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Wealth Management Corporate Governance

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Disclaimer

The views expressed in this thesis are those of the student and do not express any official views or positions of the Lebanese University Faculty of Law, Political, and Administrative Sciences.

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Abbreviations

Note: Abbreviations marked with an * correspond to figures 32, 33, and 34.

Abbreviation	Meaning
A	
AAA	Highest Credit Quality
ABCP	Asset Backed Commercial Paper
ABS	Asset Backed Securities
AI	Artificial Intelligence
AIF	Alternative investment Fund
aka	also known as
AML	Anti-Money Laundry
AMLA	Anti-Money Laundry Authority
AMLCFT	Anti-Money Laundry and Counter Financing Terrorism
AMLD	Anti-Money Laundering Directive
B	
BEInExA	Bureau of Public Expenditure Internal and External Audit under MTCS* reforms related
BCAR	Basel III's calculations of capital adequacy requirements
BCBS	Basel Committee on Banking Supervision
BCCL	Banking Control Commission of Lebanon
BCCGR	Basic Circular CG Requirements
BDL	Banque Du Liban
BFIDPR	Bureau of Financial Information and Data Protection Regulation for MOFIN* reforms related
BFLCCG	Bureau of Financial and Legal Compliance Corporate governance under MOFJ* reforms related
BCG	Basel's Corporate Governance Principles
BHC	Banking Holding Groups
BCP	Basel Core Principles
BCR	Business Conduct Regulation
BIS	Bank of International Settlements
BOD	BOD Board of Directors
Brexit	British Exit (UK leaving EU)
BSIR	Beirut Stock Market's Internal Regulations' Decree
C	
Ca	Poor Standing and Highly Speculative
CapEx	Capital Expenditure
CAMELS	Capital Adequacy Asset Quality Management Earnings Liquidity and Sensitivity
CC	Very High Levels of Credit Risk
CCM	Climate Change Mitigation

CD	Compact Disk
CDD	Customer Due Diligence
CDs	Credit Derivative
CDO	Centralized Debt Obligation
CEAOB	Committee of European Auditing Oversight Bodies
CE	Circular Economy
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CG	Corporate Governance
CJEU	Court of Justice of the European Union
CMA	Capital Market Authority
CMAA	Competent Multilateral Authority Agreement on Automatic Exchange on Financial Account Information
CMC	Code of Money and Credit
COSI	Committee on Operational Cooperation on Internal Security
CRD	Capital Requirements Directive
CRO	Chief Risk Officer
CRR	Capital Requirements Regulation
CRS	Common Reporting Standards
CurEx	Lebanese Currency and Foreign Exchange Regulator
Customs	Department of Customs Regulation and Collection under MTCS* reforms related
CV	Curriculum Vitae
D	
DCO	Data Control Officer
DDEF	Department of Defence under MIND* reforms related
DEIWA	Department of Electricity, Industry, and Water Services Regulation under MIEWES* reforms related
DINT	Department of Internal Affairs under Mind* reforms related
DOAR	Department of Online Transactions and Artificial Intelligence Regulation under MOTELS* reforms related
DOBCOP	Department of Bureaucratic Services and Public Services Consumer Protection.
DOES	Department of Environment and Sustainability Services under MIEWES* reforms related
DOJCG	Department of Justice Corporate Governance under MOFJ* reforms related
DPO	Data Protection Officer
DOTR	Department of Border Security and Transport under MIND* reforms related
DOTXC	Department of Tax Collection* under MOFIN* reforms related
E	
EB	Editorial Board

EC **ECA**	European Council European Court of Auditors
ECAI	External Credit Assessment Institution
ECM	European Commission
EDPS	European Data Protection Supervisor
ECDR	European Commission Delegated Regulation
ECFIN	European Commission Directorate Generale of Economic and Financial Affairs
EEA	European Economic Area
EEC	European Economic Community
EFECC	European Financial and Economic Crime Center
EPPO	European Public Prosecutor's Office
ESG	Environment Social Governance
ESRB	European Systemic Risk Board
EU	European Union
EUR	Euros
EUROJUST	European Justice
EUROPOL	European Police
ExA	External Audit Regulator
F	
FA	Financial Adviser
FATAF	Financial Action Task Force
FC	Foreign Currency
FISMA	European Commission Directorate-General for Financial Stability, Financial Services and Capital Markets Union
FIU	Financial Intelligence Unit
FMP	Financial Market Participant
FSB	Financial Stability Board
FCU and FSU	Respectively: Financial Control Unit and Financial Supervision Unit
FX	Foreign Exchange
G	
GAAP	Generally Accepted Accounting Practices
GCG	Global Corporate Governance
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GINCOM	Government Investigations and Commissariat Regulator* reforms related
GRC	Governance Risk Compliance
GS-II	Group of Systemically Important Institutions
I	
IAS	International Accounting Standard
Ibid	Latin for "see above"

IDD	Insurance Distribution Directive
IESB	International Ethics Standards Board for Accountants
IFD	Investment Finance Directive
IFR	Investment Finance Regulation
i.e.,	From the Latin phrase “id est” which means “that is”
Ibid	From the Latin phrase “ibidem” which means same source
IBIP	Insurance Based Investment Product
IFI	International Financial Institution
IFRIC	International Financial Reporting Interpretations Committee
IFRS9	International Financial Reporting Standard 9
IMF	International Monetary Fund
InA	Internal Audit Regulator
IORP	Institutions of Occupation and Retirement Pensions Regulation and Directives I and II
IPSAS	International Public Sector Accounting Standards
ISA	International Standards of Audit
ISO	International Standards of Organization
ISVR	Investment and Strategy Regulator under MOFIN* reforms related
J	
JCPA	Joint Comprehensive Plan of Action
JSPG	Joint Parliamentary Scrutiny Group
K	
KYC	Know Your Client
L	
LBDPR	Lebanese Data and Privacy Protection Regulator* reforms related
LBP	Lebanese Pounds
LBPPO	Lebanese Public Prosecutors Office* reforms related.
LBS	Lebanese Banking Secrecy Law
LCC	Lebanese Commercial Code
LCMA	Lebanese Capital Markets Law
LCPP	Lebanese Code of Penal Procedure
LCOMP	Lebanese Competition Regulator* reforms related
LebTres	Lebanese Treasury, Income, and Budget Regulator* reforms related
LESCAB	Lebanese Economic Sectors, Corporations, and Business Enterprises Regulator* reforms related
LFI	Law Regulating Financial Intermediation
LFIU	Lebanese Financial Intelligence Units Regulator* reforms related
LFMPR	Lebanese Fit Management and Performance Regulation Department under LESCAB and MECON* reforms related
LOC	Lebanese Code of Obligations and Contracts
LPC	Lebanese Penal Code
LSRB	Lebanese Systemic Risk Board Regulator* reforms related

LTA	Lebanese Transparency Association
M	
MAC	Multilateral Convention on Mutual Assistance in Tax Matters
MCR	Market Conduct Regulation
MFF	Money Market Funds
MECON	Ministry of Economy* reforms related
MENA	Middle East and North Africa
MESAGE	Ministry of Enforcement, Regulatory Research, Social Accountability, Governance, Environment Compliance* reforms related
MIEWES	Ministry of Industry, Electricity, Water, Environment Services* reforms related
MiFID I	Markets in Financial Instruments Directive I
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
MIND	Ministry of Interior and Defence* reforms related
MOE	Ministry of Economy (current)
MOF	Ministry of Finance (current)
MOFIN	Ministry of Finance* reforms related
MOFJ	Ministry of Foreign Affairs and Justice* reforms related
MOTELS	Ministry of Telecommunication Services* reforms related
MP	Money Placement
MTCS	Ministry of Treasury, Customs, and Revenue Services
N	
NFRD	Non-Financial Reporting Directive
NFTS	Non-Fungible Tokens
NIMEX	National Import and Export Regulator* reforms related
No.	Number
NPE	Non-Performing Exposure
O	
OECD	Organization of Economic Cooperation and Development
Odious Debt	illegitimate debt
OFAC	US Department of the Treasury's Office of Foreign Assets Control
OLAF	European Anti-Fraud Office, from the French term: Office Européen de Lutte Antifraude
OpEX	Operation Expenditures
OS-II	Other Systemically Important Institutions
P	
PHD	Philosophy Doctor
PIC	Private Investment Company
R	
RBA	Risk Based Approach
Repo	Repurchase Transaction

RemGov	Department of Governmental Remuneration under MTCS* reforms related
RTI	Regulatory Technical Information
RTS	Regulatory Technical Standards
S	
SAL	French acronym for Société Anonyme Libanaise
S & P	Standard & Poor's
SCCGR	Specific Circular Corporate Governance Requirements
SFCC	Specialized Financial Crimes Court* reforms related
SFDR	Sustainability Financial Disclosure Regulation
SI	Sustainable investment
SIC	Special Investigations' Committee
SIV	Special Investment Vehicles
SMEs	Small and Medium-Sized Enterprises
SPV	Special Purpose Vehicle
SRP	Supervisory Review Process
SSSM	Single Market Single Supervision Mechanism
SSPE	Securitization Special Purpose Vehicles
STEP	Society of Trust and Estate Practitioners
STS	Simple Standardized Securitization
T	
T-bills	Treasury Bills
TCFD	Taxonomy Compliance Financial Disclosure
TelSer	Telecommunications Services Regulator under MTCS* reforms related
TFEU	Treaty of the Function of the European Union
TSC	Technical Screening Criteria
TR	Taxonomy Regulation
U	
UCITS	Undertakings for Collective Investment Schemes
USD	United States Dollars
V	
VIE	Variable Interest Entity
W	
WMCG	Wealth Management Corporate Governance

Introduction

Wealth is something one either has but is trying to grow and maintain; or something one does not have but aspires to pursue and attain. Yet how does one define wealth? For economists, wealth is measured by the total value of assets against that of debts which usually reflects years of preceding circumstances and decisions [(1)]. For legalists wealth is something one acquires or inherits. Whatever the definition one chooses to rely on; one is either a wealth seeker or a wealth management services' client. Like any other resource, wealth has its own sustainability requirements among which is a specialization in financial information utilization. Meanwhile, in the business world, key finance and investment figures reveal wealth management's deep recesses as an industry shaped by investors' strategies in the course of their business dealings which thrive on this industry's dynamic services. Take Warren Buffett's investment strategy for example. Warren's investment strategy was built on distinguishing between traders and investors' roles in influencing market dynamics, governance, and regulation. This is because Warren's investment strategy highlights the need to manage wealth in a manner that intrinsically balances fear and greed's equation which is commonly known in business as balancing risk-taking appetites with profit-making strategies. In a letter to Berkshire Hathaway Inc's shareholders and investors Warren found that one should be fearful when others are greedy and greedy only when others are fearful [(2)] because stock markets are merely devices for transferring money from impatient traders to patient investors [(3)]. According to him, investors, as the wisemen who lead fools to follow their footsteps [(4)] in growing wealth in a game won by those focusing on the playing field compared to those whose eyes are glued to the scoreboard [(5)]– i.e., traders. To this end, one can only understand how to grow wealth if one understands how investors and traders differ in goals, operations, and positions with respect to the markets they operate within. Accordingly, one must understand that investors differ from traders in the fact that when they buy shares in a company, they do so to own it not because

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(1) Alexandra Killewald, Fabian Pfeffer, and Jared Schachner, Wealth Inequality and Accumulation, Annual Review of Sociology, Volume 43, 2017, page 380, via URL accessed on January 22, 2020: https://bit.ly/3DOX9C0 .

(2) Warren Buffet, Max Olson, Berkshire Hathaway Letters to Shareholders 1965 -2016, sixth edition, Explorist Productions, Mountain View California and Salt Lake City, Utah, United States of America, 2017, P. 780.

(3) John P. Reese, Winning In The Market With The Patience Of The Wright Brothers And Warren Buffett, Jan 30, 2018, Forbs Via: https://bit.ly/3c0jG3z .

(4) Lawrence Cunnigham, The Essays of Warren Buffet: Lessons for Corporate America, third edition, Cap Press Academic, New York, United States of America, 2013, page 24.

(5) Sam Ro, Warren Buffett's 5 Rules for Investing, Business Insider Article, published on Feb 24, 2014, available via URL accessed on January 22, 2020: https://bit.ly/365fNX6 .

they want its stock to go up [(1)]. Conversely, traders buy or sell stock to raise its price or because its price went up. Accordingly, because investors are long-term players invested in markets rolling their wealth they dictate markets' dynamics via the business trends they set every time they conduct wealth management operations. Conversely, traders as mere market participants differ from investors as they seek to profit from short term business engagements across markets.

Financial markets' recessions like that of 2008 are wrecking balls wreaking havoc across world markets triggered by global issues such as COVID-19 that cause credit bubbles, default on foreign debt, inflation, and mass bankruptcies. With financial settings and transactions being predominantly intertwined due to globalization; businesses and capitals' points of entry and exit are often so blurred that when they exit they leave countries and nations to face eminent bankruptcy and total upheaval of national markets [(2)]. Consequently, regulators matter because as investors and traders take risks to attain reward in terms of profit and wealth; banks and financial firms as financial intermediators, assume risks and transfer them as they manage wealth, making someone's loss always another's gain as Warren Buffet puts it. Verily because markets as a concept are no longer strictly created by sovereign states acting as absolute powers; sovereignty itself has its limitations which constrain a state within the limits of its own volition in diplomatic relations concerning strategic international trade dealings. Such limitations can restrict a state's right to regulate [(3)] such as in the case of European Union member states as the European Union is a plurilateral democratic system. Still, between efficiency and proficiency lies success hanging on a fine line between liability and strategy because typically, an investment guru, or a wealth manager's successful strategy influences and directs investors' investment decisions which reflects on their liabilities. However, these investment or market strategists' margins of error regarding where, when, and how to invest; makes us want to thank God for weather forecasters for making them look good[(4)]. Yet, from

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(1) Under the 1974 headline, "Look At All Those Beautiful, Scantily Clad Girls Out There!, Robert Lenzner and Evelyn Rusli, Forbs, Warren Buffet - In 1974, EDT Apr 30, 2008, available via URL accessed on January 22, 2020: https://bit.ly/2Ys3148 .

(2) George Papaconstantinou and Jean Pisani-Ferry, A Research and Policy Agenda, Introduction to Global Governance: Demise or Transformation? Progress Report on the Transformation of Global Governance Project 2018-2019, European University Institute publication, project of Tommaso Padoa-Schioppa at European Economic and Monetary Integration for Robert Schuman Centre for Advanced Studies, Florence, Italy, 2019, page 7, available via URL accessed December 12, 2020: https://bit.ly/3l9COz9. See further: Edmond Carton, Banks, Their Role and Responsibility in the Crisis, Their Future, of Globalization the Reform of the International Banking and Monetary System, first edition, Palgrave Macmillan Studies in Banking and Financial Institution Series, Palgrave MacMillan, Switzerland, Geneva, 2009.

(3) Maria Gwynn, Investment Disputes, Sovereignty Costs, and the Strategies of States, a GEG Working Paper No 132, July 2017, published by Global Economic Governance Programme, University of Oxford, page 3, available via URL accessed December 9, 2020: https://bit.ly/3sskcNj. See also: Jeremy Moses, Sovereignty and Responsibility: Power, Norms, And Intervention In International Relations, first edition, Palgrave Macmillan, Chicago, United States of America, 2014.

(4) Jean Brunel, Goals Based Wealth Management: An Integrated and Practical Approach to Changing the Structure of Wealth Advisory Practices, second edition, John Wiley & Sons, New Jersey, United States of America, 2017, page 19.

the movie "*The Big Short- Inside the Doomsday Machine*" [1]; we learned that a credit bubble is a bubble because we cannot see it. Where do wealth mangers and regulators fit in this picture? Wealth managers create these credit bubbles and regulators blow them away when they regulate how wealth managers help their clients make their investment decisions. Accordingly, when a credit bubble bursts causing havoc and default it becomes a financial crisis that indicates regulators' failure, negligence or hoodwink. For this reason, we track scandals of malpractice in financial entities like Enron and legal services' entities like Mossack Fonseca & Co who were unable to identify 75% of their clients according to the Guardian[2] after the firm claimed that their clients simply disappeared and could not be found anymore[3]in the aftermath of the Panama Papers Scandal of leaked documents!

In truth, the Lebanese financial crisis is the rewind of the 2008 financial crisis in the United States of America (USA) and in particular its housing mortgage loans' credit bubble. Nevertheless, Lebanon's credit bubble manifested differently because it became a nationwide inflation when the government announced its intention to default on its sovereign debt known as the Eurobonds. Ironically, during 2008's world recession, Lebanon's deposits grew by 23% when in fact Lebanon's 2019 financial crisis actually shares the same USA 2008 crisis scenario i.e., toxic housing and real estate loans[4]. However, the difference between both scenarios is that Lebanon's Central Bank's financial engineering processes are what triggered the crisis not the banks on their own via their dealings like in USA. The said financial engineering processes were focused on reeling in USA dollar deposits from local banks with interest rates as high as 15% to finance the Lebanese government's spending mainly for what was known as the Civil Servants' Payroll Scheme[5]. In fact, Lebanese newspapers are replete with lists of names of politically exposed parties and influential high net worth individuals who should have never been given these housing loans yet benefited from them due to corruption[6]. Naturally, this exposé was followed by a report on December 2022 where Lebanon ranked at 124 out of 180

(1) Based on Michael Lewis, The Big Short- Inside the Doomsday Machine, first edition, W.W. Norton & Company, New York, United States of America, 2010.

(2) David Pegg, Panama Papers Firm Did Not Know Who 75% of Its Clients Were, an article published on the Guardian on Wed Jun 20, 2018, available via URL accessed on December 2, 2020: https://bit.ly/3iExbXU.

(3) Will Fitzgibbon, The Fall of Mossack Fonseca: New Panama Papers Leak Reveals Firm's Chaotic Scramble to Identify Clients, Save Business Amid Global Fall Out, an article published under the investigations section of International Consortium of Investigative Journalists on June 20, 2018, available via URL accessed on December 2, 2020: https://bit.ly/3qEIORe .

(4) Refer to Figures No. 1 and 2 in Annex 2 to compare both the Lebanese 2019 financial crisis with the American financial 2008 crisis.

(5) Mounir Rached, The Impact of Increasing The Civil Service Pay Scale on the Lebanese Economy and Budget, a research paper published in Assadissa Series, October 2013, first edition, Issue No 4, Year 2013, page 52, available online via URL accessed on January 7, 2021: https://bit.ly/39Dmj8s.

(6) Vivian Aqiqi, List of Housing Loans: Mikati, a Judge, and Rich People, an article for AlAkhbar Newspaper published on October 24, 2019, available via URL accessed Jan 8, 2021: https://bit.ly/3gZ3Qrm.

countries on the rampant corruption[(1)] index compared to 137/180 in 2019 with many believing that the Lebanese Central Bank was running a Ponzi scheme[(2)] after reading the IMF's report on USA dollar lending rates for housing and real estate loans. And while the Lebanese Central Bank's circulars and regulations required that at least 25% of the value of the estate be paid as down payment; borrowers from banks bypassed these regulations via a paper drafted by sellers stating that they had received 25% of the estate's value which allowed banks to legally lend borrowers the money. Eventually, these toxic loans comprised of 90% of the Lebanese market according to the IMF creating the housing credit bubble[(3)] which in turn triggered the financial crisis. How are the Lebanese and American scenarios similar? In the American scenario, American banks took the bad loans or low rated loans and bundled them into centralized debt obligations [(4)] (CDO's[(5)]) and sold them in the financial market as AAA rated instruments. Meanwhile, in Lebanon, banks' balance sheets were inflated, as real estate is routinely used as collateral for loans such that these banks' balance sheets showed 50$ billion in assets when in fact were worth 35$ billion. In this sense, when a bank loans 75K USD for an apartment worth 100K USD that is valued at 60K USD, the asset is recorded on the bank's balance sheet at the rate of 66% over its real value. By contrast, American Banks repackaged toxic debts as financial instruments to release capital and transfer risk whereas Lebanese banks inflated their collaterals to attract USA Dollar (USD) deposits to profit from the difference in exchange rates between Lebanese pounds and USD. Why did Lebanese banks fall into this faulty investment? Because Lebanese banks relied on their central bank's policy of pegging the Lebanese pound to the USD as a guarantee for financial stability and economic sustainability. Additionally, prior to Sarbanes and Oxley, American banks were in cahoots with credit rating agencies[(6)] that

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(1) According to the Transparency International (The Global Coalition Against Corruption), Corruption Perception Index, 2021, a report issued on January 24, 2022, Transparency International Secretariat, Berlin, Germany, 2022, page 3, available via URL accessed on January 27, 2022: https://bit.ly/3H4w4vP and Transparency International's 2019 Corruption Perception Index Report available via Lebanese Transparency Association via URL accessed December 27, 2020: https://bit.ly/3kV8XKq .

(2) Nicholas Larsen, What is Behind Lebanon's Deepening Financial Crisis? article published on the International Banker - Authoritative Analysis on International Banking on February 10, 2020, accessed on December 22, 2020, via URL: https://bit.ly/3a2oB1o.

(3) Rosalie Berthier, Lebanon's Real Estate Gamble, article published for Synaps Network on June 12, 2017, available via URL accessed December January 1, 2021: https://bit.ly/3lSDz0X .

(4) See definition in the List of Definitions under Annex 1 and Enrico Marcantoni, Collateralized Debt Obligations: A Moment Matching Pricing Technique based on Copula Functions, first edition, Best Master's Thesis Oriented Series, Springer Gabler, a Springer Fachmedien Wiesbaden publication, Berlin, Germany, 2014. And Janet M. Tavakoli, Structured Finance and Collateralized Debt Obligations: New Developments in Cash and Synthetic Securitizations, second edition, John Wiley & Sons, New Jersey, United States of America, 2008.

(5) Phil Angelides, Bill Thomas, Brooksley Born, Douglas Holtz- Eakin, Byron Georgiou, Heather Murren, Bob Graham, John Thompson, Keith Hennessey, and Peter Wallison, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, submitted by the Financial Crisis Inquiry Commission pursuant to Public Law 111-21, January 2011 Official Government edition, Superintendent of Documents, U.S. Government Printing Office, Washington DC, United States of America, pages: 127 – 155, available via URL accessed January 10, 2021: https://bit.ly/2YgYEZu .

(6) Quote from the Financial Crisis Report: "We conclude the failures of credit rating agencies were essential cogs in the wheel of financial destruction. The three credit rating agencies were key enablers of the financial meltdown. The mortgage-related securities at the heart of the crisis could not have been marketed and sold without their seal of approval. Investors relied on them, often blindly. In some cases, they were obligated to use them, or regulatory capital standards were hinged on them. This crisis could not have happened without the rating agencies. Their ratings helped the market soar and their downgrades through 2007 and 2008 wreaked havoc across markets and firms".

rerated the newly bundled bad loans or toxic debt with rates higher than their actual rating to make them more attractive. But this is just one facet of the Lebanese banks' toxic loans' mess. According to a report by Standard and Poor's (S&P), Bank Audi SAL, Byblos Bank SAL, BLOM Bank SAL, and Bank of Beirut SAL are in deep trouble since more than half of these banks' balance sheets are comprised of governmental debt in the form of treasury bills which the government aims to subject to a haircut from 80 to 85% leading to a gap that cannot be covered and the banking sector becoming insolvent(1). Naturally, this was followed by Moody's and S&P's downgrading of Lebanon's sovereign credit in foreign currency from Ca to CC (2). Why are we mentioning banks' involvement in the financial crisis? The answer is simple, banks manage and disperse wealth for both public and private sectors. This is why we need efficient governance to regulate banks and regulators, and eventually reach accountability to achieve recovery then maybe we can think of sustainability. It also begs the question: how do Lebanese regulators allocate the responsibility of each party in a wealth management service agreement for the products they allow wealth managers to offer as they operate and after disputes arise?

As financial information and market strategy specialists; wealth managers offer their professional services in managing investments as the key to attain wealth. Hence, because wealth management as a financial concept differs from what private banking encompasses and has to offer; its legal connotation differs depending on the legal system its provider hails from. Hence, coining the concept of wealth management with unfair competition and corporate governance, makes this research challenging as it requires discussing: (a) banking and finance markets' regulation in local and cross-border operations as per international standards; (b) consumer protection laws as well as banking secrecy laws within the scope of liability analysis; (c) fair competition requirements across other legal systems; and (d) local and Baseline requirements for corporate governance. Similarly, textbook definitions for wealth management do very little to cover what these service providers really do. Their job is to create issues that permeate concrete liability matrixes through special purpose vehicles designed according to specialized financial architectures to cloak the wealthy's dealings in their service agreements. This leaves legalists initially incapable of holding financial or investment advisers accountable

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Phil Angelides, Bill Thomas, Brooksley Born, Douglas Holtz- Eakin, Byron Georgiou, Heather Murren, Bob Graham, John Thompson, Keith Hennessey Peter Wallison, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, submitted by the Financial Crisis Inquiry Commission pursuant to Public Law 111-21, January 2011 Official Government edition, Superintendent of Documents, U.S. Government Printing Office, Washington DC, United States of America, page: 2, available via URL accessed January 10, 2021: https://bit.ly/3oG9Czt .

(1) Matt Smith, Delayed Lebanese Bank Earnings Reveal Extent of Country's Woes, report published on December 15, 2020, for Standard and Poor's on SPGlobal via URL accessed on January 4, 2021: https://bit.ly/368cGxQ .

(2) Natasha Turak, In Lebanon, Default is Virtually Certain after Stark Credit Downgrades, article written for CNBC World Economy on Feb 24, 2020, available via URL accessed January 3, 2021: https://cnb.cx/39YFlGr .

for their forecasts, their investment strategies or even their business models unless they get hold of their investment portfolios or management agreemetns to establish their liability based on their duty of professional care as experts and trusted wealth managers. This is supported by the fact that as legislators and regulators sit to debate laws and policies, wealth managers and high net worth wealth owners sit at legislature discussion tables lobbying for what they need to have their way[(1)]. This was also the case in the American crisis scenario in 2008, when Senator Phil Gramm (he was chairman of the Senate Committee on Banking, Housing, and Urban Affairs) listened to lobbyists from Enron the energy company that triggered the world crisis. The said senator advocated passing the Gramm-Leach Bliley Act in 1999[(2)] and the Commodity Futures Modernization Act in 2000 which exempted credit default swaps and other derivatives from regulations. The Gramm-Leach-Bliley Act allowed banks to use deposits to invest in derivatives something which bank lobbyists pushed as a necessity to compete with foreign firms whilst promising to invest only in low-risk securities to protect their customers. Meanwhile the Commodity Futures Modernization Act allowed energy derivatives that were traded to be specifically exempted from state laws that had formerly prohibited credit default swaps since it considered these instruments a form of gambling as they are a form of betting against the market. In this line, it is worth noting that Senator Gramm's wife who was the former chairwoman of the Commodities Future Trading Commission was also an Enron board member with Enron being a major contributor to Senator Gramm's campaigns. This is where we understand why Senator Alexandra Ocasio Cortez prides herself for not owning shares in public traded companies as she is a member of the legislative committee on publicly traded companies. Meanwhile, Federal Reserve Chairman Mr. Alan Greenspan together with former USA Secretary of Treasury Larry Summers also lobbied for passing the Commodity Futures Modernization Bill. According to Enron, foreign derivatives' exchanges gave overseas firms unfair competitive advantage[(3)]. Thus, if we are to regulate financial markets effectively we must consider that regulation and politics are often inseparable which is why the European Union's specialized audit regulations post Enron's failure, prevent statutory auditors from providing tax planning services for public interest entities (PIEs) and the economic undertakings they audit. But with wealth management seeming to be a matter of managing wealth one may

(1) Brooke Harrington, Capital Without Borders, ibid, page 10. See also, the Lebanese Banks' Association's reply to the Lebanese Central Bank's governor regarding withdrawals in foreign currency on June 3, 2021 and the Lebanese Banks' Association's reply to Parliamentary member Ibrahim Kanaan on his proposal for a law on capital control on April 21, 2021, available via respective URLs accessed on: October 9, 2021: https://bit.ly/33xzJ6Y and https://bit.ly/3v3nb2M.

(2) Also known as the Financial Services Modernization Act that repealed the Glass-Steagall Act of 1933.

(3) Kimberly Amadeo, Financial Crisis: What Really Caused the Crisis, article published on May 29, 2020, for the Balance, available via URL accessed on January 4, 2021: https://bit.ly/3thHMgS .

ask how can wealth management be legally defined enough to regulate its operations as a specialized service via hard law?

The answer to this question acknowledges Warren Buffet's rationale for wealth management on balancing illegality and folly as a theme further ascertained via laws and best practices passed as reforms necessary to restore balance in the global financial market such as: (1) Sarbanes and Oxley (to face accounting fraud), Frank Dodd (to combat investor greed and credit bubbles from banks) especially the Volcker Rule; (2) the OECD principles on proportionality and flexibility; and (3) the European Union's regulations on trading financial instruments and investor protection in correlation with the TFEU (Treaty of the Functioning of European Union)[1] as coordinated with the Brussels' Recast Regulation on Jurisdiction and Enforcement of Decisions. These changes were necessary to harmonize effective competition requirements within the unified European Market. This happy ending happened in first world countries because legalists got hold of these wealth management firms' key decision makers, auditors, and investment agreements that initiated the investment portfolios which in turn clarified their relation to their clients' investment decisions. Accordingly, only when a law provides a framework for a competent regulator and empowers him to efficiently regulate within an accountability matrix through which he can be held accountable for his regulatory decisions then his state can govern and assess his performance. This further clarifies why the process of adopting soft laws can either bridge the gaps in the name of facilitating investment, business operation, and harmonization in the name of sustainability and global governance; or widen the chasm between legal frameworks and taxation systems for sovereign entities. Essentially, only competent regulators can navigate this chasm to manage: (a) the limitations of KYC, the changes of corporate control, the hurdles of achieving market discipline, data protection and privacy laws; and (b) the impossibility of achieving perfect competition, due to clever forum shopping and jurisdictional slicing via vehicles and adjudication processes such as specialized courts and arbitration. Given the fact that this chasm thrives on cooperation gaps created by investment treaties; even international standards such as the OECD's are not enough to reinstate the clarity necessary for restitution and accountability. A great example of this harsh reality would be the London-based *Society of Trust and Estate Practitioners* (STEP). As an organization, it roughly represents more than 20K+ members in 95 countries offering individuals and multinational companies their wealth management services. STEP envisions itself as a collective body of

(1) See the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, as published by the Official European Journal, Series C 202, Volume 59, on June 2016, available via URL accessed on August 29, 2021:https://bit.ly/3lDDcWK.

professionals with capabilities that make them utilitarian transaction planners who know the ropes around income defense and wealth preservation. In the words of Nobel prize winner economist Robert Shiller, they are specialists in the science of financial goal achievement architecture via effective asset management. In one STEP training manual, the organization describes its professionals' expertise to be one that comprises of several parts: part lawyer, part tax adviser, part accountant, and part investment adviser rolled into one(1)! How do regulators handle this dilution? By vigilantly bridging transparency and cooperation loopholes to efficiently govern markets and coordinate supervisory measures with other regulators via: **(a)** sharing and expanding learning curves necessary for managing financial information and the financial services' best practices regarding trends, **(b)** troubleshooting default and disasters in hope of better chances for faster recovery if prevention proves to be unattainable, and **(c)** creating scientific and technical standards for audit, financial, and sustainable investment assessments as hard laws. In effect, strategic and responsible sovereignty rose as single sovereign and plurilateral market shares became a corduroy of influence and control across the global financial market. In fact, no man is an island(2) proved that blurred market shares further entrenched both worlds' economic interests via leverage and political dealings until soft law was utilized for efficient financial governance implementations(3). As a first world example, the European Union incorporated international soft laws such as Baseline standards on financial governance as hard law in their primary economic laws. Meanwhile, third world countries such as Lebanon responded by confining corporate and financial governance within soft law concepts. Philip Armstrong, head of the Global Corporate Governance Forum emphasizes this reality when he states in the MENA Corporate Governance Guide for 2011 that good corporate governance raises the bar for compliance not just by ticking boxes in order

(1) Brooke Harrington, Capital Without Borders: Wealth Managers and the One Percent, first edition, Harvard University Press, Massachusetts, United States of America, 2016, page 6-7.

(2) The concept "No Man is an Island" first appeared as a poem in 1624 under Chapter XVII: Meditations Upon Emergent Occasions by John Donne which was later published in the book, John Donne, No Man is an Island, a first illustrated reprinted edition, Souvenir Press Limited imprint by Helen Lush, London, United Kingdom, 1988. To understand its relation with financial governance efficiency, read: 1- European Parliament and Council EU Directive No. 2366/2015 of November 25, 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, available via URL accessed on June 24, 2021: https://bit.ly/3lZuUKc , 2- the European Banking Authority's (EBA) Opinion on the Elements of Strong Customer Authentication under PSD2 via visiting URL accessed on June 24/2021: https://bit.ly/3b0tCrT and 3 - Jay Ablian, Jacqueline Hersch, Collin Flotta, Peter O'Halloran, and Nandan Sheth, Understanding and Preparing for the Impact of PSD2, research paper, FirstData.com for Fiserv Inc, New York, United States of America, 2019, via URL accessed June 24/2021: https://fisv.co/3aWCaAf . To see its relation to sustainability governance in banks, see: Massimo Ferrari and Maria Sole Pagliari, No Country is an Island: International Cooperation and Climate Change, a working paper for European Central Bank (ECB), Series No. 2568/June 2021, available via URL accessed on July 12, 2021: https://bit.ly/34PLxln .

(3) George Zestos , The Global Financial Crisis: From US Subprime Mortgages to European Sovereign Debt, first edition, Routledge an imprint of the Taylor & Francis Group, New York, United States of America, 2016, pages 28 - 47 and 69 - 95.

to do the right thing; but because it convinces people to inspire a culture of good practice through leadership [1].

Adrian Cadbury's[2] view on corporate governance is that of maintaining the balance between economic and social goals and that between individuals and communal goals[3] to encourage efficient utilization of resources under the sanction of accountability to align individuals' interests with those of corporations, and societies. In the words of Miguel Vatter's adaptation of Foucault's work [4] we realize that governing financial systems and markets is actually a manifestation of neoliberal policy. Verily, international financial institutions (IFIs) such as the International Monetary Fund (IMF), the World Bank, Bank of International Settlements (BIS), the Financial Stability Board (FSB), FATF, and the OECD are neoliberalism's agents of economic reform and global governance. Despite the lack of consensus on its definition, neoliberalism, has significantly shaped the way regulators supervise and regulate their systems and markets. Consequently, law as a legislative gun became obsolete with the rise of governance because hard laws have their limitations as they require recognition of sovereign acts and implementation of judicial decisions or arbitration awards[5]. Meanwhile, soft law which is based on cooperation and mutual treatment administered and reviewed by a specialized authority became the method for instilling efficiency and doing things efficiently via professional honesty[6]. Simply put, we have followed Sally Moore's path who first used the term soft law in legal writing as a legal anthropological concept on semi-autonomous rules related to the social field. She was the one who conceptualized soft law as an innovative way to consider law and legal arrangements in helping generations and researchers go beyond the

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(1) Philip Armstrong, Motivations to Invest in Corporate Governance, from February 2011's guide on Advancing Corporate Governance in the Middle East and North Africa: Stories and Solutions, published by Center for International Private Enterprise Global Corporate Governance Forum from the International Finance Corporation Group, Washington DC, United States of America, 2011, page 15, available via URL accessed December 22, 2020: https://bit.ly/3qKWhqM .

(2) Michael Hopkins, Corporate Social Responsibility, and International Development: Is Business the Solution? first edition, a Taylor and Francis Earthscan Publication, New York, United States of America, 2007, page 33-35. See also: Magdi R. Iskander and Nadereh Chamlou, Corporate Governance A Framework for Implementation, Overview Foreword by Sir Adrian Cadbury, Working Paper 30446 for The International Bank for Reconstruction and Development/ The World Bank, First Print of May 2000, Washington, United States of America, page 5-8, available via URL accessed on January 23, 2021: https://bit.ly/3DNBCtJ .

(3) William Davies, Corporate Governance Beyond Neoliberalism: Agency, Democracy, And Co-Operation, Chapter 31 of the book: The Oxford Handbook of Mutual, Co-Operative, and Co-Owned Business, first edition, Oxford University Press, New York, United States of America, 2017, pages: 445 – 455, William Davies, The Limits of Neoliberalism: Authority, Sovereignty, and the Logic of Competition, first edition, Theory, Culture, and Society Series, imprint by Sage Publications Ltd, California, United States of America, 2014, pages: 42- 65, and Adrian Davies, The Globalization of Corporate Governance: The Challenge of Clashing Cultures, first edition Gower Publishing Limited, imprint of Routledge, a Taylor and Francis Group publication, Burlington, England, 2011, pages: 23- 50.

(4) Miguel Vatter states that: "Liberalism changes into neoliberalism when jurisprudence ceases being a system of natural rights and becomes the search for those pre-political, quasi-natural 'rules of just conduct' that underpin the 'natural system of interests'. In reality, the neoliberal account of jurisprudence founds the idea of governance, which operates through nomos, as opposed to that of 'government', which operates through legislation Damien Cahill, Melinda Cooper, Martijn Konings, And David Primrose, The Sage Handbook Of Neoliberalism, first edition, A Sage Reference Publication, London, United Kingdom, 2018, page 927.

