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TITLE

Lifting of Bank Secrecy and Access to Financial and Commercial Records. Whether the Rules Applicable to the Access to Financial and Commercial Records and Bank Secrecy Hinder the Process of Investigating Corruption Crimes.

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Table of Contents

INTRODUCTION

Corruption is a huge barrier to the development of economy, establishment of rule of law and democracy, as well as of security in every single country of the world.

"One of the most powerful tools for prevention, criminalization and investigation of corruption appeared in 2003. It was the United Nation's Convention against Corruption (hereinafter also referred to as UNCAC). The convention addressed all the existing issues regarding corruption, and was unique, as it combined the endeavors of almost all UN member states for elimination of corruption"[1].

"Bank secrecy is the bank's promise to keep financial affairs and dealings of the customer confidential"[2].

"One of the conditions of the relationship between a bank and its customers is that the customers' dealings and financial affairs will be treated as confidential. This rule, however, does not apply to the customers' credit information, which is shared rather freely among lending institutions. In addition, due to certain laws (such as anti-terrorist and anti drug-trade legislation) and tax treaties between nations, banks must release specific information to help fight terrorism and illegal drug trade, and prevent tax evasion and money laundering"[3].

The General Banking Law of Philippines prohibits bank directors, officers, employees or agents from disclosing to any unauthorized person, without order of a competent court, any information relative to funds or properties belonging to individuals, corporations or any other entity in the custody of the bank[4].

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[1] Aram Dayan, The Role of Anti-Corruption Agency in Republic of Armenia and legal regulations under Armenian law

[2] The law dictionary, What is bank secrecy, available at https://thelawdictionary.org/bank-secrecy/ (last visited 07.02.2018)

[3] Business Dictionary, *Bank Secrecy, Definition, available at* *http://www.businessdictionary.com/definition/bank-secrecy.html* (last visited 11.02.2018).

[4] Zinnia B. Dela Peña, *Bank Secrecy Hindering Anti-corruption Drive*, 2013, available at, https://www.philstar.com/headlines/2013/07/15/970911/bank-secrecy-hindering-anti-corruption-drive-bir (last visited 13.02.2018)

With the aim of to have more detailed information regarding bank secrecy RA law on Bank Secrecy defines that subject to bank secrecy shall be information that becomes known to the bank in the course of its official activity with its customer, such as information on customer's accounts, transactions made by instruction or in favor of the customer, as well as the customer's trade secret, facts relating to any projects or plans of its activity, invention, sample products and any other information which the customer has intended to keep in secret and that the bank becomes aware or may have become aware of such intention. Information on banks and their customers with respect to supervision thereof prescribed by the first paragraph of this Article that has come to the Central Bank's attention shall be subject to bank secrecy. Banks shall be deemed as the customers of the Central Bank[5].

Lifting the financial information considered as bank secrecy is the issue which raises international concern. Since October 2003 in New York member states of the UN convention against corruption recognized the importance of lifting financial records in order to prevent and facilitate the process of corruption cases disclosure. Thus, UN convention against corruption has been adopted, which contains regulations on the above mentioned issue. Particularly part 7 of article 31 indicates: "for the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy". By ratifying the Convention in 2007, the Republic of Armenia undertook an obligation to ensure, among other things access to bank secrecy for competent authorities (bodies implementing criminal proceedings) on the basis of court decision (This access is for the competent authorities only, it's not a general accessibility which is available to public).

In Armenia, rules regarding bank secrecy are regulated by the RA law on bank secrecy. Generally in Armenia access to bank secrecy is possible by court decision within the scope of corruption cases investigation. So there is necessity to create appropriate mechanism aimed to facilitate the procedure of lifting bank secrecy.

According to articles 6, 7, 10, 11.1, 13, 13.1, 13.2, 14 of the RA law on bank secrecy, article 29 of the RA law on operational intelligence activity, decisions AVD/0015/07/13 adopted on September 13 2013 and EKD /0223/07/14 of the RA Court of Cassation, as well as from study of the RA Central Bank Council decisions' No 4 and 5 adopted on December 10 2013 official

[5] 80 HO Republic of Armenia Law on Bank Secrecy (1996) (last visited 27.03.2018)

clarifications, derives that in the RA access to the bank secrecy is possible within following cases:

1. By the bank to the client directly to whom relates the information
2. To each person by the written consent of client (with the exception of cases envisaged in point 4)
3. The secrecy regarding parties of civil or criminal cases on the basis of court decision
4. To tax authorities by the court decision
5. To financial system mediator within the case of its proceedings, if the latter investigates the claim against that bank
6. To the Central Bank regarding banks and its clients' information in connection with banks control
7. To credit bureau
8. To the foundation of deposits' compensation guarantee
9. To the criminal prosecution bodies but only regarding the persons who have the status of suspect or accused and only on the basis of court decision
10. To the criminal prosecution bodies within the framework of ensuring the availability of financial data or operational intelligence activity private control of financial transactions by the court decision.
11. To the heirs of bank client (successor) if the latter provides the sufficient documents justifying the right of heritage after dead of the successor.

Taking into account the above mentioned it is obvious that there are 3 cases of bank secrecy provision connected with financial crimes, which are applicable for disclosure of corruption crimes cases.

In Armenia person's bank secrecy information is under protection of the RA law on protection of personal data also (the Law).

So according to the article 27 of the Law: "the processor may transfer personal data to third parties or grant access to data without the personal data subject's consent, where it is provided for by law and has an adequate level of protection"[6].

Within the framework of this paper, there are three chapters introduced, which contain information regarding the rules applicable to the access to financial and commercial records and bank secrecy, which hinder the process of investigating corruption crimes. Moreover within the

[6]

scope of paper I will briefly discuss the implementation of the raised issue not only in Armenia but in other countries as well.

CHAPTER 1

Rules applicable to the access to financial and commercial records and bank secrecy in the RA

According to article 6 of the RA law on bank secrecy:

1. Disclosure of the bank secrecy shall be deemed the disclosure or dissemination of the information constituting bank secrecy through mass media or otherwise in verbal or written form, its disclosure to the third party or parties, directly or indirectly enabling the third parties to obtain such information, i.e. to permit, fail to prevent or as a result of violation of the privacy rules, make possible the disclosure, except for the cases laid down in Article 43 of the Law of the Republic of Armenia "On banks and banking".

2. Disclosure or provision of the information constituting bank secrecy by the bank to any persons and organisations providing legal, accounting, and other advisory or representative services or carrying out certain activities for the bank, provided that, it is necessary for the provision of these services or the implementation of these activities, and that these persons and organisations should refrain from actions or inaction laid down in Article 8 of this Law, shall not be considered as disclosure of bank secrecy.

