house searches, searches of law offices, searches of offices or public services, searches for diplomatic missions and consular premises, but nothing is said about the searches in banks.

Seems to have been corrected, by this law, the question of the competent authority to order and preside over the search, because without it there can be no apprehension, nevertheless as stated above, the law does not make special mention searches in the banks. Results from the article 2 that the authority to preside the diligence is the prosecutor or the judge. As established by the law of financial institutions, as the breach of the duty of confidentiality can occur, under the instruction process, by order of judge or prosecutor (b), no. 2, article 50). The special law, which in this case is the law of financial institutions points to two competent authorities. The law of searches, seizures and apprehension confers jurisdiction to examine the documents titles, values, or objects seized amounts to the judicial authority that ordered the search, allowing it to be aided by criminal police officers and advisors to qualified personnel (no. 2, article 20).

Another feature of this search law is the subjugation to secret of all intervening in the apprehension of bank premises, as determined in paragraph 3 of this article 20.

We would also like to go over the rules of civil procedure, pointing either towards the protection of the duty of secrecy, as in the derogatory sense of that duty, by comparison with the duty to cooperate with justice.

The article 519 of the Civil Procedure Code entitled "duty of cooperation in uncovering the truth," contains in its no. 3 the exception to the principle of collaboration, excluding the obligation to provide such cooperation all those who in fulfillment of the duty to cooperate, violate, however, the professional secrecy: "the refusal is, however, legitimate, if obedience entails breach of professional secrecy (...)." Also e) of article 618 stipulates be incompetent to depose those who by virtue of their status or profession are bound by professional secrecy, "as to the facts covered" by this secret.

Towards the derogation of the duty of secrecy is the article 519 thereof, quoted above, that on the numbers 1 and 2 contains an obligation to cooperate with the justice for the discovery of truth and the corresponding sanction for non-compliance. The article 535 which is a limitation to the provision principle, gives the court the power, on its own initiative or at the suggestion of either party, ordering all that is necessary for the discovery of truth. The request can be made to official bodies, to the parties or to third parties.

And after passing through this set of legal instruments analytically, which on a general refer to professional secrecy, we considered it on a more precise manner in legislation that established or had established the banking secrecy it in the Angolan legal system.

The first law in Angola that (after independence) referred to banking secrecy was the Organic Law of the National Bank of Angola, law no. 69/76 of 10 November (confiscated the assets and liabilities of the Bank of Angola, based in the (People) Republic of Angola). In the article 75 of this law, it was considered subordinate to bank secrecy whatsoever was related to deposits, loans, guarantees, relations with overseas and in general all bank operations and information related to the organization, operation and safety of the bank. However, this article determined exceptions to the principle of confidentiality in the treatment of that range of subjects, which took place at the request of the interested in the operations to the conduct of proceedings since court judge or similar delivered the corresponding order, by determination of the government, by order and in other cases, when preceded by authorization of the Government of the National Bank of Angola (BNA). The breach of confidentiality constitutes legitimate grounds for dismissal and cause and foundation of dismissal, without prejudice to trigger other procedures prescribed by law.

We believe that the establishment of the obligation of the banking secrecy in the first Organic Law of the Central Bank has had its origins in Decree-Law no. 47 909, of September 7, 1967, which created the service of Centralization of Credit Risks aiming to centralize the risk elements relating to information to granting and applying for credit, the provision of information that was obtained for the purpose of being used exclusively by that department, constitute infringement of the principle of banking secrecy to use for different purposes. A breach of confidentiality on the part of those who were required to provide service to credit institutions was considered a crime of violation of professional secrecy punishable under article 290 Penal Code article 6.

It seems that the merits of this legislation have not been much innovating in relation to the establishment of the principle, if not to explicitly establish the duty of confidentiality, as a general principle, extending it to all institutions providing credit, which by contract and customary, had been fulfilling this duty. And that aim was not certainly with least importance, provided that it came to creating or establishing on a rigorous way, on banking credit matters are related, a protection in performing loans operations, also directed to the interests of clients (not only to the system or credit service). And when talking about the accuracy of such protection, has a view to the criminalization of behaviors that could jeopardize the custody of data and confidential information that only the institution in the relationship with your customer concern.