(5) Rolf H. Weber, Overcoming the Hard Law/Soft law Dichotomy in Times of (Financial Crises), research paper submitted to the Journal of Governance and Regulation, Volume 1, Issue 1, 2012, available via URL accessed on January 23, 2021: https://bit.ly/3oFIO23 and Elis Tarelli, The Strengths and Weaknesses of Soft law as a Source of International Financial Regulation, a research paper for Nehemiah Gateway University Journal, 2009, Progadec, Albania, available via URL accessed on January 23, 2021: https://bit.ly/3yMBUx0 .

(6) King Report III on Governance for South Africa 2009, Institute of Directors Southern Africa, page 21, available via URL accessed January 23, 2021: https://bit.ly/3taDOFR.

accepted legal positivist idea according to which law was simply a uniform body of regulations and coherent interpretations[1].Together, the IMF and the World Bank set the tone for international economic cooperation after the Bretton Woods' conference. The said conference aimed to establish a global financial and monetary governance system wherein the IMF one of the Bretton Woods Twins (the other was International Bank for Reconstruction and Development) was responsible for overseeing and supporting the Bretton Woods' system of pegged exchange rates until 1973 when international monetary relations became unstable, and countries moved to floating exchange rates[2]. Meanwhile, the World Bank was established to provide investment capital for post-world war reconstruction and economic development whilst specializing in tangible profitable infrastructure projects. Today due to geographical proximity and the credible threat of withholding approval for IFI contributions; both bodies exercise considerable influence despite lacking immediate control over national governments' polices. In this respect, non-compliance with their policies, frameworks, and recommendations to adopt and adapt reforms; entails financial detriment for both governments and countries. Among IFI's persuasive tools when dealing with national governments was conditional lending arrangements, which escalated to delays in loan disbursement and eventually suspension of lending altogether. Prior to 1980, both organizations were not pushing neoliberal policies via conditional lending, but after the rise of neoliberal conservative administrations in both the United Kingdom and the United States of America, things changed given the rise of third world countries' debt crisis. After 1980, both organizations shifted from access to or reliance on conditional lending to a reliance on considerable expert authorities who perform assessments and issue reports on financial stability, economic sustainability, and governance thus vouching for or taking away credit worthiness and financial integrity. By then, it had become evident that financial regulation had morphed into a three-tiered hierarchy (IFI, Cross-Border, and local regulations) centralized around managing systemic risks to prevent global financial crisis through two approaches macro and micro-prudential financial regulation for both local and cross-border operations. These two approaches highlighted the roles of soft law compliance in maintaining financial stability and economic sustainability via continued possession of market shares. Consequently, several banks, financial institutions, and even entire countries were blacklisted for failing to adopt and adapt IFI regulatory policies and recommendations on combating money laundry,

(1) Gerhard Anders, Lawyers and Anthropologists: A Legal Pluralist Approach to Global Governance on the Potential of Legal Pluralism, Chapter 2 of Governance and International Legal Theory, a Nova Et Vetera Iuris Gentium publication under the University of Utrecht from Series A: Modern International Law, Number 23, via Martinus Nijhoff Publishers, first edition, Boston, United States of America, 2004, page 46.

(2) محمد مرعشلي، النقود والائتمان المصرفي في ضوء التجربة اللبنانية، طبعة ثانية مزيدة ومنقحة، بدون دار نشر، بيروت لبنان، ٢٠٠٤، صفحة: ١٢٣ – ١٢٤.

and counter-financing terrorism issues. There are many examples. For instance, the European Union's list of high risk third world countries with deficient jurisdictions or non-cooperative sovereigns which includes countries classified by IFIs such as FATF as non-compliant jurisdictions regarding anti money laundry and combating terrorist financing issues as well as the OECD's principles on economic substance requirement for combating tax havens(1). Another example would be countries listed on the USA's list of countries under primary and secondary sanctions(2) which are in fact exorbitant American laws that forced the European Union to take union level measures to rebalance its financial interest which shall be further explored herein. Also in its 10th anniversary report on tax transparency, the OECD requested that Lebanon addresses the issue of allowing joint stock companies and partnerships in Lebanon to issue bearer shares(3) to which Lebanon partially complied by abolishing bearer shares under Law No. 55/2016, which became effective on November 2016 and compelled that existing bearer shares are converted into "to order shares" in registered form under the sanction of a mandatory transfer of nonconverted bearer shares to the Lebanese Republic. According to the said report, there were 110 Lebanese companies that had issued bearer shares of which only 91 companies complied with the conversion requirement. Consequently, the remaining 19 companies that failed to do so were fined the sum of 816,310 Euros as imposed by the tax office. Similarly, Lebanon as a third world country that defaulted on its sovereign Eurobond debts in 2019 which left it in a financial crisis is still trying to reinitiate negotiations with the IMF for funding and loans necessary for its financial recovery. With the IMF's funding being conditional on implementing necessary reforms and ensuring the efficiency of Lebanon's financial governance; these negotiations were disrupted by calls for considering Lebanon's public debt an odious debt amidst accusations of corruption and money smuggling all of which raised flags around the integrity and efficiency of the Lebanese financial supervision and regulatory systems(4). In fact, Le Temps, a Swiss Investigative Journal alleged on October 8,

(1) See: EU Commission Delegated Regulation No. 855/2020 on amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the table in point I of the Annex and deleting Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia, issued on June 19, 2020, available online via link accessed on June 10, 2021: https://bit.ly/3aUDFyS ; See: Jeffrey Owns and Pascal Saint-Amans, OECD Countering Offshore Tax Evasions: Some Questions and Answers on the Project, a consultation and guide paper, OECD Centre for Tax Policy and Administration, September 28, 2009, via URL accessed June 26, 2021: https://bit.ly/3B4QIbz ; OECD, Fighting Tax Crime- The Ten Global Principles, Second Edition, Country Chapters, Paris, France, 2021, available via URL accessed June 26, 2021: https://bit.ly/30BAdHl .

(2) The Office of Foreign Assets Control (OFAC) utilizes has different economic sanctions' programs that serve diplomatic, criminal enforcement, economic, humanitarian, and national security purposes. To learn more, see: OFAC, Primary and Secondary Sanctions, an article for comply advantage, available via URL accessed June 26, 2021: https://bit.ly/3vwf5xH; For Official OFAC Sanctions List visit: https://sanctionssearch.ofac.treas.gov/ .

(3) Transparency and Exchange of Information for Tax Purposes: Multilateral Cooperation Changing the World, 10th Anniversary Report, Global Forum on Transparency and Exchange of Information for Tax Purposes, 2019-2020, page 16, available via URL: https://bit.ly/3jo9bK1.

(4) Stephanie Collet and Kim Oosterlinck, Denouncing Odious Debts, Journal of Business Ethics, Issue No. 160, Year 2019, published by Springer Science and Business Media B.V. part of Springer Nature, Cham, Switzerland, 2018, pages 205-223, available via for paid subscribers via URL accessed on August 21, 2021: https://bit.ly/3rlZtwf.

2021, that Banque Du Liban's (Lebanon' Central Bank - BDL) governor had requested the removal of fourteen pages from the IMF's 2016 report on Lebanon's financial system's stability which forecasted that Lebanon was heading towards financial ruin; something which the governor denies while the IMF refrains from commenting on. But the fact remains that Lebanon is in desperate need of funding from the IMF but only time will tell whether the Swiss journal's allegation stands. In the meantime, this research shall utilize the said report to highlight that even without the alleged missing fourteen pages, the report was pristine on the fact that the Lebanese financial system had been in stalemate since 2016[(1)].

On March 25, 1998, the Lebanese Central Bank Issued Basic Circular No. 44 containing Basic Decision No. 6939 which mandated the application of Basel I's Capital Adequacy Framework in Lebanese Banks signaling the dawn of neoliberal influence on the Lebanese banking market's regulation. As of January 22, 2021, Basel III's Consolidated Framework has enhanced its three pillars on minimum capital and liquidity requirements, supervisory review process for firm-wide risk management and capital planning as well as risk disclosures and market discipline. In this line, this research shall treat Basel III's framework's applications under Lebanon's regulatory framework for corporate governance in its banking and capital market vis a vis the European Union's approach to these markets under its Single Market Rulebook. It is this research's aim to showcase the role of banking and financial supervision and regulation in understanding the value of financial information management by utilizing it for optimizing efficient consumer protection for financial services in banking and financial operations' regulation for wealth management corporate governance via fair competition for financial stability and economical sustainability in Lebanon and the European Union. To this end, the research highlights areas where regulation failed to prevent default or harness recovery due to structural and operational issues in the dynamics of market discipline supervision in multifaceted cross border operations with multiplayer operators. This approach serves to answer the question whether the Lebanese scenario is a matter of corruption fostered by the oligarchy of the rich and influential or a matter of incoherent, unimplemented hard laws, or even a case of deformed adaptation of international soft law standards. The research will tackle these issues highlighting cases of regulatory deficiencies in scope, and market reach as

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(1) See the official 2016 IMF working paper published on the IMF's official website: Lebanon: Financial System Stability Assessment, IMF Country Report No 12/21, issued on January 2017, International Monetary Fund Publication Services, Washington, D.C., United States of America, available via URL accessed on February 28, 2021: https://bit.ly/3f9d6cE ; also Maha El Dahan, Lebanon's Central Bank Denies Swiss Report About 2016 IMF Paper, an article published on Reuters on October 8, 2021, available via URLs accessed on October 12, 2021: https://reut.rs/2WXNOHx; See also the link to the Swiss Investigative Journal Le Temps for paid subscribers: https://bit.ly/3myK9ZC.

well as abuse. This approach is salient for dealing with Lebanon's eminent state of bankruptcy, and alternative wealth management and banking practices that are armed with extra-legal investment operations such as blockchains and fintech to evade regulators and the premises of state borders as matters of public order in several jurisdictions(1).

This research's approach contrasts local operation requirements with cross-border operation requirements across the Lebanese and European legal systems to provide a comparative wealth management service contract requirements scaled study in relation to achieving efficient wealth management corporate governance and regulating unfair competition. Accordingly, the research's comparative approach evaluates efficient wealth management corporate governance by examining its vices and remedies in both legal regimes in its bid to formulate solutions and recommendations in each chapter. To this end the research employs various scientific methodologies including but not limited to analytical, comparative, descriptive, and deductive methodologies. It also utilizes a dual comparative approach in implementing Baseline Standards by comparing the Lebanese legal framework with that of the European Union. For this reason, the research is supplemented by a list of abbreviations and a list of four annexes for definitions, tables and figures, explanatory notes, case studies, and case notes, as well as important legal texts from relevant comparative laws .

With due consideration to all the issues discussed in this introduction, the research aims to answer the legal question: **"how do regulatory authorities utilize corporate governance requirements to combat unfair competition in wealth management contracts in cross-border operations?"** Accordingly, the research shall first explore **effective wealth management corporate governance** in part one before moving on to discuss the **implementation of wealth management corporate governance** in part two.

(1) Armand Terrien and Alexandra Kerjean, Blockchain and Cryptocurrencies: the New Frontier of Investment Arbitration, an article published on behalf of Terrien Avocat and Quinn Emanuel Urquhart & Sullivan LLP on Kluwer Arbitration Blog on October 18, 2018, available via URL accessed on December 17, 2020: https://bit.ly/2NkU4Uy.

Part I — Effective Wealth Management Corporate Governance

"Accountability is authority's eyeglasses worn on competency's eyes to calibrate change from reality's perspective on governance and power". **Pasithea Chan**

In business, governance has nine basic theories[1] compared to corporate governance which is meant to be commensurate with an economic undertaking's structure, operations, roles, and objectives in a given market as shaped by the legal system in place. Defining wealth management corporate governance requires defining its mandate according to the law and the wealth managers' service contracts. As an operation, wealth management is governed depending on its legal framework's definition and classification of operations, products, and limitations. Additionally, because a wealth manager links providers with users of financial capital in multifaceted activities[2] as a profession, it falls under financial intermediation. In this sense, wealth managers either manage assets and assure the realization of financial goals or act as brokers who operate based on service performance fees trading their financial information management specialization along with their financial management skills to direct clients' investments or conduct more efficient investments on their behalf[3]. Hence, any purported legal definition must stem from the service provider's capacity and his/her role in the service contracts as defined by applicable laws determining permissible terms and conditions stipulated by the contracting parties in their contracts' scopes. Business wise, wealth managers offer their services as products that are of three types: (1) investment instrument management services, (2) portfolio management, and (3) market segment tailored wealth management products. Hence, this part's first chapter explores **wealth management operations in Lebanon** to legally define wealth management there, its service providers, as well as its limitations and pitfalls. Meanwhile chapter two, explores **effective wealth management corporate governance a macro-micro reality or balance** to focus on regulators effective supervision of banks' and investment entities' as well as wealth management entities' corporate governance from an international and European Union perspective.

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(1) Christopher Ansell and Jacob Torfing, Handbook on Theories of Governance, first edition, Edward Elgar Publishing Limited, Cheltenham, United Kingdom, 2016, page 14.

(2) Eileen Appelbaum, Rosemary Batt, and Jae Eun Lee, Financial Intermediaries in the United States of America: Development and Impact on Firms and Employment Relations, a Cornell University Law Review Research, published by Oxford University Press, 2014, available via URL accessed January 23, 2021: https://bit.ly/3kRTQkY; See also: Alessio M. Pacces, Financial Intermediation in the Securities Markets: Law and Economics of Conduct of Business Regulation, an Elsevier Publication, International Review of Law and Economics, Issue 20, 2000, pages 479 - 510, available via URL accessed on January 23, 2021: https://bit.ly/36IElWp.

(3) Stuart I. Greenbaum, Anjan V. Thakor, Arnoud W.A. Boot, Contemporary Financial Intermediation, fourth edition, an Academic Press Elsevier Publication, London, United Kingdom, 2019, pages: 24-29

Chapter One — Wealth Management Operations in Lebanon

"Follow the Money to know who does what." ***Henry E. Peterson***

In general practice, both firms and banks may engage in wealth management compared to private banking which is sometimes expanded to include wealth management sans private banking facilities. In this sense, wealth managers differ from private bankers when it comes to issues of conflicts of interest as they are paid by clients compared to private bankers who are employees paid by banks. Meanwhile in Lebanon, wealth managers' roles are limited to certain regulated legal entities as well as banking and finance professionals. These differences set Lebanon apart from the rest of the world as they subject wealth management in Lebanon to a particularity of regulatory limitations that extend to the types of products, professionals, and contracting terms utilized in wealth management. This is mainly because Lebanese laws do not mention wealth management as a service since the law neither uses the term wealth management to refer to the said service nor refers to its specialized professionals as wealth managers. Instead, professionals such as financial consultants, financial planners, financial brokers, portfolio managers, as well as investment and asset managers fall under the concept of "*financial intermediator*" which stems from the term "*financial intermediation*" which applies to wealth management as a service. In effect, Lebanon uses the concept of financial intermediation in its laws to indirectly regulate wealth management as a service or product in the banking market and to vastly regulate wealth management's professionals' conduct as they provide their specialized services within the financial market. Thus, this chapter shall examine **wealth management a dual natured operation in Lebanon** in section one; then proceed to discuss **wealth management service providers' roles and agreements** in section two.

Section One — Wealth Management a Dual Natured Operation in Lebanon

In Lebanon, wealth is managed via banks offering banking services that are explicitly designated as commercial acts under Article 6(4) of the Lebanese Commercial Code (LCC). However, financial institutions, and financial intermediation institutions also offer wealth management services under the concept of financial intermediation as well. Conceptually speaking, financial intermediation for wealth management differs slightly from the concept specified in the LCC since the latter specifically applies financial intermediation to economic projects that aim to offer services that circulate moneys or improve investments for others such as brokerage agencies[1] to establish economic activities' commercial nature via the criteria of professionalism, repetition, and profit. Meanwhile, in wealth management, financial intermediation is governed by a complex structural legal framework that does not regulate financial intermediation's operations'[2] by function. Essentially, the said legal framework only regulates organizational compliance with regulations of either the Lebanese Capital Market Authority (CMA) or the Lebanese Banking Market Authority (Banque du Liban – BDL) for three types of financial entities as legal persons: banks for licensing requirements and financial institutions as well as financial intermediation institutions specifically for natural persons who are working within or for these entities. In this sense, financial intermediation in wealth management serves to indicate banks' roles as financial intermediators for money changing hands compared to the same concept meaning professionalism causing money to change hands in the financial market's securities' business. Accordingly, financial entities offering wealth management services are in reality financial intermediation institutions conducting financial intermediation operations from two aspects in two paragraphs: **(1)** wealth management as a regular banking operation subject to regulatory obligations on licensing under BDL and **(2)** wealth management as a financial operation subject to CMA regulatory obligations as either financial intermediation projects or investment banks conducting securities business. Accordingly, this section explores **wealth management as a banking operation** paragraph one then **wealth management as a financial operation** in paragraph two.

Paragraph One — Wealth Management as a Banking Operation

Under Article 121 of Decree 13513/1963 (Lebanon's Code of Money and Credit – CMC), a bank is defined as an institution whose main purpose is to utilize for its own account in lending activities moneys it receives from the public. Article 126 of the same decree states that only entities incorporated as joint stock companies may engage in banking activities compared to subsequent Article 178 which defines financial institutions as institutions whose main objective is to provide loans whatever their types may be as long as they fall under articles 179, 180, 181, and 182 of the CMC. Yet like banks, financial institutions must be incorporated as joint stock companies under Article 179 CMC including foreign entities or branches licensed or authorized to operate in Lebanon. Accordingly, financial intermediation is specifically regulated in these

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(1) صفاء مغربل، القانون التجاري: الشركات التجارية، الطبعة الأولى، بدون دار نشر، بيروت، لبنان، ٢٠٠٤، صفحة: ١١٤ – ١١٥ و ١٢٥ – ١٢٦.

(2) Decree No.13513/1963 the Lebanese Code of Money and Credit (CMC), and laws No. 161/2011 the Lebanese Capital Markets Law (LCMA), No. 234/2000 Regulating Financial Intermediation (LFI), Executive Legislation No. 120/1983 Law, and Decree No. 7667/1995 as amended by Decree No. 17424/2006 on Executing Beirut Stock Market's Internal Regulations (BSIR) only determine who can act as a financial intermediary, as well as the bodies that license and supervise their operations; refer to the List of Laws, Executive Legislation, and Decrees under the Laws and Regulations list under the References section page 201 of this reearch.

entities under Articles 43 and 44 of Executive Decree No. 7667/1995 on Executing Beirut Stock Market's Internal Regulations which mention that as per Article 7 of Executive Legislation No. 120/1983 on Regulating Beirut's Stock Market, only authorized clients are intermediaries permitted to conduct operations in the stock market hall without prejudice to vested rights such that a client is every legal person authorized by Beirut's Stock Market's Committee to mediate trading activities in the stock market. By contrast, Law No. 161/2011 on Financial Markets distinguishes in Articles 11(5)a(vi) and 29(1) between entities that provide consulting and financial instruments' trading services; and natural persons who practice financial instruments' trading services. The latter article of the said law states that those who seek to practice private financial instruments' trading activities require a prior license from the CMA's Committee provided that intermediation and portfolio management operations are strictly practiced by institutions specified in Law No. 234/2000 on Regulating Financial Intermediation Professions. From comparing and cross referencing between the said laws, it is clear that under Articles 1, 4, and 6 of Law No. 234/2000, these financial institutions must be previously licensed by BDL. In effect, financial intermediation operations for investment, asset, and portfolio management, are strictly practiced by financial institutions, banks, and financial intermediary entities since they are financial intermediation activities. Similarly, a financial consulting service, a financial instruments trading service, or a funds' investment trading service are all services that fall under Articles 11 and 29 of Law No. 161/2011 as all these operations are considered financial intermediation operations in the eyes of the law. Accordingly, wealth managers as financial services' providers are governed by either regulations that govern banks and financial institutions if they are offered by regular banks compared to financial services offered by investment banks which are under CMA's regulations. In this sense, CMA regulations apply to wealth management service providers conducting financial intermediation as an investment banking profession that requires licensing and supervision from the CMA and for natural persons working with or within investment banks and financial institutions licensed by the CMA. To this end, banks, financial institutions, and financial intermediation institutions are overseen and supervised by the Banking Control Commission of Lebanon (BCCL) that is a subcommittee of BDL[1] compared to those under the CMA's regulations who are overseen by the Financial Supervision Unit (FSU) as per Article 14

(1) As specifically mentioned in Articles 8 and 9 of Law No. 28/67 dated on May 9, 1967, and Legislative Decree No. 43/1967 dated on August 5, 1967, as well as Article 2 of Law No. 4/1985 dated on April 1, 1985, and Article 9 of Law No. 42/1987 dated on November 21, 1987 . See:

مالك عبلا، قوانين المصارف دراسة حول المصرف المركزي والمصارف التجارية المتخصصة والإسلامية ومكافحة تبييض الأموال (دراسة مقارنة) الطبعة الأولى، منشورات زين الحقوقية، بيروت، لبنان، ٢٠٠٦، صفحة: ٤٢.

of Law No. 161/2011. From this legal framework, we **first** resolve that unless wealth managers are private investment companies which are as per Law No. 163/2020[1] incorporated as limited partnerships; wealth managers must either be banks, financial institutions, and financial intermediation institutions who provide wealth management services directly or through employees specialized in providing financial and investment management consultations[2] which include legal and tax planning advice. In this sense, the Lebanese structural legal framework includes professionals who purchase, sell, and manage financial instruments, and assets. Similarly, this includes professionals who manage investment banking and currency trading accounts for clients as well as professionals who incorporate legal entities and manage them or invest in legal entities, sell, or acquire them. **Second,** in accordance with the requirements of Law No.161/2011 and Article 5 of Law No. 234/2000 wealth management practitioners require a prior authorization/license from BDL if they are a bank or financial institution or from the CMA if they are a financial intermediation institution aiming to trade or invest in financial instruments. **Third,** as service providers, legal entities must be a joint stock company whose shares are nominal such that any transfer of shares or ownership directly or directly that exceeds 10% of total shares or stocks must be approved by BDL. However, this stipulation does not apply for transfer of shares between spouses, children, or transfers as a result of inheritance. **Fourth,** service providers must comply with BDL or CMA regulations and cooperate with the BCCL in BDL or the FSU in CMA depending on their respective supervisory bodies. **Fifth**, service providers can only offer services/products based on their licensed operations' category[3]. This concludes wealth management as a banking operation. We now explore wealth management as a financial operation in the paragraph below.

Paragraph Two — Wealth Management as a Financial Operation

As of August 17, 2011, the CMA became Lebanon's securities' business and capital market regulator under the Capital Markets' Law No. 161/2011 issuing regulations such as the Licensing and Registration Regulation under Series 2000, Business Conduct Regulation Series 3000, Market Conduct Regulation Series 4000, Offers of Securities Series 6000, Listing Rules Regulation Series 7000, and the 8000 Series on Collective Investment. Accordingly, the CMA

(1) Law 163/2020 on Regulating Private Investment Companies, published in the Official Lebanese Gazette, Issue 20, on May 14, 2020, page 1167.

(2) See further on financial intermediaries' liability for their employees and agents' acts in financial markets:

دانا حمه باقي عبد القادر مسؤولية الوسيط المالي عن تصرفات المندوب في سوق الأوراق المالية (دراسة مقارنة)، مجلة زانكوى سليمانى، العدد ٣٤، آذار ٢٠١٢، قسم الدراسات الإنسانية (ب)، جامعة السليمانية، كلية الحقوق والعلوم السياسية، السليمانية، العراق، ٢٠١٢، ص ٢١٩ - ٢٦٠ .

(3) There are four types of wealth management contracts in Lebanon. and they are: leasing, fiduciary and investment banking, asset and portfolio management, financial and investment consultations, as well as funds and securitization operations. However, because each of the specialized wealth management contracts mentioned above has its own governing law that delimits the duties, and rights of its respective parties which may differ depending on the supervising authority overseeing the service provider, the research shall discuss them in part two of this research as they involve contractual duties set by these contracts' respective laws on wealth managers.

oversees and supervises investment banks, financial institutions, and financial intermediation institutions engaging in financial securities business which target savings invested in the form of financial instruments. Under Article 2104 of the CMA 2000 Series, securities business is defined first as a person who engages in any securities business activities set out in Article 2103 and: (i) carries on business or commercial activity, (ii) holds itself out as willing and capable of engaging in securities business activity, or (iii) solicits others to engage in transactions based on that activity unless any of the exclusions set out in the 2000 Series apply. Meanwhile the same article provides that the said securities business definition does not apply on an individual or company acting as brokers (introducing brokerage) by introducing investors to an approved institution such that the said entities shall not be considered to be carrying out securities business. However, the approved institution shall: (i) inform the CMA of the names of companies and individuals acting as introducing brokers on its behalf, and (ii) clearly fully disclose to its clients all commissions that these brokers receive from such transactions. In this line, Article 2102 stipulates that in order to carry on securities business in Lebanon, the person must be an approved institution licensed by the CMA, unless it is excluded from the 2000 Series licensing requirement. Additionally, a person must not carry on, or hold itself out as carrying on securities business prior to obtaining approval for a license from the CMA. However, the licensing requirement does not apply to an institution previously licensed by BDL to carry on securities business, if the said institution obtains a license from the CMA in accordance with the requirements set by the CMA under Article 57 of Law No. 161/2011's stipulations. Meanwhile the CMA 2000 Series regulation identifies **four regulated securities business activities** under Article 2103. The **first** type of licensed activities regulated by Article 2103, is **dealing operations** which are activities comprised of two categories. <u>Category one dealing operations</u> are activities that require a 400K USD capital or 600 Million LBP and includes: (i) dealing in or trading a security as principal or as agent, (ii) selling or buying or taking an order to sell or buy a security, and (iii) assuming the role of an approved distribution agent for a foreign collective investment scheme. Meanwhile <u>category two's dealing activities</u> require a 1 Million USD or 1.5 Billion LBP capital which include: (i) market makers or liquidity providers, and (ii) managing subscriptions for distributing or underwriting securities which does not include license for arranging for third parties to provide custodial services to clients since that operation requires another license to carry out arranging services. Furthermore, this license does not include carrying out custody services since they require obtaining a custody license. **Advisory operations** are the second type of securities business activities requiring a 100K USD or 150 Million LBP capital which includes: (a) providing commensurate advice to other persons on benefits and risks of investment dealing with any type of securities; (b) carrying out securities offerings, public or private placements, (c) advising on exercising any right related to security, and (d) providing financial advice including advice on investments, dealing in securities, corporate finance matters, mergers and acquisitions. However, this license does not include taking orders from clients since it requires a dealing service license. **Arranging operations** are the third type of securities business actives as they require a 200K USD or 300 Million LBP capital which includes: (i) arranging transactions related to securities business, (ii) introducing persons to transactions in securities, (iii) arranging a transaction in a security, (iv) arranging corporate deals, mergers and acquisitions deals, securities offerings, public or private placements, and (v) arranging custodial services for a third party and are subject to the provisions of the 3000 Series articles 3515 and 3517. However, an arranging license does not include a dealing license since dealing is about executing trades. Lastly, the fourth type of securities business activity is **custodial operations** which requires a 4 Million USD or 6 Billion LBP capital which includes: (i) safeguarding assets for another person including securities, (ii) client custody services, and administering rights, benefits and actions relating to a Security[1]. In this line, given that these activities' capita is either in USD Dollars or Lebanese pounds, the question is at which rate since there are several exchange rates. The second section of this article acknowledges financial intermediation institutions' right to undertake **complementary operations** besides their main objectives. However, the said article prohibits them from undertaking: (i) exchange operations, except when such operations are complementary or related to those performed, within the limits of their objects, on behalf of their clients; (ii) cross-border transportation of cash, metal coins, bullion, and specie, (iii) any commercial or industrial activity or any activity not related to financial intermediation. Meanwhile section 3 of the said article specifies that financial intermediation institutions operating in Lebanon must assign in accordance with their activity and out of their Tier-1 capital an amount: (i) equivalent to the minimum stated in the first sub-article of this article assigned to the headquarters, and (ii) of 30% of the capital required for each of the categories specified in the first sub-article of this article assigned to each branch. Should, any Lebanese financial intermediation institution plan to start a branch abroad then it must apportion to this branch three times the sum necessary for opening a branch in Lebanon, in addition to the amount required by the respective foreign regulators. Lastly, all required total capita or total allocations in addition to any further subsequent increases ought to be fully paid in a single

(1) This also includes acting as a custodian for a collective investment scheme.

cash payment. However, Article 2105 defines carrying on securities business in Lebanon to be that of: if the person engages in a securities business (i) from a permanent place of business in Lebanon, or (ii) with or for a person in Lebanon. In this line, Article 2106 provides exclusions for the license requirement mentioned in article 2102 if the said person engages in a securities business activity that is (a) an economic group or joint venture (Article 2107), (b) activities as part of another business (Article 2108), (c) activities in connection with the sale of a company (Article 2109), and (d) dealing or arranging for own account (Article 2110). Accordingly, a person is excluded from Article 2102 requirements if they fall under either of **four categories** specified in Articles 2107, 2108, 2109, and 2110. The first category is the **economic group or joint venture** mentioned in Article 2107. These activities are transactions between a principal company acting and another company that: (i) are members of the same corporate group; or are, or propose to become, participants in a joint venture and the transaction is for the purpose of that venture, or (ii) activities of arranging, managing, advising or carrying out custody by: a person that is a member of a corporate group and the services in question are provided for another member of the group, or a person that is, or proposes to become, a participant in a joint venture and the services in question are provided to another participant in the joint venture and for the purpose of that venture. The second category is mentioned in Article 2108 as activities that are part of another business which are **incidental activities to securities business** or other than securities business but are a necessary part of other services provided in the course of that profession or business, provided that the person that carries on the activity does not hold itself out as carrying on securities business. The third category can be found in Article 2109 which are **activities in connection with the sale of a company** which are transactions made, or securities business activities carried on, by a person acting as principal for the purpose of acquiring or disposing of at least 50% of the voting shares in a company. Lastly, Article 2110 specifies the fourth category is for **dealing or arranging for own account**. These activities deal in a security or arranging a transaction by a person for their own account: (i) unless the said person: holds itself out as engaging in the securities business activity of dealing; or regularly solicits members of the public to deal in securities; (ii) the person deals as principal or arranges for the purpose of acceptance of an instrument creating or acknowledging indebtedness related to a loan, credit, guarantee or other similar financial arrangement that the person has granted or provided; (iii) the person deals as principal or arranging for the purpose of issuance of a person's own shares, debt instruments or other securities; and (iv) the transaction made is by a person acting solely as a nominee, trustee or executor for another person. From the following categories, one can see how the mention of Tier-1 capital and the issue of previously licensed institutions makes wealth management a financial operation conducted by investment banks. Clearly, banks' capital adequacy, risk taking, and liquidity ratios reflect on their participation in the financial markets through their wealth management activities. This concludes section one as we now move on to explore wealth management service providers' roles and agreements in section two.

Section Two — Wealth Management Service Providers' Roles and Agreements

General practice of wealth management has shown that the same person could offer one client different services in different capacities in multiple contracts or within the same contract. However, because Lebanese laws neither directly regulate wealth management's operations as a service nor specifically address wealth managers' roles as a function; this section shall tackle these matters from common practice under two paragraphs: (1) **wealth management service providers' roles** and (2) **wealth management service agreements**.

Paragraph One — Wealth Management Service Providers' Roles:

As a service provider, a wealth manager's role can either be a **financial consultant** or an **executive wealth manager**. As a **financial consultant**, this professional is specialized in financial and market information necessary to direct an investor's decisions or the said investor's investment operations. Activities that a consulting wealth management service provider performs vary depending on the wealth management service agreement itself which may include gathering relevant financial data for a particular project or obtaining and utilizing personal information necessary for identifying possible partnerships, evaluating financial data such as feasibility studies or balance sheets to determine compliance with international or local standards and meeting the client's investment requirements to manage wealth or initiate investment in foreign countries in terms of meeting investment eligibility applications. Additionally, some wealth management consulting agreements may include making recommendations for financial or investment decisions and problem-solving strategies such as investing in stocks, participating in funds, or taking out loans from banks or even benefiting from state aid. In this line, some wealth managers who provide consulting services sometimes offer their clients business networking and financial facilitation and affiliation services that are necessary for attaining or growing wealth such as establishing and maintaining a client's financial and cooperative relationships with banks, funds, and other individuals. Others may include analyzing financial information to determine a client's or prospectus partner's financial status as well as conducting financial investigations to provide general financial analysis[1] or customized financial studies such as analyzing faulty investments, debt restructure/rescheduling, and financial/asset recovery management. Meanwhile, an **executive wealth manager** is a financial information professional who embeds his consulting services within his managerial services which may include depending on the mandate or agency agreement preparing and dispersing financial reports to investors, regulators, and specialized projects' consortia, filling out forms for the purpose of submitting for licensing requirements/requests to local and foreign authorities or investment participation applications within public or private investment entities such as biddings, tenders, and ventures. Additionally, executive wealth managers may also liaise with supervisory authorities[2] as well as external auditors and lawyers of prospectus investment entities that their clients are targeting[3]. In this line, a number of executive managers also offer executive services by investing on behalf of clients upon interpreting financial and regulatory data based on their qualities as funds, stocks, and other investment/financial solutions as viable and profitable investments. Moreover, executive wealth managers also offer business operations' management services such as clients resource monitoring[4], developing clients' business operations teams[5], and coordinating with specialized professional services retained by their clients[6]. These business operations' management services also include asset management[7], opening bank accounts, tax planning, resolving disputes pertaining to taxes/fines, as well as negotiating or concluding take overs, and mergers or acquisitions on behalf of their clients. Brokerage services are also offered by executive wealth managers since they include selling financial instruments on behalf of their client or influencing others to sell to their client or purchase for their client the said instruments. Accordingly, wealth managers' roles in a wealth management agreement will solely depend on the scope of services stated in their service agreements, along with their duties as defined in their authorizing mandate. In order to further

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(1): سماح حسين علي، الالتزام بتقديم المشورة في سوق الأسواق المالية (دراسة مقارنة)، مجلة المحقق الحلي للعلوم القانونية والسياسية، العدد الثالث، السنة الثامنة ، ٢٠١٦، متاح عبر رابط جرى دخوله في ٢٠٢١/٠٤/٢٧ https://bit.ly/3aU0gf2 .

(2) Such as when they are retained by governments/ regulated markets' supervisors to vet market players, rate internal systems and credit, conduct financial studies, and appraise banking/financial products as part of their specialized professional financial services.

(3) Such as the client's lawyers, agents, outsourced specialized financial service professionals such as external or internal auditors and tax planners.

(4) Such as handling and maintaining client account files and financial information data systems via utilizing their client's financial software by either offering to manage the said software or hiring professionals to do so for the account of their client such as servers/data clouds in other jurisdictions to keep their client's data out of reach/breach.

(5) Such as offering training and certification programs for companies' staff in AMLCFT, Related Party Transactions (RTS) and Conflicts of Interests Management, Financial Disclosures, GDPR, financial, regulatory, sustainability, and financial compliance as well as building a client's public relations, investment or strategy, and financial teams.

(6) Such as image consulting, art or collection appraisal services, intellectual property management, and even promotion or advertising consulting services.

(7) Such as managing downsizing, restructure, intellectual property rights management, trademarks, trade secrets, layoffs, change of company forms from LLC to Public Interest Companies, Regular banks to Islamic banks, investment in LLCs, cross-border operations, SPVs, securitization, underwriting, insurance subscription/coverage, actuarial processes, and portfolios as a preliminary step to executing an investment strategy devised by the wealth manager or his client's partners in the case of group companies.

explore how these elements, connect, paragraph two shall explore wealth management service agreements' risks and liabilities to classify these service agreements.

Paragraph Two — Wealth Management Service Agreements:

Essentially, wealth management is constrained by the business definitions of discretionary or non-discretionary mandates as consecrated in existing hard laws. However, wealth management as a service, is solely dependent on the mandate specified in the service agreement which may be expanded, narrowed down, or even revoked by further addenda or separate agreements in the course of the subscribed service. Simply put, wealth management service contracts can be grouped legally into two classes: (a) wealth management contracts based on services offered/operations and (b) wealth management contracts based on the types of relation (agent, broker, or consultant/advisor), decision, and commission. In this sense, under the first classification wealth management service agreements allow their service providers to act as: (**1)** money managers, (2) investment planners, or (3) financial planners to sell wealth management products that are offered by: (a) product vendors, (b) customized traders, and (c) financial planners. Meanwhile, based on the second classification, wealth management service agreements are contracts that engage the services of: (a) financial advisors, (b) independent dually registered advisors, (c) hybrid financial advisors, (d) fee only fiduciaries, and (e) hourly planners to render wealth management services to clients. Thus, because these types of agreements rely on their supplementing addenda, schedules, and exhibits[(1)] to elaborate on products as well as terms of service allowing these templates to create a chasm between wealth management as a business; and law as a guide serving to protect the general public's collective interest. The said chasm manifests in the fact that these agreements often require interpretation services from a financial service provider in the normal course of the service agreement or a judge and even an arbitrator in case of disputes. The said specialized interpretation is also necessary to commensurately construe the type of wealth management agreement based on the wealth manager's role in managing any of the four categories of risks[(2)]. The first category is

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(1) William R. White, International Agreements in the Area of Banking and Finance: Accomplishments Outstanding Issues, a Banks International Settlements' Consultative Guideline, October 1996, available online via URL accessed on January 24, 2021: https://bit.ly/3n750VX; Outsourcing in Financial Services, a Joint Forum Consultative document by the Bank of International Settlements, issued on February 2005, available online via URL accessed January 24, 2021: https://bit.ly/3kVBiQK ; Good Practices for Financial Consumer Protection, Consultative Draft Document of March 2011, The World Bank: Financial and Private Sector Development Vice Presidency FPDFS-Financial Systems Policy Unit, Washington DC, United States of America, available online via URL accessed on January 22, 2021: https://bit.ly/3mXXWe9; and Canadian Guidelines on Financial Service Agreements, a guideline issued by the Treasury Board of Canada Secretariat, available online via URL accessed on January 22, 2021: https://bit.ly/3yL2rL4 .