3. The Central Bank shall disclose names of bad debtors holding large liability(s) towards banks and/or a certain bank through press and/or other mass media, every three months. Large debt provided for in this point shall mean an amount of 20 million Armenian drams, or the liability equivalent to or exceeding such amount. For the purpose of implementing this part, the equivalency of foreign currency liability to the liability in drams of the Republic of Armenia shall be determined according to the average exchange rate prevailing in the exchange markets published by the Central Bank of the Republic of Armenia as of the last business day of the preceding quarter. The bad debtor referred to in this point shall be considered as the debtor who has breached the terms of the contract for a period of 180 days and more. Disclosure of information referred to in this point shall not be deemed as illegal disclosure of bank secrecy.

4. Disclosure of the decisions by the Central Bank of the Republic of Armenia and the delinquent bank, on violations of the laws or other legal acts by the bank and/or the manager of the bank and sanctions for these violations imposed against the bank and/or the manager of the bank by

the Central Bank of the Republic of Armenia, shall not be considered as illegal disclosure of bank secrecy. It is prohibited to indicate the names (titles) of customers of the delinquent bank while disclosing the decisions on the sanctions.

According to the RA criminal procedure code, the bodies conducting criminal prosecution do not have direct access to banking secrecy to detect financial crimes as well as corruption offenses. The criminal prosecution authorities shall have the necessary and sufficient evidence for obtaining information constituting bank secrecy. That is, the court acquainted with the materials of the case determines the relevance of the mediation as necessary, which would not be considered as an obstacle for the provision of bank secrecy, if the practice does not cease to satisfy the absolute majority of such petitions. In other words, this mechanism has become an additional tool that complicates the procedure.

According to article 14, part 15 of the RA law the following operational intelligence measure (the Law) may be conducted during operational intelligence activity:

15) ensuring access to financial data and secret monitoring of financial transactions

According to article 29 of the Law:

Ensuring access to financial data and secret monitoring of financial transactions is the acquisition of information on bank and other type of accounts (deposits) from banks or other financial institutions, as well as constant monitoring of financial transactions without the knowledge of persons engaged therein.

According to article 31 point 4 of the Law:

Operational intelligence measures laid down in points 8, 11, 12 and 15 of part 1 of Article 14 of the Law may be conducted only in case the person, with respect to whom the measure is to be conducted, is suspected of committing a grave and particularly grave crime and if there is substantiated evidence that it is impossible for the body carrying out operational intelligence activity in any other manner to acquire information required for the fulfillment of the tasks conferred thereon by this Law.

So “Ensuring access to financial data and secret monitoring of financial transactions” operational intelligence activity can be implemented only in case when person to which it will be implemented is suspected in committing a crimes defined in articles 308 part 2, 309 parts 2 and 3, 311 parts 2,3, and 4, 311.1 parts 3 and 4, 311.2 parts 3 and 4, 312 part 3, 375 parts 2, 3 and 4, 190 parts 2 and 3 of the RA Criminal Code and if there are reasonable evidences that it is impossible for the body carrying out operational intelligence activity in any other manner to acquire information required for the fulfillment of the tasks.

According to the RA Court of Cassation decision EKD/0223/07/14 adopted on August 15 2014:

Court of Cassation states, that the purpose of subjecting the appealed judicial act to a cassation appeal is the assurance of the uniform application of the law as well as realization of the law enforcement function. In this regard, the Court of Cassation finds that there is a problem of uniform application of the law on the issue of permitting banking secrecy information regarding legal entities directly related to the criminal act (s) charged with the suspect or the accused. Therefore, the Court of Cassation considers it necessary to express legal positions, which may be of directive importance for the proper formulation of judicial practice in such cases.

The legal case raised before the Court of Cassation in this case is as follows:

Is the conclusion of the lower courts lawful that the mediation of the body conducting the proceedings on obtaining information constituting bank secrecy and seizure with the part of Anushka, ARMIN DECOR and DILJRPETSHIN LLC are subject to rejection.

According to article 172 part 3.2 of the RA Criminal Procedure Code:

Criminal prosecution bodies may obtain information containing bank secrecy with regard to persons involved as a suspect or an accused in the criminal case and official information on transactions in securities by the Central Depositary prescribed by the Law of the Republic of Armenia "On securities market" based on a court warrant on search or seizure. It is clear from the foregoing that the criminal-procedural legislation does not provide any restrictions due to the gravity of the crime during obtaining bank secrecy information regarding persons involved as suspect or accused by the criminal case.

According to article 10 part 1 of the RA law on Bank Secrecy:

Banks shall provide criminal prosecution authorities with the information constituting bank secrecy on the suspect or accused in the criminal case based only on the court decision, according to this Law and the Criminal Procedure Code of the Republic of Armenia.

The analyzing of abovementioned norms shows, that information constituting bank secrecy by the legislator has included in the list of limited available information envisaging a certain legal regime of their protection. The most important part of the said legal regime is the legal norms envisaging the possibility of their disclosure.

According to article 23 of the RA Constitution:

Everyone shall have the right to respect for his or her private and family life. No information other than that provided for by law concerning a person may be collected, kept, used or disseminated without his or her consent.

Use and dissemination of information concerning a person shall be prohibited if it contradicts the purposes of collecting the information or is not provided for by law (…)

According to article 43 of the RA Constitution:

Fundamental human and citizen's rights and freedoms enshrined in Articles 23-25, 27, 28-30, 30.1 and in the third part of Article 32 may be restricted only by law where it is necessary in a democratic society for the protection of state security, public order, for the prevention of crimes, for the protection of public health and morals, constitutional rights and freedoms, honour and good reputation of others.

"According to article 8 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter referred to as the European Convention):

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

In the context of Article 8 of the European Convention, by interpreting the term "personal life", European Court of Human Rights (hereinafter referred to as the European Court) reiterates that "private life" is a broad term not susceptible to exhaustive definition. The Court has found that health, together with physical and moral integrity, falls within the realm of private life. The right to private life also encompasses the right to personal development and to establish and develop relationships with other human beings and the outside world in general[7].