In 1991, when operated, by law, the transformation of the banking system from a single level to the current banking system, of two levels, the banking secrecy has come to have legal recognition, whether in the

Organic Law of National Bank de Angola (Law no. 4/91(37), of 20 April) whether in the Financial Institutions Law (Law no. 5/91(38), of 20 April).

The law no. 4/91 remained unchanged, in the article 94. thereof, the wording of article 75 of the previous organic law, on what the meaning and scope to be attributed to the principle of bank secrecy was related, having introduced a change in the field of exceptions, granting the right to a breach of confidentiality to those interested in the transactions, to the law judge or to the prosecutor and to the governor of the Bank, by order. Unlike the previous law, this article 94 relates nothing about the criminalization of breach of the duty of confidentiality.

In the law no. 5/91 it was the article 29 that demarcated the objective and subjective scope of the duty of banking secrecy (no. 1 and 2), setting out the situations in which could be derogated, conditioning them to the existence of an express statutory provision that admitted or determined the duty to cooperate with justice (courts and judicial authorities) or the tax authorities, in duly organized process (no. 3), in addition to resume, on one hand the creation of a service of information centralization and credit risks (similar to what it is already provided in the decree-law no. 47 909, of September 7, 1967), on the National Bank of Angola, and a system of reciprocal exchange of information among the financial institutions, with the purpose of giving more security operations (no. 4), and the other hand, the duties of statistical information or other taxes that were legal (no. 5).

Both the law no. 4/91 as the law no. 5/91 were revoked, having entered into force the organizational law from 1997 (Law no. 6/97 of 11 July) and the law of financial institutions 1999 (law no. 1/99 of 23 April).

The article 94 of the Law no. 6/97 only differed from article 94 of the previous law because it was established in the facade of the banking secrecy information about monetary policy and about the safety of the National Bank of Angola, leaving only the governor of the bank provide such information.

Given the fact that this law expressly conferred the National Bank of Angola competence to conduct the nation's monetary policy, the legislature intended to refer to confidential information that, in this respect, the employees and other persons subject to the duty of secrecy could have, as a way of preserve aspects relating to that financial policy, since it contains a set of guidelines aiming to regulate the functioning of the economy, at all times, so that the improper disclosure of the use of a certain instrument, would frustrate the intended effects of its application. On the other hand, it was established that data on the safety of the bank were to be provided only by the governor. This was information concerning the internal life of the institution, and that it concerned only and may put at risk the role of numerous functions that the bank played either as banker to the state, which on the role of the bank of banks, either still in this relationship maintained with the outside world.

The law only allowed that disclosure of this data could be provided by the governor of the bank, which was simultaneously autonomous singular body and president of the board of directors of the bank, being one of its powers to act as the highest representative of the bank. Therefore, to no other body could fall power that no. 2 of article 4 gave the governor of the bank.

The law of financial institutions established one section (I) to due to banking secrecy. The general rule had been expressed in article 49, which dealt with who were the active subject and person liable for the duty of secrecy and under which conditions and circumstances should the latter be bounded to this duty. The article 50 contained the exceptions to secrecy: the first alluding to disclosure of data relating to clients of institutions, only when these clients authorize in writing the release of data that allied to them and its operations; the second attributed to the National Bank of Angola the power to reveal data that were under cover of the secrecy obligation; thirdly, the disclose could occur for the conduct of proceedings, by order of the judge or prosecutor; and fourth and finally, when it was established that there was legal provision which expressly limit the duty of confidentiality, the disclosure of information covered by this duty could occur.

This last limitation to the secrecy duty and that it is repeated in the current law, Law no. 13/05 of September 30, has to be properly understood, has it is not enough that the provision makes a generic reference, vague and indirect way to possibility of obtaining data from the financial institutions, which must, in addition, it contains either in the spirit or the letter, the assignment of the faculty to access to such data and information and therefore, the duty of secret should to give in. Is that even what has been happening in certain jurisdictions where the law states that the duty of secrecy must give way to the practice of criminal conduct, such as the origin of capital originating in money laundering operations.