(2) This section is a result of studying contracts from Saxo Investment Bank, Barclays, Credit Suisse, Morgan Stanley Wealth Management, Bank of America Wealth & Investment Management, J.P. Morgan Private Bank, Goldman Sachs, Charles Schwab, Citi Private Bank, BNP Paribas Wealth Management, Julius Baer. See also: Sample Contractual Clauses for an Asset Management Agreement by the Industry Organization for Asset Management of the VQF Services Standards Association regarding the Practice of Asset Management, published by Verein zur Qualitatssicherung von Finanzdienstleistungen, VQF doc no. 500.04, Version of February 4, 2014, available via URL accessed January 20, 2021: https://bit.ly/3n2ZVh1 ; ICGN Model Contract Terms Between Asset Owners and Managers, a research guide published by International

securities related risks such as call risk, connectible risk, default risk, interest rate risk, management risk, marketability risk, power-purchasing risk, systemic and unsystemic risk, and indirect cost risk(1). The second category is **sovereign related risks** such as capital control on movement of cash, transactions, ownership, and investment in legal entities such as banks, fixed exchange rates, control of foreign currency handling or disbursement. The third category is **financial institution related risks** such as inflation of assets on balance sheets in banks, financial institutions, as well as factoring agencies, mutual and securitization funds; for the purposes of obtaining better credit ratings or recapitalization, decreasing of guarantees that back up assets for traded financial instruments. Finally, the fourth category includes **operational and regulatory risks** such as abuse of mandate/authorization which include: (i) misselling, misconduct, overstepping authorizations, conflict of interests between the operators and the wealth owner or the employee charged with wealth management via the operator; (ii) breach of legal and regulatory requirements including capitalization and licensing requirements, informed financial consent, insider trading, infringement of banking and professional secrecy laws, breach of privacy and proprietary information; (iii) tax evasion, (iv)fraud regarding stating rightful economic right owners, and (v) violation of consumer protection laws; breach of liquidity, interest rate, and loaning requirements. Accordingly, a proper classification of wealth management service agreements becomes crucial for discerning wealth managements' contractual parties' compliance with applicable laws for accountability purposes. In effect, legal practitioners need to understand wealth management agreements' types based on the risks they entail in both their boilerplate and specialized clauses(2) since business products and wealth management service schemes can be confusing hybrids which are grouped into the two categories discussed below.

A- Financial or Asset And Investment Management Consultation Agreements:

Wealth management financial or asset and investment management consultation service agreements, assess a client's needs based on asset information the client provides or gathers financial information a client needs for a financial project which is commonly known as business or financial intelligence services. Under this type of service agreement, the wealth management consultant utilizes his specialization to study and manage financial and market information to devise a financial plan or an investment strategy for investing a client's assets

Corporate Governance Network (ICGN), 2012, available via URL accessed on January 20, 2021:https://bit.ly/3stFJpL; NAPF Guide to Investment Management Agreements, March 2015 guide, a NAPF publication in association with CMS Law. Tax, available via URL accessed on January 19, 2021: https://bit.ly/3kWKd4D .

(1) محمد عبد اللاه حسن، عقد تقديم الاستشارات بشأن تداول الأوراق المالية، دراسة مقارنة مع القوانين الأميركية والفرنسية، الطبعة الأولى، منشأة المعارف بلال حزي وشركاه، الإسكندرية، جمهورية مصر العربية، ٢٠١١، صفحة: ٤٠ – ٥٠.

(2) Refer to Table 1 in the List of Tables under Annex 2 for an inexhaustive list of boilerplate and specialized wealth management clauses, page 237 of this research.

or wealth. He then recommends steps or measures to be taken along with services of other wealth management professionals who can execute the plan for the wealth owner or offers to do the latter in another separate agreement for discretionary or non-discretionary financial or asset and investment management services. If the client chooses to utilize the wealth manager's non-discretionary financial or asset and investment management services, the wealth manager must obtain the wealth owner's consent for implementing the transactions that align with the proposed financial or asset and investment management plan/strategy. Sometimes, the said non-discretionary wealth management service agreement may include an exhibit or a clause that enumerates the transactions or types of investments that the client/wealth owner has approved of and others that require a written consent or confirmation via phone call, email or confirmation from the client's lawyer, operations manager, or chief executive officer if it is a company. The said exhibit or clause is called a mandate or authorization scope of services execution clause usually explicitly mentions that the service is a non-discretionary wealth management for assets/investments performed as a result of a financial or asset and investment management consultation on a specific date. Also, each transaction requires the client's consent such that latency in providing consent exempts the wealth advisor according to the contract from any repercussions. Additionally, the services will be executed in accordance with the financial or investment strategy or plan that the client had agreed to. To this end, the contract must also enumerate the assets involved, the forms and scopes of consent and disclosure, as well as the contact person required per authorization which will depend on the value of each transaction which can range from the client to his lawyer, CFO, or CEO in the case of a company as a client. Furthermore, the contract must specify that the transactions will be construed as conducted by and for the wealth owner and on his own risk and liability. Lastly, the contract must specify a timetable for managing the assets, the fees, expenses, profits, and risks involved.

B- Discretionary or Non-Discretionary Financial or Asset and Investment Management Service Agreements:

Discretionary financial or asset and investment management wealth management contracts are agreements that entitle a financial advisor or wealth manager to act as the client's agent in managing and transacting with a client's assets/ wealth. These agreements could also subdivide into active or passive management if they involve managing currency trading portfolios or trading via online platforms. An active management means that the wealth manager could be either continuously trading or conducts every transaction on a day to day or hourly basis depending on the scheme that specifies how transactions are managed in the schedules attached to the authorization or scope of engagement clause. A passive management could mean that the wealth advisor will create a trading model that will operate the trading transactions or investment transactions within a given timeframe. Entities that offer discretionary wealth management services could be banks' or financial institutions' employees acting on a client's behalf or a bank or financial institution as a wealth manager directly hired by the client. Discretionary or non-discretionary financial or asset and investment management service agreements are comprised of three parts: (i) the financial or asset and investment evaluation consultation, (ii) the financial or investment strategy or plan with recommended steps that the client agrees with, and (iii) the mandate exhibit or discretion scope of authorization clause. Thus, a wealth manager's mandate exhibit or authorization scope of engagement clause must specify the assets which are being managed under the financial/ investment plan/strategy and the steps by which the said assets will be invested or managed, the timetable for the said management, the expected profits, risk appetite, the commissions or fees for such management, the methods of recording the transactions and data(1) , as well as the full identity and address of the wealth owner plus the manager. Accordingly, the said wealth management services' classification stems from wealth management's operational forms that vary greatly depending on the nature of the wealth management service provider or operator whether they be natural persons or legal entities such as regular or boutique firms and regular or international banks as part of their private banking services(2). For example, if the provider is a bank or financial institution, the said operator will have to abide with banking and financial institutions requirements regarding transactions, disclosures, risk taking policies, capital adequacies, corporate governance requirements, as well as regulations of supervisory bodies on types of contracts and services they can engage in. Meanwhile solo firms will abide with corporate governance requirements(3) from obtaining proper authorizations and consents, to furnishing proper disclosure for a duly obtained informed financial consent and abide with their direct regulators whether they be capital market authorities or investment company regulators. In this sense, both discretionary and non-discretionary wealth management service agreements will have slight differences regarding scope of authorizations and types of products they may

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(1) Extracted based on terms from Barclays Private Clients Non-Discretionary Investment Management Agreement, available online via URL accessed January 19, 2021: https://bit.ly/2KTul4N in consistency with Discretionary and Non-Discretionary PM, an article published via Finance Management on January 19, 2021, available online via URL accessed January 19, 2021: https://bit.ly/36iEorI.

(2) Dimitris N. Chorafas, Wealth Management, Private Banking, Investment Decisions, and Structured Finance, first edition, Butterworth- Heinemann publication by Elsevier Linacre House, Jordan Hill, Oxford, United Kingdom, 2006, pages 24 to 34.

(3) Björn Nilsson, Robert Schiff, and Dan Williams, Perspectives on conduct Risk in Wealth Management, Article published on May 31, 2018 for McKinsey and Company, available online via URL accessed January 19, 2021: https://mck.co/2Nw8e5l .

provide[1]. In a nutshell, under a discretionary wealth management contract, a wealth owner gives his service provider permissions necessary for managing his assets/wealth which is not the case in a non-discretionary service wherein the client hires a wealth manager for certain services wherein only the client decides the wealth manager's authorization premises for example to invest on his behalf. Hence, in discretionary contracted wealth management services, the said service provider is also providing financial service advice embedded in his decision of investing in product X of stock Y and bond X. However, in non-discretionary wealth management, a service provider will provide the client with financial advice or information regarding product X of stock Y and bond X but must wait for the client's authorization to transact on his behalf. If the client consents and the agreement includes a transaction/implementation services part, then the said wealth manager may proceed with investing in these financial instruments. Hence, non-discretionary wealth managers are liable only when mislead people, missell services, or overstep or abuse their client's consent or confidence. Accordingly, they are liable when their services prevent a client from making an informed financial decision. Hence if a client is misled by the information a wealth consultant provides about a certain investment meeting the client's appetite as an investor; the said consultant is liable. Accordingly, when a client signs up for a wealth management service, wealth managers are required to create a portfolio of the client as an investor which must include a client's acceptable levels of risk appetite, and his/her profit/turnover expectations[2]. In other words, in a non-discretionary contract, the risk and liability for decision making is on the client with the wealth manager being held to a standard duty of care as a general professional. Meanwhile, in a discretionary wealth management services agreement, a wealth manager is held to a higher standard as the client is entrusting to make financial assessments and decide on his behalf which means the client is delegating and authorizing him to act and transact on his behalf.

Liability wise, wealth managers are held accountable based on the agency theory as a specialized agent who has a vested interest in earning fees for managing assets or planning asset management and investment on the client's behalf. The difference in this respect on the extents of the application of the agency for fee theory on wealth managers will differ depending

(1) Wealth Management -Risk and Regulation, the Terrible Twins, an Investment Solutions Consultants Whitepaper, published by ISCLIP publication for Autumn 2011, available online via URL accessed January 19, 2021: https://bit.ly/3n27kxa and Scot Jill, Considerations for Discretionary vs Non-Discretionary Investment Management, article published on March 1, 2017 for XY Planner Network under RIA Compliance, available online via URL accessed January 19, 2021: https://bit.ly/2Z6W85o .

(2) Richard P. Projeck, Wealth: The Ultra-High Net Worth Guide to Growing and Protecting Assets, first edition, a Palgrave MacMillan Publication by Springer Nature, Cham, Switzerland, 2019, pages 113 to 129.

on the type of operator the wealth management service provider is(1). For example, if it is a bank, the bank is essentially the wealth manager and the financial advisor dealing with the client is an employee who works for the bank ergo paid by the bank. Hence should disputes arise as a result of abuse or exceeding authorization or even fraudulent application of the wealth services agreement, the bank will be responsible for the actions of its employee if the said actions fall under the scope of authorizations the employee was hired to perform on behalf of the bank as an agent for the bank(2). However, if the employee's actions do not fall under the financial advisor's job description at the bank, the employee will be held liable towards the bank with the bank still liable before the client since the bank is responsible for the employee's action by law as part of the operational risks that banks incur when transacting business(3). Meanwhile, if the financial advisor is a solo practitioner, then the wealth management services agreement will be point of reference for delimiting parameters of liability arising from the agency fee-based role the manager assumed. Thus, all damages will be assessed on a contractual basis except for those damages arising from fraud, deceit, and other grounds for non-contractual breach which will have a tort-based ground for its respective damages. As for firms such as limited partnership or limited liability or even financial institutions in the form of joint stock companies, the agency theory will also apply such that the wealth management services' contract's obligations will be the basis for assessing damages and calculating redress unless there is fraud or deceit or other contractual grounds for breach. Should a financial advisor acting as an agent i.e., employee of the firm or company be the one to cause the breach or violation of the wealth management services' agreement, then if such actions are within the scope of his job description he is an agent. However, if the said actions fall outside his job description, then the employee can be held liable along with the firm since it is more solid financially for redress calculations and it is liable by law under the theory of positive liability for risks during operating business towards the client(4). This concludes chapter one, and we proceed to chapter two to examine Effective Wealth Management Corporate Governance a Macro-Micro Reality or Balance.

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(1) Malik Hafeez, Corporate Governance, and Institutional Investment: Rules, Regulations and Best Practices to Monitor Corporate Affairs and Balance the Interests of Managers and Shareholders, first edition, 2015, Universal Publishers Boca Raton, Florida, United States of America, page 111.

(2) John Donnellan, Wanda Rutledge, Agency Theory in Banking: Lessons from the 2007-2010 Financial Crisis, research paper published for International Journal of Business and Applied Social Science, Volume 2, Issue No 3, March 2016, available online via URL accessed on January 19, 2021: https://bit.ly/3BAmTQK .

(3) Based on the Lebanese Code of Obligations and Contract's(LOC) Articles 122, 125, 127, and 128 . See also: William Davies, Corporate Governance Beyond Neoliberalism: Agency, Democracy, And Co-Operation, from the book: The Oxford Handbook of Mutual, Co-Operative, and Co-Owned Business, edited by Jonathan Michie, Joseph R. and Carlo Borzaga, Oxford University Press, New York, United States of America, March 30, 2017, page 12.

(4) Flávia Zóboli Dalmácio and Valcemiro Nossa, Agency Theory Applied to the Investment Funds, research paper published in Brazilian Business Review, Volume 1, Issue No 1, year 2004, pages 31-44, available via URL accessed January 19, 2021: https://bit.ly/3BFiyvD .

Chapter Two – Effective Wealth Management Corporate Governance a Macro-Micro Reality or Balance

"*Efficiency is doing things right; effectiveness is doing the right things*" ***Peter. F. Drucker***

National legal systems' and financial regulation frameworks determine how wealth management services' legal entities and natural persons are held accountable as decision makers and managers. However, due to neoliberal governance regimes amidst globalized financial markets, almost all financial transactions are cross-border operations. To this end, banking and financial sectors need proactive supervisors and efficient regulators competent in balancing neoliberal regimes with efficiently disciplined markets' requirements to command banking and financial operations' regulatory chains in a way that sets these sectors' tones at the top. Still, without effective and specialized legal frameworks to draw their power from, regulators cannot gauge financial and economic performance, control damage, manage financial crisis, or even coordinate with the government on fiscal and economic policies to foster economic sustainability(1). In this line, under Lebanese law, banking and financial markets' regulators influence the way banks as wealth managers exercise corporate governance in their operations. How does that reflect on Lebanon's ability to allocate liability for both regulator and market players for distorting available liquidity, financial security, or market discipline? This chapter answers this question by exploring the roles of Lebanese regulators in applying relevant Lebanese laws and regulations amidst the current financial crisis with respect to supervising banks and securities' business operations vis a vis Baseline supervisory and corporate governance requirements for entities; then proceeds to compare Lebanon's approach with the European Union. By comparing both legal and financial supervision systems this chapter serves to show the importance of efficient supervision for protecting consumers and investors in financial services' sectors as well as the value of financial information management for market players' financial transparency which are also necessary for efficient market dynamics and financial stability. Accordingly, this chapter respectively subdivides into two sections: **Basel's effective banking supervision a means for effective corporate governance** and the **Lebanese Central Bank's corporate governance framework, a vice for banks**.

(1) Emilios Avgouleas, Governance of Global Financial Markets: The Law, the Economics, the Politics (International Corporate Law and Financial market Regulation), first edition, Cambridge University Press, New York, United States of America, 2012, pages: 246-256 ; Scot Ellis, The Role of Systemic Risk, Regulation, and Efficiency within the Banking Competition and Financial Stability Relationship, first edition, dissertation from Northumbria University Newcastle's School of Accounting and Financial Management, published by ProQuest LLC, New York, United States of America, 2020, pages 110 -162; and Imad Moosa, Good Regulation, Bad Regulation: The Anatomy of Financial Regulation, Palgrave MacMillan Studies in Banking and Financial Institutions Series, first edition, Palgrave Macmillan, New York, United States of America, 2015 pages: 16-56.

Section One — Basel's Effective Banking Supervision a Means for Effective Corporate Governance

In Lebanon, BDL is banks' supervisory authority regarding their banking and wealth management operations. Meanwhile, in securities business, under Law No. 161/2016 the CMA is investment banks' regulator for business securities' financial and wealth management operations in the Lebanese capital market. Hence, this section respectively subdivides in two paragraphs: **Basel's Banking Supervision Principles in Lebanon** in paragraph one and **Basel's Banking Supervision Principles** in the **European Union** a **macro-micro balance** in paragraph two to compare legal and financial systems' frameworks. This preliminary comparison is essential for section two's evaluative function.

Paragraph One — Basel's Banking Supervision Principles in Lebanon

This paragraph examines BDL's application of BCP's[1] twenty-nine principles in its supervision of Lebanese banks and regulating the Lebanese banking sector by laying out Basel's principles against BDL's measures of supervision coined with an analytical approach based on the Lebanese legal framework for banking regulation and banking operations legal requirements as follows:

Principle 1 – An effective banking supervision will have a clear set of responsibilities and objectives for every involved authority in supervising banks and their respective banking group. Additionally, a commensurate legal framework for banking supervision is essential to legally empower the supervisory authority to authorize banks, exercise its supervision, administer compliance with laws and provide judicious corrective measures for safety and soundness.

As an organizational structural law and Lebanon's legal framework for banking regulation and operation; the Code of Money and Credit (CMC[2]) has many drawbacks despite enumerating the Lebanese Central Bank's (BDL) functions including those of its committees' operating inside or outside BDL. For example, it enumerates these committees' tasks according to BDL's organization without operational mechanisms that break down how these supervisory bodies set their supervisory priorities and objectives, delimit their tasks, or coordinate their functions with respect to the banks and entities they regulate. In effect, banking, and financial regulation in Lebanon is a banking monologue wherein the Lebanese supervisor and regulator applies a one-track supervision with a reactive approach rather than a proactive one. Initially,

(1) Bank of International Settlements, BCP: Core Principles for Effective Banking Supervision, guideline, issued on December 15, 2019, BIS, Basel, Switzerland, available via URL accessed on February 19, 2021: https://bit.ly/38H9sCm .

(2) The CMC was promulgated as a Law implemented via Decree No. 13513/1963 which was issued on August 1, 1963, and published in the Official Lebanese Gazette, Issue No. 64 on August 12, 1963. It was amended and supplemented by Law No 28/67 which was also amended in 1985 and 1987.

this is because the CMC lacks a distinction between reporting lines with the governor and BDL’s committees. Essentially, this is because BDL’s subsidiary committees’ independence falls within the governor’s discretionary powers which makes reporting structural not functional or operational. For example, the Banking Control Commission (BCCL) which is supposed to be independent according to Article 8 of Law No. 28/76 enumerates the BCCL’s members, chair, meetings, and tasks without elaborating on how reporting lines work besides stating that the BCCL’s reports on control and supervision are submitted to the governor(1). This also indicates a unidirectional non-operational reporting mechanism. Furthermore, this lack of operational reporting lines renders supervisory tasks within BDL’s subsidiary committees unclear operations’ wise and unaligned with function-based objectives which explains the absence of performance appraisal and grounds for accountability regulations in BDL or its subsidiary committees for the purposes of supervisory operations’ legal compliance. These drawbacks are the result of BDL’s lack of internal regulations on how it operates as well as principles of supervisory conduct(2) which make key regulatory functions solely based on BDL’s governor’s internal discretionary organization powers. For example, the CMC’s Article 26 provides the governor with the vastest authority to manage the Central Bank and conduct its affairs via: (1) charging the governor with applying the CMC and the decisions of the Central Banking Council, (2) classifying under his organizational discretionary powers matters of managing the Central Bank’s operations such as determining BDL’s units, departments, and committees’ tasks, as well as hiring/laying off, or professionally training BDL’s employees (all ranks), (3) contracting with specialists or researchers, and (4) duly authorizing him as the Central Bank’s legal representative to sign deeds, contracts, treaties, raise cases, taking all executive and precautionary measures including real estate mortgages. Basically, under CMC’s Article 26, Lebanon lacks commensurate banking supervision as it dubs the governor an omnipotent public figure with an absolute discretionary authority(3) that created BDL’s two-tiered circular-based regulation system(4) without which Lebanon has no banking and financial regulations or

(1) مالك عبلا، قوانين المصارف دراسة حول المصرف المركزي والمصارف التجارية المتخصصة، مرجع سابق، أنظر أعلاه، ، صفحة: ٤٧، ٤٩، و ٥٢.

(2) Recently, a research colleague who was completing his thesis on the nature of BDL’s internal control systems mentioned that Decision No. 117 of 1960 organizes this matter. It is worth mentioning that the said decision remains unpublished and kept from the public eye. Like him, the researcher, strived to obtain a copy of the decision but as usual the BDL staff laughed away the researcher’s request by remarking that the decision was ancient and irrelevant to BDL’s current mode of operations.

(3) This is clear from the governor’s throughout his circulars, decisions, and memos both basic and intermediate ones which usually begin with the phrase *“based on Article 26 of the CMC and section 5 of Article 70 which states that BDL exercises the authorities stipulated in CMC and the first line of Article 174 which stipulates that BDL is authorized to give recommendations and utilize means to sustain a sound banking business*”.

(4) The circular system is comprised of: (a) the governor’s circulars *(basic and intermediate)* decisions, and memos and (b) BCCL’s circulars which serve as the executive ordinance for the governor’s circulars. Hence, both BDL and BCCL circulars, decisions, and memos are subdivided into basic and intermediate whilst not being compiled in a codex that is organized by any manner since they are updated or repealed based on market volatility. This burdens banks and regulated entities who wish to comply with Lebanese banking regulations since Lebanese laws are structural not operational laws. This requires banks to manually search for the said circulars, decisions and memos given the fact that BDL and BCCL websites do not have an optimized search engine. The other common alternative to be compliant is to call or email BDL and

supervision systems [1]. Additionally, beyond what is stated in Article 127, the CMC lacks concepts on fit and proper management except what BDL's circulars define as fit and proper. As for transparency in supervising banks, the CMC does not require BDL to publish Lebanese banks' data on capital adequacy, risk exposures, compliance with corporate governance requirements especially regarding assessments of banks' management systems for single- and two-tier models, as well as a distinction between the roles of internal and external audit vis a vis the roles allocated to internal audit board committee vs. internal audit department/unit.

Meanwhile, judicious corrective measures are inexistent in Lebanon's supervisory and regulatory framework **first** because the CMC solely relies on administrative disciplinary measures[2]. **Second**, because Lebanon's administrative disciplinary measures classify acts of breach only within the categories of misdemeanor and infractions with petty fines. **Third,** because these measures only target specific people[3]; they are highly unlikely to deter breach of laws let alone deter non-compliance, correct discrepancies, remedy, or prevent breaches. Of course, some might argue regarding the existence of criminal law articles, but they are left for penal courts not the regulator. In this line, both the Specialized Banks Bankruptcy Court which was defined in Article 2 Law No. 110/91 dated 07/11/1991 and Banks Disputes Specialized Court in Article 15 of the same law (whose members remain unappointed[4]) highly depend on the governor's powers in referring banks to these courts who in turn rely on the governor's opinion which is mandatory for these courts' measures as a means to bail banks in without distinguishing between a bank in genuine financial difficulty and a bank suffering from negligent/incompetent management[5]. Meanwhile, lack of grounds for accountability or methods to monitor BDL's governorship and committees' performance is a glaring drawback within the CMC. Aside from proforma grounds for relieving the governor or vice governors

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BCCL for compliance issues and inquiries. The system caused a confusion on the onset of implementing Law No.161/2011 regarding securities business regarding the scope of CMC vis a vis Law No. 161/2011, how to be compliant, and which regulation/law supersedes or complements in its texts the other during the period of 2011-2016.

(1) Because the CMC neither has stipulations on banking operations nor stipulations on obligations or conduct requirements for issuing and providing banking products, services, or liability for transparency and management.

(2)Administrative disciplinary measures are stipulated under Part 3 Administrative Sanctions (Articles 208 – 210) despite having criminal sanctions (Articles 192- 206) under part 1 of the CMC under chapter four, as well as latency fines in part two (Article 207); since chapter four's criminal sanctions first require a penal court to issue a final judgment in order to enforce the sanctions especially those under chapter 4 of part 1 since they are punishments within the Lebanese penal code such as Articles 351, 355 and 356 on bribery, 655 on fraud, and 319 on smearing the state's financial and credit worthiness reputation.

(3) Namely external auditors, board of directors (BOD), loaning banks, facility applicants who mislead with information, banks who breach CMC or people who practice banking without license.

(4) مالك عبلا، قوانين المصارف دراسة حول المصرف المركزي والمصارف التجارية المتخصصة، مرجع سابق، أنظر أعلاه، صفحة: ١٣٧–١٦٣.

(5) This is why on April 4, 2013, current Lebanese President Michel Oun submitted a law (was never passed) to formulate a specialized court for financial crimes that cause financial harm to the state, embezzlement of public funds, abuse of power, illicit enrichment, and crimes related to utilization of influence. See: Michel Oun, Proposal for Issuing Expedited Law on Establishing Specialized Court for Financial Crime, April 4, 2013, available on TransparencyLebanon.org via URL accessed on March 21, 2021: https://bit.ly/3J5ce4t .

from their posts, the CMC is silent regarding performance evaluation and accountability of these public servants. For example, Article 19 stipulates that unless the governor voluntarily resigns, the former cannot be relieved from his post except on the grounds of: (a) a duly proven health related incapacity or for breach in performing his duties (without defining what constitutes a breach to the governor's duty to perform); or (b) breaching Article 20 of the CMC regarding holding a parliamentary position, any other public office, or a position in the private sector whatever the activity while being governor of BDL. Additionally, Articles 19 and 20 have two major issues. **Firstly**, Article 19 refers to section 3 of chapter 1 of the Lebanese Penal Code (LPC[(1)]) but neither mentions the governor, vice governors or any of BDL's committees, nor regarding what is considered a punishable violation. Verily, the text neither stipulates on instances wherein these public servants could be held accountable nor prescribes methods of prosecution or penalizing them. **Secondly**, Article 6 of Law No. 161/2011 of August 17, 2011, clearly contravenes Article 20 of CMC as it states in its first line that the CMA's Board shall be comprised of seven members with the governor of the Central Bank of Lebanon as chair or whoever replaces him legally. Presently, BDL's governor is the CMA's board chairman which should have been grounds for his removal as BDL's governor since his position as CMA's chairman remains a public office. Some might explain it as though Law No. 161/2011 tacitly amended or repealed Article 20 of the CMC partially. But from the practices of penal judges in office, Law No. 318/2001 on Combating Money Laundry and Financing Terrorism remained applicable in articles that do not contravene with Law No. 44/2015 on the same issues since the new law did not explicitly and specifically state that it has repealed its predecessor i.e., Law No. 318/2001. **Thirdly**, upon reading Article 3 with Article 4 of Law No. 161/2011, it is clear in Article 3's last paragraph that the CMA coordinates and cooperates with BDL while Article 4 clearly states that the CMA is an independent legal person of the public sector and enjoys administrative as well as financial independence such that it is not subject to the rules of management and operations' oversight that apply to the rest of the public sector's institutions or utilities (which is the same text used in Article 13 of the CMC). Ironically, Article 40 of CMC prohibits members of the Banking Advisory Committee which has no core regulatory functions compared to the BCCL, Governorship, or Higher Banking Committee; from holding public office such as parliament or other public service positions. Meanwhile, Law No. 161/2011's Article 7(1)'s last paragraph dictates that the CMA's chairman and all CMA board members must act in their personal capacities not as per the capacities they were appointed by but also

(1) Which discusses the general theory of crime penalization from elements of crime and classes of crimes to multiple offenses for one act, to justifiable causes.

not as representatives of the organizations that appointed them. If anything, we see this section as a tacit gap filling text used to circumvent the CMC in a way that can be interpreted to create an excuse for the character of the chairman as in BDL's governor which is impossible to apply since in both positions the governor remains one person holding two public offices as a public employee acting as BDL's governor as well as the CMA's chair. Additionally, should the governor or CMA's chairman be held liable for negligence of breach, Lebanon adopts the personal theory[(1)] in matters of punishments involving personal incarceration and indivisible patrimony[(2)] in matters of compensatory punishments/damages. **Fourthly and finally,** Law No. 161/2011 does not explicitly mention CMC's Article 20 being repealed instead states in Article 57's first paragraph that all laws that contravene with Law No. 161/2011 which do not fit in context with its stipulations do not apply and explicitly repeals Law 520/1996 of 06/06/1996 on Fiduciary Contracts and Developing Financial Markets. Reading these laws side by side verily reflects a massive concentration of authority via supervisory discretion whilst breaching Article 20 of the CMC.

Principle 2 – The Banking Supervisor authority possesses independence in operations, transparency processes, implementing sound governance, budgetary processes that do not affect autonomy and commensurate resources allocation. It is also liable for its duties and utilization of resources with adequate legal protection for the supervisor within the banking supervision's legal framework.

In applying this principle, BDL has several issues due to the CMC's Article 13's stipulations on BDL's legal persona. Under this article, as a public legal person with monetary independence, BDL is also considered a commercial person in its relations with others whilst conducting its operations and organizing its accounts according to commercial and banking rules as well as commercial and banking customs such that Beirut's courts have exclusive competence to adjudicate disputes between BDL and others. In fact, the Lebanese State's Council ruled that despite Article 13's designation of BDL as a public legal person as well as a commercial and industrial non administrative institution; BDL has a special legal nature[(3)] since it is excluded from submitting to the stipulations of Article 40[(4)] of Executive Ordinance No.

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(1) سمير عالية، شرح قانون العقوبات القسم العام (معالمه – نطاق تطبيقه – الجريمة – المسؤولية – الجزاء) دراسة مقارنة، طبعة منقحة ومعدلة حديثاً، دار مجد المؤسسة الجامعية للدراسات والنشر والتوزيع، بيروت، لبنان، ٢٠٠٢، صفحة: ٢٥٠ - ٢٥١.

(2) These issues are further explored respectively under Part II's Chapter 1's Section 1's Paragraph 1's part A and Chapter 2's Section 1's Paragraph 1's part B, and Section 2's Paragraph 1's part A.

(3) The Lebanese State's Council Decision No 195/95-96, Nasr African Lebanese Bank vs Banque du Liban, Presiding Judge Iskandar Fayyad and Advisors Khalil Abu Rjaili and Nizar Alamin, pages 2-3, extracted from the Lebanese University's Center for Legal Information via URL accessed on February 17, 2021: https://bit.ly/39z6alr.

(4) The said Article states that BDL, the National Social Security, The State's Cooperative, the National Council for Scientific Research, the Large Projects' Executive Council of Beirut, The Lebanese University, and the Educational Center for Research and Developments shall be subject to their promulgating laws as well as their subsequent implementation regulations.

هيام مروة، القانون الإداري الخاص: المرافق العامة الكبرى وطرق إدارتها- الاستملاك – الأشغال العامة – التنظيم المدني، الطبعة الأولى، دار مجد المؤسسة الجامعية للدراسات والنشر والتوزيع، بيروت، لبنان، ٢٠٠٣، صفحة ٦٢.

72/4517. Thus, the Lebanese State Council's ruling classifies BDL's legal persona in a way that prevents decision-making governance for supervisory and internal operations on BDL's public (Articles 84-97 CMC) and private sector (Articles 98-109 CMC) operations. In effect, BDL's legal persona causes many issues when it comes to applying this principle. **First,** BDL's special legal persona removes any checks and balances which prevent balancing operation and independence with effective governmental oversight for decision-making governance. For example, it's been almost twenty years since we've heard anything regarding the Government's Commissariat which is surprising considering that according to Article 41 of the CMC it is chaired by an employee appointed with the title of general director to act as liaison between the Lebanese government and BDL for operational oversight purposes(1). Ironically, what Article 41 of the CMC provides is negated in Article 44's last line as well as Articles 11 and 13 of Decree No. 16400/1964 as amended by Decree No. 17058/1964(2) which respectively provide that the governmental commissioner may neither intervene in matters regarding BDL's operational organization nor have access to information that are deemed confidential by law i.e., the LBS. Also, under Article 70, BDL has tasks whose objectives clearly give BDL's actions a public authority's characteristic which further blurs accountability's lines when BDL is acting: (1) as a public authority entrusted to issue currency and stabilize the banking market, (2) as a liaison for the government's financial matters, and (3) as a public utility whose role is to supervise banks. Thus, if we are to go through an audit and accounting mindset, all of BDL's actions are related party(3) transactions since BDL is a party to all three transactions' classifications with the leverage of its special legal persona. This complicates things for banks in terms of regulating banking operations with BDL as well as the banking sector and for foreign regulators regarding crossborder operations as BDL readily becomes a related party risk that must be disclosed, measured, and managed. Furthermore, conflicts of interest exist yet remain undefined due to the multiple capacities in which BDL acts and deals which also explains the accusations of corruption amidst the glaring conflict of interest from a related party regulating a transaction that is under investigation and by that we mean the odious debts which triggered the financial crisis(4). In fact, conflict of interest for regulators is only indirectly regulated and

(1) It employs 13 staff members who serve in its commission council, department of monitor and audit, department of research and banking; considering that each department is chaired by a chief accountant.

(2) See: Decree No. 16400 of May 22, 1964, on The Organization of the Government's Commissariat within Central Bank of Lebanon; published in the Lebanese Official Gazette, Issue No. 44, on June 1, 1964, pages: 1809 – 1811; as amended by Decree No. 17058 of August 7, 1964, on the General Structuring and Management of the State's Accounts and the Organization of the Department of Public Accounts, published in the Lebanese Official Gazette, Issue No. 65, on August 7, 1964, pages: 2370 -2374.

(3) Refer to Explanatory Note No. 2 in the List of Explanatory Notes under Annex 3 to explore related party risk and disclosure in Lebanon a case study of a crisis in public and private international audit and accounting standards, page 346 of this research.

(4) See Susan Rose Ackerman, Corruption and Conflicts of Interest, Elisa D'alterio, Global Integrity': National Administrations Versus Global Regimes, Hubert Delzangles, Regulatory Authorities and Conflicts of Interest, Bernardo Giorgio Mattarella, The Conflicts of Interests of Public Officers: Rules, Checks, and Penalties, Richard E.

specifically limited within Article 8(4) of Law No. 161/2011 in the form of stipulations on CMA's board members' prohibited actions concerning direct or indirect dispositions and decision-making activities. For instance, CMA board members are prohibited to opine or preside cases that they held interests in or had interests in within two years prior period or cases pertaining to legal entities they worked for or held positions two years prior to the case. It also applies to CMA board members opining on a case the said member were representatives or agents for either of the concerned disputants as well as a case wherein the said members were previously hired by disputing parties either as consultants or arbitrators.

The **second** issue caused by BDL's special legal persona is that it is a vice for transparency and accountability processes because under Article 13 of CMC BDL is neither: (1) subject to rules that apply on the management and operation of public sector institutions(1) nor (2) the LCC's requirements when BDL is dealing as a merchant with banks regarding registering in the commercial register for providing the public access to record, decisions, and operations for accountability purposes. Additionally, if one reviews BDL's structure and organizational charts one notices that it neither has an internal audit department nor internal operations' organizational charts as BDL's website only shows organizational charts for departments that handle supervisory functions. In this sense, according to point 1, BDL's special legal persona under BDL's currently applicable accounting standards make it impossible to segregate BDL's transactions for financing the government from those that are conducted with the banks themselves for BDL's commercial account since Lebanese banks also financed public debt and expenditure through treasury bonds and financial engineering processes. Accountability wise, one wonders how can someone initially regulate a transaction at arm's length and eventually calculate compensation for losses based on contribution if it is a party that acts in three different legal capacities all the time? Essentially, governing private wealth managed by banks with BDL as their regulator, and public wealth managed by BDL as the state's public banker entails BDL being considered a major related party risk in both operations. This renders governing wealth in both public and private sectors under BDL impossible since Lebanese laws do not address related party risks and because even presently engaged forensic auditors under the current Lebanese accounting laws cannot draw the line between the capacities BDL assumes to: (i) resolve issues of conflicts of interest, (ii) protect

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Messick, Policy Considerations When Drafting Conflict of Interest Legislation, Edoardo Chiti, Mismanagement by European Agencies: Concerns, Institutional Responses and Lessons, and Patrycja Szarek-Manson, OLAF; The Anti-Corruption Policy Within the European Union, from the book: Corruption and Conflicts of Interest, first edition, Edward Elgar Publishing, Massachusetts, United States of America, 2014, pages in respective order: 3 -11, 16 -29, 30 - 38, 113 - 123, 198 - 214, 253-271, and 288-302.