The Court of Cassation in its judgment of decision No. AVD/0015/07/13, expresses a legal position that: by interpreting the provision of article 4, part 1 of the RA law on Bank Secrecy under the light of Article 23 of the Constitution of the Republic of Armenia as well as Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights the Court of Cassation considers that it is envisaged that pursuant to article 4 (1) of the RA Law on Banking Secrecy relationships between the bank and the person in connection with the servicing or other activities as a kind of personal relationship with the outside world are guaranteed by article 8 of the

[7] *Nada v. Switzerland* no. 10593/08 2012 (last visited 05.04.2018)

European Convention for the Protection of Human Rights and Fundamental Freedoms as a part of person's private life. Accordingly, the information provided for in article 4 (1) of the RA Law on Banking Secrecy as part of a person's private life are immune and are subject to the restrictions set forth in Article 43 of the RA Constitution and article 8, part 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Based on the above, the Court of Cassation states, that the legal regulation of the protection of information constituting bank secrecy must be carried out on the manner, that to exclude any arbitrary retreat of its warranty requirements on the basis of commitments of the Republic of Armenia under international treaties, the constitutional principles of a legal and democratic state in particular the freedom of economic activity and free economic competition, as well as right to private life. Possible restrictions may be considered lawful and justified on the basis of the constitutional order, from the point of view of the need for protection of public health and morality, the rights and freedoms of others, public order.

So, information constituting bank secrecy may be provided to state bodies and officials only within the limits and to the extent what is necessary for the purposes set out in the RA Constitution, including the assurance of public interest, with condition, which provides effective safeguards for the protection of the rights and legal interests of private persons.

Thus, the problem of disclosing information constituting bank secrecy is closely related to the fundamental problem of the criminal procedure for ensuring the balance of public and private interests. Based on the need to ensure this crucial issue in criminal procedure in regulating the legal regime of banking secrecy as a landmark, first of all, must be adopted the constitutional requirement for the protection of human rights and freedoms. Accordingly, legislative regulations on disclosing banking secrecy should provide appropriate guarantees to exclude the possible arbitrary behavior of state bodies and officials.

Bank secrecy information according to applicable legislation can be obtained as a result of seizure or search investigative activities. Moreover, the existence of a clear legislative regulation of these investigative actions implementation is extremely important, which contains effective safeguards for the enjoyment of the rights and legitimate interests of the individual. So:

1. Legislation defines the exhaustive circle of persons regarding whom banking secrets may be required. The limited scope of these persons includes only the suspect and the accused**.** In other words, during a criminal case proceedings the information constituting bank secrecy may be disclosed not to any person but to exclusively for the suspect or the accused. From the content of article 62 part 1, article 64 part1 and Part 1 of Article 202 of the Criminal Procedure Code of the Republic of Armenia derives, that the provisions of article 172, Part 3.2 of the RA Criminal Procedure Code and part 1 of Article 10 of the RA Law on Banking

Secrecy provides a legislative opportunity to obtain information constituting bank secrecy regarding those persons, regarding whom the evidence obtained in the criminal case has been substantiated at the level of reasonable suspicion that they may have committed a publicly dangerous act.

2. The scope of the information that may be required is clearly defined. The concept of bank secrecy is clearly defined in the RA Law "On Bank Secrecy" and according to article 4, part 1:

"Bank secrecy is the information on customer accounts that have been given to the bank in connection with servicing the bank customer, information on the customer's instruction or in the interest of the client's operations, as well as its trade secret, information of any program or development, invention, industrial design and any other information about him, that the client intended to keep secret and the bank is aware or could be aware of that intention".

3. It is intended to provide the most important safeguard for the enjoyment of personal rights and legal interests, such as preliminary judicial supervision over the implementation of these investigative actions. The European Court's case-law review of article 8 of the European Convention shows, that in assessing compliance with this or that intervention in conformity with the conventional requirements, the existence of judicial (pre-judicial) supervision is seen as an effective safeguard of the individual's rights and the prevention of possible arbitrariness and abuse[8].

So from the aforementioned legal position stems, that the RA domestic legislation provides effective safeguards for the legality of restriction of the legal regime of banking secrecy and for the enjoyment of rights and legitimate interests of private persons. But the most important principle of balance between public and private interests is, that human rights and freedoms are not absolute and their implementation should be countered by wider public interest. As already mentioned, both the European Convention and the Constitution of the Republic of Armenia considers a certain limitation of the individual's rights and freedoms for the protection of the most important values of a democratic society. The study of the case law of the European Court also indicates that the European Court did not consider a violation in all cases where the rights laid down in Article 8 of the European Convention were restricted to the legitimate aims set out in paragraph 2 of the same article[9].

Based on the foregoing, the Court of Cassation states that the body carrying out the proceedings shall justify by the evidence (factual information) obtained by the criminal case, that

[8] *GmbH v. Austria* No 74336/01 2007, *Robathin v. Austria* No 30457/06 2012 (last visited 10.04.2018)

[9] *I.S. v. Germany* No. 31021/08 *2014* (last visited 15.04.2018)

the relevant investigative action will result in the acquisition of information constituting banking secrecy, directly related to the criminal act (s) allegedly inflicted on the suspect or the accused and the legal person whose activity is fully or partially governed, controlled or otherwise in fact directed by the suspect or the accused. The basis for such interpretation is the systematic analysis of articles 172 part 3.2 and 282 of the Criminal Procedure Code of the Republic of Armenia. The body conducting the proceedings with the aim of receiving banking secrecy information by the mediation of permitting confiscation or search must provide necessary and sufficient facts, which will give the court a reason to believe that the data expected to be obtained as a result of the respective investigative action, directly relates to the criminal act (s) incriminated to upon the suspect or the accused and refers to a legal person who is fully or partially governed, controlled or otherwise governed by the party.

It is clear from the case study that the prosecuting authority has filed a mediation of obtaining bank secrecy information and confiscation implementation to the the First Instance Court. The body conducting the proceedings substantiated its motion with the factual data obtained during the preliminary investigation, that the defendants in this case had set up a limited liability companies personally for the alleged embezzlement, who did not carry out any economic activity, had no place of business and no registered employees. According to the prosecuting authority, it turned out that these companies were actually managed by the accused and that the latter representing himself as the company's director, accountant, supplier and other employee, by presenting company registration certificates and charters, have gained confidence in the victims, signed contracts themselves, signed invoices and pledged to pay for the purchased goods through bank transfers. In order to justify the aforementioned facts, the body conducting the proceedings has attached the motion to "DILJRPETHIN" and "ARMIN DECOR" LLC registration certificates, data provided by the RA Ministry of Justice State Register Agency of Legal Entities on "ANUSHKA" LLC and its founder Armine Avagyan, electronic registrar extracts regarding "ARMIN DECOR", "ANUSHKA" and "DILJRPETHIN" LLC and their founders, copies of the supply contract and invoice, signed by Armine Avakyan as director of "ANUSHKA" LLC, and "Alpian" LLC, copie of the supply contract, signed by Armine Avakyan as director of "ANUSHKA" LLC, and “Golden Gout” LLC, the record of victim Yura Abrahamyan’s additional interrogation, witness Karen Petrosyan's additional interrogation, accused Armine Avagyan's additional interrogations.