Under the legislation to which it is subjected the Angolan banking financial system, the banking secrecy is a rule of thumb, the violation of which is punishable under the Penal Code and complementary legislation that addresses this issue. This rule comes under Section II of Chapter VI of Law no. 13/05, of September 30 and is presented with the following characteristics: the general rule is the preservation of discretion in handling customer data, this general rule may yield in the following cases: a) on the initiative of the client whose disclosure authorization must be submitted in writing to the institution; b) disclosure of data to the National Bank of Angola, as part of its duties, the Committee on Capital Markets, within its powers and to the Institute of Insurance Supervision, within their competence; c) development for the conduct of proceedings by order of a Judge or Public Prosecution magistrate; d) whenever there is rule of law expressly that limits the duty

of secrecy.

The duty of secrecy covers banking financial institutions, their agents of any degree situated in the organizational hierarchy (members of management, employees, commissioners, service providers permanently and even occasionally) and focuses on facts or data relating to the life of the institution or its relationship with its customers, whose knowledge derives exclusively from the exercise of its functions or the provision of services.

The duty of secrecy is also required to all who work or have worked at the National Bank of Angola, as well as to those who provides or have provided service on a permanent or occasional basis. The National Bank of Angola can exchange information with the following entities, which are also subject to secrecy duty: the Commission of Capital Market and the Superior Institute of insurance of Angola, within its competence; authorities involved in the liquidation of financial institutions; person for whom the legal control of the financial statements of financial institutions and the agencies that oversee them meet; supervisory authorities of other States, on a reciprocal basis, as to the information necessary for the supervision of financial institutions based in Angola and institutions of similar nature established in these States, under cooperative agreements; central banks and other institutions with similar functions as monetary authorities and other authorities responsible for overseeing payment systems.

The information received by the National Bank of Angola may be used only in the following cases: for examination of the conditions for access to activities of financial institutions; to supervise the activities of banking institutions, in particular with respect to liquidity, solvency, large exposures and other requirements for capital adequacy of its funds, administrative organization, accounting and internal control; to impose sanctions; the scope of appeals of decisions made by the National Bank of Angola; for the purposes of monetary policy and the operation or oversight of the payments system.

VIII. Banking Secrecy, Money Laundering and Terrorism Financing

Criminal activities that are subsumed in the concept of money laundering and terrorism financing appear established in Law no. 34/11 of 12 December and once framed in the context of a crime case, the cause shall be covered on the conduct of proceedings crime aforesaid, for the purposes of non-application of the rule of secrecy by the financial institution.

According to this law, the entities subject, that is relevant here to consider banking and non-banking financial institutions (subject to supervision by BNA) are bound to a set of duties: of identification, of diligence, of refusal, conservation, abstention communication, cooperation, confidentiality, supervision and training.

The duty of identification is to be payable in certain circumstances, by those institutions, to identify and verify the identity of their customers and others, where this is applicable, upon proof. The moment verification of the identity of the customer and other people related to the case shall occur where it is established the business relationship or before performance any occasional transaction.

The duty of diligence is to be obtained by the financial institution all the updated information as it relates to clients and other people related (from the point of view of the risk profile) and the negotiation relationship (nature, purpose, origin and destination of funds). This duty of care can occur in simplified or enhanced form (article 9 and 10).

The obligation to refuse occurs whenever the institution becomes aware that there are personal and operational requirements of the customer are not met and therefore, the institution is entitled to refuse to perform any transaction and give as extinguished the intended business relationship by client.

The banking and non-banking financial institution (subject to the supervision of BNA) shall retain for a period of 10 years the essential documents, such as documents enabling reconstitute the operation performed, a copy of all business correspondence, copies of communications made to the Financial Information Unit and other competent authorities.

The duty of communication consists in the banking and non-banking financial institutions (subject to supervision by BNA) inform the Financial Information Unit on any data that have lead to suspicion on certain customers and operations that meet the requirements of own activities of money laundering or terrorist financing and that are equal to or greater than USD 15.000,00.