(1) Namely Executive Legislations numbers: 114 (Civil Service Committee), 115 (Central Inspection Committee), and 117 (Public Accounting Rules).

the interests of stakeholders especially the depositors, and (iii) establish grounds for accountability and performance assessment[1]. Also, point 2 further solidifies BDL as a systematic risk for both the Lebanese banks and banking sector since BDL's special natured legal persona effectively obstructs efficient transparency and accountability mechanisms. These discrepancies matter since Lebanon has signed the United Nations 2003 convention on combating corruption and adopted anti-corruption laws among which is Law No. 33/16/10/2008[2] which was followed by Laws: Law No. 175 on Combating Corruption in the Public Sector and the Establishment of National Anti-Corruption Committee, Law No. 83 on the Protection of Corruption Whistle-blowers[3], and Law No. 28/2017 on the Right to Access to Information[4] which mandates disclosures be made via a public institution's management under Articles 6-12. However, all these laws lack implementation since the members of the National Anti-Corruption Committee have yet to be appointed and since Law No. 28/2017 only covers disclosures of decisions, circulars, and memos not on methods of operation internally or how a special natured legal person like BDL operates.

Another issue that obstructs the application of this principle lies in the fact that BDL as a regulator suffers from the dependence and duplication of persons and committees. As a regulator BDL is comprised of six main committees: the Governorship (Governor and his four vice governors), the Central Banking Council, the Higher Banking Council, the Banking Control Commission (BCCL), the Government's Commissariat and the Banking Advisory Committee. Based on these bodies' CMC allocated tasks[5], there are only three core committees or bodies that shape and regulate banks in their operations and governance: the Governorship, the Central Banking Council and the BCCL. In line with what was discussed under principle 1 above, the CMC does not clearly show independence of these bodies, but it does show duplication and dependence[6] within the committees and commissions of the supervisory authority. We begin with the BCCL which is linked to the Governor directly first according to BDL's General Organization Chart (figure 4), then to the Central Banking Committee, then throughout its

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(1) Refer to Explanatory Note No.3 in the List of Explanatory Notes under Annex 3 page 352 of this research to link accountability governance in BDL with IMF's 2016 - 2017 report.

(2) Published in the Lebanese Official Gazette Issue No 44 on 23/10/2008, page 4389- 4344

(3) Published in the Lebanese Official Gazette Issue No. 20 on 14/05/2020, pages 1203-1211 and Issue No 45 on 18/01/2018, pages 4575-4580.

(4) Published in Lebanese Official Gazette Issue No. 8 on 16/02/2017, page 758-762

(5) Central Banking Council Article 28 of CMC, there were 3 Vice Governor under Article17 of CMC until Article 1 of Law 4/85 added a fourth, Article 18 of CMC regarding the Governor. As for BCCL it was promulgated via Articles 8 and 9 of Law 28/67 as amended via Parliamentary Executive Ordinance 43 of 1967, Article 2 of Law No. 4/85 of 01/04/1985, and Article 9 of Law No. 42/87 of 21/11/1987; See also:

مالك عبلا، قوانين المصارف دراسة حول المصرف المركزي، مرجع سابق، أنظر أعلاه، صفحة : ٣٧، ٤٢ و ٤٩.

(6) To highlight the areas of duplication and dependence, we refer the reader to Annex 2 of this research for each point examined to illustrate in several diagrams based on the CMC's stipulations and the organizational charts published on BDL's website, pages 317-320 of this research. Figure legends are indicated at the bottom of each figure.

departments by function, sector, or product under a respective vice governor as per BDL's detailed governorship organization chart (figure 5). Additionally, as per BDL's organization chart, BCCL is linked to the Governorship Committee regarding onsite matters via coordination with the Higher Banking Commission (figure 6). This is part of BDL's governor's organizational and discretionary authority under CMC Articles 26. According to BDL's detailed organizational chart of its Governorship (figure 5), the governor is on top of this committee and the Central Banking Council, with the governor acting as head of the council and each vice governor holding specific tasks as they are also members of the Central Council by virtue of the CMC's article 28. Meanwhile according to Article 8 of Law 28/67 the CMC's supplementing law, the BCCL is an independent body but also since CMC's Article 26 stipulates on the governor's vast authority and discretion, the governor is able through paragraph 3 of the said article to embed each of his governors since he possesses the organizational authority in BDL for tasks handled via the various departments of the BCCL since it is a division within BDL. In order to illustrate our take, each vice governor (figure 8) shows up in the reporting lines within BCCL's operations by function or sector and product as per the functions that show up on BCCL's website with a corresponding color that ties the BCCL departments with their respective overarching vice governor. For instance, risk assessment, regulation, macro-prudential, large exposures, and consumer protection are under the second vice governor in orange. Information technology, Islamic Banking, real estate, and subsidized loans are under the first vice governor in violet. Meanwhile, information technology is under the third vice governor in green. Lastly, money exchange is under the Central Bank Council in black. This is why we put the BCCL unit in the diagram in the maroon color that designates the governor and Governorship. However, If we examine the General Regulator's Organization Chart (figure 4) that is published on BDL's website, one sees how the BCCL, the Higher Banking Commission, the Special Investigation Commission (SIC), and the CMA[1] have a direct line to the governor only. In fact, according to Article 148 of CMC, it is stated that supervision of banks shall be tasked to the Central Bank's department that is totally separate and independent from its other BDL departments and directly tied to the governor. Clearly, Article 148's definition of independence is that of other departments in BDL not the governor. When read conjointly, Articles 148 and 26 of CMC with Article 8 of Law No. 28/67, BCCL is only independent from other BDL departments with respect to the banks it regulates but not from the Governor. Meanwhile, BDL's website provides a diagram for the regulation's main control charts by functions in blue

(1) CMA under Articles 3, 4, and 57 of Law 161/2011 is supposed to be a separate entity as the research has shown in principle 1 and as per its promulgating law.

(figure 6) with the BCCL clearly situated between the Governorship and the Higher Banking Council. Upon first glance it gives the impression that the three bodies are at same level in control but upon examining the reporting lines, it clearly shows that the BCCL must work between the Governorship and the Higher Banking Council as well. To understand this, we must read Law No. 44/2015 of November 24, 2015, on Combating Money Laundry and Financing Terrorism with the CMC and Law No. 28/76 regarding the BCCL. According to Article 6 of Law No. 44/2015 which amended Law No. 318/2001, the SIC is chaired by the governor of the Central Bank, with the Head of the BCCL as member, the judge appointed for the Higher Banking Council as member, plus two other members. So far, we have members of two committees in BDL that are already under the governor in the SIC whose task is to monitor AMLCFT. Meanwhile if we review Article 10 of Law No. 28/76 that promulgated the Higher Banking Committee, one finds that the governor is also the head of the Higher Banking Council with one of his chosen vice governors as member and a judge who has been in service for ten years as selected by the Higher Judiciary Council. Hence, we see the duplication and dependence in BCCL through its need for the Higher Banking Committee to hold banks it regulates accountable or enforce its sanctions since the governor, his vice governor and the same judge in the committee are all present in the Higher Banking Committee as well as the SIC. This duplication strikes a chord firstly because the BCCL needs the SIC to lift banking secrecy in order to conduct supervision and revision[1]. This issue was highlighted in the IMF's 2017 report, in its second table in its fourth appendix where it recommended that the Lebanese authorities enable the BCCL to lift banking secrecy restrictions as needed to achieve its supervisory[2] tasks. Secondly, because the SIC as per Law No. 44/2015 not only investigates AMLCFT offenses but also investigates licensed entities' performance of due diligence duties enshrined in Articles 4 and 5 of the said law. Thirdly, despite the fact that the legislator does not mention in Law No. 44/2015's promulgation reasons the fact that the SIC was created to act as liaison between foreign authorities and organizations such as FATF and the application of Banking Secrecy Law of 1956 (LBS) for the sake of being lifted from the list of non-cooperative countries regarding AMLCFT; this duplication jeopardizes financial information's exchange and compliance transparency. The SIC acts as a filter for information exchange keeping banking information sealed from the public and giving culprits a chance to buy time to fight off investigations through procedures and the difficulties of coordinating the

(1) إلياس ناصيف وبول مرقص،المصارف العربية في مواجهة التحديات القانونية الدولية، الطبعة الأولى، المركز العربي للبحوث القانونية والقضائية، جامعة الدول العربية، توزيع، Justia ،.بيروت، لبنان، ٢٠١٩، صفحة: ٣٥.

(2) Lebanon: Financial System Stability Assessment, an International Monetary Fund Country Report, report No 17/21 January 2017, Washington D.C. United States of America, pages 65-70, available online via URL accessed on February 25, 2021: https://bit.ly/3jGcrRJ .

requirements of the LPC's 1946 text with those of AMLCFT crimes under Law No. 44/2015 with logistical obstacles of prosecuting criminal cases. Fourthly, because the Higher Banking Commission is responsible for imposing administrative sanctions on non-compliant entities or banks. The governor and the judge are common members within the SIC and the Higher Banking Commission. Yet, despite the administrative sanctions not being part of the penal code sanctions, the Lebanese Code of Penal Procedures (LCPP) Law No. 328 of August 2, 2001, stipulates in Article 50 a prohibition on general prosecutors who have prosecuted a case to adjudicate or investigate the said case(1). This is called as the principle of separation of authorities in investigating, prosecuting, and adjudicating a case. While the Higher Banking Commission is no court as it is limited to imposing administrative measures; concentrating the powers to investigate and sanction within the hands of the same persons jeopardizes independence and governance itself which eventually reflects on the integrity and stability of the banking sector. In spite of means to aggravate punishments for crime in the general provisions of the LPC, the fact remains that the punishment allocated for AMLCFT or breaching obligations of due diligence and cooperation with the SIC under Law No. 44/2015 remain misdemeanours punishable by two months to one year jail time with a fine of maximum 100 million Lebanese pounds or either of those punishments for breach of obligations under Articles 4,5,7, 10, and 11 of Law No. 44/2015. Additionally, Article 3 of Law No. 44/2015 punishes those who attempt or commit or intervene or facilitate AMLCFT crimes with 3 to 7 years in prison in addition to a fine that does not exceed twice the amount of money laundered. Going back to BDL's General Regulator's Organization Chart (figure 4), one notices that both general directors of the ministries of finance and economy have no reporting lines. Accordingly, the fully mapped out duplication and dependence in the organization and operation of BDL can be viewed in our diagram "BDL Regulator Bodies by Dependence and Governorship Duplication"(figure 7). In this diagram, it is clear that only the Government's Commissariat and the Banking Advisory Committee have no duplication although they have reporting lines with the governor. Under Article 14 Law No. 161/2011 regarding the CMA, the CMA board must create a financial control unit that is independent in function. However due to the presence of the BCCL's chairman on the CMA board the BCCL is duplicated in CMA Supervisory Board through the BCCL's financial institutions' department. The said department's main objective is to sustain the stability of the non-banking financial sector by managing financial market operations such as market making/liquidity providing, asset

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(1) عفيف شمس الدين، أصول المحاكمات الجزائية القانون رقم ٣٢٨ تاريخ ٧/٨/ ٢٠٠١، الطبعة الثالثة، بدون دار نشر، بيروت ، لبنان، ٢٠٠٥، صفحة ١٥١.

management, brokerage services and loan providing against securities, specialized lending (investment) through factoring, leasing operations, loans to SMEs, retail banking and micro finance, investment banking, and advisory services[(1)]. If anything, these operations clearly show a want for distinguishing banking from financial operations and regulators' independence. From these points one can see how the BCCL is a backdoor for BDL's governorship's duplication and dependence. Additionally, since the financial control unit as per the CMA's website conducts continuous investigations which are not among its authorized functions but is allowed to do so since the sanctions and special financial market court were not promulgated. Thus, one can understand the duplication of BCCL in both the banking and financial operations once more since the BCCL conducts field onsite and offsite inspections as well as compliance inspections and investigations (compare Figure 6 with Figures 8 and 10).

Principle 3 – The country's legal framework provides a framework for cooperation and coordination regarding domestic and foreign supervisors whilst safeguarding confidential information.

Upon reading the laws that apply to coordination and cooperation between BDL and other banking regulatory bodies or states[(2)], we note that both Law No. 55/2016 and BDL's Basic Decision No. 12625 clearly set cooperation within two domains: (a) Tax purposes and (b) AMLCFT. Additionally, both Law No. 55/2016 and BDL's Basic Decision No. 12625 featured stipulations on: (a) how information is collected, transmitted, and classified, (b) the Adoption of OECD's Common Reporting Standards of 2014[(3)] in particular Section 8[(4)] of the said standard, (c) a list of countries they declare or cooperate with, and (d) a distinction between information that is considered within or outside the scope of the LBS as the repealed Law No. 43/2015 did by leaving it to BDL and SIC to handle information that fall under the LBS.

(1) About the Financial Institutions Department in BCCL, from BCCL website and About the Financial Control Unit for CMA, from CMA website available via respective URLs accessed on March 9, 2021: https://bit.ly/3kQ6jFL and https://bit.ly/3zXE8eF .

(2) On October 27, 2016, the Lebanese Official Gazette published in its 51st issue the Lebanese Government's ratification of two treaties: The Multilateral Convention on Mutual Assistance in Tax Matters (MAC) and The Multilateral Competent Authority Agreement on Automatic Exchange on Financial Account Information (CMAA). This was followed by the repeal of Law No. 43/2015 of 24/11/2015 on the Exchange of Tax Information by Law No. 55/2016 dated on October 27, 2016, titled as Law on Exchange of Information for Tax Purposes. The said law was supplemented by: (a) the Lebanese Government's Executive Ordinance No. 1022 dated on July 7, 2017; (b) The consultation from the Lebanese State Council's (opinion No. 247/2016-2017 of 13/06/2017); (c) the Lebanese Central Bank's Basic Decision No. 12625 of 21/07/2017 in Basic Circular No. 139, and (d) the MOF's Decision No. 1248 of 06/12/2017. Available via respective URLs accessed on February 21, 2021: https://bit.ly/2YlqhAF; https://bit.ly/3lFGiJx; https://bit.ly/39588K0; Lebanese Official Gazette Issue No 34, on 03/08/2017, pages 2785-2788 also via: https://bit.ly/3cYLCDE; and Lebanese Official Gazette Issue No 34, on 03/08/2017, pages 2785-2788 also via: https://bit.ly/3cYLCDE.

(3) OECD CRS standards are available online via pdf manual titled as Standard for Automatic Exchange of Financial Account Information in Tax Matters, via link accessed on February 25, 2021: https://bit.ly/3f1mIGc , these standards have been supplemented by the Standard for Automatic Exchange of Financial Information in Tax Matters: Implementation Handbook second edition, 2018 available online via link accessed on February 23, 2021: https://bit.ly/3eYYooq as well as by the Common Reporting Standard User Guide and XML Schema on July 2017 also available online via URL accessed on February 23, 2021: https://bit.ly/2NFq1Yi and the Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures on March 9, 2018, available online via URL accessed on February 26, 2021: https://bit.ly/2PlkzKv .

(4) OECD CRS standards are available via pdf manual titled as Standard for Automatic Exchange of Financial Account Information in Tax Matters, page 158 – 206, via link accessed on February 25, 2021: https://bit.ly/3f1mIGc .

Meanwhile, Law No. 44/2015 sets in its Articles 9 and 10 the SIC's chair authorities to communicate with foreign and local authorities for the purposes of applying AMLCFT measures. Meanwhile, under Law No. 55/2016 which is a one-article law; Section 4(1) states that the competent Lebanese authorities will assist the requesting foreign authority upon receiving its request for information if it is within the stipulations of the treaty signed with the requesting state such that the Lebanese competent authorities will provide the requested information in accordance with the said treaty and Law No. 55/2016. Should the competent Lebanese authorities find the request noncompliant with the stipulations of the treaty between Lebanon and the requesting state, the request for information shall be denied and the said state will be informed of the Lebanese authorities' decision. Our take on the measures imposed by the law, is that it does not clearly treat how exchange and coordination, or cooperation will differ between authorities who are signatory to the Common Reporting Standards Treaty (CRS) and those with whom Lebanon has a bilateral treaty with. In our opinion, the law should be revised to expedite cooperation for bilateral treaties and lift bureaucratic impediments on CRS countries. We base our vision on the fact that the current laws' mechanisms make it a very time-consuming process to figure out which ministry or regulator's decisions apply to the financial entities that must comply with the requests and impractical to allow contestation through the State's Council in the name of banking secrecy since only both BDL and the SIC are the ones who have access to financial and banking information.

Section 5(1) of Law No. 55/2016 states that if the requested information does not fall within the scope of Banking Secrecy Law of 03/09/1956 or Article 151 of the CMC, the competent Lebanese authorities will immediately provide the information requested to the requesting foreign authority. According to Section 4(2), if the requested information falls within the scope of the LBS or Article 151 of the CMC and if the requested info is within the stipulations of the treaty signed between Lebanon and the said requesting authority; then the SIC shall be obligated to provide the requested information to the foreign authority. For this section, it is clear that through the limitation related to Article 151 of CMC which concerns employees of BDL this section serves as an obstacle for combating corruption and smuggling of moneys[1]. In fact, enough is said when we read Article 12 of Law No. 44/2015 which provides immunity to the SIC's chair and its employees regarding executing their SIC tasks as well as employees of BCCL, external auditors and all individuals and entities who fall under

(1) Based on what the research had discussed under this paragraph's Basel's first core supervision principle as there are no deterring punishments nor grounds for accountability for any of BDL's committees' members. Although BDL is required under Baseline effective supervisory principles to protect its regulators but never at the expense of transparency, integrity, and accountability.

the stipulations of Articles 4 and 5 of the Law. Ironically, the BCCL members do not have such immunity in banking control operations despite being the first point of contact and heart of the banking supervision control. In short, BDL has enough protection to perform its duties but zero checks and balances to ascertain accountability and gauge performance. Moreover, Section 5(3), stipulates that any information within the scope of the LBS may not be provided to the requesting foreign authority before informing the person who's subject to the foreign state's inquiry within 15 days from the date of notification of the competent Lebanese authorities' decision as per Law No. 44/2008 regarding taxation procedures[1] with the contestation raised before the State's Council regarding the decision to share the requested information. The said paragraph mandates that the State's Council shall adjudicate the matter in an incontestable decision that is final regarding the validity of legal grounds that mandate the information exchange within a period of three months from the date of initiating contestation procedures. Upon the lapse of the three months period or the State's Council issuing a decision to provide the requested information, the competent authorities must furnish the requesting authority the information it requested. Our comment for this paragraph of the law is that the SIC is the filter that oversees the continuous application of the LBS with BDL's governor initiating communication or responding to it. This is validated via Article 6 of Law No. 44/2015 which places a concrete framework for how information is collected, as well as how accounts, transactions, and individuals are traced or frozen.

Contrary to Section 5, paragraph four of the same section states that the previous stipulations may be forsaken in the case of inherently urgent situations wherein informing the concerned party may influence the successful investigations performed by the requesting foreign authority. It states that information must be furnished to the requesting authority sans the notification mentioned in the prior paragraph according to standards and measures agreed upon between both states in a manner that protects the rights of all parties involved. Our take regarding this paragraph is that this is an important and practical exception, but it lacks criteria as to how and when information is deemed urgent which leaves much to discretionary powers of regulators or authorities. Hence, this is not a guarantee for prompt cooperation with the requesting state if it is dealing with a case of information hijacking or hacking or trying to crack down on electronic transactions done through platforms. This needs to be supplemented with more lenient and information security related measures that allow Lebanese authorities to be of further help especially in matters related to exchange and online trading platforms. In this

(1) Articles 27-28 and 97-101, available online via URL accessed on February 15, 2021: https://bit.ly/3cSGTDw .

line, Section 6(1) authorizes both BDL and the SIC to request financial institutions in specific times and manners to provide information as per Law No. 55/2016 that are requested in order to allow competent authorities in Lebanon to exercise automatic information exchange as per treaties or bilateral treaties . Meanwhile, Section 6(2) authorizes the minister of finance or BDL depending on their legal authorities and decisions passed later to determine entities that must provide information, information that must be provided and the methods of furnishing such information including electronic methods, criteria for assessing precision and coverage of provided information. Our comment for this section of the law is that this concentrates more discretionary power in the hands of regulators and ministers on how information is exchanged, and entities cooperate which eventually paralyzes the application of the law. Our basis for this remark is that Law No. 55/2016 was clear in its reliance on the definitions of Section 8 of the OECD CRS principles and in ratifying Lebanon's signature to the concerned CRS treaty. Furthermore, the law clearly adopts the CRS definitions. Hence what the law is lacking is a clear distinction between measures that apply to CRS countries and those that apply to bilateral treaty countries. It's not enough to specify countries that benefit from the law in a list via an executive ordinance such as Executive Ordinance No. 1022 when the law's cooperation mechanisms and methods of exchanging information are not clear on distinctions between bilateral treaties and countries that benefit from the CRS treaty. Hence the law itself needs to be reviewed and redrafted. Meanwhile, Section 6(4) sanctions noncompliant entities with a fine ranging between 100 to 200 million Lebanese Pounds notwithstanding the regulatory authorities' rights to administer administrative sanctions and fines depending on the laws that apply. In our opinion, this section is not enough to deter incompliance because fines are not enough. Generally, wherein foreign regulators and authorities request information from regulators in another jurisdiction for tax purposes or anti money laundering they are related to major crimes or big-time mobs and cartels. Our take on the fine's inefficiency for deterrence also resonates well with the current financial crisis given the hyperinflation that the Lebanese currency is facing. Lastly, according to Section 7 of this law, Law No. 55/2016 applies also to treaties on double taxing measures that are relevant. This section is the hallmark of the discretionary application of this law when in fact this law should be about precision and coordination to foster cross-border operations' economic sustainability and financial stability. The law does not specify which department in the MOF shall conduct the information exchange for entities that do not fall under BDL. When we read Basel's Effective Supervision Principles 1 and 2 with 3, we see the effect of duplication and dependence in BDL's bodies mainly BCCL, SIC, and Higher Banking Commission continue regarding cooperation and coordination of information exchange with other foreign banking regulators especially for cross-border cooperation purposes. From all of the above points, we notice how information exchange is limited for the purposes of tax and AMLCFT by the applicable laws which do not mention combating unfair competition or cooperation for the sake of wealth management governance or even environmental or regulatory compliance. The said law dismisses opportunities to regulate cross-border operations through coordination and reciprocal treatment from foreign regulators. Hence, the Lebanese legal system is also marked with logistical and bureaucratic stumbling blocks that present themselves in the forms of: (a) scattered laws that range between old and new laws that are either laws, decisions of regulators or governmental and ministerial decisions, and (b) delays due to notification and contestation processes.

Principle 4 – Authorized and regulated activities of institutions licensed and subject to the supervisory banking authority are clearly defined using the word bank for activities it regulates and controls.

There are two issues that present themselves when applying this principle which are the lack of clarity of regulations and control as well as the overlapping of banking and securities requirements regulations. Regarding the first issue, in 2017, the IMF highlighted under its recommendations' table, Lebanon's lack of current yet cohesive primary and secondary legislations for the banking industry and its supervisor to ensure future revisions on a set timescale(1). In this line, Article 121 of the CMC defines a bank as an institution whose main objective is to utilize for its account in loan and credit operations moneys it receives from the public. The CMC also stipulates on banks': (a) prohibited activities under prohibitions in part two, (b) residency conditions in part three, and (c) banks obligations in part four. However, due to the CMC's lack of definitions and stipulations on banking operations; authorized and regulated activities must rely on BDL and BCCL's circulars, decisions, and memos both basic and intermediate. Other terms such as banking or financial institutions as well as financial intermediation or brokerage institutions are also used. As for the second issue, due to stipulations limiting banking and securities' business operations to banks only; requirements for both sectors overlap, since the CMC lacks a definition for what constitutes banking operations and since the 3000 Series of the CMA regulations that deal with the regulation of business conduct for securities business stipulates in Article 3001(1) under the title "Purpose" that the said regulation applies to approved business activities but does not apply to banking or credit activities regulated by BDL. The problem with this stipulation is that it is quite hard to

(1) Lebanon: Financial System Stability Assessment, an International Monetary Fund Country Report, report No 17/21 January 2017, Washington D.C. United States of America, pages 65-70, available online via URL accessed on February 25, 2021: https://bit.ly/3kRPD0E .

draw a line between the banks' activities as banking ones from securities business ones since even custodial activities can appear on banks' sheets as banking operations and many of the said banks performing securities business are investment banks which lead to labeling their operations as investment banking operations. The same applies for banks dealing with management of assets, arranging for transactions related to assets which also fall under investment banking operations. The fact that the former mentioned activities require specific licenses from the CMA under the stipulations of Article 2103 of the CMA's 2000 Series on Licensing and Registration for securities business coined with the fact that the CMA's chair is BDL's governor do not help in truly defining bank activities[(1)]. Thus, when banks conduct business securities' operations they are faced with requirements of two sets of rules regarding compliance with corporate governance requirements: one for banking operations and another for business securities operations. This is due to the fact that both banking and securities business operations are limited to banks which is reflected in the regulations of the CMA's regulations of the securities business. In essence, the division between both the CMA and BDL as two separate regulators for banking and finance as two separate activities is inconclusive except for a change of terms for pro forma requirements with soft law standards in cross-border operations' compliance requirements such as Basel or OECD.

Principle 5 ─ Supervisory body is empowered to set licensing criteria and rejections for applications of entities that do not meet the licensing requirements. The licensing framework should at least comprise of an assessment of ownership structure and governance including fitness and properness of board members and senior management of the bank and its wider group, its strategic and operating plans, internal controls, risk management and projected financial status including capital base. In case of a foreign bank being the proposed owner or parent organization, supervisor must require prior consent of the said bank's home supervisory.

Implementing this principle faces three issues among which are rejections' criteria as a CMC limitation, piecemeal licensing based on sector, and prospective regulation of fitness and properness. For the first issue, stipulations on banks' licensing criteria are inferred from Articles 126 and 135 of the CMC. However, Articles 26, 70, and 174 provide BDL's governor with all the authority required to set licensing and rejections criteria. Despite that, the CMC only provides grounds for crossing out a bank off its list of licensed banks under Article 140[(2)]. Accordingly, BDL relied on Articles 121 to 139 of CMC and Executive Legislation No 50 of

(1) Series 3000- Business Conduct Regulation, Capital Markets Authority, Lebanon, page 4, the bilingual edition of version 1.9 of September 24, 2019, available online via the CMA website link accessed on February 21, 2021: https://bit.ly/3mZ2H7d .

(2) Banks are crossed off BDL's list of Banks if: (a) is subject to liquidation, (b) if it declares it has stopped paying, (c) if the Higher Banking Commission determines the bank cannot continue operating, (d) if the bank ceases activity for over a year, (e) if the bank fails to reconstitute its capital within the time limits of Article 134 CMC, (f) if any of Article 208 of CMC apply.

July 15, 1983, to issue its licensing Basic Circulars No. 79 and 95 on requirements for establishing regular commercial banks and Islamic Banks(1). However, both circulars do not provide criteria for rejection of applications of either licenses.

As for the second issue, under the CMC, the only assessment of bank board members is based on them and their senior management being clear of any of CMC's Article 127's(2) prohibitions. Meanwhile, Articles 128 up till 131 CMC set foreign banks' requirements to obtain a license to operate in Lebanon. However, licensing requirements under BDL's basic circulars No 79 and 95, provide a piecemeal approach rather than a cohesive licensing assessment framework with detailed criteria for each of this principle's stipulations. For instance, BDL's approach for board members assessment does not utilize the term "fit and proper" in either of the circulars. Another instance of piecemeal approach is under Article 5 of Basic Circular No 79 which stipulates that the Lebanese bank or the foreign bank's branch whose establishment was authorized by the Central Council of BDL must complete the establishment formalities within a time limit of six months at most, starting from the authorization notification date. Failure to comply with this deadline will result in repealing the authorization. Meanwhile, under Article 4 of Basic Circular No. 79, the Central Council of BDL will authorize the establishment of a bank in two scenarios. First, if it deems "it appropriate for serving public interest", based on the following criteria and conditions: (i) The economic feasibility and the projected results for the three coming years (profit and loss projections- balance sheet projections – cash flow projection)s; and (ii) the material and moral competence of the founders and subscribers, and the persons expected to hold senior managerial positions(3). Second, if it ascertains its compliance with requirements specified in the legal and regulatory texts, particularly those regarding: (i) its establishment as a public or joint-stock company, under the provisions of Article 126 of the CMC; (ii)The form of shares forming its capital, and their trading rules; (iii) the organization chart and the basic rules to be adopted for internal control and audit; (iv) the percentage of participation in the bank's capital, the category of shares and their distribution; and (v) the existence or not of a direct or indirect link between the bank and other specific financial institutions or economic groups in Lebanon and abroad. In this line, it is worth noting that the same criteria of appropriate for serving public interest applies on

(1) Basic Circular 79 to Banks contained Basic Decision 7739 of December 21, 2000 on the conditions for the establishment of banks in Lebanon. It was amended by Intermediate Decision No 9455 of November 9 2006 of Intermediate Circular No 125, Decision 8946 of Intermediate Circular No 78 on January 8, 2005. Meanwhile Basic Circular No 95 contained Basic Decision No 8829 of August 26, 2004 and was the executive regulation for Law No 575 of February 11, 2004.

(2) Refer to Explanatory Note No. 1 in the List of Explanatory Notes of Annex 3, page 346 of this research.

(3) In particular the fact that no criminal or civil sentence has been issued against any of them, in Lebanon and abroad, for the perpetration of any offence, theft, breach of trust, fraud, money laundering or declaration of bankruptcy.

Islamic Banks under Article 6 of Basic Circular No. 95 and after verifying that all the legal and regulatory requirements are met. Among these requirements are according to Article 2(a) of Basic Circular No. 95 one which states that banks operating in Lebanon or foreign banks, Islamic or proficient in Islamic banking operations, must be among the founders of any Islamic bank in Lebanon. Additionally, at least one third of a Lebanese Islamic bank's total shares must, at all times, be held by banks from the categories specified in Article 2(a). Lastly, under Article 4 banks' by-laws must include a special section on the Shari'a Consultative Body, detailing the provisions that govern the appointment of its members, its relationship with the bank itself and its prerogatives, including the provisions related to Shari'a- based internal control that clearly show the bank's compliance in all its transactions and operations, with the Shari'a provisions and principles that are consistent with the enacted laws not in conflict with the provisions of Law No 575 of February 11, 2004, relating to the Establishment of Islamic Banks and with the regulations issued by BDL for the implementation of this law.

As for the third issue, since issuing Basic Circular No. 44 on 25/3/1998 regarding the applications of Basel II's capital adequacy requirements as well as Basic Circulars No. 106/2006 and 112/2007 on application of Basel's core corporate governance framework principles; BDL has relied on a prospective-based approach in determining the educational and professional qualifications of banking professionals required for licensing and operating banks. Adopting this approach was mainly for cost-benefit and pragmatic purposes as CG was relatively new to the Lebanese banking sector. In this line, Basic Circular No. 103 of March 9, 2006, which had classified banking professionals by function and position into twelve categories; was updated on 2013 via Intermediate Circular No. 339 of September 23, 2013. According to the said update, banking professionals' requirements slightly differed from those professionals who were also involved in securities business. However, after the implementation of Law No. 161/2011 via CMA's Regulations; BDL issued on August 10, 2017, Intermediate Circular No. 470 which effected slight changes to the educational, moral, and professional requirements whilst maintaining the categories' numbering. Despite improvements in requirements applied for banking professionals in this intermediate circular compared to Basic Circular 103; it lost a key element which is the categorization specifics on exemptions and minimum requirements per function (as specified in Intermediate Circular 339) due to Intermediate Circular No 430. The numbers for categories are clearly still there but the specifics of each category and the justification of each requirement per category are gone for both banking and securities' business professionals. Accordingly, this reinforces BDL's discretion in deciding exemptions and qualified professionals who can be licensed bankers or securities business operators. Additionally, only notes on what is meant by each term remain(1). What is also clear here is the: (a) the absence of "sound criteria for assessment of fit and proper" concept for banking professionals whether they be directors or banking employees in terms of licensing or on-going operations, and (b) overlapping of regulation of both the banking and securities or capital markets business through their common regulator the governor of BDL who is also chair of the CMA.

Principles 6 and 7 – The Banking Supervising authority is authorized to accept or reject or impose prudential requirements regarding proposals to transfer significant ownership or control as well as controlling interest held directly or indirectly in existing banks to other parties. The supervisor is charged with approving, rejecting, and imposing prudential conditions on, major acquisitions or investments by a bank, against prescribed criteria, including the establishment of cross – border operations, and to determine that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision(2).

This principle is partially covered in a scattered framework(3) that does not tackle the term "prudential requirements regarding proposals to transfer significant ownership or control" nor the broad definition of the term "controlling interest held directly or indirectly in existing banks to other parties". In fact, Law 308/2001 which is the heart of regulating significant ownership transfer is concerned with three main issues: (a) making all stock nominal and of one category traded in the Lebanese Capital Market that abolishes differentiation between nationality of stock owners and stock value based on type of share, (b) regulating preferred shares, and (c) regulating temporary acquisition of banks for real. The law does not specify on rejections but rather specifies its requirements. For instance, Article 4 states that the following cases of subscribing and trading in Lebanese banks' share are subject to prior approval by the Central Council of BDL: (a) when the subscriber or the assignee acquires directly or through a fiduciary contract in accordance with Law 520/1996 more than 5% of the total shares of the bank or of the voting rights whichever is higher; (b) when upon assignment of shares the assignee holds 5% or more of the total shares of the bank or of the voting rights whichever is higher. This percentage includes participations of spouse and children underage as well as the participation of any economic entity as per BDL's definition, and (c) when the assignor or the

(1)To further illustrate the difference between requirements of Basic Circular No. 103 as updated in 2013 and after Intermediate Circular No. 470 of August 10, 2017, we refer the reader to figure 11 in the List of Figures under Annex 2, page 324 of this research.

(2) Refer to Explanatory Note No. 4 in the List of Explanatory Notes in Annex 3, page 354 of this research.

(3) Refer to (a) CMC Articles 152, 153, and 154, (b) the LCC's Articles 78, 79, and 144 on joint stock companies since banks are established in this form, (c) Law No. 308/2001 On Bank Share Issuing and Trading Bank Bond Issuing, and Bank Ownership of Real *Estate* (Published in Lebanese Official Gazette Issue No 15, on April 15,2001, pages: 973-969), (d) Basic Circular No 82 containing Decision No.7814 11/05/2001 as implementation ordinance for Law 308/2001 (Published in Lebanese Official Gazette Issue No 24, on 17/05/2001, pages 1903-1910) of and (e) Basic Circular No 116 of 13/05/2008 on Special Provisions for Islamic Banks' Private Moneys.

assignee is a member or member-elect of the board. Meanwhile Article 4(2) excludes share transfers via inheritance from the scope of this article compared to Article 4(3) which excludes shares subscribed by shareholders for the purpose of increasing the bank's capital whether the increase is irreducible or not from the restrictions of (a),(b), and (c). However, this article does not apply to the assignment of preferred shares mentioned in Article 2 of this law even if such assignment is implemented through a fiduciary contract in accordance with Law No. 520/1995 since these shares are not included in computing the proportion specified in sections 1(a), (b), and (c). Meanwhile Article 5 of the said law prohibits without prior authorization from the Central Council to list in an organized financial market shares of a Lebanese bank that is being established or those of a bank on BDL's Official list of Banks or purchasing by a bank of any portion of its own shares. However, the Central Bank's Council may provide its authorization if: (a) the shares of the concerned bank are in total and not in part open to public subscription and tradable on organized financial markets in accordance with its statutes or with the decisions of the shareholders in extraordinary meeting, (b) the bank's statutes or shareholders' extraordinary meeting should determine: (i) the proportion of shares specified in (a) that is open in effect to public subscription and tradable on organized financial markets, (ii) the trading system is applicable to shares not listed on these markets; and (c) the bank that intends to purchase a portion of its own shares that are listed in effect on organized financial markets, must prove that it holds enough free reserves to carry out the transaction. The said authorization from BDL does exempt the concerned from complying with the applicable laws and regulations that govern organized financial markets and are not contrary to the provisions of this law. As for Article 7, it states that BDL's Central Council may object to: (a) any assignment of a Lebanese bank's shares that may cause directly or indirectly, any shareholder or economic group (as per BDL's regulations) to lose effective control even though relatively over the management of the bank or over shareholders' voting rights; and (b) to the election of the chairman or any member of the board of Lebanese banks or to the continuation of the mandate of any chairman or member. Furthermore, Article 7 further requires compliance with BDL's objections such that the Central Council will have discretionary powers exercised in accordance with public interest. The problem here is that there is room for supervisory arbitrage in terms of what BDL deems as public interest and BDL's loose definition of economic group. Additionally, Article 10 stipulates that Lebanese banks operating in Lebanon shall be deemed purely Lebanese companies regarding the ownership of real estate or the holding of real estate rights in buildings to be used as headquarters, regional departments, or branches. The said ownership is however subject to the approval of the Central Council in compliance with Article

153 of CMC. As for Article 11, it stipulates that all temporary acquisition of real estate or real estate rights as per Article 154 CMC by banks for the purpose of recovering doubtful debts, are subject to a 2% registration fee of the value of the real estate or real estate right as per an assessment approved by BDL in consultation with BCCL. In this line, Article 13 stipulates that the Central Council of BDL shall set out the necessary regulations to implement the provisions of this law. This article is the epitome of BDL's supervisory arbitrage via discretionary power exercised since Basic Circular No. 81 was crafted solely to implement Article 13 of Law No. 308/2001. The irony is that this circular was dubbed in the Official Lebanese Gazette as the Executive Implementing Regulation of Law No. 308/2001 as it was made to highlight prohibitions in investments and again without any mention of major transfer of property or extended definition of control. For instance, its fourth article has an investment concentration prohibition that excludes investments in banks, leasing and financial intermediation institutions as well as insurance companies from the said concentration prohibition. BDL's definition of investment concentration in this circular is of two main forms: (a) banks and financial institutions owning stocks or shares with unlimited liabilities, or (b) using their private moneys to invest, participate or own directly or indirectly more than 10% in one sector or one company. Meanwhile, these restrictions do not apply to participations and investments in Lebanon and abroad in banks and financial institutions, leasing companies and financial intermediation, funds, and insurance companies as they are governed by their own specific laws. In other words, BDL does not view investment concentration in financial and banking sectors as a concentration risk for banks nor a hindrance for effective supervision or a case of significant control. Our take on the regulator's application of this principle lies in its reliance on its vast and discretionary measures that have zero criteria for objectivity purposes. The mention of any control is limited to voter rights or ownership. Influence or leverage are not taken into consideration in these operations since terms such as directly or indirectly are hinged on the voter or ownership definition of control. Furthermore, given BDL's prospective approach in supervision and regulation of banking operations, any reference to economic right owner for the purposes of efficient supervision is utilized mainly for financial reporting in external audit, AMLCFT due diligence requirements, and cooperation with exchange of information under Law No. 55/2016. Additionally, the BCCL essentially requires the SIC's help to lift secrecy off the names of the owners of fiduciary accounts established under Law No. 520/1996 if BCCL were to enforce the identification of proper economic right owners to establish BDL's definition of economic groups and of course implement the restrictions of Laws No. 318/2001 and No. 44/2015.