In fact, the body conducting the proceedings has provided factual data that can objectively indicate that the relevant companies referred to in the motion have been governed, controlled, or directed by persons charged as accused, as well as the alleged criminal acts committed against them, have been committed by founding companies and by contracting on

their behalf. Meanwhile, lower-level courts, having at their disposal the above-mentioned facts, they have not been examined and have not been properly examined for justification of mediation, as a result of which it is possible to confirm that the data expected to be obtained as a result of the respective investigative action relate to the accused.

The Court of Cassation (within the framework of criminal case EKD/0223/07/14) expresses its disagreement as well, to the justification in the judicial acts of lower courts in the ground of partial denial of the mediation of the preliminary investigation body, that the information constituting bank secrecy regarding organizations may not be required in the manner prescribed by the Criminal Procedure Code of the Republic of Armenia as they cannot be involved as suspects or accused. A lawful monitoring that organizations cannot be involved as suspects or accused does not apply to the factual circumstances of this case, as according to the preliminary investigation body the subject of the corresponding mediation was bank secrecy information regarding persons involved as accused, directly related to their alleged criminal acts and companies founded, controlled by them, or in fact guided by any means.

Reflecting on the circumstance that the Court of First Instance referred in its judicial act the legal position expressed by the Decision of the Court of Cassation of 13 September 2013, AVD / 0015/07/13, that. "(...) within the framework of a specific criminal case, the body conducting the pre-trial proceedings may, based on the court decision, obtain information that constitutes bank secrecy of the bank's client who has been involved as a suspect or accused under the Criminal Procedure Code of the Republic of Armenia. In other words, the information constituting banking secrecy on persons who have no status of suspect or accused in the context of the criminal case may not be provided to the investigative or preliminary investigation bodies. The Court of Cassation states that the cited legal position could not be settled on the basis of the conclusion of the First Instance Court on partial satisfaction of the motion. Particularly, the legal position expressed by the Court of Cassation in the aforementioned case concerned the inadmissibility of obtaining banking secrecy information on deals made by a certain circle, for a certain period of persons who are not suspected nor accused. In this case, the Court of Cassation concluded that the prosecuting authority may be provided with information constituting bank secrecy only for persons having a status of suspects or accused. This position is also re-established within the framework of this criminal case decision. Meanwhile, the motion of the preliminary investigation body in this case refers to the accused persons involved in the case.

By using legal positions expressed in the decision towards factual circumstances of this case the Court of Cassation concludes, that the conclusion of lower courts, that the motion of the body conducting the proceedings on obtaining bank secrecy information and confiscation by the

part of "Anushka", "ARMIN DECOR" and "DILJRPETHIN" LLC companies are subject to rejection, is not lawful.

Based on an analysis laid down in decision, the Court of Cassation states, that in the present case such substantial violations of the procedural law were permitted which led to the improper decision making not corresponding to the requirements of article 358 of the Criminal Procedure Code of the Republic of Armenia. Implemented violations based on article 398, 406 of the RA Criminal Procedure Code are grounds for annulment of the Appellate Court's decision. Therefore, the Court of Cassation finds that the decision of the RA Criminal Court of Appeal adopted on April 9, 2014 on leaving the Court of First Instance of the Kentron and Nork-Marash Administrative Districts of Yerevan of March 21, 2014 decision to be in force on partial satisfaction of the motion on obtaining information containing bank secrecy and confiscation the partial satisfaction of the motion must be reversed and sent to the same court for a new trial.

Taking into account the abovementioned as well as the necessity of strenghtening the cooperation between banks and law enforcement bodies the Council of the Central Bank gave 4 official clarifications on some provisions of the RA Law on Bank Secrecy (the “Law”) referred to the practice of bank secrecy provision to criminal prosecution authorities.

According to official clarifications:

1. The bank according to article 10 of the Law may provide data which is bank secrecy to criminal prosecution bodies regarding persons who within the scope of criminal case are involved as suspect or accused. In all other cases when from the content of the court decision it is not possible to identify whether the person about whom the information is requested is a suspect or accused within the scope of that criminal case, the bank addresses a request to the head of relevant law enforcement body.
2. The bank according to article 11 of the Law may provide data which is bank secrecy exclusively on his client who is a party to a criminal or civil case. In all other cases when from the content of the court decision it is not possible to identify whether the person is a party of that criminal or civil case the bank addresses a request to the court.
3. The provision of information containing bank secrecy about legal entities and dead natural persons to the law enforcement bodies on any ground may be considered as illegal disclosure.
4. Commercial banks provide information containing bank secrecy to the law enforcement bodies only in the manner prescribed by article 10 of the Law, therefore based on the 3rd part of article 7 of the Law the permission submitted by the client is not yet an

appropriate basis for providing bank secrecy information about him to law enforcement bodies[10].

It is worth mentioning that the Council of the Central Bank has given a very narrow interpretation about the provision of bank secrecy in regard to legal persons. For that reason the decision EKD/0223/07/14 of court of cassation comes to regulate the issues regarding provision of legal entities bank secrecy. According to that decision the Court of Cassation states that the body implementing the criminal proceeding shall justify with sufficient evidence obtained in the criminal case (factual data), that in the result of corresponding investigating activity certain information will be acquired which is directly connected with crime for which person is accused and the bank secrecy data regarding legal entity, whose activity is fully or partially governed, controlled or otherwise in fact directed by the suspect or the accused.

So by summarizing the abovementioned it is obvious that investigating body for obtaining information which is bank secrecy shall provide necessary and sufficient facts by motion on permission of implementing seizure and search, which will be ground for the court reasonably to suppose, that data, which are expected to be obtained as a result of the relevant investigative action is directly connected with crime for which person is accused and concerns to legal entity, whose activity is fully or partially governed, controlled or otherwise in fact directed by the suspect or the accused.

While talking about RA domestic legal regulations, other Decision of the RA Court of Cassation should be mentioned. Thus, according to the RA Court of Cassation decision adopted on 13.09.2013 in connection with maintenance or other functions envisaged in the article 4 point 1 of the RA law on bank secrecy: relations established between bank and individual as a type of individual's relationship with the external world, are considered as part of individual's personal life guaranteed by the article 8 of the European Convention on protection of human rights and fundamental freedoms.

Thus, information presented by part 1 of article 4 of the RA law on bank secrecy, as part of human's personal life are immune and the limitations prescribed in the article 43 of

[10] Official Clarification No. 4 of Certain Clauses of the Republic of Armenia Law on Bank Secrecy by the Council of the Republic of Armenia Central Bank (10.12.2013) *available at* http://www.arlis.am/DocumentView.aspx?DocID=87804 (last visited 01.04.2018)

the RA constitution, as well as in the article 8 part 2 of the European Convention on protection of human rights and fundamental freedoms are applicable to them.