Banking and non-banking financial institutions (subject to supervision by BNA) should refrain from actions that depict suspicion and liable to constitute a crime, shall report such fact to the Financial Information Unit so that it may decide on its suspension or not and to carry out the convenient additional representations to the competent court (Attorney General's office).

The obligation of cooperation requires that banking and non-banking financial institutions (subject to supervision by BNA) provide information to the Financial Information Unit and authority of supervision and inspection.

The duty of confidentiality on the part of institutions extends to members of their governing bodies and to all that perform functions on them, in terms of what is being observed this duty in this text. However, the law admits that when the information is given in good faith, does not constitute a violation to secrecy duty, nor

imply disciplinary, civil or criminal. Good faith must be proved by whoever alleges.

The requirement of control consists in the institutions to provide to themselves with policies, processes and procedures to assess the fulfillment of the objectives pursued, in order to comply with legal regulations imposed on them in their entire length.

The duty of attending training to employees of institutions is mandatory so that the rules are respected in the field of prevention and punishment of the crime of money laundering and terrorist financing.

In addition to these general obligations the law determines specific obligations on financial institutions (article 21 to article 28) and non-financial entities (article 29 to article 34).

The law contains provisions on the regime of offenses (article 42 to article 48), fines (article 49) and associated penalties (article 50). It also contains provisions of adjective nature (article 51 to article 58) and criminal provisions (article 59 –violation of protection of information–, articles 60 –money laundering–, article 61 –terrorist organization–, article 62 –terrorism–, article 63 –International terrorism–, article 64 –Terrorism financing – article 65 –criminal liability of companies and similar persons and penalties–, article 66 –Precautionary measures).

The concern with prevention against these criminal activities, the proportions they have achieved throughout the globalized world, led to the adoption of rules of conduct applicable to interbank markets: the Code of Conduct for the Monetary and Foreign Exchange Markets, also known as Code of Conduct of Interbank Markets.

This Code shall apply the subjective point of view to all operators of the financial institutions that directly or indirectly engage in trading, transaction and management of financial products, in the exercise of their duties or outside and from objective point of view to all operations performed in those markets, with a view to raising the professional standards of agents who practice and even the efficiency of those markets. Both managers and operators since they are subject to a set of obligations may be held liable where the breach. Managers among many other obligations must be held accountable when they do not issue clear instructions so the resulting clear limits of liability of operators. All should adopt behaviors with strict observance of high standards of honesty and integrity, professionalism, impartiality, confidentiality and loyalty (the so-called rules of conduct in general). Consequently should not work under the influence of drugs or other psychotropic substances, or engage in gambling, nor practice any discrimination.

The code separates that designates the rules of conduct of business between general rules and special rules. Belong to the first group, the need for market halls be physically separated from the office called Back Office and also the financial institutions present themselves endowed with a Back and Front Office and even a Middle Office, if one exists.

Institutions should make recordings of telephone conversations or when it is not possible to register by other suitable means to prevent and clean up disputes that occur between the negotiating parties. Such records shall be kept for the period of three months or longer period, occurs when a dispute between the parties.

The second group, and when they apply to the forex market, there is a requirement to: be disclosed price quotations for buying and selling currencies, may be firm or indicative; be abstaining from practices aimed at hiding gains or losses, the continued practice of fraud or unauthorized extension of credit; dealers linkup with the agreed prices and conditions prevailing in case of divergence between the verbal agreement and written confirmation, the latter; instructions for payment to be notified in the shortest amount of time to prevent incidents; confirmations are to be made between market halls and obey a certain format that includes the date, the amount, the currency, the exchange rate of the transaction, the value date, the swift code and number of account, the nature of the transaction and other relevant information. Special rules apply to business occurring in the interbank money market focus on interest rates that will be implemented at the moment you should consider the completed transaction and the procedures for confirmation of transactions. It is expected, in this code, the resolution of conflicts that arise between the parties who deal in markets primarily resolved by consensus and if not come to mind, resort to arbitration.

The acceptance of this Code of Conduct or its membership obliges managers, operators and financial institutions or subscribing members, subjecting them to disciplinary measures in the event of non-compliance with its provisions.