Principles 8 and 9 – To be effective as a banking supervisory authority, a supervisor must: (a) develop and maintain a forward- looking assessment of the risk profile of individual banks and banking groups, commensurate with their systemic importance; (b) identify, assess and address risks emanating from banks and the banking system as a whole; (c) provide a framework for early intervention; and have plans in place, in partnership with other relevant authorities, to take action to resolve banks in an orderly manner if they become non-viable. The supervisor utilizes commensurate techniques and tools to implement its supervisory approach and allocates its supervisory resources on a proportionate basis that takes into consideration banks' risk profile and systemic importance.

Given the fact that BDL never classified its banks based on their operations, and risk exposures or appetites when it first mandated the application of Basel II and later Basel III's framework in its Basic Circular No. 44/2006 (regarding applying Basel requirements); systematically important banks were not officially labeled as such although one may find some banks put within the category of alpha banks without further explanation for such classification. Additionally, there are several laws on reforming non-viable or bankrupt banks that till now lack implementation due to the absence of executive implementation ordinances as well as due to the lack of appointment such as the members of the Special Bankruptcy Court and the National Anti-Corruption Committee. In this line, BDL highly relies on field inspections and samplings that are basic since its employees are legacy trained professionals to manage market volatility without forward looking projections or forecasts. The Lebanese banking sector's legal framework also lacks laws on implementations of modern cloud information systems or databases that could have served as a point of reference for forecasting scenarios, financial instability mitigation, and case studies. The current prospective regulatory and reactive supervisory approaches of BDL depend on the governor's vastest discretionary organizational powers that do not apply early intervention approaches but are constricted within business continuity plans that are limited to what the banks apply from BDL's circulars in this respect.

Principles 10 and 11 – The Banking Supervisor collects, reviews and analyzes prudential reports and statistical returns from banks on both a solo and a consolidated basis, and independently verifies these reports through either on-site examinations or use of external experts. Corrective and sanctioning powers of supervisors: The supervisor acts at an early stage to address unsafe and unsound practices or activities that could pose risks to banks or to the banking system. The supervisor has at its disposal an adequate range of supervisory tools to bring about timely corrective actions. This includes the ability to revoke the banking license or to recommend its revocation.

For these principles, it is worth noting that BDL receives data from banks and publishes what it deems necessary either in its quarterly reports on banks' performance or in the BCCL's annual reports as findings reports. However, these reports hardly generate analytical or prudential reports since they highly rely on banks' external audit from big four audit foreign companies due to the absence of an internal audit culture in both corporate Lebanese life and banks such that Lebanese laws only regulate external audit practitioners by requiring that all external audit reports are signed off by licensed Lebanese external audit professionals who are members of the LCPA. Additionally, Lebanese laws do not regulate the audit profession's er aspects such as audit and accounting standards to focus on regulating auditors' certification and syndication as well as their membership in the LCPA. Additionally, the lack of a systemic risk board coined with a lack of laws on operations or regulations that regulate supervision strategy renders these principles inapplicable. All these factors readily add up to the fact that the LCPA as the official regulator of external auditors has few circulars and memos that are inaccessible to the Lebanese public. Aside from disciplinary sanctions, BDL as a regulator does not sanction banks' approaches to risk mitigation with respect to their profit making strategies since it is constrained by Article 208 of the CMC which limits its sanctioning authorizations to sanctions specified in CMC texts such as: (a) warning, (b) decrease of loaning facilities or suspension of them, (c) prohibition of performing certain operations or limiting them, in addition to any further restrictions on practicing banking; (d) appointment of an auditor or temporary director, and (c) removal of the said bank from its official list of banks that provide banking services. The said article supplements itself by referencing the possibility of enforcing fines and criminal penalties applicable to the non-compliant banks. Although the Lebanese framework includes in its LPC articles that penalize fraudulent and negligent bankruptcy (Articles 689-700) as well as Article 210 concerning criminal liability for legal persons and Article 8 of the LBS as iterated throughout AMLCFT laws No. 318/2001 and 44/2015; the said laws are not within the dispensary of BDL since they rely on the financial prosecutor, the SIC making findings both of which hinge on the Chief Supreme Court prosecutor who coordinates according to the LCPP and approves or disapproves of the financial prosecutor's request to prosecute the suspects. Additionally, as discussed earlier the BCCL who is responsible for exercising control and supervision does not have access to certain data that fall within the premises of the Banking Secrecy law. Hence, if the BCCL is not granted the SIC permission to lift secrecy, how can it report these issues to the Higher Banking Council?

Principles 12, 13, and 14 – The Banking Supervisor exercises a consolidated basis for its supervision of banking groups to adequately monitor and, as appropriate, apply prudential standards to all aspects of the business conducted by the banking group worldwide. Home and host supervisors of cross – border banking groups share information and cooperate for effective supervision of the group and group entities, whilst effectively handling crisis situations. Supervisors should apply the same standards they require for local operations of foreign banks as those applied on domestic banks. The supervisor assesses whether banks and their groups have robust corporate governance policies and processes covering mainly strategic direction, group and organizational structure, control environment, responsibilities of the banks' Boards and senior management, and compensation. The Banking supervisor will assess if policies and processes are commensurate with the risk profile and systemic importance of the bank.

These three principles are interrelated in their misapplication by BDL in Lebanon in four areas. Initially, due to BDL's discretion, BDL's circulars' provide for legal definitions that impede the application of these principles for consolidation and targeted entities as well as affiliates and control. These impediments manifest in four issues as we shall elaborate on herein. **First,** the term consolidation is not genuinely applied as intended by Basel since consolidation is about a regulator supervising a banking group on a consolidated basis that adequately monitors and appropriately applies prudential standards to all aspects of the said banking or financial group's business worldwide. Thus, this mechanism requires a shift from a legal entity approach to a supervision that considers all the group entities' risks. In this sense, consolidated supervision provides an effective cross-functional supervision that enables a regulator to exercise cross-sectoral supervision and consider a cross-border supervision that understands the financial stability required for international operations abroad(1). Accordingly, BDL as a regulator needs to be able to identify the types of groups it is going to supervise, treat them as the economic conglomerates they are depending on their risk and impact, define notions of control and ownership, as well as determine the principles and basis for the said group's consolidated accounting and audit standards. In Lebanon however, the following do not allow a truly fully consolidated supervision first because BDL does not identify the basic three types of holding groups which are banking holding groups (BHC), financial holding conglomerates (FHC), and mixed activity groups (MAG). Second, because dentification is half the process since effective consolidated supervision will entail legal stipulations that tackle these kinds of risks which are associated with each type of group which will also vary depending on the size of the concerned group. This is based on the fact that BDL's circulars do not stipulate on the criteria required for identifying the types of economic groups and the entities they are comprised of as well as the relation of the said group's structure with its conduct. Hence, BDL's

(1) Refer to figure No. 13 in Annex 2 Figures and Tables, page 326 of this research.

cross-border operations' and banking groups' regulations fail to govern and supervise seven major risks whose severity combinations vary depending on the kind of the group a regulator looks at which are: intra-group transaction risks, moral hazard risks when excessive risk taking is under the assumption that the group as a whole will assist in case of problems, double gearing risks when funds are committed several times for both parent and subsidiary, contagion risks when financial problems such as insolvency of one group member deteriorates the conditions of other group members, reputational risks where market access of the financial group as one entity is harmed by the distressful situation of one member, decreasing competition risks when one member utilizes unfair advantage of the group's superior market power to disadvantage investors or consumers or abuse the group's dominant market position, and conflicts of interest risk when a group operates on both the investing and saving side of a relationship which usually increases when the numbers of activities or products increase in a group for such operations on both sides of the market(1). Third, regarding affiliates and control, legally speaking, Lebanese laws lack a definition for affiliate entities, hence BDL's various circulars such as Basic Circular No. 34 of April 24, 1997 distinguishes between three types of control that banks have over their affiliates: (i) exclusive control which is a parent's effective control of financial and operational policies of an affiliate when it directly or indirectly holds the majority of voting rights in the said affiliate and can appoint or revoke the majority of the said affiliate's board of directors; (ii) joint control: when a parent company and other partners to a joint venture agreement pertaining to managing the said affiliate have control without any partner having the majority shares in the affiliate; and (iii) participation interest when a parent company holds directly or indirectly minimum twenty percent of the said affiliate's voting rights(2). As for affiliates abroad, Basic Circular No. 141 of August 16, 2007, governs this type of group relationships via stipulating obligations to report on their relation when a parent company directly or indirectly holds minimum forty percent of the voting or rights or when the affiliate's management is effectively controlled by the parent's company irrespective of the equity it owns in the affiliate. Despite using the phrase "directly or indirectly controlled", the said circular does not conform with the VIE requirements since control within BDL's circulars is defined

(1) Refer to the definition of contagion in the list of definitions, page 233 of this research. This issue will be further discussed in its relation to financial groups, economic conglomerates, financial exceptions, and shadow banking in chapter 1 part 2. See: Victor U. Ekpu and Chioma N. Nwafor, Consolidated Supervision of Banks and Financial Conglomerates: A Handbook for Financial Regulators and Supervisors, Mindset Resource Consulting LLC, London, United Kingdom, 2014, page 8 -15, Mohd Zabidi Md Nor and Michael J. Zamorski, Consolidated Supervision: Achieving 360 Degree View of Bank Risk, SEACEN Financial Stability Journal, Volume 2, 2014, Sasana Kijang Bank, Negara Malaysia, available via URL accessed on February 14, 2021: https://bit.ly/3tdAlXS; Stephen A. Lumpkin, Risks in Financial Group Structures, OECD Journal of Financial Market Trends, Volume 2010, Issue No 2, OECD, 2011, available online via URL accessed February 14, 2021: https://bit.ly/3kRP0nO and Silvia Bressan, The Effect of Consolidation for the Interplay between Risk and Double Leverage Inside Holding Bank Companies, Academy of Accounting and Financial Studies, Issue 3, Volume 2018, available online via URL accessed on February 14, 2021: https://bit.ly/3BIr9Oq .

(2) This method however is limited as we shall further elaborate on in part two of the Explanatory Notes regarding VIEs under international audit and accounting standards.

within the ownership of shares or voting powers. However, the circulars have no limitations whatsoever on transactions between banks and their affiliates besides what falls under common conflicts of interests as set out in the CMC such as granting loans or conducting transactions with board members, major shareholders or family members which require the approval of the general assembly in addition to providing sufficient collateral when applicable. **Second,** there is a lack of distinction between integrated and consolidated supervisory approaches in BDL since its circulars do not have any further provisions regarding organizing cross-border operations beyond establishing BDL's definition of control, ownership, AMLCFT, and external audit-hinged financial reporting[1]. Hence, BDL's misapplication of the consolidated supervision principle is actually a rehashed integrated supervision amplified via adoption of its own version of IFRS9 sans the legal framework targeting economic conglomerates by type for topical compliance with consolidated supervision requirements. **Third,** due to onsite supervision weaknesses, offsite supervision is overshadowed by the said weakness. This issue is visible when we visit the BCCL functions for onsite and offsite supervision[2]. Due to BDL's misapplied and topical compliance with the consolidated supervision approach and even though BCCL's offsite supervision division relies on rating systems for peer group reviews; the said application and reach fall behind the required CAMELS-BCOM[3] for Baseline standards. Additionally, BCCL's criteria for qualitative and quantitative info and objectives are not published or provided for in BCCL's circulars. Compared to the BCCL's onsite supervision department, the BCCL's offsite supervision department lacks figures or ratios for each criteria compared to the onsite supervision page. This issue was pointed out in the 2017 IMF report on Lebanon's Financial Stability Report (FSR)[4] in particular when the report stated that BCCL's current supervisory framework has problems governing assets, provisions, and reserves due to a number of weaknesses. The report also cites a lack of an onsite inspection program for branches and subsidiaries of Lebanese banks abroad and an absence of dialogue with the Insurance Control Commission regarding risks posed by insurance companies owned by bank groups. These observations reaffirm BDL's truncated, misapplied, and topically consolidated supervisory approach.

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(1) To further demonstrate how integrated and consolidated banking supervision differ, we refer the reader to figure 13 in the List of Figures under Annex 2 of this research.

(2) Based on observations from the BCCL websites visited on March 5, 2021, follow onsite and offsite BCCL URLs respectively: https://bit.ly/3tbHLuO and https://bit.ly/3tfmnol .

(3) Refer to the list of Abbreviations and Definitions.

(4) Lebanon: Financial System Stability Assessment, IMF Country Report No 12/21, issued on January 2017, International Monetary Fund Publication Services, Washington, D.C., United States of America, pages 59 and 62, available online via URL accessed on February 28, 2021: https://bit.ly/3f9d6cE.

Fourth, the LBS hinders BDL's consolidated supervision of banks. To this end, on October 4 2019, the Lebanese Ministry of Finance issued Announcement No. 3045 regarding the obligation of disclosing the rightful economic right owner which defined the former according to three criteria which are: (a) natural person ownership directly or indirectly of 20% or above of a legal entity's capita, (ii) possession of a natural person the majority of votes or decision making powers of a legal entity, and (iii) a natural person holding an executive board position within a legal entity. The announcement also specifies disclosure requirements for trusts, cooperatives, investment funds, syndicated professions, and partnerships. This is only one part of the reporting standards which is part of applying laws pertaining to combating corruption, AMLCT, and enhancing information exchange. Meanwhile, should the BCCL need to acquire the names of the said persons as linked to their respective bank accounts, the BCCL will require banking secrecy to be lifted via the SIC. As the major supervisor and controlling regulator, BCCL is powerless without access to the said names so long as the authority to trace them contributes to the misapplied and truncated application of these principles.

Principle 15 — The supervisor assesses if banks possess a comprehensive risk management process which includes effective Board and senior management oversight to identify, measure, evaluate, monitor, report and control or mitigate all material risks on a timely basis and to assess the adequacy of their capital and liquidity in relation to their risk profile and market and macroeconomic conditions. The Supervisor will also oversee the development and revision of contingency arrangements including robust and credible recovery plans where warranted such that these arrangements consider the specific circumstances of the bank. Additionally, the supervisor oversees that the risk management process is commensurate with the risk profile and systemic importance of the bank.

This principle is hampered due to the fact that BDL's circulars on CG requirements provide no assessments or criteria for compliance with CG requirements despite claiming reliance on the Baseline principles of CG for banks which only proves that BDL's circulars created BDL's own version of CG. Additionally, BDL never publishes its findings on its banks' CG frameworks and policies(1). As a result, onsite inspections, or samplings from field visits by the BCCL's agents do not provide for a comprehensive supervision of Lebanese banks' risk management processes. In fact, this further proves that BDL utilizes a piecemeal approach to the Baseline principle discussed herein.

(1) Hiding behind the possibility of a back-end assessment which is something which Lebanese financial professionals like to assume and perpetuate .

Principles 16, 17, 18, 19, and 20 – The supervisor establishes prudent and apt capital adequacy requirements for banks that reflect the risks assumed by, and presented by, a bank in the context of the markets and macroeconomic circumstances in which it operates. The supervisor defines the elements of capital, taking into consideration the bank's ability to assimilate losses. At minimum for internationally active banks, capital constraints should not be less than the applicable Basel requirements. The supervisor determines adequacy for banks credit risk management process that deems their risk appetite, risk profile and market and macroeconomic conditions adequate. This incorporates prudent policies and processes to detect, measure, assess, observe, report and manage or mitigate credit risk (including counterparty credit risk) on a timely basis. The full credit lifecycle is covered including credit underwriting, credit evaluation, and the ongoing management of the bank's loan and investment portfolios. The supervisor decides the adequacy of banks' policies and processes for the early detection and management of problem assets, and the preservation of adequate requirements and reserves. The supervisor determines the adequacy of banks' policies and processes necessary to detect, assess, gauge, observe, report and control or mitigate concentrations of risk on a timely basis. Supervisors establish prudential limits to limit banks' exposures to single counterparties or groups of linked counterparties. For the purposes of preventing abuses arising in transactions with related parties and addressing risks of conflict of interest, the supervisor mandates an arm's length basis entry for banks regarding transactions with related parties; to take suitable measures to control or mitigate the risks; and to set aside exposures to related parties in agreement with standard policies and procedures.

These principles have three major problems that prevent their enforcement in the Lebanese banking sector. **First** there is an absence of proportionality and assessment since aside from licensing requirements for foreign banks in Lebanon for their branches, these principles are also undermined by the same defects discussed in principles 1,2, 3, and 11, since BDL only identifies and mandates the standardized approach for applying the Baseline framework on capital adequacy. Additionally, due to the multiple foreign exchange prices (Fx) and lack of internal audit culture, BDL's entire approach to the credit cycle renders BDL's performance questionable under the banks' assets current inflated state. Hence, these principles are only topically applied within the limitations of Basic Circulars No. 82 and 95 for the requirements of establishing regular and Islamic banks as well as the specifics of BDL's own version of Baseline CG framework as per their respective CG's requirements under Basic Circulars No. 106/2006 and 112/2007. In effect and given BDL's prospective regulatory approach early detection is not the case. Additionally, given the lack of assessments in both onsite and offsite criteria for banking groups, assessments for Lebanese banks' implementations of CG framework, classification of Lebanese banks as per risk taking profiles and appetites; proportionality is a matter of BDL's discretionary power since the internal rating system criteria is something neither regulated by BDL nor exercised by banks autonomously or under the guidance of BDL's supervisory weightings. Banks simply follow what BDL decides from adequacies to weights and buffers. Aside from what is determined in the CMC as capital in addition to what BDL's basic and intermediate circulars mandate as reserves or capital; these principles have a very constrained application. This is the result of BDL's one size fits all method regarding the standardized in applying Basel II and III framework sans the classification of Lebanese banks by systemic importance in the light of their risk-taking profile. In accordance with our findings in Principle 15 above, Principle 17 is limited to BDL's approach regarding holding banks liable for abiding with the requirements of lending, investment, and capital but never guided by an evaluative performance or assessment. **Second,** due to the existing limitations of BDL's CG requirements in banks' BDL relies on various exceptions regarding financials and assessments of internal audit and control for both banking units and committees in Lebanese banks. Consequently, BDL's supervision is only concerned with applying its own version of Baseline CG requirements as established in Basic Circulars 106/2006 and 112/2007 which only stipulate on requirements without performance or compliance assessments. **Third,** the Lebanese legal framework lacks definitions for conflicts of interests' vis a vis counterparty transactions. This is the case since BDL's circulars neither explicitly define what it considers a conflict of interest nor tackle conflicts of interest risks since it relies on CMC's stipulations on prohibited transactions such as lending to members of boards of directors beyond what requires general assembly's approval regarding loans to BOD members within 25% of the banks' private moneys. Additionally, the CMA's unpublished glossary document has a slight reference to managing conflicts of interest and what a counterparty is. This is because investment banks are under the CMA are the main banks for wealth management professional services that must abide with Article 3311 of the CMA's 3000 series regarding managing conflicts of interest. Meanwhile, according to the CMA's unpublished glossary, a counterparty is a client that is one of the following: (a) an approved institution, (b) an institution licensed by BDL or (3) a foreign financial services entity that is properly licensed in its home country to provide banking securities or similar financial services to clients. Given these legal gaps in the banking and financial operations' framework; one can understand how the consolidation principle's misapplication also reflects on BDL's application of these Baseline core principles on consolidated banking supervision.

Principles 21, 22, and 23 ─ The supervisor determines adequacy of banks' policies and processes to identify, measure, evaluate, monitor, report and control or mitigate country risk and transfer risks in their international lending and investment activities on a timely basis. The supervisor determines adequacy of banks' market risk management process that reflects their risk appetite, risk profile, and market and macroeconomic circumstances and the risk of a substantial decline in market liquidity. This includes prudent policies and processes to identify, measure, evaluate, monitor, report and control or mitigate market risks on a timely basis. The supervisor determines adequacy of banks' systems to identify, measure, evaluate, monitor, report and control or mitigate interest rate risk in the banking book on a timely basis. These methods reflect the bank's risk appetite, risk profile and market and macroeconomic circumstances.

There are four issues that concern Lebanon's abidance with these principles. **First,** BDL lacks a distinction between macro and micro prudential measures since banks rely on BDL's instructions to implement and interpret the laws and their obligations vis a vis international standards; which keeps them on the receiving end of the regulation process. In this sense, the Lebanese banks abide with whatever BDL specifies as one size fits all series of circulars on capital requirements, risk exposure limits, investment restrictions, loaning facilities, and interest rates that BDL despite the fact that BDL's circulars do not specify which stipulations fall within the scope of macro or micro prudential measures. **Second,** there is an absence of cross-border supervision because aside from lending and investment limits set in BDL's circulars; Lebanon lacks regulations on international lending aside from constraints regarding ownership and control as well as mandatory investments in treasury bonds under Basic Circulars No. 86 of 20/09/2001 and 87 of 27/ 09/2001 regarding mandatory reserves and investments. As we stated earlier under principles 11 to 15, there are no limitations on transactions across Lebanese banking groups' entities that are abroad which manifests as a lack of cross-border operations' supervision from BDL for the purposes of gauging market liquidity and enforcing microprudential policies on foreign currencies reserves within banks. Hence transferring risks across entities within groups is common practice because economic groups are not properly identified which makes proper group risk identification and mitigation by both regulator and market players impossible. **Third,** because banks are dependent on BDL gauging market and liquidity risks, Lebanese banks neither have accurate financial markets' data nor reliable financial information databases proactively manage market and liquidity risks. In fact, the Lebanese banking sector relies on BDL's reports and continuous circulars for day-to-day operations and market risks' projections. Furthermore, Lebanese banks' investment strategies and business dealings' policies depend on what is recommended by BDL's circulars for quarterly projections and annual profit-making strategies. Hence, when BDL sensed a shortage in foreign currency and liquidity it issued Basic Circular No. 151 to curb and control withdrawals from banks in USA dollars which serves to show the regulator's reactive response and Lebanese banks' passive approach. **Fourth,** the issue of fiscal discretion affects investment and lending operations as BDL determines banks' lending and interest rates which automatically renders Lebanese banks' market and investment strategies reactive due to the miniature margins left by BDL for them to operate from within due to BDL's vast discretionary powers. Consequently, banks have no say in affecting market dynamics or participating in a healthy banking competition since they only have two choices: either comply with BDL's circulars and stay on the list of operating banks or be incompliant and risk being crossed off that list. A good example is the role of the Lebanese housing loan scheme that was incorporated in the financial engineering processes as discussed earlier which literally allowed banks to make profits without actually engaging in real investments via trading in foreign exchange on the pegged USA dollar from loan facilities and exchanging the said foreign currency collected from the Lebanese market for BDL for more lending facilities from BDL.

Principles 24, 25, and 26 – The supervisor establishes careful and proper liquidity constraints for banks to mirror banks' liquidity requirements. The supervisor determines that banks possess a strategy that allows prudent administration of liquidity risk and compliance with liquidity constraints. The strategy reflects the bank's risk profile as well as market and macroeconomic circumstances and incorporates prudent policies and processes, consistent with the bank's risk appetite, to detect, measure, evaluate, monitor, report and control or mitigate liquidity risk over an appropriate set of time horizons. Nonetheless for internationally active banks, liquidity constraints should not be lower than the related Basel requirements. The supervisor determines adequacy of banks' operational risk management structure that reflects their risk appetite, risk profile and market and macroeconomic conditions. This includes prudent policies and processes to identify, assess, evaluate, monitor, report and control or mitigate operational risks on a timely basis. The supervisor determines adequacy of banks' internal control structures to create and maintain an effectively controlled operational environment for the conduct of their business considering their risk profile. These include clear measures for delegating authority and charges; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding the bank's assets; and appropriate independent internal audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.

For these principles, we have observed three issues. **First,** BDL's liquidity requirements are set to be competent with those stated in the CMC and BDL's adapted version of the Baseline standardized approach sans the risk based profiled liquidity per capita which should be in accordance with a bank's business model, type of operations, and risk appetite. This is due to the fact that banks were never classified based on risk profile or appetites. What BDL mandates as a one size fits all, the banks are bound to apply. **Second,** BCCL's onsite inspections for supervision purposes coined with BDL's circulars regarding BDL's adapted version of the

Baseline corporate governance principles determine what is appropriate for Lebanese banks' internal control systems within the bodies it deems essential for an existing corporate governance compliant with BDL's requirements as the research will later show in part two. Assessments whether periodic or annual or even existing are not available since the relevant BDL basic and intermediate corporate governance circulars do not mention such assessments or criteria for assessments. Additionally, BDL's circulars only require notifying BDL regarding the appointment, removal, or replacement of banks' CG key personnel such as members of the board of directors, executive board and auditors. only enumerates a few banking professionals for whom BDL must be notified when they are removed, replaced, or appointed. **Third,** BDL's circulars regarding internal control environments are structural ones since exceptions apply and this is well reflected in how each bank has chosen to comply with these circulars as we shall reveal in subsequent case studies in part two regarding compliance, risk management, and internal audit.

Principles 27, 28, and 29 ─ The supervisor regulates how banks and banking groups keep suitable and consistent records, prepare financial statements in accordance with accounting policies and practices that are widely accepted internationally and annually publish information that fairly reflects their financial condition and performance and bears an independent external auditor's opinion. The supervisor also decides if banks and parent companies of banking groups have sufficient governance and oversight of the external audit function. The supervisor determines that banks and banking groups recurrently publish information on a consolidated and, where appropriate, solo basis that is easily accessible and fairly reflects their financial condition, performance, risk exposures, risk management strategies and corporate governance policies and processes. The supervisor determines adequacy of banks' policies and processes, including rigorous customer due diligence rules to promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.

For these principles, we raise several points. **First** only BDL's circulars specify when and how banks, and their groups publish financial information in order to be compliant with the legal framework applied to banks in Lebanon. However, compliance with these publication and disclosure requirements vary from bank to bank since there are no records published on banks sanctioned for incompliance given that out of 8 alpha banks only 1 had published complete data for 2020. **Second**, BDL's circulars indicate requirements for consent and refer to the Lebanese consumer protection act while mandating due diligence all of which fall under policies implemented by the legal compliance department. Meanwhile, transaction abuse which is related to dealing with customers was only regulated in Basic Circular No. 134 of February 12, 2015, under the title: "The Principles of Banking and Financial Operations with Customers". The said circular required banks to prepare brochures listing customers rights and duties in Arabic and English and make them available in all banks' head offices and branches. The said list was to be provided to the customer via a bank employee who was to proceed and explain its content as well as its importance. Also, the said circular mandated that banks and financial institutions develop policies relating to principles of banking and financial operations with customers which should be approved by the board of directors. Accordingly, the circular further affirmed the importance of dealing with fairness and clarity with customers especially regarding computational methods for deposit interest rates for each product or service, clarity and transparency of advertisements, protecting customers' personal financial information, as well as periodic statements, developing clear and efficient mechanisms for customers to submit their claims for free with a guaranteed follow up and handling of claims. In this respect, the circular also supplemented a sample list of customer rights and duties as a minimum standard list to abide with along with a list of instructions for customers. However, given the current financial crisis and the various successive circulars from BDL such as Circulars No. 151, 156, and 157 which implement masked capital control regarding transactions and withdrawals from banking accounts in foreign currency mainly the USA dollar or conclude payments in USA dollars; BDL has clearly breached numerous Lebanese laws. Lastly, BDL also refers to the sanctions for breaching the LBS and prohibitions of insider trading information in the said customer rights and operations' brochure. This concludes paragraph one as we now move on to explore the European Union's approach to the Baseline Banking Supervision Principles.

Paragraph Two — Basel's Banking Supervision Principles in European Union Macro-Micro Balance

The concept of European Financial Supervision System (ESFS) was created to be a multi-layered system of macro and micro prudential authorities to ensure coherent and consistent adherence with the Consolidated Treaty on the Functioning of the European Union(TFEU)[(1)], Basel III Requirements, and the Single Market approach created for market discipline under the European Union's Competition Law. Its legal basis are Articles 114 and 127(6) of the TFEU[(2)]. Thus, the Financial Supervision System rules[(3)] must be construed from three approaches[(4)]: **(a)** the bodies that make up the system (structural approach) to understand

(1) Articles 101 through 109 are available in Annex 2 of this research, pages: 414-426 of this research.

(2) Radostina Parenti, European System of Financial Supervision(ESFS), an article published for the European Parliament's Official page, available via URL accessed on May 21, 2021: https://bit.ly/3xz3ihR .

(3) Refer to Explanatory Note No. 5 in the List of Explanatory Notes under Annex 3 for an Overview of the European Union's Legal Framework for the European Union Financial Supervision System, pages 354-354 of this research.

(4) Gudula Deipenbrock, The European Securities and Markets Authority and Its Regulatory Mission: A Plea for Steering a Middle Course, pages 17-26; Iris H.-Y. Chiu, Power and Accountability in the EU Financial Regulatory Architecture: Examining Inter-Agency Relations, Agency Independence and Accountability, pages 67-82; Georgina Tsagas, The Regulatory Powers of the European Supervisory Authorities: Constitutional, Political and Functional Considerations, pages 103-117; Kern Alexander,

interdependence; **(b)** the scope of the system's operations (operational approach) to understand specialized authorization; and **(c)** the implementation strategy (methodological approach) to understand the European Financial System's approach in formulating rules, regulates adoption, supervises implementation, and enforces compliance.

A-<u>The Structural Approach:</u>

The European Union's System of Financial Supervision[(1)] was designed as a network connecting three European Union supervisory authorities known as: (a) the ESAs which are (i) the European Banking Authority (EBA), (ii) the European Insurance and Occupational Pensions Authority (EIOPA), and (iii) the European Securities and Markets Authority (ESMA); (b) the European Systemic Risk Board; and (c) the National Supervisors (NCAs).

B - <u>The Operational Approach:</u>

The European Banking Supervisor which is the European Central Bank (ECB) must work with the ESAs, mainly the European Banking Authority[(2)] the EBA. In the process, the European System's Financial Supervision (ESFS) employs two kinds of supervisory approaches known as the: (1) Macro-prudential Supervision, and (2) Micro-prudential Supervision. Which bodies of the European Union Financial Supervisory System are considered responsible for Macro-prudential or Micro-prudential approach? ESMA, the EBA, the EIOPA, the Joint Committee of European Supervisory Authorities (JESA), and the NCAs are considered micro-prudential bodies. Individuals affected by the ESAs decisions may appeal to the Board of Appeals which is a joint body that is independent yet composed of six members as well as six alternates appointed by the ESAs. Meanwhile the Joint Committee of the ESAs are represented by one representative to ensure cooperation and regular exchange of information when handling cross-sectoral consistency in the development and application of the Single Rule Book[(3)]. On the other hand, the European Systemic Risk Board's (ESRB) is in charge of macro-prudential supervision. To this end, the ESRB is comprised of the: (1) General Board, (2) Steering Committee, (3) Advisory Technical Committee, (4) Advisory Scientific Committee, and (5) the Secretariat. As chair of the ESRB, the ECB also offers systematic, numerical,

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The ECB and Banking Supervision: Does Single Supervisory Mechanism Provide an Effective Regulatory Framework?, pages 258-263; Christos V. Gortsos, The Role of the European Banking Authority (EBA) After the Establishment of the Single Supervisory Mechanism (SSM), pages 277-289; Raffaele D'Ambrosio, The Single Supervisory Mechanism (SSM): Selected Institutional Aspects and Liability Issues, pages 299-315; series of research chapters compiled in the book: Regulating and Supervising European Financial Markets More Risks than Achievements, edited by Mads Andenas and Gudula Deipenbrock, first edition, Springer International Publishing, Cham Switzerland, 2016.

(1) To further highlight the EU's Financial Supervision System's dynamics, refer to figures 15, 18, and 20 in Annex 2, pages: 328, 330, and 332 of this research.

(2) The EBA is an independent body that answers to the European Parliament, the European Council of the European Union, and the European Commission (important for competition issues). Refer to Figure 15 in Annex 2 to examine the EBA structure, page 328 of this research.

(3)Giuseppe Boccuzzi, The European Banking Union: Supervision and Resolution, Ibid, pages: 23-44 and 118-122. For further information, visit the European Banking Authorities' webpage to view the Interactive Single Rulebook via URL accessed on January 5, 2021: https://bit.ly/3h16Tzg.

organizational, and logistical assistance to the ESRB. Due to the complexity and intertwined nature of financial markets; supervisory authorities of different sectors and entities throughout the European Union coordinate their efforts for regulatory harmonization and single market mechanism within the European and international markets. The ESFS also liaisons with the International Organization of Securities Commissions (IOSCO), the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS)(1).

C — The Methodological Approach: Macro vs Micro Prudential Balance and Linkages(2):

Methodologically speaking, macro-prudential supervision in the European Union (EU) targets overseeing the financial system as a whole via preventing and mitigating systemic risk. Conversely, micro-prudential supervision targets individual oversight of institutions such as banks, insurance companies, pension funds, financial institutions, and financial intermediation institutions. Balancing the simultaneous application of both approaches stems from the fact that their targets differ even though they share a number of instruments that makes them somewhat related. As a demonstration, the ESFS utilizes its micro-prudential supervision to oversee and limit distress of individual financial institutions as well as prevent them from failing to protect these institutions' customers. It also prevents or mitigates contagion(3) risks and repercussions for other institutions. As for macro-prudential techniques, the ESFS, focuses on the financial system's exposure as a whole to common risks and works to limit its distress across the EU market's overall economy thus protecting the said economy from substantial failures in real output. After the global financial crisis(4), the EU realized that it had put too much emphasis on supervision of individual financial institutions compared to macro-prudential aspects. That realization unraveled the need to balance between macro and micro prudential mechanisms whilst realizing the complementary linkages between these two. A good example would be the fact that counter-cyclical capital buffers which fall under macro prudential supervision may only lead to the unintended effect of banks collectively taking risk ex ante. Meanwhile, micro-prudential measures may halt banks from engaging in the said collective behavior by preventing banks from engaging in excessive risk-taking on an

(1) See Figures 15 and 16 in the list of figures under Annex 2, pages 328-329 of this research.

(2) Definitions for macro-prudential and micro-prudential supervision in this section are from the European Union perspective.

(3) It is a type of risk that manifests when an economic crisis spreads from one market or region to another and thus can happen in both domestic and international settings since virtually all markets are connected through monetary and financial systems. See also: Jorge A., Chan-Lau, Srobona Mitra, and Li Lian Ong, Identifying Contagion Risk in the International Banking System: An Extreme Value Theory Approach, International Journal of Finance and Economics, Volume 17, Issue No 4, October 2012, pages 390-406, available online via URL accessed on June 21, 2021: https://bit.ly/3j0jIMb.