CHAPTER 2

Obstacles that exist in activities connected with bank secrecy lifting and what are the possible negative effects for bodies conducting investigation as well as anti-corruption institutions in Armenia

"Corruption is regarded as one of the most difficult crimes to investigate. There is often no scene of the crime, no fingerprint, no eye-witness to follow up. It is by nature a very secretive crime and can involve just two satisfied parties, so there is no incentive to divulge the truth. Even if there are witnesses, they are often parties to the corruption themselves, hence tainted with doubtful credibility when they become prosecution witnesses in court. The offenders can be equally as professional as the investigators and know how to cover their trails. The offenders can also be very powerful and ruthless in enforcing a code of silence amongst related persons through intimidation and violence to abort any investigation. In this modern age, the sophisticated corrupt offenders will take full advantage of the loopholes in cross-jurisdictions and acquire the assistance of other professionals, such as lawyers, accountants and computer experts in their clandestine operations and to help them launder their corrupt proceeds"[11].

In the context of the legal position expressed in the previous chapter, the interpretation of the provision set forth in article 172, part 3.2, of the RA Criminal Procedure Code, which may, on the basis of a court decision, be obtained information on bank accounts only from the under the name of a suspect or an accused, is unnecessary narrowing the scope of this legislative provision. Such interpretation does not correspond to the problems in the face of procedural (investigative) activities, which substantially limits the role and significance of the criminal case. As a result, private interest prevails over public interest in disclosing crimes (fight against crime). Analysis of the concept of "persons involved in a criminal case as suspect or accused" in part 3.2 of the article 172 of the RA Criminal Procedure Code testifies, that it is not just about the name of a suspect or an accused, but also a bank confidential information relating to a legal person directly related to the alleged criminal act (s), if there is a reasonable assumption that the

[11] Tony Kwok Man-wai, *INVESTIGATION OF CORRUPTION CASES,* http://www.unafei.or.jp/english/pdf/RS_No79/No79_19VE_Man-wai2.pdf (last visited 05.14.2018)

activities of that legal entity are fully or partially governed, controlled or otherwise instructed by the suspect or the accused.

Furthermore taking into consideration the facts mentioned in the chapter 1 it is obvious that the law prohibits access to bank secrecy information when the person is neither suspect nor accused. The absence of mentioned type of necessary activity in the law creates a huge obstacle for law enforcement bodies especially within corruption crimes framework and not only. There are cases when body conducting preliminary investigation with the aim of collecting sufficient evidences for involving person as suspect or accused needs to get information, which is bank secrecy. Such ban is an obstacle for bodies conducting preliminary investigation to do comprehensive, objective investigation as well as to find the real criminal. Because of prohibiting access to bank secrecy information of the suspicion, many corruption crimes will remain undiscovered and will not prevent corruption crimes spreading.

The Financial Monitoring Center of the Central Bank of Armenia implements the ongoing supervision over suspicious transactions, as well as by concluding the substantiated suspicion of money laundering, terrorism financing, notifies criminal prosecution authorities as appropriate by providing access to bank secrecy[12].

Despite this, criminal prosecution authorities do not have direct access to banking secrets to detect financial crimes as well as corruption offenses, which decreases probability to detect the real criminal.

In regard the obstacles that exist in case of disclosure of bank secrecy on legal entity, it should be noted that, despite the tendency of international practice to involve legal entities in the scope of subjects of criminal offenses and their involvement in financial crimes (corruption, money laundering, terrorism financing, etc.), the existing Armenian regulation requires disclosure of bank secrecy on a legal entity only if there is an interconnection of a legal person with a suspect or accused[13].

By means of this the fact that the interconnection is a mandatory requirement in order to apply for disclosure of bank secrecy creates artificial obstacles for effective investigation of financial

[12] 117A Republic of Armenia Central Bank Council Resolution (2009), *Charter of the Financial Monitoring Center of the Central Bank of the Republic of Armenia* § 2, *available at* https://www.cba.am/Storage/AM/downloads/FDK/fmc_statute_arm.pdf (last visited __02.04___, 2018).

[13] OECD Anti-corruption Network for Eastern Europe and Central Asia, Liability of legal persons for corruption in Eastern Europe and Central Asia, available at https://www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf (last visited 25.03.2018)

crimes and corruption cases, taking into account the fact that in practice it is hard to prove that kind of connection between legal entity with a suspect or accused.

It is important to mention, that especially in case of corruption crimes disclouser, the role of Special Investigation Service is limitated. Special Investigative Service implements only preliminary investigation and towards certain narrow circle of persons and does not have the authority to carry out operative-intelligence functions. There is another problem that hampers the most effective implementation of the tasks set before the Special Investigation Service, it is investigative subordination prescribed by the article 190 of the RA Criminal Code. By analyzing the article 190 of the RA Criminal Code it is obvious that in the issue of investigative subordination the possibilities of alternatives to investigative subordination are groundless narrowed and Special Investigation Service can not proceed with a case subject to another investigator (with the exception of cases when it is related to a specific person or the person who has been recognized as a victim within the scope of criminal case).

To another problematic issue of banking secrecy is discussed the Organization for Economic Co-operation and Development (OECD) within the framework of the 4th round monitoring of its Istanbul Anti-Corruption Action Plan in 2014. The 7th recommendation of the "Anti-Corruption Reforms in Armenia" report, suggests studying access to bank secrecy during financial investigations, applicable rules of records accessibility and their current application method to ensure that the procedure is clear and consistently implemented and does not hinder the investigators and prosecutors corruption offences investigation[14].

One obstacle that could be posed by bank secrecy to domestic investigations may arise from procedural issues. While in many jurisdictions it is substantially possible to overcome bank secrecy, the procedural requirements may be cumbersome as to virtually render this possibility null. Depending on the agency in question, and the authorized use of the information, States Parties vary on what they require procedurally for access to banking information. In some jurisdictions, a law enforcement order suffices. In others, an authorization from the regulator or supervisor is required. In stricter 127 jurisdictions, a judicial order is the only valid authority to

14

OECD Anti-corruption Network for Eastern Europe and Central Asia, Anti-corruption reforms in Armenia (2014), Paris, available at https://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf (last visited 28.03.2018)

lift bank secrecy. Obviously, the standards for obtaining such authorizations vary depending on the authority in question[15].