Furthermore, for the detection of situations that identify with assimilated within the crime of money laundering and terrorist financing offense of criminal conduct, Notice no. 21/12 of 25 April and the Notice no. 22/12, of 25 April regulate the obligations under the Law no. 34/11 of 12 December, the Law on Money Laundering, including the requirements for the identification and investigation and the establishment of a system of prevention of money laundering and terrorist financing, including the creation of the compliance office in the organizational structure of non-banking financial institutions and banking institutions, respectively.

More recently, came into force the Law on the Underlying Criminalization of Money Laundering Offenses whose aim is to consider certain criminal conduct that undermine certain fundamental legal rights. Now considered to be crimes: criminal association (article 8.), fraud in obtaining grants or subsidies (article 9), misuse of grant, subsidy or subsidized credit (article 10), fraud in obtaining credit (article 11), tax fraud

(article 12), qualified tax fraud (article 13), fraud against social security (article 14), abduction (article 15), abduction (article 16), hostage taking (article 17), slavery and servitude (article 18), trafficking of persons (article 19), the sexual trafficking of persons (article 20), the pimping (article 21), the pimping of minors (article 22), sex trafficking of minors (article 23), arms trafficking (article 24), trafficking in stolen goods and other goods (article 25), computer falsehood (article 26), counterfeiting (article 27), falsification or alteration of legitimate currency (article 28), the passage and uttering of false or counterfeit coin (article 29), and the manufacture counterfeit securities (article 31) (39), the use of bills of forged or falsified (article 32), aggression to the environment (article 33), pollution (article 34), pollution with common danger (article 35), the improper receipt of benefit (article 36), passive corruption (article 37), bribery (article 38), participating in business (article 40) (40), trading of influence (article 41), corruption in international trade (article 42).

This is undoubtedly a law that addresses the requirements of international organizations that consider Angola a country of high risk in the face of cast materials that began to typify criminal. The relevance of such a law can not be called in question, its practical materialization certainly expect better days.

IX. Conclusions

Along the lines we have drawn on bank secrecy, we evaluate the importance of this institute in the development of banking activity, both from the side of customers, as the side of the institutions carrying on that business. And this is so true, as this institute ensures that the data and information that these institutions are entrusted, relating to specific aspects of the privacy of customers connected to its financial condition and patrimonial are stored safely, as aspects that concerning to the operation, and organization of individual financial institutions are preserved, ensuring that their operability is conducted in an atmosphere of healthy competition.

With regard to financial institutions supervised by the National Bank of Angola, the law provides that nothing but in few cases, it refers the data and information that they acquire should not be released.

The law of financial institutions criminalizes behaviors that violate the scope of the duty of secrecy defined in the law, referring it thus to the broader concept of professional secrecy whose classification and punishment of violations, the Criminal Code establishes.

The bank secrecy as a kind of professional secrecy is founded on the right to privacy, which has constitutional base.

Whilst professional secrecy, the banking secrecy is subject to exceptions, which however does not relieve it of the duty to guard and respect for the observance of rules on dissemination and use of data and information, which are peculiar and unlikely of frivolous treatment by those who deal with them or have access to them. For this reason, these exemptions or arise from the person interested on the operations (excluding the hypothesis wanton by others) or arises from the duty to cooperate with justice (if any statement or process already instructed) or in very specific situations by initiative of the administrative authority that supervises the banking system (either when providing information within the system or when providing outside the banking system) and outside such cases be express rule which allows the removal of the duty of confidentiality. It should not be understood that cooperation with tax authorities has been resolved with the entry into force of the presidential decree that created the figure of tax enforcement and that this happened to be incorporated under the law of financial institutions as one more exception to the bank secrecy, provided all inconsistencies that imposing such institute puts, since as noted it does not have the foundation at the level of the Civil Procedure Code in force, the attachment of money or bank accounts and funds existing in them.

On the contrary the duty to cooperate with justice became stronger, especially, when it is concerned with criminal conduct as money laundering and underlying crimes and even terrorist financing, which is the reason it was required that the financial institutions under the supervision of National Bank of Angola were provided with all procedures to evaluate such criminal practices and help in their fight.