(4) George Zestos, The Global Financial Crisis: From US Subprime Mortgages to European Sovereign Debt, first edition, Routledge an imprint of the Taylor & Francis Group, New York, United States of America, 2016, pages 42- 97 (why the European Sovereign Debt Crisis lasted so long), and 130 - 207 (for the roles of Germany and Greece).

individual level. As a result, Baseline Requirements[1] became hard law via the EU's capital requirements legislative package enshrined in the consolidated text of EU Directive No. 36/2013 of EU Parliament and Council of June 26, 2013, regarding access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms which amended Directive No. 87/2002 EC and repealed Directives No 48/2006 and No 49/2006 EC[2]. How does all of the above relate to the licensing and operating of wealth management institutes as a financial intermediation service? Member states will have to apply their licensing rules in coordination with the banking supervision body in their country which also has to coordinate with the EBA and the ECB. After that, they too have to cooperate with ESMA in all operational aspects. As for matters of regulating financial instruments and investment, the EU passed a co-legislation Directive via the European Parliament and the European Council Directive No. 65/2014 on May 15 2014 amending Markets in Financial Instruments Directive No. EC 92/2002 and Directive No. 61/2011 which was later amended in 2016 by the respective EU Directives No. 97/2016, 1034/2016, 2034/2019, and Regulation No. 2115/2019 to govern and regulate financial institutions, banks, and financial intermediation in financial markets. Meanwhile, according to Article 4 of the amended EU Directive No. 65/2014, an investment firm means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis where a natural person provides services involving the holding of third-party funds or transferable securities, that person may be considered to be an investment firm the purposes of this directive and EU Regulation No. 600/2014 only if without prejudice to the other requirements imposed in this directive or in Regulation No 600/2014 and in the Directive No 13/2013 that person complies with four conditions. **First,** ownership rights of third parties in instruments and funds are safeguarded especially in events of insolvency of the firm or of its proprietors, seizure, set off or any other action by creditors of the firm or of its proprietors. **Second,** the firm must be subject to rules designed to monitor the firm's solvency and that of its proprietors. **Third**, the firm's annual accounts must be audited by one or more persons empowered under national law to audit accounts. **Fourth**, where the firm has only one proprietor, that person must make provision for

(1) Banks fall under the Single Supervisory Mechanism governed by the SSM Supervisory Manual: European Banking Supervision published on March 2018, and available online via URL accessed on January 5, 2021: https://bit.ly/3gPWFRs.

(2) Published in European Union Official Gazette under 02013L0036, on July 9, 2018, under No 004.004 -1, available online via URL accessed on January 5, 2021: https://bit.ly/35CiSx8.

the protection of investors in the event of the firm's cessation of business following the proprietor's death or incapacity or any other such event.

In view of these considerations, EU's CG requirements transpose Baseline capital adequacy framework, supervision requirements, and corporate governance requirements under primary level European laws that fall under rules that govern the European Single Market and Single Regulation Mechanism known as the Lamfalussy mechanism. Named after Baron Alexandre Lamfalussy ex BIS chairman and head of European Monetary Union (EMU) that preceded the ECB(1); the Lamfalussy mechanism organizes Europe's modern financial and economic laws whilst adapting international standards and transposing Baseline guidelines into a coherent framework of rules for financial services under four levels. **Level 1** includes rules which are framework legislation via regulations or directives on general requirements of the initiative as well as individual provisions that empower the European Commission to adopt Level 2 measures. **Level 2** includes rules which are implementing legislation that is detailed sometimes in regulations mostly directives drafted first-hand by the ESAs. **Level 3** includes rules which are guidelines prepared by the ESAs for national regulators to comply with or explain their reasons for noncompliance. Finally, **Level 4** includes rules which are supervision and enforcement measures that are usually prepared by the EU's member state's national regulators. The mechanism's adoption appears in the TFEU's provisions on the European Commission's power as the EU's executive arm and its delegated legislative powers in the EU's subsequent financial system regulations as well as under the TFEU's principles of conference and proportionality(2). It is also apparent in the way EU level agencies such as the ESAs are formed, made to function, and coordinate among themselves as well as with member states' national supervisors. Hence, the EU applies segregation of powers with respect to EU level agencies differently from legacy legal systems like Lebanon. Instead of relying on strict allocation of powers to agencies based on classifying them by nature or area of specialty; the EU prefers a holistic functional allocation of powers required to regulate undertakings' conducts across the European market. For instance, much of the European Commission's

(1) Alexandre Lamfalussy, Central Banks, Governments and The European Monetary Unification Process, BIS Working Paper No. 201, Bank for International Settlements Press and Communication, February 2006, Basel, Switzerland, pages: 1-8, available online via URL accessed on August 3, 2021: https://bit.ly/3DLkGUI See also Alexander Lamfalussy, Cornelius Herkströter, Luis Angel Rojo, Bengt Ryden, Luigi Spaventa, Norbert Walter, and Nigel WICKS, Final Report of the Committee of Wise Men on The Regulation of European Securities Market, Original Lamfalussy Mechanism Document, ESMA Europe, February 15, 2001, Brussels, Belgium on: https://bit.ly/3tm2Rqs .

(2) To understand how the TFEU is related to Financial Regulation in EU see: Adrienne Héritier and Magnus G. Schoeller, Governing Finance in Europe: a Centralization of Rulemaking, first edition, Edward Elgar Publishing Limited, Cheltenham, United Kingdom, 2020 in addition to Borgmann Yuri and Malcom Ross, Provisions on Democratic Principles, from "The Treaty on European Union (TEU): A Commentary, Blanke Hermann-Josef and Mangiameli Stelio", first edition, Berlin, Germany, Springer-Verlag, 2013.

delegated regulations are conducted via consulting with the ESAs on the topics they regulate and upon informing both the European Parliament and Council despite the fact that the ESAs themselves have no legal persona(1). In legacy legal systems, agencies generally have legal personas and are mostly either public law agencies or mixed partnerships or are at least under the supervision of a minister or ministry they report to. Another example would be the ESA's drafting directives which is a legislative function and coordinating with the European Commission which is an executive function or even the latter consulting with the ESAs upon drafting its delegated regulations which is a public advisory function. Additionally, the ESAs regulate financial institutions of member states' compliance with EU laws indirectly since the said institutions fall under the direct supervision of their member state regulators (local central banks and capital market authorities) who are under the ESAs that supervise them depending on their function such as the EBA for banks(2). In this sense, the EBA coordinates with a member state's central bank to indirectly oversee that member state's local banks. To this end, ESAs, are allowed a small margin of delegation of powers except for their regulatory powers(3) which make them quasi-administrative, quasi-judicial, quasi-investigative, and quasi-executive agencies with respect to their direct supervision of member states' national supervisors and indirect supervision of member states' local institutions as a result of their direct supervision of national supervisors. Similarly, the EU's commission is also a regulator, legislator, and investigator, in addition to its quasi-judicial powers when it issues administrative-criminal fines regarding breaches to financial and competition laws such as mergers and acquisitions, as well as unfair business practices. Recently, the mechanism is applied via regulations instead of directives to secure EU's member states' supervisors and local institutions' coherent compliance with the EU's financial system's framework legislation as well as its technical implementations which fall under the European commission's legislative and executive powers(4). We now move on to explore the Lebanese Central Bank's CG framework as a vice for banks in section two below.

(1) Despina Chatzimanoli, A Crisis of Governance? — From Lamfalussy to de Larosière or Bridging the Gap between Law and New Governance in the EU Financial Services Sector, research paper published in the European Journal for Risk and Regulation, Volume 2, Issue No 3, 2011, Symposium on the Financial Crisis in the EU (Part 1), pages 322 - 339, available online via Cambridge University Press via URL accessed on August 3, 2021: https://bit.ly/2WRWL4Y .

(2) For more on Centralized and Localized Enforcement Harmonization, see: Peter Alexiadis and Caio Mario Da Silva Pereira Neto, Competing Architectures for Regulatory and Competition Law Governance; an FSR publication for the European University Institute under Robert Schuman's Center for Advanced Studies, 2019, first edition, San Domenico di Fiesole, Italy, pages 72-82.

(3) Meroni Doctrine as set by Meroni & Co., Industrie Metallurgiche, Società in Accomandita Semplice v High Authority of the European Coal and Steel Community, Case 10-56, June 13, 1958, English special edition: 1957-1958 00157, ECLI: EU:C: 1958: 8, available online via URL accessed on August 4, 2021: https://bit.ly/38Jo18p .

(4) Magnus Strand, The Choice of Instrument for EU Legislation: Mapping the System of Governance under MiFID II and the MiFIR, Chapter 4 in the book Governing Finance in Europe: a Centralization of Rulemaking edited by Adrienne Héritier and Magnus G. Schoeller, first edition, Edward Elgar Publishing Limited, Cheltenham, United Kingdom, 2020, pages: 79 -108.

Section Two — Lebanese Central Bank's Corporate Governance Framework, a Vice for Banks

Internationally, entity level CG requirements in banks is subject to guidelines contained in Basel's guideline paper which comprises of 13 principles(1) that are now consolidated within the Basel III framework. As banks, these entities' compliance with international CG requirements generally depends on their legal functional classification as banks, public interest entities (PIEs), financial institutions, financial intermediation enterprises, and funds as well as their roles in banking or financial operations(2). As an evaluative section, this section purports to evaluate the Lebanese banking supervision through its regulatory framework's parameters and requirements for compliance on an entity level CG. Hence, this section's first paragraph examines and compares Lebanon's **piecemeal CG requirements a crisis of circulars** vis a vis Basel's principles of whilst the second evaluates the **Lebanese Central Bank's discretion as a price levied from banks to stakeholders.**

Paragraph One — Piecemeal Corporate Governance Requirements a Crisis of Circulars

CG requirements for banks offering wealth management services in Lebanon do not differ from legal requirements that apply to regular Lebanese joint stock companies except for the fact that they exist within BDL's circulars. This is because banks' legal obligations are legislatively regulated from a contract-based approach and on a transactional level(3) despite banks differing from regular joint stock companies in ways through which they finance their operations. Essentially, this is because BDL's circulars stem from the CMC's and LCC's texts which are old laws that were passed sans policies or implementation tools which makes these circulars oblivious to banks' roles as market players intertwined in investment, financing, and banking operations that are cross-border operations as well. Consequently, BDL's entity level stipulations neither specifically regulate these banks' internal control requirements nor efficiently supervise their risk-taking strategies with respect to their business models for financial stability purposes. Additionally, only BDL's circulars explicitly require CG when they refer to Basel's CG's requirements in their piecemeal regulatory supervision compared to the CMA's regulations for securities' business in investment banks. Naturally, BDL's piecemeal approach to CG triggered a crisis of basic circular CG requirements (Basic Circulars No.

(1) Guidelines Corporate Governance Principles for Banks, Basel Committee on Banking Supervision, July 2015, available online via URL accessed on February 9, 2021: https://bit.ly/2Vh2xg0 .

(2) Whether they are underwriters, intermediaries, buyers or sellers, money managers, or even market makers.

(3) Since the law views their corporate governance duties as contractual duties under specific laws.

106/2006 and No. 112/2007 BCGR) when BDL's subsequent specific circulars on CG requirements (SCCGR) (1) intertwined with investment banks' CG requirements under the CMA(2). This crisis is due to the fact that both sets of circulars do not indicate which Baseline principle they correspond to nor which subsidiary BDL body oversees their compliance or implementation. Accordingly, we shall examine BDL's transposition of Baseline principles for entity level CG in banks vis a vis the LCC and CMC as fleshed out in BDL's BCCGRs and SCCGRs.

BCGBP 1 − The board of directors (BOD) is fully responsible for the bank, including authorizing and supervising management's implementation of the bank's strategic goals, governance structure and corporate culture.

Given the fact that both the original and current Article 153 of the LCC specify that the BOD's chairman is the general manager (GM) in Lebanese joint stock companies; the LCC does not mandate a two-tiered management system for joint stock companies but rather makes this system generally optional since its 2019 amendment. Accordingly, Lebanese joint stock companies have practiced having their BOD's chairmen act as CEOs or GMs in the majority of Lebanese banks which prevents the application of this principle since upper management cannot serve as control on lower management as per this principle's CG requirements on accountability and performance management. This is also the case in Article 1 of BDL's Basic Circular No. 106/2006 for CG requirements which adapts the LCC's Article 153's definition of upper/senior management i.e., the chairman as acting GM or CEO in a bank. Also, because independence, transparency about conflicts of interest, and internal control are required when applying this principle; Article 158(5) of LCC which does not address these two issues is a vice in Lebanese banks' operations and internal governance since it allows joint stock companies' BOD members including their chairmen to benefit from loans, facilities, and guarantees since the said article considers these actions the heart of banks' business operations(3). This is the case as well in Article 152(d) of the CMC which allows banks to provide their chairmen and board members with facilities up to 25% of their private moneys(4). Regrettably, the said situation is a related party risk under this Baseline CG principle as well as IAS, and ISA requirements since it jeopardizes sound risk management and governance (5)in Lebanese banks

(1) Refer to Table No.4 in the List of Tables of Annex 3 to see the Lebanese Corporate Governance Requirements under BDL's circulars.

(2) This issue is discussed in detail under Part Two's Chapter Two's Section One's Paragraph One.

(3) See Article 158 of the LCC; Beirut Appeal Court, Commercial Chamber , Decision No. 635 , issued on April 8, 1965, Judicial Review, Year 1965, page 521, available online via URL accessed on December 12, 2021: https://bit.ly/3IbluDK; and Hani El-Chaarani, The Impact of Corporate Governance on the Performance of Lebanese Banks, The International Journal of Business and Finance Research, Volume 8, Issue No 5, 2014, p35.

(4) Article 152 of the CMC, Law Executed by Decree No. 13513, issued on August 1, 1963, published in the Official Lebanese Gazette, Issue No. 64, on August 12, 08, page: 0.

(5) See International Accounting Standards No. 24 on Related Party Disclosures, reissued on November 29, 2011, IAS 24 an Overview from Deloitte, available via URL accessed on February 19, 2021: https://bit.ly/3yImiea .

since Lebanese laws do not identify corporate control beyond direct share ownership, ability to appoint directors, and voting powers(1). Verily, because Lebanese laws lack regulations on variable interest entities (VIEs(2)) and leverage as forms of corporate control within financial groups(3); these laws fall short in CG obligations on banks who should be disclosing these risks and managing them as possible sources of conflicts of interest for accountability purposes. In effect, Lebanese laws' limited definition of corporate control renders its application of the concept of economic beneficial owners and mechanisms for identifying ultimate economic right owners and beneficiaries is lacking since this concept as well requires managing related party risks through disclosures for potential conflicts of interest and VIEs for ensuring managerial transparency and control that go beyond direct control, share ownership, voting power, and appointing managerial executives. Aside from these two vices, the CMC does not specify distinct managerial responsibilities for banks who are also joint stock companies besides the obligation of maintaining liquidity and capital adequacy(4) compared to those required of regular joint stock companies in the LCC(5). To this end, BDL's Basic circulars 106/2006 and 112/2007 set out CG duties(6) of commercial and Islamic banks as well as financial institutions which are structural pro-forma requirements that neither address the related party risk of banks legally lending their BODs, managements, and chairmen nor do they address banks' one-tiered managerial model(7). At most, both circulars can be considered as CG guidelines since they lack enforcing mechanisms as well as disciplinary actions to deter incompliance. Ironically, BDL's Basic Circular No. 112/2007 clearly treats Islamic Banks' CG

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(1) See: Law No. 308/2001 on Issuing and Circulating Banks' Stocks and Bonds and Acquiring Real Estate, published in the Lebanese Official Gazette, Issue No. 15, on April 5, 2001, pages 973 -969; MOF Decision No. 1472 of September 27, 2018, on Mechanisms for Identifying the Economic Right Beneficial Owner, published in the Lebanese Official Gazette, Issue No. 43, on October 4, 2018, pages 4493- 4494; Memo No. M- 18, on Statements Disclosing Economic Right Beneficial Owners, Announcement No. 0, issued on October 4, 2019, published in the Lebanese Official Gazette, Issue No. 47, on October 10, 2019, pages 3501- 3505; MOF Decision No. 246/1, issued on July 6, 2020, on Specifying the Situations wherein Requests for Information are Subject to Banks' Secrecy or Article 151 of the Code of Money and Credit are Inherently Urgent or If Notifying Those Subject to the Inquiry Could Jeopardize the Success of Investigations as per paragraph 4 of Subsection 5 of Law No. 55/2016, published in the Lebanese Official Gazette, Issue No.39, on October 8, 2020, pages: 1608 – 1609; and SIC Announcement No. 24 of June 14, 2018, Addressed to Entities and Persons Specified in Article 5 of Law No. 44/2015 of November 24, 2015, on How to Identify and Allocate the Economic Beneficial Owner, published in the Lebanese Official Gazette Issue No. 29, on June 29, 2018, pages 3762 – 3763.

(2) Refer to Explanatory Note No. 16 in Annex 3 of this research.

(3) Because they are required in international standards such as Basel, IAS, and ISA; see on definition of corporate control and economic right Article 13 of Law No. 163/2020, on Private Investment Companies, issued on May 8, 2020, published in the Lebanese Official Gazette, Issue No. 20, on May 14, 2020, pages 1167- 1176 and on the Lebanese definition of economical right/beneficial owner see:
صفاء مغربل، القانون التجاري اللبناني: الشركات التجارية: شركات الأموال، الطبعة الأولى، بدون دار نشر، بيروت، لبنان، ٢٠٢١، صفحة: ٤٦ – ٤٩.

(4) مالك عبلا ، قوانين المصارف دراسة حول المصرف المركزي والمصارف التجارية المتخصصة والإسلامية ومكافحة تبييض الأموال (دراسة مقارنة) ، الطبعة الأولى، منشورات زين الحقوقية، بيروت، لبنان، ٢٠٠٦، صفحة ٧٩ - ٨٩.

(5) Such as the legal obligations of publishing annual budget and names of BOD members, forming obligatory and regulatory reserves, calling for general assembly meetings, preparing financials and disclosing them to shareholders, furnishing external auditors with financials, appointing the head of the BOD. See:
صفاء مغربل، القانون التجاري: الشركات التجارية، الطبعة الأولى، بدون دار نشر، بيروت، لبنان، ٢٠٠٤، صفحة: ٣٠٧ – ٣١٢.

(6) Both circulars are based on Articles 70 and 174 of the CMC and are specified by the Central Bank's Committee's Decisions No. 9382 on July 12, 2006, and No. 725 on September 27, 2007.

(7) To see the topical adaptation of the two - tiered managerial model in Lebanese banks refer to Tables 3 and 4 respectively on Management Models in Lebanese Alpha Banks (eight banks) and CG Requirements under BDL's BCCGR and SCCGR in Annex 2 for requirements and management models.

requirements in a stricter sense via requiring these banks to have an actual CG officer and department which tacitly renders Islamic banks investment banks with somewhat better CG internal control models despite keeping them still under BDL's not CMA's supervision. In effect, Lebanese banks have recently chosen to ignore BDL's upper management one-tiered model opting for a topical and structural application of the international two-tiered management model(1) which remains a soft law rather than a hard one. In this sense, corporate governance duties remain in Lebanese banks by virtue of applicable Lebanese laws a best practice not a legal duty that is also not a specialized function with specific tasks allocated around a corresponding liability matrix founded on the lack of performance of a specific task. Hence, the concept of BOD's having policies that shape decisions is only topically existent and lacks efficient implementation that applies a holistic sense of CG in Lebanese banks.

BCGBP 2 − Board members should be and remain qualified, individually, and collectively, for their positions. They should understand their oversight and corporate governance role and be able to exercise sound, objective judgment about the affairs of the bank.

According to the Qualifications' Basic Circular No. 103/2006 which was issued on 09/03/2006, this principle is applied in a limited manner. The said circular regulated minimum skills, experience, and qualifications for banking and financial institutions' employees despite the fact that according to Article 5 of the said circular both BOD members and duly appointed managers may be exempted from undergoing competency and efficiency exams. Additionally, BDL neither specifies these exemptions' grounds or mechanisms nor the fact that these professionals must remain qualified at all times. Accordingly, the concept of fit and proper is neither fully nor efficiently implemented(2). Hence, Basic Circulars 103/2006 and 112/2007 are vices that continue to affect CG's efficient implementation since they have not been reconciled with the CMC or LCC since the CMC covers basic capacity defects (Article 127) yet does not tackle issues of conflicts of interest, internal control, impartiality, independence, and liability for mismanagement beyond basic agency theory liability matrix(3). As a result, the BOD, and executive directors in banks function with complete discretion, as well as a concentration of control or power(4) due to the lack of actual banking operations' regulations. In effect, decision

(1) One bank actually had placed an honorary chairman but made the vice-chairman of the BOD acting GM and CEO.

(2) The circular lacks the key element which is the categorization specifics on exemptions and minimum requirements per function (as specified in Intermediate Circular 339) due to Intermediate Circular No 430 as shown in figure 11 and in principle 5 of section under paragraph 1 of chapter 1.

(3) See Articles: 785-807 (agency) and 883-893 (management as an agent for partners) the Lebanese Code of Obligations and Contracts, Law No. 0, issued on March 9, 1932, published in the Official Lebanese Gazette, Issue No. 2642, on April 11, 1932, pages: 2-104.

(4) Since there are neither controls and policies nor checks or even balances for situations of control override for audit or compliance watchdogs besides forms set in their charters. We discuss this issue in detail in Part Two's Chapter One's Section One's Paragraph Two (A and B).

making in Lebanese banks is opaque, and accountability within them is a matter subject to LPC's articles on negligent or fraudulent bankruptcy(1) or a litigation risk pending a shareholder's case or the joint stock company's action since class actions in joint stock companies in Lebanon are explicitly denied under Article 176 of the LCC since management is not liable towards third parties unless in situations of bankruptcy wherein the company's assets were found to be less than its liabilities and under Article 168 as legal action is reserved either for the shareholder or the company itself (2). Hence, there's nothing sound or objective in these banks' decision making.

BCGBP 3 − The board must commensurately define governance frameworks and practices for its own tasks and establish means for compliance and implementation of these practices which should be frequently reviewed for ongoing effectiveness.

Given the fact that CG is not a legal obligation in both Lebanese joint stock companies and banks in the LCC and CMC such that it only exists within BDL's circulars; the compliance committee is clearly not a mandatory organ in the BODs of Lebanese banks. Also, due to lack of economic conglomerate regulation in Lebanese, banking groups are likely under one compliance committee or under the audit committee, and banking groups do not distinguish between legal, regulatory, and financial compliance(3). In effect, the governance framework is not defined and tasks for applying the framework are not clear just as the governance practices are within the discretionary powers of the banks' BODs. In this line, compliance units exist but do not undergo continuous assessment via BDL nor are they equipped to handle risks individually within the group as an extension of the Lebanese laws' deficiency in distinguishing between legal and compliance as well as not regulating risk and liability for risk management in hard laws. The same deficiency applies for the compliance committee in group compliance which makes room for group risk transfer. Additionally, audit or risk management committees are overwhelmed with tasks from both compliance and audit units which makes banks' board members on the compliance or audit committees generalists not specialists. Ironically, under BDL's circulars, compliance is overseen by audit which is against international practice which

(1) Articles 689 – 700 of the Lebanese Penal Code, Executive Legislation No. 340/1943, issued on March 1, 1943, published in the Lebanese Official Gazette, Issue No. 4104, on October 27, 1943, pages 1-78; See also: Penal Supreme Court Decision, Fifth Chamber, Decision No. 46, issued on March 3, 1975, Held that a bank's branch manager falls under the definition of an authorized agent within a joint stock company it held him culpable for fraudulent bankruptcy that occurred in the bank, extracted from:
تمييز جزائي لبناني، الغرفة الخامسة، قرار رقم ١٩٧٥/٤٦، تاريخ: ٣ آذار، ١٩٧٥، سمير عالية، مجموعة اجتهادات محكمة التمييز الجزائية بغرفتيها، الجزء الرابع، ١٩٧٤-١٩٨٧، الطبعة الثانية، مجد، المؤسسة الجامعية للأبحاث والدراسات، بيروت، لبنان، ١٩٨٧، صفحة: ٢٤١- ٢٤٢.

(2); See Articles 166 and 168 LCC on barring class action for non-shareholders, favoring single stockholder actions whilst distinguishing between single action and joint stock company cases; also: Beirut First Instance Court, Fourth Chamber, Decision No. 76/1994, issued on March 23, 1994, Ghalib Ghanim, Jurisprudential Treasures in Commercial Law, first edition, Sader Legal Publishers, Beirut Lebanon, 2001, page 329.

(3) This issue is discussed in detail and examined in a case study in part two of the research since it is related to micro implementation of WMCG.

mandates that audit is under compliance[(1)] and audit may take samples to assess internal controls to verify assure stakeholders as well as regulators of the financial and internal control within a bank. Lastly, risk management, audit, and compliance functions as well as CG compliance lack assessments from BDL which reflects on efficiency making this principle inapplicable.

BCGBP 4 − Under the board's direction and oversight, senior management should carry out and manage the bank's activities in a manner consistent with the business strategy, risk appetite, remuneration and other policies approved by the board.

Both the CMC and LCC neither regulate on strategy and risk or risk-taking and risk-reward trade-off explicitly nor do they tie these activities with remuneration policies since they both rely on the classical agency theory set in the LOC. Additionally, the LOC does not cover mismanagement of risk or strategy related errors since Article 134 of the LOC only covers direct, concrete, and future damages which exclude coverage for potential damage[(2)]. Hence, remuneration is either vetted through external audit and approved by shareholders or questioned by them in case of doubt in financial statements, bankruptcy, or latency of distributing profits; thereby subject to single shareholder or joint stock company's legal action. This issue has been raised in violations of environmental law as forms of financial and AMLCFT crimes which may not be redressed unless the risk manifests into a full-blown catastrophe and is calculable as per Article 134 of the LOC. In effect, Lebanese legal framework lacks when applying this principle in the fact that risk management is clearly not a legal obligation in hard laws such as the CMC and LCC. Also, remuneration is not transparent and is not subject to clear policy since the law does not offer ways to justify a remuneration scheme or subject it to revision without litigation. Meanwhile, shareholder activism is limited to voting or litigating compared to risk appetite and risk-taking revision that are not regulated clearly. Additionally, there is no real distinction between the BOD and management since the BOD decides and management is led by the chairman who is the acting GM/CEO which leaves managerial performance lacking performance evaluation and competency fields for adjusting

(1) We shall address this principle in further detail in part two of this research since it falls under specialized micro-implementations of efficient wealth management corporate governance.

(2) See Article 134 of the LOC on redress for liability for direct and future damages and Article 9 of the Lebanese Code of Civil Procedure which requires that cases raised by claimants must have a current, direct, personal, and existing legal interest. See further on valid existing legal interest and potential damage (which should be labeled as potential risk not damage) the following respective references:

حلمي الحجار، الوسيط في أصول المحاكمات المدنية، طبقاً للمرسوم الإشتراعي ٨٣/٩٠ والتعديلات لغاية ٢٠٠١/٨/٧، الجزء الأول: الدعوى- الإثبات – التنظيم القضائي وقواعد الاختصاص، الطبعة الخامسة، بدون دار نشر، بيروت، لبنان، ٢٠٠٢، صفحة: ٥٠ – ٥٨.

مصطفى العوجي، القانون المدني، الجزء الثاني: المسؤولية المدنية، الطبعة الأولى، مؤسسة بحسون للنشر والتوزيع، بيروت، لبنان، ١٩٩٦، صفحة: ١٩٨ – ٢٠١.

عامر طراف وحياة حسنين، المسؤولية الدولية والمدنية في قضايا البيئة والتنمية المستدامة، الطبعة الأولى، دار مجد المؤسسة الجامعية للدراسات والنشر والتوزيع، بيروت، لبنان، ٢٠١٢، صفحة: ٢٣٦ -٢٣٩.

remuneration based on evaluating the decision-making processes that remain impossibly opaque.

BCGBP 5 − For group structures, the parent company's board has the total responsibility for the group and for safeguarding the institution and operation of a clear governance framework commensurate with the group's structure, business, and risks as well as its entities. The board and senior management must recognize and comprehend the bank group's organizational structure and the risks that it presents.

For this principle, the LCC, CMC, CMA, and BDL fall short since they limit organizational structure for decision making liability in economic conglomerates/groups within their definition of corporate control being voting power or ownership of shares in economic conglomerates. Also, both the CMC and LCC lack stipulations on specific obligations for institutional and operational requirements for economic and banking groups since they only regulate singular entities offering texts that govern entities' managerial requirements depending on an entity's form yet void of transactional or operational approach. Additionally, both the CMC and LCC's lack legislation on reporting lines in their connection with establishing liability for decision making requirements for matters of transparency and disclosure of risk and risk management for BODs in entities vs banking/economic groups. This in turn manifests as a lack of holistic CG within banking groups and a lack of consolidated risk-based CG in banking groups. This translates into Lebanese banking groups and economic conglomerates practicing structural management/governance which is a topical rather than actual operations/risk-based approach since groups are not properly identified in Lebanese laws and regulations making their risks clearly incommensurately managed. Consequently, this makes group risk transfer in cross-border operations part of the Lebanese banking and financial operations' culture. Lastly, both Lebanese regulators and banks only comprehend organizational structure from a loss-profit rationale not a transactional interdependence or a risk-dependence approach.

BCGBP 6 − Banks should have an effective independent risk management function, under the direction of a chief risk officer (CRO), with sufficient stature, independence, resources, and access to the board.

Applying this principle is hindered by the fact that both the CMC and LCC along with BDL's and CMA's regulations do not specifically tackle risk management as a legally defined function. The said function falls under the umbrella of managerial tasks placed on both the BOD and management under the concept of the agency theory. CROs are treated as employees who are dependent on being instructed by the BOD or executive directors due to BDL neither has regulations that manage situations wherein management overrides nor regulations that oversee and develop internal control for such situations in banks. Accordingly, CROs in

Lebanese banks are not strategists or proactive trouble-shooters since they are implementers who are basically employees who lack independence and usually resort to documenting situations of managerial override since BDL's circulars do not tackle managerial override of internal control. In effect, maintaining independence for CROs, auditors, risk managers, and compliance officers in Lebanese banks is a matter of professional discretion and preference based on the charters they choose to be bound with when they forward their credentials to BDL as they are retained to achieve selected tasks required by the BOD or the executive board for CROs. Additionally, reporting lines are only between the BOD and the executive board or the executive board and the key employees at a bank such as internal auditors, compliance and CROs which makes their access to the BOD dependent on pending internal investigations or governmental/regulatory inquiries for AMLCFT.

BCGBP 7 − Risks must be recognized, observed, and controlled on an ongoing bank-wide and individual entity basis. Sophistication of a bank's risk management and internal control infrastructure must keep abreast with changes to the said bank's risk profile as well as its external risk landscape and in industry practices.

Applying this principle is hindered by both the CMC and LCC that do not specify risk management as a legal obligation; BDL's set of identified risks applies. However, only individual entity based-risk identification approach is applied since the concept of economic conglomerate management does not go beyond shares and voting power for corporate control. Hence, internal control on both department and bank wide levels is a pro-forma since management can override internal control and since internal control policies are often vague to fit the one size fits all in a banking group. In effect, banks do not identify risks for operations beyond tasks within a department or services offered within an entity which leaves banking groups open to contagion risk within groups which is evident from the fact that risk management in Lebanese banking groups is basic and not sophisticated. To this end, banks' risk profiles may be available for entities within a bank or in the form of a group risk profile for an entire banking group. Meanwhile, external risk landscape is not thoroughly explored since industry practices are shaped by BDL's circulars due to the current banking and regulatory monologue that does not identify systemic banks beyond BDL's designation of alpha banks whose scientific and financial criteria are still unknown.

BCGBP 8 − Effective risk governance framework requires robust communication within the bank about risk, both across the organization and through reporting to the board and senior management.

As a vice to this principle, BDL's regulations specify the methods of communication for audit, compliance, and financial functions with a bank's management. Accordingly, these departments only report to management who then reports to the BOD. Additionally, internal audit and compliance disperse their reports only via management. In effect, reporting risk, financial statements, and other sorts of financial information/communication internally within Lebanese banks is for proforma requirements since only external audit is relied on for assurance. This is evident from the fact that the internal audit culture is absent(1) from both the CMC and LCC and the fact, that internal audit in banks is often charged with preparing the statement of accounts or financial reports hence zero independence for these professionals. Also, risk governance is a general practice that is not specialized in certain risks and does not cover non-compliance risk, situations of managerial override, as well as internal audit risks. Furthermore, financial reporting in Lebanese banks do not fully apply international ISA and IAS standards which means they do not offer assurance or transparency(2). As a result, this principle is not applied since banks lack the competency to analyze and utilize financial information for accountability, financial assurance, and transparency, as well as financial compliance for efficiency purposes.

BCGBP 9 − The bank's compliance risk is the bank's board of director's responsibility. The board must oversee compliance and establish a compliance function as well as approve the bank's policies and processes which are necessary for identifying, assessing, monitoring, reporting, and advising on compliance risk.

Both the LCC and CMC acknowledge this principle but lack the means for implementation since the laws do not define legal operations and do not specifically stipulate on internal bank management processes, reporting mechanisms, or oversight. The concept of incompliance as a risk that banks must manage is not clearly stipulated in the laws. In effect, regulatory and financial incompliance are treated as legal duties that need to be breached with no means to measure or identify these acts as risks before they are fully blown breaches. Also, because Lebanese laws only regulate banking operations structurally, they do not offer a means to allocate responsibility for the BOD or executive management breaching their duty to maintain compliance or manage incompliance risks. Consequently, BOD's incompliance is usually detected via cases of fraudulent bankruptcy or shareholders suing the bank's BOD/chairman for their rights. Additionally, reporting incompliance is not enhanced by safeguarding whistle-blowers beyond the stipulations on AMLCFT. Lastly, as the banking control commission, the BCCL does not provide on how they aid whistleblowing for

(1) We shall further discuss this in part two of the research. Refer to Explanatory Note No. 9 in Annex 3 to see how the Lebanese law treats and defines the audit and accounting functions and their respective professionals, page 357 of this research.

(2) This issue is discussed in detail in Part Two's Chapter One's Section One's Paragraph Two (A) and Explanatory Notes 7, 9, and 11 in Annex 3, pages: 355, 357, and 364 of this research.

incompliance risk nor are they capable of accessing the said data if it contains identities of account holders related to suspicious activities due to the LBS.

BCGBP 10 − The internal audit function must provide independent assurance to the board and ought to support both the board and senior management in fostering effective governance processes as well as the bank's long-term soundness.

Applying this principle is hindered since providing independent assurance is solely vested in external auditors who rely on samplings of financial statements prepared by internal auditors. Additionally, given the fact that internal audit within Lebanese joint stock companies in general and banks specifically is absent in the Lebanese legal and regulatory culture due to both the LCC and CMC texts that also rely on external audit; ISA and IAS audit and accounting standards are not applicable neither in Lebanese banks nor in BDL or Lebanese laws. Hence, effective CG processes are not fostered on a bank's long-term soundness. In effect, Lebanese laws do not define internal audit in scope, function, liability, and professional standards of operation and conduct. Also, despite the fact that internal audit as a unit is not mandatory in BDL; the Internal Audit Committee is yet with allowances for having a group internal audit committee that oversees the group audit unit of all other group entities. Accordingly, Lebanese banks' financial information's accuracy and assurance is not something internal audit provides in banks since they do not have the required independence, power, impartiality, and professional skepticism. Consequently, internal auditors who are responsible for securing financial assurance to the board, stakeholders, and regulators fall back in front of external auditors who are considered the only form of financial assurance vis a vis BCCL.

BCGBP 11 − The bank's compensation structure ought to sustain comprehensive corporate governance and risk management.

When applying this principle, both the CMC and LCC do not relate remuneration/compensation to CG and risk management obligations for BOD and executive management. As a result, Lebanese banks' management and BODs are driven by excessive risk-taking for profit and breach various Lebanese laws mainly LCC provisions on depositors' rights under the auspices of BDL.

BCGBP 12 − A bank's governance must be adequately transparent to its shareholders, depositors, other related stakeholders, as well as market partakers.

This principle is hindered by the fact that both BDL's and CMA's regulations require that a Lebanese bank's management provides for CG codes without mentioning no criteria that criteria on how these codes are implemented. This explains why Lebanese banks only publish CG policies/codes but not their charters or internal regulations for decision-making and authorized signatories. Hence, decision making, and implementation remain a discretionary power and stakeholders are dormant activists as banks remain family businesses. In effect, CG in Lebanese banks is a proforma practice that offers a proforma transparency.

BCGBP 13 − Supervisors should provide guidance for and supervise corporate governance at banks, including through comprehensive evaluations and regular interaction with boards and senior management, should require improvement and remedial action as necessary, and should share information on corporate governance with other supervisors.

Given the fact that the only guidelines BDL provides are within its own circulars; this alone is a vice since these circulars only specify proforma requirements such as requirement to abide with Baseline standards without specifying which standard it is applying in its circulars, without assessments, and without deterring sanctions for non-compliance beyond fines. In effect, BDL only intervenes post catastrophe or crisis. Hence, BDL's guidelines are umbrella principles that lack enforcement and implementation framework since they have no criteria or areas of competency or means to measure performance for efficiency. This concludes paragraph one summoning paragraph two's evaluation of BDL's application of Baseline CG.