"In Bulgaria, a significant obstacle frequently encountered by investigative bodies pursuing financial investigations is the delays that occur when they request the courts to provide an order for the lifting of bank secrecy. A representative of the Ministry of the Interior told the lead examiners that the courts do not observe any deadlines provided by law. The representatives of the National Investigation Service (NIS) further indicated that the Banking Act provides a 24-hour time limit for the courts to decide whether to lift bank secrecy, but that it usually takes one week for the courts to provide their decision. One of the authorities interviewed stated that the decision of the court in his respect is not subject to an appeal, while another, while another believed that an appeal is available, and it is a very lengthy process. According to the latter, the delays involved in obtaining the lifting of bank secrecy jeopardize the outcome of investigations, they stated that the courts request more and more information, prolonging the decision-making process, with the result in the end the obtaining of the lifting of bank secrecy is pointless. Representatives of the Prosecutor's Office stated that the courts normally make their decisions on whether to lift bank secrecy within 3 days. They further stated that, pending the court's decision, it is possible to block the bank account in question, subject to confirmation by the court. If the court does not make its decision within the time limit the bank is required to unfreeze the account"[16]

After talking about obstacles it worth to mention the general information regarding anti-corruption institutional framework in Armenia. The anti-corruption institutional framework in Armenia consists of several institutions established in different time periods. In general, currently anti-corruption policy in the Republic of Armenia is implemented within the scope of preventative institutional model with the following structure:

- Anti-corruption Council - Task force,
- Responsible bodies for prevention and detection of corruption.

[15] Technical Guide to the United Nations Convention Against Corruption *available at* https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf (last visited 01.04.2018)

[16] Bulgaria, *Implementing the OECD Anti-Bribery Convention*, *available at https://books.google.am/books?id=wyXN4YQuI6YC&pg=PA40&lpg=PA40&dq=obstacles+of+lifting+bank+secrecy&source=bl&ots=gemx7VqAES&sig=T7BonrbpCyU-u_OkP08SVRDalvI&hl=hy&sa=X&ved=0ahUKEwiD3oKO_YbbAhWEEywKHeQKACgQ6AEIXTAH#v=onepage&q=obstacles%20of%20lifting%20bank%20secrecy&f=true*

In accordance with Government Decree N 165-N the Anti-corruption Council was initially established in 2004. However, the creation of a body with more serious preventive functions became an urgent necessity; therefore, on 19 February of 2015 the RA Government established the new Anti-corruption Council. Originally the Council was composed from:

- Prime Minister of the Republic of Armenia (Chairperson of the Council)
- Minister-Chief of Staff of the Government of the Republic of Armenia
- Minister of Justice of the Republic of Armenia
- Minister of Finance of the Republic of Armenia
- Prosecutor General of the Republic of Armenia (upon consent)
- Chairperson of the Ethics Commission for High-Ranking Officials (upon consent)
- One representative from each opposition faction of the National Assembly of the Republic of Armenia (upon consent)
- President of the Public Council (upon consent)
- One representative from the Union of Communities of Armenia (upon consent)

Two civil society representatives (upon consent)

The Council meets three or four times a year. Even though important issues are represented at the Council, it does not have sufficient resources to effectively address all those problems. First obstacle for its productive operation is that the Council is not an independent body. Despite the fact that members of non-governmental organizations and some independent bodies have seats in the Council, it still fails to operate independently. Another reason is the fact that the Council is chaired by the Prime Minister of the Republic of Armenia. Even though thanks to that factor the decisions of the Council are being reflected in the form of Prime Minister's decrees and become mandatory for all executive branch of the Government, however, the political pressure on the Council becomes unavoidable. Moreover, the Council does not have a staff to perform its functions. It is not a permanent body. The secretariat of the Council is the Monitoring division of anti-corruption programs of the Government staff.

According to the Government Decree N 165-N, the Council is in charge of coordination, control and monitoring of implementation of anti-corruption strategies, programs, other anti-corruption actions, endorsement of anti-corruption strategy, anti-corruption sectoral programs, submission of recommendations to make amendments in strategies and programs.

At the same time the below-listed institutions responsible for investigation and prosecution of corruption cases exist in Armenia:

- the Department on corruption and economic crime of the General Prosecutor's office. This department is specialized in prosecution of corruption cases.
- according to the RA law "On making additions and changes in the RA law" on the Special Investigation Service" a new department of Corruption, Organized and Official Malfeasance Crimes Investigation was established.

General Department on Combating Organized Crime of the RA Police has a specialized unit to fight against corruption and economic crimes. The main function of the above-mentioned Department is to prevent and detect corruption related crimes

CHAPTER 3

Best international practices with regard to bank secrecy lifting and preventive measures in different countries

In order to have a more comprehensive idea on raised issue it is worth to analize international practice on disclosure of bank secrecy within the framework of investigation of corruption cases, including cases of money laundering.

Thus, according to Article 26 of the Law of Romania "On the Prevention and Sanctioning of Money Laundering and on the Establishment of Certain Measures to Prevent and Combat Terrorism Financing for Certain Types of Crime" the data and information on bank secrecy shall be communicated to financial institutions, upon written request of the prosecution bodies with the authorization of the prosecutor or of court of law.

The abovementioned law also stresses the importance of not opposing the bank secrecy to the prosecution bodies or to the courts of law.

According to the Law of the Republic of Bulgaria "On the Measures Against Money Laundering", the relevant supervisory authority shall provide information on bank secrecy to appropiate bodies upon the request of the investigating authorities, law enforcement authorities or the prosecutor and if that request is approved by the Prosecutor General or the special authorized prosecutors.

According to Article 22 of the Law "On Financial Institutions" of the Republic of Moldova, bank secrecy can be disclosed to the Central Bank, its inspectors, accountants and

external auditors hired by the organization, as well as to the judicial and investigative bodies, to the Chamber of Accountants, to the Economic Crimes and Corruption Prevention Center, to the relevant tax authorities.

According to the article 91 of the "Act on Banks" of the Republic of Slovakia bank secrecy may be provided for a number of circumstances, including the written request from the law enforcement or regulatory authorities.

The Austrian banking act defines that the obligation to keep bank secrecy can not be imposed only in cases prescribed by law, such as the case of provision bank secrecy to criminal courts in connection with the criminal proceedings or with clear consent of the bank's customers.

General study of banking legislation of Spain comes to prove that credit entities and their senior management staff have an obligation to keep secret customers' financial information. That means it should not be disclosed to third parties. Meanwhile, it should be highlighted that bank secrecy is not strongly safeguarded in Spain, since public interest is superior to person's privacy rights[17].

In the **Latvian Republic**, financial institutions have an obligation to maintain non-disclosable information, which is not an official secret. The non-respect of this rule will be sanctioned by criminal law. Thus, the article 200 of the Criminal Law of Latvia envisages liability for disclosure of non-disclosable Information, which is not an official secret,unauthorised acquisition and disclosure of information containing commercial secrets, and unauthorised disclosure of inside information of the financial instrument market.