NOTES

- (1) When we refer to banks, institutions or banking institutions is the financial institutions that we are alluding.
- (2) See in the article 96, no. 1 of the Organic Law of the National Bank of Angola and article 59 Law of the Financial Institutions.
- (3) This right corresponds to the correlative legal duty to keep secret, whose subject we will refer in the following paragraph.
- (4) *The Bank Secrecy in Brazilian law*, in Luso-Brazilian Symposium on Banking Secrecy Edições Cosmos, 1997, p. 65. To LUIS ALBERTO, "the banking secrecy is the discretion that banks, their agencies and employees shall observe on economic and personal data of customers who have come to its attention through the exercise of banking functions." *The Secret banking*, p. 88. MARIA EDUARDA AZEVEDO, *The Bank Secrecy*, Notebook of Science and Physical Technique, no. 157, 1989, p. 7, defines this duty as: "The banking secrecy is thus the discretion that banks, their agencies or and employees, will have perceive relating to the information of personal and economic nature on customers, exclusively harvested in the exercise of their functions (...)."
- (5) See no. 1, article 59 of the Law of the Financial Institutions.
- (6) See no. 1, article 59 of the Law of the Financial Institutions.
- (7) See no. 3, article 59 of the Law of the Financial Institutions.
- (8) As it relates to individual clients, for example, their family, while they are alive, it integrates the concept of third parties. But even after death, the bank, out of respect for personal rights of the deceased client, should only provide information related with to the asset,