Paragraph Two — Lebanese Central Bank's Discretion a Price Levied from Banks to Stakeholders

From comparing BDL's applications of Basel's Banking Supervision Core principles (SRP) and Basel's Banking CG Core Principles (BCG) this paragraph uncovers BDL's impact on wealth management's CG via BDL's circulars as they impact banks' adherence with Basel III's capital adequacy framework as wealth management service providers on two levels for financial stability and economical sustainability purposes. **First,** BDL's interlocking directorates, duplication, and functional dependence within its supervisory bodies have allowed banks to keep decision-making processes opaque enough to cloud both the supervisor and market players' liability matrixes. Also, due to the CMC providing BDL's governor with omnipotent discretionary powers; compliance with Basel III's framework regarding capital adequacy, risk management, and Baseline SRP is an arbitrary process plagued with uncategorized exemptions for topical compliance with Baseline BCP on financial and legal regulatory CG requirements. This further negates compliance with Basel III's framework requirement on banking market discipline (Pillar 3[1]) as it puts disclosures in disarray, facilitates breaches, and covers up arbitrary banking practices. Also, BDL's SRP's application policies rendered performance assessments for supervisory efficiency and entity accountability

(1) Refer to Figure No. 16 in the List of Figures under Annex 2, page 329 of this research.

purposes inexistent[1]. Meanwhile, on a supervisory accountability level via governmental oversight for BDL, BDL's special legal persona allowed it to infringe MOE and MOF's powers in currency pricing policies due to obscured transactions under Account No. 36 with the department of treasury which made room for political influence in regulatory decisions. Also, as a related party in both public and private sector transactions, BDL's circulars legalized banks' breach of depositors' rights as the governor is immune via CMC texts from cases on abuse of power, corruption, AMLCFT, and gross negligence[2]. This is well supported by the fact that the governor under the CMC's stipulation controls all functions of BDL committees which controls how the BCCL functions as well as prevents uncovering inconsistencies, instilling controls, managing, and dispersing financial information including AMLCFT management. Hence, the BCCL's independence in its control and supervision of Lebanese banks is irrelevant as only the SIC via its chairman (the governor) can lift banking secrecy off the names of UEBO suspected accounts or transactions. This is especially true when one examines Lebanese laws and realizes they lack criteria to determine breaches of AMLCFT risk management and technical financial standards for financial information (FI) disclosure requirements as these supervisors' methodology is unclear. This ambiguity overarches to cross-border FI exchanges and legal assistance. Thus, the lack of cross-border operations' governance beyond structural approaches due to the lack of definition of economic conglomerates exacerbates the fact that in situations of FI exchange and legal assistance; foreign authorities and regulators deal with BDL and SIC for banking FI and various Lebanese bodies as authorities for non-banking FI. Accordingly, the supervisory conflation of BDL and CMA further intensifies the Lebanese legal framework's lack of banking and financial operations' laws via revealing the Lebanese financial system's lack of objectives regarding public interests. Consequently, Lebanese financial regulations are limited to licensing powers. Meanwhile, fitness and properness requirements for key CG figures in banks translates in BDL's circulars as required certifications that can be waived via the governor's discretionary powers as exemptions. In this line, the flexibility and proportionality principle for CG implementation, is downsized under BDL's supervision to a cost-benefit process based on banking products' profitability. Consequently, Lebanon carries on mismanaging bearer shares despite Lebanon's commitment to UN's OECD - CRS, and FATF requirements which makes

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(1) Because supervisory assessments require publishing findings which are based on technical and financial data when technically BDL bars internal audit of its supervisory activities besides the fact that it is technically impossible due to related party issues which conflate public and private sector transactions. We discussed this under Explanatory Note No. 3 in the list of Explanatory Notes under Annex 3, page 352 of this research.

(2) Refer to Case Study Note No.1 under the List of Case Notes in Annex 3, page 346 of this research.

UEBO difficult to trace and establish. Essentially, this explains how the lack of identification of business and investment risks, along with business concentration risks triggered the spread of contagion risk which manifested as a shortage in USA Dollars. With that being said, profit-making and sharing is BDL's reactive supervisory policy's driver as banks are the Lebanese government's debt funders and since BDL does not allocate resources for banks. This is why when a bank is on the brink of failing BDL either resorts to temporarily managing the said bank before acquiring that bank's assets like it did with Mashriq Bank in 1988[(1)] or forces mergers between Lebanese banks. Basically, BDL's reactive supervision and piecemeal regulation triggered Lebanese banks' inflation of assets amidst massive banking group risk transfer, via credit bubbles created whilst reeling foreign currency only to be spread by these banks' banking groups to the financial market and entire national economy. Furthermore, BDL's one size fits all CG supervisory policies lead to the misapplication of Basel III's Standardized Approach for RM in banks via limiting banks internal control policies to guidelines that render RM strategy in banks a one size fits all as well. Thus, even adherence with Basel III's capital adequacy framework is impossible as the supervisor's policies and regulations allow risk-taking margins that exceed by six times both the allocated capital buffers and risk mitigation liquidity cushions which nullifies BDL's so called RM requirements on Baseline CG. **Second,** on an entity level CG remains a soft law regulated function that lacks specialization and enforceability mechanisms such as a liability matrix built on roles and performance assessments. Essentially, BODs exercising policies that shape decisions are absent as both the BOD and executive directors function with complete discretion as banks remain in common practice: both family businesses set in closed joint stock companies with respect to the majority of corporate controlling shares. With Lebanese laws allowing one-tiered management models, board oversight of management for internal control requirements under CG is redundant while management's override of control functions is the norm. In this respect, decision making on entity levels remains opaque with accountability being a matter of litigation risks subject to settlements outside courts either by mergers or demergers. CG practices are within the BOD's discretionary powers leaving all control functions such as compliance, internal audit, and risk management to govern themselves via independent charters for declaratory proforma BDL CG requirements. In this sense, these key control functions resort to creating paper trail to document override to protect themselves and their memberships in their respective

(1) مالك عبلا ، قوانين المصارف دراسة حول المصرف المركزي والمصارف التجارية المتخصصة والإسلامية ومكافحة تبييض الأموال (دراسة مقارنة) ، الطبعة الأولى، منشورات زين الحقوقية، بيروت، لبنان، ٢٠٠٦، صفحة: ١٦٣.

international disciplinary organizations (IAS and ISA) especially for internal auditors and risk managers since both functions are not specifically regulated. Furthermore, remuneration is not transparent and not subject to clear policy since the law does not offer ways to justify a remuneration schemes or subject them to revision beyond litigation as shareholder activism is limited to voting or litigating. Hence, because BODs decide and execute their decisions on risk-taking for profit under the one-tier model, financial reporting does not offer assurance or transparency prior to an investigation or pending litigation. In effect, liability for non-compliance with CG requires making an act that is treated as a breach of legal duties otherwise it remains a risk that can neither be sanctioned nor have its damages redressed. Also, both the CMC and BCCL regulations neither provide on how they aid whistleblowing for breach of compliance duties nor how the identities and interests of auditors, RM managers, or compliance are protected from retaliative litigations. In conclusion, there are no hard laws on CG nor efficient Lebanese regulations that govern CG in banks or financial institutions other than BDL's circulars which clearly neither provide for criteria for determining credit risk and assessing risk appetites nor stipulate when BDL is providing micro or macro prudential policies for credit risk in banks. This evaluation concludes part one of this research. However, before we move on to examine the implementation of efficient wealth management CG as a necessary step to regulate unfair competition in wealth management; we advise the reader to refer to our comprehensive framework for the Lebanese banking and financial vices regarding wealth management CG[(1)] and timeline case study on BDL's Baseline applications from 1999 leading up to the financial crisis[(2)]

(1) Refer to Table No. 5 in the List of Tables of Annex 2 of this research to see an overview of the Lebanese legal system's vices vis a vis Baseline standards, page 246 of this research.

(2) Refer to Case Study Note No. 1 in the List of Case Studies and Case Notes under Annex 3, page 397 of this research.

Part II ─ Implementation of Wealth Management Corporate Governance

" The practice of interlocking directorates is the root of many evils. *If we desire respect for the law, we must first make the law respectable*(1)". ***Louis D. Brandeis***

Specialization and holistic approaches provide for regulatory precision and systemic balance between macro policies and micro applications of wealth management CG. In the previous part, this research discussed effective CG as a macro-micro balance(2) by-product. Accordingly, this part addresses efficient wealth management CG's micro application in the light of Environmental Social Governance (ESG) through its vices in Lebanon to move forward with reform and recovery. Consequently, this part shows how micro application regulation can use competition regulation to promote financial sustainability via effective CG under the notion of holistic consolidated banking and financial supervision. By comparing the Lebanese sector-based disclosure and reporting requirements with the European Union consolidated reporting and disclosure requirements this part shall show that transparency can dictate financial crisis avoidance. Also, by relying on Basel III's consolidated framework(3); this part explores how each regime transposed the Baseline requirements in its micro-applications of wealth management CG. Verily, this part evaluates soft and hard law approaches regarding international standards in wealth management CG because on May 12, 2014, in Paris, BDL's governor in his capacity as Lebanon's CMA's chairman signed a memorandum of understanding (MOU) with then French CMA's chairman Mr. Gérard Rameix(4) to provide one another with the fullest mutual support necessary to facilitate operational functions within their respective jurisdictions as well as enforce and safeguard compliance with their respective laws and regulations. Hence, this part explores Lebanon's inherent legal framework's vices that preclude the application of **effective wealth management corporate governance** vis a vis its **European counterpart** which utilizes its legal framework as a means for **holistic governance** in chapter one. As for chapter two, it explores **financial markets' governance a vice and means in micro implementation** in terms of managing regulatory limitations and hyper regulation for the purposes of implementing reforms necessary for recovery and sustainability.

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(1) Louis Brandeis, Other People's Money and How Bankers Use It, The Barnes, and Noble Library of Essential Reading, first edition, New York, United States of America, 2009, page 52.

(2) Refer to paragraph two of section two of chapter two in part one.

(3) Refer to figures 16 and 22 in Annex 2, pages: 329 and 334 of this research.

(4) The official copy of the memorandum of understanding between the Lebanese and French CMAs can be found on the French official capital markets' authority's online page via URL accessed on March 21, 2021: https://bit.ly/3gR8Fn4 .

Chapter One –Legal Framework, a Vice and Means for Micro Application

"Design is not just what it looks like and feels like. Design is how it works(1)". ***Steve Jobs***

Supervision of micro wealth management corporate governance implementation in Lebanon tackles contractual wealth managers' duties from a regulatory approach in four major types of contracts utilized to manage wealth by Lebanese banks, financial institutions, and financial intermediation institutions. These contracts are fiduciary contracts, securitization contracts, collective investment schemes' related contracts, and private investment contracts(PIC) under Law No. 163/2020. Despite the fact that each contract is governed by its respective law; their body of executive ordinances is in the CMA's series of regulations since the CMA is their ultimate regulator. Meanwhile, in the EU, supervision of micro wealth CG implementation is achieved via three mechanisms: (1) functionality for entities and European supervisory agencies, (2) Single Market and Single Resolution Mechanism, and (3) specialization in applying international standards on holistic CG for efficiency purposes. Meanwhile, as a modern economic law, the EU's legal framework provides for specialized, technical, and flexible audit and compliance rules compared to its Lebanese counterpart which are abstract and do not cross domains in audit and compliance. This is why this chapter examines audit and compliance regulation as a vice in Lebanon yet a means in the European Union as a drawback that exposes the Lebanese market to legal and operational loopholes since regulators rely on supervisory arbitrage to implement financial exemptions that are vices for shadowbanking . Accordingly, this chapter shall compare the Lebanese vices with the European means of implementing effective wealth management CG to calibrate how each regulatory and legal framework supervises market players and regulates their operations and obligations. This emphasizes the words of England's Central Bank's current Governor Andrew Bailey when he pointed out that supervision and regulation are usually and wrongfully used interchangeably(2). The latter has to do with the framework of rules and guidance while the former has to do with how regulators or supervisors use the framework in practice. For the foregoing reasons, this chapter shall explore **Lebanon's legal framework a vice for financial governance** in section one followed by section two which discusses **Europe's legal framework a means for holistic financial governance**.

(1) Rob Walker, The Guts of a New Machine, an article published in The New York Times Magazine, on Nov. 30, 2003, available online via URL accessed on June 6, 2021: https://nyti.ms/3x0hIXZ

(2) Refer to Explanatory Note No.4 in the list of Explanatory and Case Notes of Annex 3, page 354 of this research.

Section One – Lebanon's Legal Framework a Vice for Financial Governance

An entity answers the question of who because it is a legal person created to assume rights and liabilities which constitute its patrimony. The Lebanese legal system relies on the notion of legal entities with the exception of special purpose vehicles as specialized patrimonies on off balance sheets of an originator or operator in banking and financial operations. Accordingly, paragraph one shall treat **legal structure and financial exemptions a vice for financial transparency and systemic risk** and **legal definitions on audit and compliance a vice for internal control governance** in Lebanon in paragraph two.

Paragraph One – Legal Structure and Financial Exemptions, a Vice for Financial Transparency and Systemic Risk

Entity level supervision of wealth management CG is both specialized in the sense of how an entity's structure serves why it was created; and holistic in the sense that the said structure reflects on how that entity's operations are governed transparently and effectively. However, as entities operate in regulated markets such as banking and capital markets they may benefit from exemptions that fall under the discretionary powers of their respective regulators. Having passed regulations concerning entity level supervision of wealth management CG without reconciling its classical approach to legal structure or operational regulation, the Lebanese legal framework sustained two vices which we shall treat respectively under: **(A)** beneficial ownership and control transparency vice and **(B)** systemic risk due to interlocking directorates' vice.

A- <u>Legal Structure and Patrimony a Vice for Beneficial Ownership and Control Transparency:</u>

In the line of entity level governance management, Lebanon generally adheres to the personal theory of patrimony which defines patrimony as the collective set of rights, assets, and liabilities of a legal person (companies of various forms) such that it is characterized with indivisibility, irrevocability (as in it cannot be transferred fully or partially), and dependency on its association with a legal or natural persona for its existence, with a few exceptions(1). Meanwhile, the notion of specialized patrimony is used in the Lebanese legal framework without distinguishing between off-balance sheet entities or off-balance sheet transactions in four types of contracts: fiduciary, securitization, collective investment schemes, and private investments companies (PICs) including independent portfolio management. The laws also lack rules for defining the basis for considering a transaction or an entity as an on or off-balance sheet item. For example, Articles 7 and 10 of Law No.

(1) Refer to Explanatory Note No 6 in the List of Explanatory Notes of Annex 3, page 355 of this research.

520/1996 on fiduciary contracts only mention the term "*fiduciary patrimony*" as being segregated from a fiduciary bank's patrimony and recorded outside its balance sheet. Meanwhile Article 4 of Law No. 706/2005 for collective investment schemes' funds states that the fund does not possess a legal persona and uses the term "*communal property*" to refer to the fund's mobile assets as well as the term "transferable shares" for the fund's equity. Additionally, for governance purposes, off balance sheet specialized patrimonies whether they be special purpose vehicles (SPV) such as in securitization or off-balance transactions such as in fiduciary contracts; fall under the consolidated Baseline banking supervision principles 10, 11, 12, 13, and 14 as well as pillars one and two of Basel III's consolidated framework. Accordingly, these gaps in the Lebanese legal framework affect Lebanese regulators' financial governance under Baseline SRP and banks' compliance with Basel III's calculations of capital adequacy requirements (BCAR) for covering credit risk, and exposure in their operations. Furthermore, for matters of control, ownership, and financial governance, the said principles extend entity level wealth management CG to cover both banks and bank groups or economic conglomerates and financial groups[(1)]. First off, because of Lebanon's traditional banking operations' view, a bank's assets are basically depositors' moneys or loans and facilities offered to investors. However, when they are surrendered by a bank to an SPV, or in the course of an off-balance transaction, they become items or assets beyond a bank's control. Accounting wise, this transfer appears in a bank's balance sheet as liabilities in the form of explicit or implicit guarantees for the assets migrated to the SPV which records the transfer as equity [(2)]. In this sense, off-balance sheet items in specialized patrimonies, expose a bank to future losses when an SPV's loans, tranches, or assets which were migrated to an independent portfolio for a fiduciary contract underperform. As incognito leverages[(3)] that can become hidden liabilities which are difficult to trace, they affect the sponsoring or originating bank's financial position. For example, in 2010, Citibank had off balance sheet assets equal to six percent of the United States of America's GDP[(4)]. These accounting notions apply first under Article 6 of Law No. 520/1996 in Fiduciary Contracts which uses the term "return a fiduciary patrimony with its returns to its originator". They also appear within Article 23 of Law No. 705/2005 for Securitization SPV with specialized patrimony which uses the terms "relinquish/surrender " for its equity; and within Article 9 of Law No. 706/2005 in collective investment scheme funds which uses the term " price

(1)Solomon Deku and Alper Kara, Securitization Past, Present, and Future, first edition, Palgrave MacMillan Studies in Banking and Financial Institutions Series edited by Philip Molyneux, imprint publication of Springer Nature, Gewerbestrasse, Switzerland, 2017, pages 66-77.

(2) Refer to figure No. 17 in the List of Figures in Annex 2, page 329 of this research; Edward J. Ketz, Hidden Financial Risk: Understanding Off-Balance Sheet Accounting, first edition, John Wiley & Sons, New Jersey, United States of America, 2003, pages:140-163; and Ann Wang, Essays on Market Frictions and Securitization, a dissertation for the title of Doctor of Philosophy of Financial Economics and International Finance from the University of Maryland, United States of America, 2016, pages 7- 11, accessed via the University of Maryland's Research Digital Repository on May 7, 2021, via URL : https://bit.ly/2TXYAM6

(3) See Explanatory Note No.7 in the List of Explanatory Notes in Annex 3, page 355 of this research.

(4) Diana Vanessa da Silva Teixeira, Off Balance Sheet Items in European Banking: A Panel Data Econometric Model on Risk and Liquidity, Thesis for Master's in Finance and Taxation, University of Portugal, Faculty of Economics, 2013, pages 4 - 6, available via URL accessed on May 12, 2021: https://bit.ly/3DOoG6D .

of equity shares sold". In this respect, the said law does not mention credit risk transfer in its securitization process, nor does it discuss if the term surrender/relinquish is a true sale nor how the securitization SPV will reflect on its banks' or investment firms' capital adequacy requirements as the European Union's Legal framework does. However, due to the LBS that applies to banking operations, off-balance sheet items such as fiduciary contracts and securitization SPVs do not appear on banks' balance sheets not even to the BCCL unless banking secrecy is lifted by the SIC in terms of economic beneficiary natural person in economic groups or originator fiduciary for fiduciary contracts. Basically, Law No. 520/1996 for fiduciary contracts relies on the bank's disclosure of it acting in its capacity as a fiduciary according to Article 4, compared to Law No. 705/2005 on securitization which relies on the designated SPV's annexes and tables of disclosures in Article 23 to inform investors of the SPV's equity. In this sense, the off-balance sheet items in combination with the LBS go beyond the SPV's specialized patrimony's financial disconnect in case of bankruptcy creating an illusion of disconnection between a sponsoring or originating bank from its SPV in liability that cannot be traced through structure. Additionally, in cross-border operations, investors who rely on annual financial reports published by banks cannot trace each SPV to its respective sponsoring bank. In this sense, a bank's liquidity and capital adequacy risks are not properly portrayed not to investors nor foreign regulators. Financial disclosure must inform an investor and regulator by providing a complete and true picture of a bank's financial standing. The same scenario applies for collective investment schemes that utilize SPV's in Lebanon and by extension, banks that have independently managed portfolios by PICs under fiduciary contracts via subsidiary investment arms; also fall within the opaqueness of off-balance sheet items.

Second, not only do specialized patrimonies and their SPVs impede the application of Baseline SRPs(1) in banking markets but also in financial ones. For instance, CMA's Article 2106(2) stipulations mention economic groups under <u>two categories of activities</u> exempted from licensing to conduct financial securities business without defining what economic groups are. The **first category** applies**,** if they fall under the category of transactions between a company transacting from its private account with another if they belong to the same group as well as if it is or if it suggests becoming a partner in a company project wherein the transaction is for that purpose. As for the **second category** it applies**,** if they are activities such as arrangements, management, custodial, managerial, or advisory services that are conducted by a member of the same economic group or if the person conducting these activities offers or becomes a partner in

(1) Review principles 6 ,7, 12, 13, and 14 of Baseline SRP on ownership and control for exercising consolidation and targeted entities through affiliates and control. This is due to the fact that Lebanese laws do not define what an economic conglomerate or membership is beyond the notion of control through ownership or votes. see paragraph 1 of section 1 in chapter 2 of part 1 of this research under the title "Basel's Banking Supervision Principles in Lebanon".

(2) CMA's Licensing and Registration Series, issued on January 19, 2017, available via CMA's official page via URL accessed on May 11, 2021 : https://bit.ly/3mXAxJL .

a common project so long as the services it renders are to a partner in the common project and for its purposes. Another example would be Article 13 of Law No. 163/2020 on PICs which states that a group of companies is considered an economic group if a natural person has the majority of votes or where one parent company exercises direct or indirect managerial and supervision authorities on subsidiary companies rendering the latter under the parent company's continuous supervision. The said article defines supervision as a natural person or a parent company having the majority of a subsidiary's capital or total voting rights or the right to appoint more than half the board of directors or directors of the said entity(1). However, if a PIC's client is a bank conducting private investment, then the LBS will apply to off balance sheet items held in PIC portfolios. Meanwhile in non-PIC scenarios, when a bank is dealing in financial securities business, Article 51 of Law No. 161/2011 lifts banking secrecy for these transactions only upon the authorization order of the CMA's chair. In other words, one might be able to trace a legal entity's parent and subsidiary companies without truly having access to the natural person in control (beyond the notion of ownership/votes) of the organization or knowing the ultimate economic beneficiary. This is also supported by the MOF's announcement pertaining to form M-18 - Declaration of Economic Right Owner and the form itself which require declaring legal and natural persons as economic right owners under three criteria: (1) natural person owning directly or indirectly 20% or more of a legal entity's capital, (2) ownership of the majority of essential decision making/votes, and (3) holds a senior management position in the legal entity's management. Accordingly, any legal/natural person who does not own 20% of the capital and doesn't satisfy criteria (1) or (2) is not mentioned (2). In this sense, both investors and cross-border regulators may not be able to identify correlations between parent companies using subsidiaries to operate SPVs or specialized patrimonies because in common practice, subsidiaries might appear on a parent company's balance sheet, but the SPV (in securitization or collective investment schemes) will only appear as a liability through guarantees on the subsidiary's balance sheet not the parent company such as a banking group's investment arm- subsidiary scenario such as BLOM Investment SAL for BLOM Bank.

B- <u>Financial Market Exemptions A Vice For Systemic Risk Due To Interlocking Directorates:</u>

According to Xavier Vives, a piecemeal prudential regulatory approach does not work because elements such as capital, liquidity, disclosure requirements and macro-prudential ratios

(1) PICs deal in financial securities that are no longer listed in organized financial markets in the date of investment (Article 2(1)(a) Law 163/2020).

(2) Lebanese Ministry of Finance Announcement No 3045/S1 pertaining to M-18, dated on October 4, 2019, page 2, available via URL accessed May 11, 2021: https://bit.ly/2UXTmAs and M-18 Form Declaring Economic Right Owner, available on the Lebanese Ministry of Finance's website via URL accessed on May 11, 2021: https://bit.ly/2UXTmAs.

must be considered altogether vis a vis activity restrictions[1]. In his view, both capital and liquidity requirements must work towards controlling the probability of insolvency and illiquidity which means they need to be set together. His view matters as both Lebanese banking and financial regulatory frameworks are piecemeal regulations that employ exemptions. Also, because Lebanese laws' are silent regarding the term shadow banking; the CMA's piecemeal financial regulations are Law No.161/2011's executive ordinances governing the Lebanese financial market via exemptions scattered across seven volumes issued to structurally govern financial activities sans financial operations. To this end, this subparagraph groups the said exemptions into the following six categories:

(1) Exemptions from prior licensing: The CMA's 2000 Series on licensing and registration regulation includes exemptions from obtaining prior licensing in order to engage in securities business in Articles 2107 up till 2110. Under **Article 2107, economic groups and common projects** are exempted from this requirement if they fall under <u>two categories</u>. The <u>first category</u> includes transactions for own account with another company if (a) both companies belong to the same group of companies, or (b) is or suggests becoming a partner in a common project provided that the transaction is for the purpose of the partnership project. Meanwhile the <u>second category</u> applies to transactions for arranging, managing, advising and custodial activities carried out by: (a) a person who is a member of the corporate group and the services concerned are provided for another member of the group; and (b) the person is or proposes to become a participant in a joint venture and the services provided are to another participant in the joint venture for the purposes of that venture. Meanwhile, **Article 2108** applies to securities business activities that are **incidental** or **ancillary to carrying on professions or business** other than securities business conditioned on the person carrying out these activities not presenting itself as carrying out securities business. Additionally, **Article 2109** includes **activities in connection to the sale of a company** where a transaction is concluded, or a securities business activity is carried out by a person acting as principal for the purpose of acquiring or disposing of at least 50% of the voting shares in a company. Lastly, **Article 2110** includes **activities of dealing or arranging for own account** and is comprised of <u>four categories</u>: (1) <u>dealing in a security or arranging a transaction by a person</u> for their own account, unless the person: (i) holds itself out as involved in securities business activity dealings, or (ii) regularly solicits members of the public to deal in securities; (2) <u>dealing as principal or arranging for the purpose of acceptance of an instrument creating</u> or acknowledging indebtedness regarding a loan, credit guarantee, or other similar financial

(1) Xavier Vives, Competition and Stability in Modern Banking: A Post Crisis Perspective, research paper published in Journal of Industrial Organization, Volume 64, 2019, pages 55-69, available via URL accessed on June 28, 2021: https://bit.ly/3i36IVm .

arrangements that the person has granted or provided; (3) dealing as principal or arranging for the purpose of issuance of a person's own shares, debt instruments, or other securities; and (4) a transaction made by a person acting solely in his capacity as nominee, trustee, or executor for another person. Through this exemption, Article 2107 makes room for conflicts of interest and group risks in points one and two. Regulatory approval and supervision here should not be a matter of licensing or registering but rather fact checking that the securities are truly issued for a partnership and business growth not a restructuring or change of control. We say this knowing that there are three financial intermediation institutions deficiencies that apply: (1) deficient CG framework for banks, (2) limited corporate control beyond majority of shares and voting rights, and (3) limited economic conglomerates definition. These deficiencies are opportunities to use adjusted financial reporting and inflating assets via issuance of securities for own account or constituting partnerships without supervision because public traded companies rely on public confidence to continue operating, financing their operations, and investing. Meanwhile, Article 2108 which governs exemptions for ancillary activities opens a door for endless possibilities of foreign currency exchange rate manipulation through business securities institutions who should not be initially doing foreign currency exchange business which is regulated by totally different regulations and topically through a different regulator - BDL. Recently, Lebanon has been struggling with the hyperinflation due to excessive deliberate manipulation of USA Dollar-Lebanese Pounds exchange rates in the black market. Exchange institutions that ship currencies and non-shipping exchange institutions are not the only ones responsible for these fluctuations, since ancillary practicing institutions have been manipulating the exchange rates through forced early amortization of securities to reap cash USA Dollars before maturity date utilizing BDL's circulars that fixed the exchange rate at 1515 LL then at 3900 LL and finally at 21000 L.L. via the "Sayrafa Platform". Additionally, it enshrines the practice of shadow banking by opening the door for performing lending operations through issuance of securities which reflect on interbank lending interests whose implications create credit bubbles which we have seen amidst the housing loan crisis. This is the case when an investor is allowed to borrow from the institution for transactions. Together Articles 2107 and 2108 create a massive gap for cross-border operations regulation and supervision for economic conglomerates especially in scenarios of holding companies, mixed financial holding companies due to the Lebanese laws' limited notions of corporate control. Verily, consolidated financial reporting can be essentially undermined especially with non-financial holding companies controlling and managing their financial subsidiaries to carry on risks between parent, daughter, and subsidiary companies. Furthermore, Articles 2109 and 2110 open the door to concentration risks and abuse of market dominance through unsupervised and unregulated mergers and acquisitions especially with Article 2109 specifically mandating that the company concerned must acquire or dispose of 50% of the shares which is technically a drastic change in the corporate control dynamics of a group and essentially for a financial subsidiary within the said group.

(2) **Exemptions from Offer Disclosure Requirements by waiver:** Under Article 6210 of the 600 Series on offers of security, if an issuer deems that the information specified in that regulation are unduly detrimental such that precluding the said information would not mislead investors in assessing the issuer or the securities in question; the said issuer may request in writing that the CMA waive the disclosure requirement. It further specifies that the issuer includes in its request and in strict confidentiality the necessary information with a justification for its presumption that the said information is unnecessary for disclosure at that time. Should the CMA approve the issuer's request for waiver and then see fit that the said information should be disclosed, then it can request the issuer to disclose the said information to the public at any given time as per the enclosed waiver. For this exemption we contend that the exemption empowers the regulator with massive discretion which is room for supervisory arbitrage. It does not clarify which information can be truly detrimental nor does it point to what information contributes to an investor's informed financial consent, nor does it explain what it means by information necessary for an investor. In fact, what can be truly detrimental to the issuer can be financially detrimental to the investor with time being of essence as to when information is disclosed with respect to an ongoing financial transaction. The exemption makes us wonder about the regulator's role in protecting the interest of local investors in the Lebanese financial/capital market. The said article's wording is vague in a way that allows utilitarian interpretations for the purposes of supervisory arbitrage which can disrupt the market.

(3) **Exemptions from Supervisory Revision for Public Offering:** Under Article 6304(1) of the 6000 Series, there are **nine types of exempted public offerings for securities** which are: (a) Lebanese Government's issued securities, (b) foreign governments' issued securities or a supranational authority recognized by the CMA, (c) securities offered to maximum 20 professional subscribers who invest at least USD 10K (or its equivalent in another currency) each, through an approved institution, (d) securities offered by one member of a corporate group to other members of the corporate group, (e) securities that are only offered to a director, officer, or employee, or controller of the issuer, (f) securities already listed on a regulated exchange provided they are only offered to existing security holders of the issuer and if the number of securities listed would be increased by a maximum of 20%, (g) securities issued in place of

already issued securities provided they are offered only to existing security holders of the issuer and without causing a capital increase, (h) securities offered as stock bonus, stock dividends, or upon exercising the right of conversion for existing security holders of the issuer only, (i) securities offered in connection with a merger or take-over bid provided that a disclosure document is sent to all offerees containing information which CMA deems as adequate as information that should be included in a prospectus. Meanwhile Article 6304 (1)(2) both elaborate that the said exempted offers may include more than one type of exempted offers listed under Article 6304(1) such that they must fully meet the conditions required for at least one type of exempt offer and that upon receipt of the issuer's written application the CMA shall decide if it will treat an offer that doesn't fall within paragraph one may be treated as an exempted offer should it consider the said offer in the public's interest. Additionally, Article 6304(3) adds that the CMA may impose any conditions on the offer that it deems appropriate. Our concerns regarding this exemption are many. For instance, in point (a) we see how these regulations continue the practice of utilizing private sector money to finance odious public debt which resulted in Lebanon's default on sovereign debt and its financial crisis(1). Meanwhile for point (b), not because certain securities are issued by a supervisory authority that the CMA recognizes, then the said securities are safe and beneficial for the Lebanese market. Wirecard and Greensill are clear examples(2) when they used subsidiaries they established in the countries of the markets they targeted. Hence, relying on knowing or recognizing a regulator and distribution of securities via a duly authorized Lebanese institution are not guarantees that these securities will perform or are liquid and viable investments. As for point (c), despite it being about encouraging bringing in foreign currencies via professional investors, this does not protect the Lebanese system from money laundry nor from foreign exchange rate currency manipulation. As for point (d) it opens doors for change of control in a subsidiary or group by creating leverage and mixing revenues. What if the securities/bonds issued are actually a transfer of liabilities from one member of the group to another to delay bankruptcy with SPVs as the vehicle like in Greensill? Point (e) is questionable since it casts the Lebanese financial regulation as one replete with conflicts of interest especially that the normal practice is that shares/securities owned by directors in joint stock companies normally in Lebanon are sealed for safekeeping as a guarantee for their management and performance. Hence, we raise the question, how is it that this article allows

(1) See further: Yvonne Wong, Sovereign Finance, and the Poverty of Nations, first edition, Edward Elgar Publishing, Cheltenham, United Kingdom, 2012, pages: pages 20 - 39 and 127 -177.

(2) See further: Arthur Wilmarth Jr, Wirecard and Greensill Scandals Confirm Dangers of Mixing Banking and Commerce, research paper for 40 Banking & Financial Services Policy Report No. 5 of May 2021, GW Papers Series, GW Law Faculty Publications and Other works, George Washington University, Washington, United States of America, available via URL accessed December 25, 2021: https://bit.ly/35CpxLe .

an exemption for offering securities to a director or officer or controller of the issuer. In fact, this raises questions of transparency and basis of commensurate remuneration under the agency theory and thereby strikes the heart of CG which mandates balancing the interests of the corporation with the stakeholders inside and outside the institution. Point (f) strikes a chord because it speaks of increasing the number of securities to a maximum of 20% when such increase can mean two things either the company is raising capital which has special procedures, or the company is effectively devaluating the value of its shares in a manner detrimental to shareholders. As for point (h), these types of conversions must be monitored because if they are a bonus then they are rewards for performance, if they are dividends then the regulator needs to see if the company's issuance of dividends is based on actual revenue for tax purposes and financial continuity of the institution, and if they are a conversion of bonds into shares then the CMA needs to check if there is a capital raise and if the control is still as per the requirements of the Lebanese Law. Similarly, not everything is about licensing or registering. There are things that need to be confirmed for compliance and transparency reasons and that's where true financial regulatory control shows in micro-implementation of efficient supervision. Lastly, for point (i), a prospectus is not enough in a merger or acquisition related securities' issuance because such actions change the dynamics of the financial market, and this very point is the epitome deficiency of the Lebanese financial market's lack of competition regulation. This in itself explains why Lebanese financial markets' performance is poor compared to the contributions of the banking operations because this limits market entry for competitors as well as investors thus distorts competition through monopoly or oligopoly.

(4) **Exemptions from Supervisory Revision for private Offering:** Under Article 6305 of the 6000 Series, an offeror may submit an offer exempted from regular supervisory revision by way of private placement for the purposes of raising equity or debt capital for a company that meets Article 6304's requirements via filing a memorandum of private placement with the CMA notifying it of its intention to provide an exempted offer after fulfilling the requirements of Article 6302. Under the prior article, the offering company must offer securities via a duly authorized and registered institution for providing securities business as specified in the 2000 Series or directly through an issuer who falls under the categories of companies mentioned in subsections (a),(b), (d), until (g) in Article 6304, provided that it notifies the CMA fourteen days ahead of the date the issuer intends to offer the securities along with all the documents required for necessary disclosures, sale of securities as per Annex five of the 6000 series. The said request to benefit from a private offering is subject to authorizations enjoyed by the CMA under Article 6303 which allows it to accept or request supplementary info and disclosures

contained in the private placement memorandum or suggest amendments provided that the memorandum includes all necessary information that would allow an investor to appraise the issuer, its assets, instruments, liabilities, and financial position in addition to the types and terms of the offered securities. It also places liability for the essential information contained in the memorandum and damages that arise from precluding or misrepresenting such info on the issuer. The issuer is also required to provide a copy of its memorandum free of charge to all persons invited to underwrite prior to making a decision to invest. Our contention with this exemption is that it can lead to collusion among big joint stock companies and economic groups/conglomerates to fix securities prices and limit entry into the market in a manner detrimental to the investors and the market's sustainability.

(5) **Exemptions Regarding Foreign Instruments and Subsequent Offers:** Under Article 6306 of the 6000 Series, securities offered by an issuer in another country may offer them in Lebanon if the offer qualifies as an exempted offer under requirements of Article 6304 and the offer is done through a dully authorized, licensed, and approved institution in Lebanon. Meanwhile, under Article 6307 of the 6000 series, distributing securities of exempted offers as subsequent offers that are re-offered or offered for resale shall constitute a new offering of securities which must comply with the requirements that apply for a public offer unless they too qualify as another exempted offer. This exemption falls under our contention in exemption number three with a slight difference which is the fact that it constitutes room for supervisory arbitrage as to what may be allowed a re-run in the Lebanese financial market and what needs to go through the licensing system of approvals and once again vagueness that serves the regulator not the market's optimal performance or investors' interests.

(6) **Exemptions from Corporate Governance Requirements by Waiver:** Under Article 7502 of the 7000 Series on listing, a listed issuer may apply to the CMA requesting it waive one or more of the corporate governance requirements of Part F – Corporate Governance in the 7000 Series in writing with detailed reasoning for such request for each requirement included in the application for waiver. Should the CMA grant its request, the listed issuer must disclose in its annual report which provisions of Part F it has been granted a waiver from including the reasons for requesting such waiver to the CMA. Lastly this exemption in itself with respect to its grave negative impact is similar to exemption number two regarding waiver of disclosure of unduly detrimental information. This exception cannot be justified by the market being mostly comprised of small and medium size entities that do not carry out complex operations or if they lack the funds to have necessary bodies of corporate governance within them. These institutions still need to be governed to prevent financial runs or bankruptcies. Hence, waiving

CG requirements without any specifications on what requirement can be waved and conditions that apply for such waivers without mitigating measures for waived CG requirements is a systemic risk for the financial market exacted by supervisory arbitrage. A regulation cannot be vague to the extent it disembowels the law of its objective in protecting interests, but in order to further understand how Lebanon's legal structure is a vice for effective wealth management governance on a micro level, we need to explore how these entities are governed under Lebanese legal definitions of the audit, risk management, and compliance functions in paragraph two below.

Paragraph Two – Legal Definitions on Audit, Risk Management, and Compliance, a Vice for Financial Control Governance

This paragraph subdivides into two subparagraphs to treat Lebanese laws and regulations' definitions of audit, risk management (RM), and compliance as internal control functions with legal repercussions on CG in Lebanese banks offering wealth management under BDL or CMA's regulations.