An exception from this rule is stated in the article 63 of the "Credit Institution Law" of Latvia, according to which information containing bank secrecy, such as accounts and transactions conducted by both legal and natural persons are subject to disclosure only to the state authorities, such as a court, Office of the Prosecutor, State Revenue Service, State Audit Office, the Office for the Prevention of the Laundering of the Proceeds Derived from Crime,State security institutions. It should be highlighted that the information shall be submitted to the abovementioned authorities only in accordance with the procedures and conditions specified by law.

In Luxembourg, banking secrecy is considered to be a more generalized professional secret, which is subject to legal regulation under Article 458 of the Luxembourg Criminal Code

[17] Global Legal Insights, *Banking Regulation 2018, Spain, available at https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/spain*

and Article 41 of the Law on the financial sector of Luxembourg. It requires from the employees of financial institutions to keep secret all information gained during their professional activities. Failure to perform this obligation may cause up to six months of imprisonment and penalties.

However, there are some exceptions to banking secrecy rules in Luxembourg. According to these exceptions, a financial organization may provide information to third parties, among others, in following cases:

• upon the request of the Luxembourg financial supervisory authority;

• in cases if it is regulated by special laws special cases (for example, law on money laundering);

•within the framework of criminal proceedings, banks are required to cooperate and provide information to the judge examining the case.

BULGARIA

"As to access to bank information, the Bulgarian authorities explained at the on-site visit that, pursuant to article 52(4) of the law on Banks, banks may normally give information on the transactions and accounts balances of individual clients to all other authorities only by the clients consent or by a court ruling. The same article, however allows for an exception in the case of the Bureau For Financial Intelligence (BFI), which may be given access to such information on request, in the course of its money laundering investigations. With respect to bank information in the possession of the BFI, when the BFI reports a suspicion of a money laundering transaction to the Prosecutor's Office, it is only authorized to provide preliminary data (the name of the company involved, amount of t he transaction, date of the money movement, number of the bank account and reason for the suspicion). It is then up to the Prosecutor's Office to decide whether to request the court to lift bank secrecy. No information about cases where the authorities have requested access to bank records or other financial records held by a financial institution for the purpose of obtaining information, searching and seizing, or freezing property in relation to the bribery of foreign public officials was however available to the examining team at the time of the on-site visit"[18].

[18] Bulgaria, *Implementing the OECD Anti-Bribary convention,* 2003

UNITED STATES OF AMERICA

"The United States' Bank Secrecy Act of 1970 (BSA) requires financial institutions (FIs) to assist government agencies to detect and prevent money laundering. Specifically, the Act requires FIs to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to report suspicious activities that might signify money laundering, tax evasion or other criminal activities"[19].

PHILIPPINES

The bank Secrecy law in the Philippines was put in place in 1955 pursuant to Republic Act (RA) No. 1405[2]. It provides for a confidentiality rule for all types of bank deposits except upon written permission of the depositor, in case of impeachment, upon order of the court in cases of bribery or dereliction of duty of public official or where the deposit is the subject of litigation. The law aimed to encourage people to deposit their money in banking institutions and to discourage private hoarding so that money may be properly utilized by the banks by way of authorized loans to assist in the economic development of the country. [20]

"Investigations into corruption often necessitate access to bank accounts to trace bribes and obtain incriminating evidence. Bank secrecy regulations can hamper investigation and prosecution. Hong Kong, China, India, Indonesia, Korea, Malaysia, Nepal, Pakistan, Singapore, and Thailand permit authorities to search bank records and seize documents. In Singapore, the competent Corrupt Practices Investigation Bureau may access the bank accounts not only of a suspect but also of his or her relatives. In Hong Kong, China, Korea and Malaysia a judicial rulling is required before bank information can be accessed. Japan's law-enforcement agencies are empowered to access public officials bank accounts to check for suspicious activity.

[19] NTRC Tax Research Journal, *Lifting of the Philippine Bank Secrecy Law for Tax Fraud Cases,* July-August 2016 (last visited 14.05.2018)

[20] NTRC Tax Research Journal, *Lifting of the Philippine Bank Secrecy Law for Tax Fraud Cases,* July-August 2016 (last visited 15.05.2018)

A bill pending in the Philippines strives to empower the Office of the Ombudsman to access bank information. In some countries like the Philippines and the Cook Islands, access to bank accounts is permitted for investigations into money laundering"[21].

Anti-Corruption Agencies of different countries

The Corrupt Practices Investigation Bureau of Singapore

"The world's oldest multi-purpose anti-corruption agency is considered to be the Corrupt Practices Investigation Bureau of Singapore (hereinafter also referred to as CPIB). CPIB was founded in 1952. Since 1959 the new Government in Singapore started a radical reform in the anti-corruption sector and a number of public high ranking officials were investigated and punished. As a result the reputation of CPIB increased. During the last decades its organizational and functional abilities were improved and as a result, currently it is an independent organization, chaired by a director appointed by the President and accountable only to the Prime Minister

Corrupt Practices Investigation Bureau has a staff of 150 officers, who periodically take trainings and are specialized in specific areas. The Bureau's main functions are to:

- Receive information on corruption offences and investigate them,
- Investigate corrupt misbehavior of public officials,
- Prevent corruption through awareness raising and education, as well as controlling public service"[22].

The Independent Commission against Corruption in Hong Kong

"The Independent Commission against Corruption (hereinafter also referred to as ICAC) of Hong Kong is also one of the oldest multi-purpose agencies. It was established in 1974 and

[21] ADB/OECD Anti-Corruption Initiative for Asia and Pacific, *Anti-Corruption Policies in Asia and the Pacific, Progress in Legal and Institutional Reform in 25 Countries, available at https://books.google.am/books?id=Ffe5PrHCjA0C&pg=PA53&lpg=PA53&dq=procedure+of+bank+secrecy+lifting+in+phillipins&source=bl&ots=9d_dnfVWxM&sig=zh9JwOIdxaS3H4hBV3EsiOSK-bU&hl=hy&sa=X&ved=0ahUKEwil9Nisj4fbAhXEDSwKHSJmAJY4ChDoAQhSMAc#v=onepage&q=procedure%20of%20bank%20secrecy%20lifting%20in%20phillipins&f=false*

[22] Aram Dayan, The Role of Anti-Corruption Agency in Republic of Armenia and legal regulations under Armenian law

has three main functions: prevention of corruption, investigation of corruption and anti-corruption education.

Immediately after its establishment ICAC started investigations against some public and police servants known as corrupt officials. After comprehensive investigation and conviction of those officials the rating of ICAC and public trust toward that body increased, which became an important guarantee for its later successful career.

Like Corrupt Practices Investigation Bureau in Singapore, ICAC is also an independent body accountable only to the head of the executive branch. It has its own staff - about 1300 employees and a large group of 1000 volunteers engaged in educational programs. ICAC has an enormous budget of about 106 million US dollars, which is another serious ground for its independence, impartiality and professionalism. Hong Kong is 15th in the Transparency International's Corruption Perception Index and is considered as one of the clean of corruption countries in the world"[23].