- subject to maintaining private the information on the privacy of the deceased client.
- (9) JOSÉ MARIA PIRES, *Banking Law*, Volume II, Editora Rei dos Livros, 1995, 94.
 - (10) AMARAL NETO, *The Bank Secrecy*..., cit., pp. 67 and following.
 - (11) *The Bank Secrecy, with Particular Focus on Civil Protection*, São Paulo, Editora Universitária de Direito, 1991, p. 137, cited by the MARIA JOSÉ. O. L. ROQUE, Banking Secrecy and right to Privacy, extract taken from the internet.
 - (12) It is, according to the author, a personal legal duty of non-disclosure or non-use of information, imposed by common law, by reason of profession or provide services to banks, which should be seen only as a duty of professional secrecy, lacking, therefore, absolute nature, as with the absolute right to reserve their privacy, *The Banking Secrecy and the Tax Secrecy*, in Colloquium on Banking secrecy, pp. 104-105.
 - (13) See MARIA EDUARDA AZEVEDO, *The Bank Secrecy*, cit., p. 11.
 - (14) JOSÉ MARIA PIRES, *Banking Law*, Vol II, Editora Rei dos Livros, 199, p. 79.
 - (15) BENJAMIM RODRIGUES, *The Bank Secrecy*..., cit., in Colloquium on banking secrecy p.105.
 - (16) MARIA CÉLIA RAMOS, *The Bank Secrecy in Portugal – origins, evolution and fundamentals*, In Colloquium on Banking secrecy, pp. 136-37.
 - (17) See NOEL GOMES, *Banking Secrecy*..., cit., pp. 101-102.
 - (18) GOMES CANOTILHO and VITAL MOREIRA, *Annotated Constitution of the Portuguese Republic*, 1993, p. 181.
 - (19) See Noel Gomes, *Banking Secrecy and Tax Law*, Almedina, 2006, p. 90.
 - (20) RODRIGO SANTIAGO, *The Crime of Violation of Professional Secrecy in the Criminal Code 1982*, Almedina, Coimbra, pp.103 ff., quoted by JOSÉ MARIA PIRES, ob. cit., pp.78-79.
 - (21) BENJAMIM RODRIGUES, *The Bank Secrecy*..., cit., p. 105.
 - (22) For more details, see VASCO SOARES DA VEIGA, *Banking Law*, Almedina, p. 163 ff; RODRIGO SANTIAGO, ob. cit., pp. 79-80.
 - (23) See ROSS CRANSTON, *Principles of Banking Law*, Clarendon Press, Oxford, 1997 pp.186-194.
 - (24) See NOEL GOMES, *Banking Secrecy and Tax Law*, Almedina, 2006, pp. 187-189.
 - (25) For further developments on this matter see VANESSA DACHER, *Conséquences de l'Assouplissement ou la Disparition du Secret Bancaire en Suisse*, Genève, le 19 août 2011, Haute École de Gestion de Genève, p. 25 e ff.
 - (26) In the English doctrine is in favor of this position JOSÉ LUIS SALDANHA SANCHES, for whom "the invocation of bank secrecy as a provisional taxpayers may oppose against the State constitutes therefore a clear anachronism, given the economic situation and the fundamental aspects of legal system of the Rule of Law," *The Current Situation of the Banking Secrecy. The Particularity of the Portuguese Case*, in *Banking Law Studies*, Coimbra Editora, 1999, p. 373.
 - (27) JORGE PATRÍCIO PAÚL.
 - (28) Although as we have seen already has opponents, for whom the defense of banking secrecy, in the Portuguese legal system appears unframed from the "consensus about the need to use the bank information for tax purposes", contrasting to trends in most developed countries, where the Rule of Law and guarantees the taxpayer reached higher levels of consolidation. See SALDANHA SANCHES, cit., p.363.
 - (29) In the opinion of JÚLIO CASTRO CALDAS, "professional secrets and particular bank secrecy, are protecting the basic individual rights, which are the privacy and the sphere of action that determines individual identity, and that has to be preserved from totalitarian intrusion of others.... also for Anselmo Rodrigues, "any legal limitation to banking secrecy in relation to the administration will have to go through mechanisms for ensuring that the privacy of the citizen portrayed in its "numerical biography", the bank account will not be probed. (...) This "biography in numbers" X contains documents, information of a personal nature which necessarily enter into the private personal sphere, in the words of certain authors, or of privacy and human dignity, knowledge of which by third parties, regardless of the interests that may determine their wanton, constitute infringement of the right to privacy, because they constitute the essential core.
 - (30) AUGUSTO ATHAYDE, School of Banking Law Course, p. 508.
 - (31) The position mentioned in last place is referred to in the Judgment of the Supreme Court of Portuguese Justice, of October 20, 1988, has been advocated that the legislature of 1978 overrode the duty of confidentiality to the duty to cooperate with justice, so could only be breach of confidentiality, when the law clearly imposed.
 - (32) JORGE PATRICIO PAUL believes that "the banking secrecy is protected in our legal system, as a kind of professional secrecy, its violation will not only be punished when a legal provision, expressly allow such violation, taking into account special interests of the legal system that justify, case by case, this breach of confidentiality." *Journal of Banking*, no. 12, p.
 - (33) The valuation and weighting of justice values, by the courts, arises even when the rules that point to the prevalence of justice values, as has been the current trend of the Portuguese legislature, as a measure of prudence. See JÚLIO CASTRO CALDAS, ob. cit, p.
 - (34) Still regarding the balancing of conflicting interests, this should be assessed so as not to reduce the effectiveness of the role of banking secrecy, or even the practical disappearance of their effectiveness, as AUGUSTUS ATHAYDE says, p. 509, so it is advisable that the "breach of confidentiality" produce of the weight never go beyond what is necessary, as well as claims MENEZES CORDEIRO, *Banking Law*, p. 326.
 - (35) See Judgment of the Portuguese Constitutional Court no. 128/92 and also no. 355/97, cited in NOEL GOMES, *Banking Secrecy and Tax Law*, Almedina, p. 87.
 - (36) BENJAMIM RODRIGUES, cit, p. 105.
 - (37) By this law, several articles of the law no. 69/76 and also 4/80 of 28 April, the Law no. 4-A/80 of 25 June, and the law no. 3/83 of May 23 were repealed.
 - (38) This law repealed the law no. 4/78, of 25 February, the law no. 2/80, of February 12, paragraph b) of article 16 of the law no. 21/88 and Decree-Law no. 30 689 of 27 August 1940.
 - (39) The content of article 30 should be part of the definitions, as is entitled "definition of currency."
 - (40) The article 39 contains the aggravation of active and passive bribery crimes.

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