

Banking Secrecy

Abstract

The thesis deals with the topic of banking secrecy in the context of the laws of the Czech Republic with the main focus being the so-called practical exceptions to banking secrecy, i.e. the exceptions that are not expressly provided for by the laws but were inferred by the interpretation given by the Czech National Bank as banking supervisory authority or by court decisions. These are mainly the exceptions that can be used by the bank in carrying out certain procedures that are important for its operations. The need for these exceptions is due to the not very satisfactory statutory regulation of banking secrecy, particularly the exceptions to it in the Act on Banks, that this thesis points out, among other things, in conjunction with the objective impossibility (or impracticability or inappropriateness) to obtain the client's consent in these cases.

In the first chapter, the thesis provides a description of the basic characteristics and main aspects of banking secrecy arising from the legislation, the interpretative practice of the Czech National Bank, court decisions, and legal doctrine. In the second chapter, the basic outline of the issue of the exceptions to banking secrecy is given, including the categorization thereof and highlighting of some exceptions and aspects that cause interpretation or application problems. The third chapter analyses in detail the cases of the so-called practical exceptions to banking secrecy and other situations where there is some uncertainty as to the permissibility of disclosing data covered by bank secrecy without the client's consent. The fourth chapter discusses the possibility of further potential exceptions to banking secrecy in the light of the decision of the European Court of Justice in case C-580/13 (collision of banking secrecy with another fundamental right) and in the context of the issue of community of property of spouses. In the fifth and final chapter, the author attempts to evaluate the statutory regulation of banking secrecy and exceptions thereto, and in connection with the identified imperfections, some *de lege ferenda* reflections and propositions are presented.

The thesis dealt with the research question, “whether the bank may disclose information protected by banking secrecy to a third person also in cases other than those expressly provided for by the law (statutory exceptions to banking secrecy) or on the basis of the consent or request of the client concerned, as seems to be implied by the Act on Banks, without breaching banking secrecy”, and through analysis of relevant legislation, interpretative opinions and decision-making practice of the Czech National Bank and court decisions in the context of individual situations in practice the thesis concluded that the bank may do so also on the basis of so-called practical

exceptions to banking secrecy. Namely, this is the case of the assignment of a claim against a client (both non-performing debt from loan and, under certain conditions, also debt from performing loans or before maturity, or even the entire portfolio of debts), outsourcing (and other cases of analogous use of this exception in relation to attorneys-at-law, auditors, etc.), and the necessity to protect bank's legitimate interests (e.g. exercise of its right to judicial protection). The Czech National Bank also admits the possibility of removing banking secrecy by the Ministry's extraordinary measures in order to protect the health or life of the population, which can be regarded as problematic. Disclosure of banking secrecy without the client's consent in the case of mergers & acquisitions and transfers of entire bank portfolios can be regarded as tolerated in practice by the Czech National Bank, however, a clear opinion on the permissibility of such disclosure is still lacking. In the case of disclosing banking secrecy to an intermediary of banking products (a commercial agent), given the decision-making practice of the Czech National Bank, it is not possible to conclude that there is the so-called practical exception to banking secrecy in spite of the fact that this situation can be ranked under outsourcing.

Keywords:

banking secrecy

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exceptions to banking secrecy inferred by interpretation,

Czech National Bank,

necessity of disclosure of bank secrecy for the bank's operations.