CONCLUSION

Corruption prevention is the first step of fight against corruption. With the aim of achieving the best results in fight against corruption it is necessary the establishment of transparency, accountability and integrity in public and private sectors. Corruption risk assessment, anti-corruption policy development and performance is the core elements of effective prevention of corruption.

This paper presneted and analyzed the regulations of bank secrecy lifting in the Republic of Armenia as well as in different countries, mentioned the possible obstacles that hinder the activities of criminal procecution bodies to disclouse corruption crimes.

So summarizing the results of this research it is becoming evident, that:

1. Despite the fact that in the Republic of Armenia a mechanism of cooperation concerning regulating the process of lifting banking secrecy in case of financial crimes exists

[23] Aram Dayan, The Role of Anti-Corruption Agency in Republic of Armenia and legal regulations under Armenian law

between law enforcement authorities and banks, it is limited to purely procedural complications.

2. Existing procedure of lifting bank secrecy only by court's decision hinders the detection of elements of corruption offenses and effective investigation of criminal cases.
3. The fact that the operative-intelligence activity of ensuring the availability of financial data and controlling confidentially of financial transactions is carried out by the Court's decision threaten itself the operative character of this activity.
4. The study of international practice, as well as existing limitations of financial secrecy come to prove that taking into account current challenges and the risks to public interest (ex. corruption, terrorism financing, money laundering, etc.), there is a need to weaken the state interference in this process and to make relevant procedural alterations.

Thus, taking into account the RA regulation on banking secrecy, including the official clarifications of the Central Bank of Armenia, the decisions of the Court of Cassation, as well as the provisions of different countries' legislations, preventive agencies, the following recommendations are presented:

1. Procedural changes should be implemented to eliminate the barriers to ensuring effective investigation and disclosure of corruption crimes. Particularly, it is recommended to envisage by law that the motion for disclosing bank secrecy information should be examined by the court instantly.
2. To eliminate the restriction on disclosing bank secrecy only on the grounds of interconnection of legal entities with accused or suspect taking into account the fact that the draft new criminal code envisages criminal liability for legal persons.
3. To eliminate the absolute prohibition on lifting bank secrecy of dead people. It would be more effective to prescribe by law that in case of necessary exceptions the bank secrecy regarding dead persons shall be disclosed.
4. To expand the framework of investigative actions sought by bank secrecy motions.

"In conclusion, the success factors for an effective corruption investigation include:

• An effective complaint system to attract quality corruption reports;

• An intelligence system to supplement the complaint system and to provide intelligence support to investigations;

• Professional and dedicated investigators who need to be particularly effective in interviewing techniques and financial investigation;

• More use of proactive investigation methods, such as entrapment and undercover operations;

• Ensure strict confidentiality of corruption investigation, with a good system of protection of whistleblowers and key witnesses; • International co-operation.

It is obvious that corruption and organized crime are getting more and more difficult to investigate. The offenders have taken full advantage of the high technology and cross-jurisdiction loopholes. Conventional investigation methods and current legal systems may not be adequate to win the battle against the corrupt. We should adopt a more proactive approach in investigation, such as in the wider use of undercover operations and the use of telephone interception, and to this end, we need to strike the right balance between effective law enforcement and protection of human rights and privacy"[24].

BIBLIOGRAPHY

1. The law dictionary, available at https://thelawdictionary.org/bank-secrecy/
2. Business dictionary available at http://www.businessdictionary.com/definition/bank-secrecy.html.
3. Bank secrecy hindering anti-corruption drive available at https://www.philstar.com/headlines/2013/07/15/970911/bank-secrecy-hindering-anti-corruption-drive-bir
4. Law of the Republic of Armenia on Bank Secrecy adopted on 14 October 1996
5. Criminal Procedure Code of the Republic of Armenia

[24] Tony Kwok Man-wai, *INVESTIGATION OF CORRUPTION CASES,* http://www.unafei.or.jp/english/pdf/RS_No79/No79_19VE_Man-wai2.pdf (last visited 05.14.2018)

6. Constitution of the Republic of Armenia

7. European Convention on Human Rights and Fundamental Freedoms

8. Technical guide to the United Nations convention against corruption

9. ՀՀ Կենտրոնական բանկի խորհրդի պաշտոնական պարզաբանումը Բանկային գաղտնիքի մասին ՀՀ օրենքի որոշ դրույթների մասին

10. Tony Kwok Man-wai, INVESTIGATION OF CORRUPTION CASES

11. REGULATION OF THE CENTER OF FINANCIAL MONITORING CENTER OF THE CENTRAL BANK OF THE REPUBLIC OF ARMENIA

12. OECD Anti-corruption Network for Eastern Europe and Central Asia, Liability of legal persons for corruption in Eastern Europe and Central Asia, available at https://www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf

13. OECD Anti-corruption Network for Eastern Europe and Central Asia, Anti-corruption reforms in Armenia (2014), Paris,

14. Law of the Republic of Armenia on operational intelligence activity adopted on 22 October 2007

15. RA Court of Cassation decision AVD/0015/07/13 adopted on September 13 2013

16. RA Court of Cassation decision EKD /0223/07/14 adopted on August 15 2014

17. RA Central Bank Council decisions' No 4 and 5 adopted on December 10 2013

18. Law on the Prevention and Sanctioning of Money Laundering and on the Establishment of Certain Measures to Prevent and Combat Terrorism Financing for Certain Types of Crime" of Romania, adopted 07 December, 2002

19. Law on the Measures against Money Laundering" of the Republic of Bulgaria, adopted 24 July, 1998

20. Law on Financial Institutions" of the Republic of Moldova, no. 550-XIII, adopted 21 July 1995

21. Act on Banks of the Republic of Slovakia, No. 483/2001, adopted 5 October 2001

22. The Austrian banking act, Austria, Fed. Law Gaz. no. 532/1999

23. Criminal Code of Luxembourg, adopted 16 June, 1879

24. Law on the financial sector, Luxembourg, adopted 5 April, 1993

25. OECD Anti-Bribary convention, 2003

26. ADB/OECD Anti-Corruption Initiative for Asia and Pacific, Anti-Corruption Policies in Asia and the Pacific, Progress in Legal and Institutional Reform in 25 Countries

27. Law on Credit Institution of the Republic of Latvia , adopted on 5 October 1995

28. The Criminal Law of the Republic of Latvia, adopted on 17 June 1998

29. Aram Dayan, The Role of Anti-Corruption Agency in Republic of Armenia and legal regulations under Armenian law