A- <u>Audit and RM Functions' Irregularities, a Vice for Financial Reporting Transparency:</u>

Audit and RM irregularities start from the Lebanese legal framework's basic definitions of these functions. On August 1 of 1994, the Lebanese parliament passed Law No. 364/1994 under the title "Law Regulating the Profession of Certified Accounting Specialists in Lebanon". The law in itself is a vice for the audit profession because it does not use the term external auditor to define the said certified accounting specialists but in context only governs external auditors[(1)]. As for RM irregularities, the issue rests in Article 134 of the LOC when it effectively, eliminated liability for risk and risk management (RM) from BOD's legal duties by excluding compensation for potential damages as the LOC is basically the general text that governs whatever the LCC does not stipulate on regarding company law texts. Meanwhile, Article 1 of BDL's Basic Circular No. 77 of 2000[(2)] defines internal control as the set of regulations, policies and procedures laid out to control risks faced or may be faced by banks or financial institutions to protect their assets. Essentially, Basic Circular No. 77/2000 does not mention RM but only defines internal audit under Article 1(2) as the independent and objective assessment of a bank's or financial institution's work, departments, and units for the purposes of enhancing their effectiveness and efficiency of their internal control and risk management. Also, Article 2, stipulates that an internal audit assessment shall cover all departments, units, operations and activities of banks and financial institutions including

(1) Refer to Explanatory Note No 9 on Law No. 364/1994 and the LCC in the List of Explanatory Notes of Annex 3, page 357 of this research.

(2) As amendment by Intermediate Circular No. 253 which amended Basic Decision No. 9956 of July 21, 2008, on the establishment of the "Audit Committee", attached to Basic Circular No 118. containing intermediate Decision No. 10706, of April 21, 2011, and Intermediate Circular No. 254 as amendment to Basic Decision amending Basic Decision No 7737 of December 15, 2000 (Internal Control in Banks) attached to Basic Circular No 77.No. containing intermediate Decision No. 10707 of April 21, 2011.

outsourced activities and operations, as well as all branches and affiliates in Lebanon and abroad. Meanwhile, Article 3 mandates that the bank's or financial institution's senior management are required to establish an internal control framework that is commensurate with the size of the bank or financial institution as well as the nature of the risks they face or may face which also means they must update the said framework as needed. However, the said framework without specifying mechanisms or criteria requires that internal control frameworks must be at least comprised of an internal environment that relies on a clear and documented organizational structure that separates duties and is free of conflicts of interests, adopts human resource policies that are based on principles of merit and qualification, and disseminates a control culture among the bank or financial institution's staff. Additionally, without specifying the types of risks or risk identifying criteria requires banks to incorporate risks that a bank or financial institution faces or may face in their internal control frameworks such that they are classified according to probability of being controlled and addressed properly. Moreover, internal control policies and procedures must be documented based on results of the risk identification and assessment processes provided by these policies and procedures such that they form an integral part of the mechanism adopted for the execution of the bank or financial institution's operations or activities. Hence, under the said circular, a bank's internal control framework must include complementary systems that provide for implementing internal control mainly: (i) an accounting system that is compliant with the applicable laws and regulations as well as the International Financial Reporting Standards (IFRS), (ii) a risk assessment and follow up system, (iii) an archive system, and (iv) an information management system; and (e) continuous monitoring that ascertains the implementation of policies and the system's soundness for the purpose of addressing reported deficiencies. In this line, Article 4, requires that all financial institutions and banks establish an internal audit unit that must: (a) be entirely independent from the body which it is entrusted with its operations such that it has no executive responsibilities within the entrusting bank or financial institution and is objective when fulfilling its duties; (b) have full powers to carry out its audit operations, (c) have qualitatively and quantitively commensurate staff with respect to the bank or financial institution's size, diversification of activities, and the nature of the risks the said institutions face or may face. However, Lebanese banks and official institutions affiliated to other Lebanese banks may be authorized by BDL's Central Council and under its sole discretion based on the BCCL's recommendation to have a joint internal audit unit with their parent bank. In this line, it is worth pointing out that this last exception regarding having joint internal audit unit negates the notion of segregation of patrimonies and functions of parent companies from subsidiaries that constitute separate legal personas accountable under Lebanese corporate law. Hence, we find the said exclusion undermines the notion of transparency required by effective CG. Also, Article 5 of the circular No 77 prohibits banks and financial institutions from outsourcing internal audit in whole or in part to external specialized firms. Meanwhile Article 6 states that the BOD shall appoint the head internal auditor and determine his/her compensation. Additionally, each bank and financial institution shall communicate to the BCCL the name of their incumbent head of internal audit or any subsequent changes with the reasons for such changes whilst providing the BCCL with the head of internal audit's CV. According to Article 7, the internal audit unit shall be responsible for the following but not restrictively: (a) assessing the effectiveness of internal controls, (b) revision of the effectiveness of risk management, management and reduction methods, (c) revision of accounting entries, financial statements, and reports' accuracy including those required by BDL and the BCCL; (d) revision of the efficiency and effectiveness of tasks performed by the compliance department regarding combating anti money laundry and financing terrorism; (e) assessing the efficiency of corporate governance systems and their complementary policies and procedures for the purpose of verifying at all the bank's levels as well as its services, units, and branches it is compliant and prioritizes the implementation of corporate governance requirements when the bank expands abroad and when the bank engages in merger or acquisition operations. To this end, Article 8 specifies that the internal audit unit shall comply with: (a) preparing its own internal audit charter which guarantees its autonomy and determines its full audit powers, (b) submits the bank's or financial institution's activities and operations toa a comprehensive audit within the specified timeframe or audit cycler provided that the said cycle does not exceed a two-year period; (c) executes its audit tasks based on an annual audit plan established after a thorough study of the risks faced or may be faced by the bank or financial institution it audits. In this line, Article 9 stipulates that the head of the internal audit unit shall submit a quarterly report to the audit committee regarding the audit assessment and follow up tasks conducted by the audit unit during the previous quarter and must promptly communicate to the audit committee its important remarks. To this end the bank or financial institutions is required under Article 10 to submit the internal audit reports prepared by its internal audit unit to the BCCL and the external auditors as soon as they are requested. Meanwhile the BOD according to Article 11 shall approve the bank's or financial institution's policies and shall be particularly in charge for: (a) supervising and accurately following up the senior management's work to ascertain that it fulfils its charges through effective and proper internal controls; and (b) safeguarding the constant effectiveness of the internal audit unit. Additionally, the audit committee shall assist the BOD in its supervising and controlling role for internal control and internal audit provided that the audit committee complies with the applicable BDL and BCCL regulations. As for foreign banks' branches operating in Lebanon, they must communicate with the BCCL the name of their supervisory body responsible for overseeing internal control and audit duties of both the BOD and audit committee as specified in applicable Lebanese regulations including those issued by the BCCL. Should a financial institution lack an audit committee, under Article 13, the BOD shall fulfil the internal control and audit duties of this committee as per regulations issued by BDL and BCCL. In this line, it is worth pointing out that there are no further regulations for this condition since companies simply apply for this exemption as seen with the exemptions from CG requirements of entities authorized to practice financial securities business which means supervisory arbitrage at the expense of CG. Furthermore, external auditors under Article 14 shall prepare annual reports regarding a bank or financial institution's compliance with the provisions of this circular. Moreover, in accordance with Article 15 the BCCL shall issue as needed implementing regulations for this circular such that any person who violates this circular's provisions may be brought before the Higher Banking Commission as per Article 16 of this circular. This particular sanction does not constitute a deterrence for financial crime or fraud since the said commission only exercises administrative sanctions.

As for RM, Intermediate Circular No. 253 containing Intermediate Decision No. 10706 of April 21, 2011, amended Basic Circular No. 118 regulates banks and financial institutions' RM committees. The highlight of this circular lies in the fact that it mentions under its 7th and 8th articles the creation of a risk committee yet neither utilizes the phrase management nor refers to the creation of a RM unit. Accordingly, the said RM committee must be comprised of three board members (without specifying their nature as independent or non-executive) and a chairman that must be independent with a modern and practical banking or financial experience in risk assessment and management. If anything, this circular's texts explains away why RM units are not mandatory and how the RM function with just a committee cannot be construed as a holistic risk-based CG as these articles basically construe internal control mostly on audit risks and credit risk on a tertiary basis as the risk-based approach according to this circular is only specifically mentioned under internal control for audit unit functions. To this end, under Intermediate Circular No. 253/2011 which is attached to Basic Circular No. 77/2000, Article 4 requires each Lebanese bank to establish an audit committee comprised of at least three non-executive board members, appoint an independent chairman for the said committee with modern practical banking or financial experience in the fields of accounting, financial administration, or audit, and determine the compensation of the audit committee's chairman and its members(1). Accordingly, it is worth noting that these requirements fall short from the requirements for both internal audit and RM committees'

(1) Refer to Table No 8. to view data on Lebanese Alpha Banks' compliance with BDL's circulars on internal audit units and committees CG requirements in the List of Tables under Annex 2, page 268 of this research and Case Study Note No 3 in the List of Case Studies and Case Notes Under Annex 3 to read the evaluation, page 394 of this research.

functional capacities as required by Basel III's framework[1] regarding financial accounting knowledge, risk management, and IFRS. Moreover, the audit committee's scope of work under Article 5 of this circular encompasses the Lebanese bank, its branches, and subsidiaries in Lebanon and abroad. Thus, according to Article 5, audit committees assist the BOD in fulfilling its charges and supervisory role pertaining to the requirements of internal control and audit as per applicable regulations and recommendations of BDL and BCCL mainly regarding: (a) external auditors and internal audit unit's competence and autonomy, (b) soundness and review of disclosure standards adopted by the bank regarding control of financial statements, (c) following up the implementation of remedial measures mentioned in internal audit reports, control authorities, and external auditors, and (d) monitoring the bank's compliance with regulations and recommendations from BDL and BCCL. To this end, Article 6 requires the audit committee to oversee and supervise internal audit activities for indicative purposes via: (a) directly overseeing the internal audit unit and ascertaining its autonomy from senior management and is objective in its performance of tasks with sufficient audit powers resources both human and material; (b) providing its opinion on the internal audit unit's compensation and its submittal of relevant recommendations to the BOD, (c) assessing the internal audit unit's performance and its head provided that the external auditor's remarks and the control authorities' recommendations are taken into consideration; (d) proposing the approval of the appointment of the head of the internal audit or his/her dismissal or resignation; (e) reviewing the internal audit unit's reports and holding periodic quarterly meetings when necessary in the presence of the head of internal audit including meetings once a year at least without the presence of senior management members to discuss reports submitted by the internal audit.; and (f) approving the internal audit unit's charter, the audit cycle, and the annual audit plan. Additionally, the audit committee is required to supervise internal control activities via: (a) reviewing internal control regulations, policies, and procedures including those for combating money laundering and financing terrorism for efficiency and effectiveness purposes; (b) conducting periodic quarterly meetings with senior management for discussing internal control efficiency and effectiveness based on internal audit reports or senior management and external auditors or control authorities' recommendations regarding weaknesses in the internal control; (c) verifying that senior management applies recommendations and remarks regarding weaknesses in the internal control. Furthermore, the audit commit is responsible for appointing external auditors and determining their follow-up activities via: (a) opining on external auditors prior to their appointment and after verifying their human and material resources, as well as ethical standards, and necessary scientific and practical expertise required to perform audit activities with

(1) See Baseline audit and RM requirements in Explanatory Note No. 10 in the List of Explanatory Notes under Annex 3, page 360 of this research. We did not compare them with BDL's requirements since they are not implemented in BDL's circulars.

respect to the bank's size and complex and diversified operations; (b) proposing conditions for external auditors and their annual remuneration; (c) acknowledging and understanding the audit plan formulated by external auditors contracted by the bank to ascertain it encompasses all risks that the bank may be exposed to; (d) assessing external auditor's performance, autonomy, and objectivity; (e) discussing with senior management and external auditors financial statements to be published; (f) discussing main remarks and recommendations included in external auditors' reports and relaying them to the BOD, (g) determining special audit assignments for external auditors including the terms and conditions of the said assignments; and (h) convening with external auditors at least every six months or whenever necessary to discuss the results of their activities.

Lastly, Under the CMA's 3000 Series which is titled "Business Conduct Regulation" which was issued on November 10, 2016, and amended on September 24, 2019; Article 3210, 3211, and 3212 define how the regulation regulates audit and internal audit for institutions operating a securities business in the Lebanese capital markets. Under Article 3210, approved institutions communicate to the CMA the names of their appointed auditors who are responsible for reviewing their financial statements and operations as well as reporting these activities to the CMA as per regulations established by BDL, CMA, and the LLC. This means CMA's regulations mainly refer to external auditors because Article 3210 also stipulates that the CMA can request a change of auditor for regulated entities or instruct them to appoint additional auditors to undertake any of the activities mentioned earlier. This is true because internal audit cannot outsource internal audit under BDL's circulars and additional auditors under the LCC applies to external auditors. Also, Article 32010 further stipulates that the article's provisions shall apply to approved institutions carrying out securities business in Lebanon for their clients and/or for their own account in accordance with Articles 1 and 2 of Law No. 161/2011 on capital markets. To this end approved institutions shall require that their accredited auditors include in the financial statements they audit information required by Article 44 of Law No. 161/2011 as well as those included in Annex 8 of the 3000 Series regulation. The said auditors shall furnish the CMA's Financial Control Unit (FCU) with reports, documents, and information whilst performing its functions in accordance with applicable laws and regulations. They must also complete their reviews and reports as well furnish these records along with the institution's financial statements within 120 days of the end of its fiscal year. Meanwhile Article 3211, provides for the regulator's discretionary powers on internal control when it specifies that depending on the nature, scale, and complexity of an approved entity; the said entity shall establish an internal audit unit charged with monitoring its systems and controls' appropriateness and effectiveness. It specifically mandates that approved entities licensed to provide custodial or managerial services must have an internal audit unit whilst giving leeway for the possibility of requiring other approved entities to establish internal audit units if it the CMA deems the said unit necessary based on the nature, scale, and complexity of the approved entity's business. In this line, the article mandates that internal audit units must have documented charges, procedures, and reporting lines to the governing body or one of its committees and be independent from operational and business functions yet have unrestricted access to all relevant records of the approved entity. Furthermore, the article mandates that an internal audit unit reviews and reports the entity's financial statements, books, and records at least annually whilst being responsible for assessing its internal controls, risk management policies, and procedures. Additionally, the article stipulates that all internal audit reports must be recorded and retained on file for a period of minimum ten years. Lastly, Article 3212 stipulates on the segregation of functions, that an approved entity is required to found policies and procedures necessary for the adequate segregation of functions within its operations including those for segregating compliance and control functions from persons handling clients, and the segregation of corporate finance from investment banking functions from other functions. Moreover, in its second paragraph, the article stipulates that policies and procedures mentioned in the first paragraph should be structured to ensure and safeguard confidentiality of confidential information pertaining to clients including those inside non-public information.

Having detailed the piecemeal approach of the Lebanese legal framework for the audit function required for wealth management CG, one can easily determine how the framework's main focus is on external audit at the expense of internal audit. For instance, wherever internal audit is mentioned for structural reasons within CG requirements regarding banks or institutions dealing in securities business; one can notice how the regulations only stipulate requirements without any sort of assessment framework for compliance or quality assurance or revision for the audit unit itself by the supervisor. It is also clear that despite the fact that the internal audit has no authority beyond reporting and making recommendations; it does such without recourse for implementing remedial recommendations besides creating liability disclaimers through documented paper trails. The regulations do not mention how the internal audit can track or report fraud or wastage nor do they address when management chooses to override the internal audit as well as how the audit unit may respond to that whether it is required to report that to the regulator nor what sorts of protections are offered by the regulator for doing so. It also neither mentions tools for internal audit to act as whistle-blowers since they are legally bound by the LBS Law as well as the requirement of professional confidentiality nor internal auditors' contribution to a database that can found for the regulator's performance and improvement measurement. Furthermore, the CMA's regulations treat their internal audit requirements as a matter of regulatory discretion unless the entity is a custodial or managerial securities business licensed entity where the unit becomes mandatory. It also treats these entities as though they have a separate framework from those established by BDL when in fact most of the entities licensed for securities business are banks which gives room for double gearing if not a leeway to find loopholes to escape regulations set on banks by opting to apply CMA regulations for operations that fall under securities business. This is particularly true when a banking group's investment arm is engaged in securities business which falls under the CMA that has no mention of abidance with Baseline requirements regarding capital adequacy calculations for securitizations and financial securities, as well as disclosure and audit requirements for economic conglomerates regarding control, exposures, and group risks. In the end the business and its owner are one: the bank operating both banking and financial securities business under one capital governed in reality under one current regulator for both BDL and CMA; which makes it a typical case of interlocking directorates plagued with discretion and supervisory arbitrage. With this evaluation we now move to subparagraph (B) to the compliance function's operational deficiencies a vice for internal control.

B- <u>Compliance Function Operational Deficiencies A Vice For Internal Control:</u>

The gap between Lebanese laws' textual requirements and international standards' practical requirements regarding the compliance function for CG purposes manifests in the way the compliance function is regulated by BDL in Lebanon(1). Accordingly, the said gap manifests on two levels: <u>structural limitations and operational deficiencies</u>. Textually, the gap began in 2006 when BDL issued Basic Circular No. 106/2006 requiring banks under Article 2(1) to work towards abiding with Baseline corporate governance principles. Meanwhile, in 2008, the gap became a <u>structural limitation</u> when BDL issued Basic Circular No. 118 regarding Lebanese banks' BOD as well as board committees and an <u>operational deficiency</u> in 2013 when BDL issued Basic Circular No. 128 on the establishment of the compliance unit. Despite the fact that the BCBS' 2005 ten Baseline compliance principles were embedded in the texts of BDL's Basic Circular No. 128; the circular remains a structural regulation that only addresses the compliance unit's functions and composition without a practical approach to its operations although it was amended in 2017. Accordingly, <u>structural limitation</u> to the compliance function first appeared in Articles 4 and 7 of Basic Circular No. 118 wherein both articles specified only two specialized committees: the audit committee and risk committee without mentioning the compliance committee. And while some legal professionals and bankers attribute the said structural limitation to BDL's gradual adoption of governance it remains a piecemeal approach to banking operations' regulation for the international community since BDL never reconciled these textual deficiencies afterwards. Later

(1) Refer to Explanatory Note No.8 in the List Explanatory Notes of Annex 3 for a practical overview of compliance in Lebanon, page 355 of this research.

the said circular under Article 6(2)(a)'s second paragraph manifested the compliance's functions' operational deficiencies when that article charged the board's audit committee with reviewing internal control's regulations, policies and procedures including combating AMLCFT as well as verifying their appropriateness and effectiveness. Hence according to that article, the audit committee oversees compliance with AMLCFT laws and regulations without mentioning the compliance unit or whether it reports to the audit committee since the compliance unit is comprised of an AMLCFT department and a legal compliance department as per Basic Circular 128/2013's fifth article. Operations wise, BDL's requirements for the compliance unit's functions under Basic Circular No. 128/2013 rely heavily on senior management disseminating compliance reports to internal audit, RM committee, and legal departments as well as communicating compliance's conducts and findings to the BOD under its sixth article. And despite the fact that Article 2 of Basic Circular No. 128/2013 specifies that the compliance unit's staff must have sufficient powers that enable them to perform their charges and have access to any officer, files, information, department, senior management, the BOD, and meetings held by specialized committees within the BOD within the bank to enable it to fully perform its duties, in addition to access to BDL's, BCCL's, and SIC's officers in charge; the said article does not specify a **reporting channel or mechanism** for the compliance unit to communicate with the BOD. This misstep is the practical gap's operational deficiency we are referring to because instead of the compliance unit having a dual reporting function to the BOD and senior management which is required in international CG standards under Basel III; the circular relies on the compliance unit reporting only to the senior management which is already a one-tiered managerial model. In effect, that reliance limits how the unit functions and how the BOD applies Baseline CG. If anything, this makes it impossible for compliance to set the tone at the top as required according to Basel's principles on compliance[(1)] and readily makes BDL's supervision fail to meet Baseline requirements on consolidated effective banking supervision according to principles one and two[(2)]. Additionally, although Article 5 of Basic Circular No. 128/2013 specifies the compliance unit's functions and charges, it fails to mention that the compliance unit has a risk-based function something that corroborates BDL's CG framework with its vision of group risks within banking groups given Lebanon's legal framework's deficient definition of economic conglomerates. This point is held under Article 8 of Basic Circular No. 128's which specifies that the compliance unit's

(1) Bank of International Settlements, Compliance and the Compliance Function in Banks, a guideline paper, published on April 2005, available via URL accessed on May 5, 2021: https://bit.ly/3jALP4c ;see also the ECB' compilation of EBA, joint guidelines, and recommendations, Table No.6 in the Tables and Figures Annex 2, page 262 of this research.

(2) Refer to the consolidated BCP01: BIS, BCP01, December 15, 2019, available from the BIS official website via URL accessed May 5, 2021: https://bit.ly/2XK0Skd .To understand how both the Supervisory BCP relate to the compliance functions in banks, see: AV Ergys Misha, The Compliance Function in Banks and the Need for Increasing and Strengthening its Role - Lessons Learned from Practice, research paper, European Journal of Sustainable Development, Issue No. 5, Volume 2, pages 171-180, available for paying subscribers via URL accessed on May 5, 2021: https://bit.ly/3nuh8i1 .

work shall cover the parent or financial institution and all its affiliates in Lebanon and abroad which is followed by Article 9 that allows affiliate banks or financial institutions to adopt their parent companies' compliance unit. Now some audit and compliance professionals might argue that the requirement for a risk-based approach for the compliance unit's functions is understood contextually from BDL's circulars on banking operations since BDL has mandated a risk-based approach for those operations. However, BDL's approach makes room for group risk transfer and exposure since BDL needs to specify that each subsidiary within a banking group must report to the group's compliance unit due to the operational deficiencies we specified earlier. Meanwhile, under BDL's current circular, its regulation of the compliance function for now is lacking operations wise and fails to meet Basel's CG principles on clarity, specialization, accuracy, and transparency required by Basel's guidelines on effective consolidated banking supervision's principles 1, 2, 14, and 26. In effect, this explains the supervisory and CG arbitrage and eventually the lack of market discipline all of which contributed to the rise of Lebanese banking sector's systemic risk that lead to the current financial crisis. To illustrate our take on the practical gap, we refer the reader to our case study on Lebanese alpha banks in order to understand how the Lebanese alpha banks adopted the compliance function in the course of applying BDL's version of the Baseline corporate governance requirements[(1)]. This concludes section summoning section two to explore the EU's legal framework as a means for holistic financial governance.

Section Two – European Union's Legal Framework a Means for Holistic Governance

This section shall explore **the economic undertaking and functional financial markets exemptions as a means for financial transparency** in paragraph one then move on to explore **specialized audit and compliance regulations a means for holistic governance** in micro applications of effective wealth management CG under the European legal framework.

Paragraph One ─ The Economic Undertaking and Functional Financial Markets' Exemptions a Means for Risk and Financial Transparency

An economic undertaking is any entity engaged in an economic activity comprised of offering goods or services in a given market irrespective of its legal status, form, the way it is financed, its intention to make or not make profit and without exclusion of state-owned enterprises[(2)]. Conceptually, this notion was created to ensure the governance of a disciplined

(1) Table 9 in the List of Tables under Annex 2 for compliance data in Lebanese Alpha banks, page 270 of this research and Case Study Notes No. 2 and 4 in the List of Case Studies and Case Notes under Annex 3, pages: 392 and 396 of this research.

(2) Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe, C-74/16, CJEU Grand Chamber, dated on June 27, 2017, preliminary ruling, ECLI: EU: C:2017:496, available at Eur-Lex-Europa via URL accessed on May 9, 2021: https://bit.ly/3dJpb6K .

functioning Single European Market via unified notions on corporate/entity control and financial transparency[1]. Given the fact that securitization SPVs in financial entities can influence credit risk exposure for compliance with Basel III's capital adequacy calculations; the EU's Single Market and Single Rulebook provides the EU's with tools for holistic consolidated wealth management CG as it utilizes the economic undertaking to transpose Basel III's framework as a hard law in EU in its **(A)** connection with Securitization SPVs and **(B)** utilization in functional financial market exemptions as a means for financial transparency.

A- The Economic Undertaking, & Securitization SPVs a Means for Risk Transparency:

For the purpose of understanding how the economic undertaking is used in managing SPVs under securitization operations, this subparagraph shall first identify securitization according to EU regulations then explore how it is included or exempted from consolidation requirements in capital calculations under prudential reporting methods for Basel III compliance in EU. As calculations that concern capital adequacy allocation under Basel III, corporate control as defined under VIE control metrics provide for financial transparency. Meanwhile, the economic undertaking, allows market discipline for banking and financial markets' competition requirements via disclosures related to credit risk transfer and financial disclosures required under the Single European market. Hence, under Article 2 of EU Regulation No. 2402 of 2017, securitization is defined as a transaction or scheme whereby the credit risk associated with an exposure or a pool of exposures is tranched whilst having the following characteristics: (a) payments in its transactions or schemes are dependent on the performance of the exposure or pool of exposures, (b) its tranches subordination determines the distribution of losses during its transaction's on going life, and (c) its transaction/scheme does not generate exposures which have all of the features itemized in Article 147(8) of EU Regulation No. 575/2013. The said regulation differentiates between Simple Standardized Transparent Securitization (STS), Traditional Securitization (TS), and Synthetic Securitization (SS). In this line, it is worth mentioning that STS is a securitization system devised by the EU to lower capital requirements for insurance and reinsurance sectors devised to be specialized by product to exclude the practices of resecuritization, derivative hedged interest rates, credit derivative assets, and heterogeneity of assets on a case-by-case basis[2]. To this end, according to point two of Article 2 of EU Regulation No. 2402/2017, a securitization special purpose entity (SSPE) means a corporation, trust, other entity, besides either the originator or sponsor founded to conduct one or several securitization activities and is duly authorized to accomplish securitization's objectives such that its structure serves to isolate obligations of an SSPE from an originator. In this sense, an entity is considered

(1) Refer to Explanatory Note No. 11 in the List of Explanatory Notes under Annex 3, page 364 of this research.

(2) For further details see: Rasheed Saleuddin, Regulating Securitized Products: A Post Crisis Guide, first edition, Palgrave MacMillan, Basingstoke, United Kingdom, 2015.

an originator if it: (a) is directly or indirectly involved by itself or through its entities in the original agreement which crated the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitized, (b) purchases a third party's exposures on its own account and then securitizes them. Hence, in order for an originator under traditional securitization to exclude an SSPE's underlying exposure from its calculation of risk weighted exposure relevant to expected loses as per Article 244 of Regulation No 575/2013; it should: (a) transfer its significant credit risk associated with the underlying exposures to third parties; and (b) apply a 1 250 % risk weight to all securitization positions held in the securitization or deduct these securitization positions from Common Equity Tier 1 (items in accordance with point (k) of Article 36(1)). However, the originator institution must demonstrate in each case that its achieved reduction in own funds requirements due to securitization is justified by a commensurate transfer of credit risk to third parties. In this line, permission may only be granted where the institution: (a) has commensurate internal risk management policies and practices to weigh the credit risk transfer; (b) has acknowledged the credit risk transference for the tenacities of the institution's internal risk supervision and its internal capital apportionment. Additionally, the securitization's economic impact is reflected in the securitization's documentation and precludes it as the originator's payment obligations. Accordingly, the underlying exposures must be employed beyond both the originator and its creditors' reach such that they meet this regulation's Article 20(1)'s requirements. Thus, originators who do not retain control over the underlying exposures since they lack the right to repurchase from the transferee the previously transferred exposures in order to realize their benefits or if it is otherwise required to re-assume transferred risk; qualify for this exclusion/deduction as well. Consequently, the originator institution's retention of servicing rights or obligations in respect of the underlying exposures shall not of itself constitute control of the exposures. Thus, the securitization's documentation should preclude clauses or stipulations that: (i) entail an originator amending underlying exposures to improve the securitization pool's average quality; or (ii) raise the profit owed to position holders or improve positions in the securitization due to a decline in the credit quality of the underlying exposures. Also, transaction documents must clarify that the originator or the sponsor are only allowed to purchase or repurchase securitization positions or repurchase, restructure, or substitute the underlying exposures beyond their contractual obligations where such arrangements are executed as per usual market circumstances such that the parties act in their own interest as free and autonomous parties. Meanwhile, under point 11 of EU Regulation No. 557/2021's preamble which amended EU Regulation No. 2402/2017 synthetic securitisation (SS) is defined as a process that involves transferring the credit risk of a set of loans, typically large corporate loans, or loans to small and medium-sized enterprises (SMEs), by means of a credit protection agreement bought by an originator from an investor. Thus, because synthetic securitization is not a sale of assets since the originator retains asset ownership and does not shift the said assets to an SSPE; it is an on-balance transaction. Hence, SS utilizes financial guarantees or credit derivatives to achieve credit risk transfer in return for credit protection. In effect, an originator is obligated to pay a credit protection premium which is the investor's return from the said transaction. Conversely, as a credit protection seller, the investor, pledges to pay a specific credit protection payment when a pre-determined credit incident arises(1). Accordingly, Article 245 of Regulation 2407/2017 specifies for this type of securitization that the significant credit risk is deemed as transferred to third parties if it is done either through funded or unfunded credit protection(2); or if the originator applies a 1 250 % risk weight for all held securitization positions or withholds these securitization positions from Common Equity Tier 1 requirements as per point (k) of Article 36(1). In this sense, the said transferred significant credit risk should either be: (a) the risk-weighted exposure sums of the mezzanine securitization positions held by the originator in the securitization that are below 50 % of the risk-weighted exposure sums of all mezzanine securitization positions current in this securitization; or (b) where the originator holds less than 20% of the exposure value of the first loss tranche in the securitization; if: (i) the originator demonstrates that the exposure value of the first loss tranche surpasses a reasoned evaluation of the expected loss on the underlying exposures by a significant margin; and (ii) there are no mezzanine securitization positions.

B- <u>European Functional Financial Market Exemptions as a Means for Financial Transparency:</u>

In its final communication's draft of June 5, 2014, the European Economic and Social Committee of the EU commission to the European Council and Parliament titled: "Shadow Banking: Addressing New Sources of Risk in the Financial Sector; set out to define shadow banking. According to that communication, shadow banking is a system of credit intermediation involving entities and activities outside the regulated banking system. According to that definition, the shadow banking system was composed of <u>two inter-connected groups</u> where the **first** is comprised of entities whose activities are mainly raising funding with deposit-like features, transforming maturity and/or liquidity, transferring credit risk and utilizing direct or indirect financial leverage. As for the **second** group, it comprised of securitization activities, securities lending, and repurchase transactions (repos) all of which are largely conceivable financial resources for financial non-banking entities. The communication shed light on SPVs being securitization

(1) Rasheed Saleuddin, Regulating Securitized Products: A Post Crisis Guide, Basingstoke, United Kingdom, first edition, Palgrave MacMillan, 2015, pages 40 to 48.

(2) According to point (59) of Article 4 of Regulation 575/2013, an unfunded credit protection' means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an institution derives from the obligation of a third party to pay an amount in the event of the default of the borrower or the occurrence of other specified credit events, page 11, of the regulation, available via accessed on June 21, 2021: https://bit.ly/3zGA7L5.

vehicles of asset backed commercial paper (ABCP) conduits, special investment vehicles (SIV) and other forms of SPVS, in addition to money market funds (MFFs), other classes of investment fund/products with deposit like features vulnerable to colossal runs, investment funds along with exchange traded funds that afford credit or are leveraged, finance companies and securities entities offering unregulated credit or credit guarantees, or performing liquidity and/or maturity conversion such as banks as well as insurance and reinsurance undertakings that provide or guarantee products. To this end, the EU decided to map out a set of exemptions to its banking and financial regulations which are:

(1) Extraterritorial Laws Exemption to Harmonize Cross-Border Operations Regulations:

This exemption was enshrined as a response to USA's primary and secondary sanctions against Cuba, Iran, Libya, and Syria as a means to put an end to the USA's exorbitant application of its laws in EU territories. To this end, the EU's Block Exemption law was introduced via Council Regulation No. 2271/1996 which was amended by Council Regulation No. 807/2003, EU Regulation No. 37/2014, and Commission Delegated Regulation No. 1100/2018 until later supplemented by Commission Delegated Regulation No. 1101/2018. Recently, these regulations were applied in the case of **Bank Melli Iran, Aktiengesellschaft Nach Iranischem Recht vs Telekom Deutschland GmbH**[1]**.** The regulation specifically prohibits EU companies and member states from complying with USA sanctions iterated in EU Regulation No 1100/2018's annex. In effect, EU Regulation No. 2271/1996 consists of four mechanisms[2]: **(a) Nullification of court decisions** whether they be administrative, arbitral, and civil which means these rulings are not recognized in EU or EU member states; **(b) Clawback measures** which entitle EU companies and individuals affected by these sanction to recover damages through EU courts, seek seizure and sale of EU based assets owned by USA entities or regulator that had taken action against an EU undertaking in the USA, in addition to damages from EU undertakings that violate the EU blocking statute. In fact, Metro Bank is an ongoing case concerning remedy against British Metro Bank Plc's closure of Iranian and Iranian-British claimants bank accounts on the pretext of the bank mitigating major OFAC penalties due to the account owners being Iranian, **(c) Obligation to Inform:** Under this obligation an EU company needs to apply for an authorization from the EU Commission through a specific template requesting permission to terminate business dealings on the basis of a legitimate business decision before terminating its dealings with Iranian

(1) EC Council Regulation No 2271/96 as amended by Council Regulation No 807/2003, EU Regulation No 37/2014 COD EU Parliament and Council, EU Commission Delegated Regulation No 1100/2018, Ref. No 01995R2271(Consolidated), published on August 7, 2018, available via URL accessed on July 1, 2021: https://bit.ly/2Vn9uvt , as supplemented by Commission Delegated Regulation No 1101/2018, published in the Official Journal of European Law, on August 7, 2018, Issue 199, Volume 1, pages 7-10, available via URL accessed July 1, 2021: https://bit.ly/2Ve81aV ; and the Opinion of Advocate General Hogan on Bank Melli Iran, Aktiengesellschaft Nach Iranischem Recht v Telekom Deutschland GmbH, C-124/20, May 12, 2021, Hamburg Germany, available via URL accessed July 1, 2021: https://bit.ly/3fdkkLF .

(2) Refer to Case Note No. 2 under the List of Case Studies and Case Notes of Annex 3, page 398 of this research.

individuals, and **(d) EU Sanctions** for violating the EU blocking regulation by complying with USA sanctions listed in the Annex of Regulation No 1100/2018. Hence, EU undertakings wishing to benefit from the legitimate business decision as an exemption from the EU Block Exemption Regulation, must apply to the EU Commission for permission if they meet the criteria/conditions stated in Article 5 of the EU Block Regulation which are: **(i)** existence of substantial connection with a third country (USA), **(ii)** a protected interest's likeliness to be specifically at risk, **(iii)** the presence or lack of mitigating measures, **(iv)** the fact or not that the applicant's activity would be rendered difficult due to a loss of essential resources, and **(v)** the presence or absence of a threat to safety. The EU commission looks into these criteria in the light of noncompliance with the sanctions causing serious damages to the undertaking's interest or the EU's interests.

(2) Exemption of Licensing Economic Groups an example of Holding Group Management:

This exemption was set in EU Directive No 36/2013 regarding Access to Activity of Credit Institutions and the prudential supervision of credit institutions and investment firms, Amending EC Directive No. 87/2002, and repealing EC Directives No. 48/2006 EC and 49/2006. This regulation was later amended by amending EU Directive No. 36/2013 regarding exempted entities, financial holding companies, mixed financial holding companies, remunerations, supervisory measures, and powers and capital conservation methods. Under point four of Article 21(a) of EU Directive No. 36/2013 as amended by EU Directive No. 878/2019, approval for financial holding companies and mixed financial holding companies shall not be required if <u>five conditions are fulfilled</u>(1). **First**, the financial holding company's principal activity is acquiring holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions acquiring acquire holdings in subsidiaries. **Second**, the financial holding company or mixed financial holding company has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority pursuant to EU Directive No. 59/2014. **Third**, a subsidiary credit institution is responsible for ensuring the group's compliance with prudential requirements on a consolidated basis and is equipped with all the necessary tools and legal powers to perform those obligations in an effective way. **Fourth**, the financial holding company or mixed financial holding company does not participate in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions. Lastly, the **fifth** condition is that there are no impairments to the group’s effective supervision on a consolidated basis. However, financial holding companies or mixed financial holding companies exempted from approval under this paragraph are not excluded from

(1) EU Directive No. 36/2013, EC Directive No. 87/2002, and EU Directive No. 878/2019, available via the respective URLs which were accessed on June 21, 2021: https://bit.ly/3j3Sd2L, https://bit.ly/3iemPj2, and https://bit.ly/3iY9sm2 .

the perimeter of consolidation as laid down in EU Directive No. 36/2013 and in EU Regulation No. 575/2013. Meanwhile point 8 of Article 21(a) states that for the purpose of taking decisions on approval and exemption from approval and where the consolidating supervisor is different from the competent authority in the member state where the financial holding company or the mixed financial holding company are established, the two authorities shall work together via full consultation. In effect, the consolidating supervisor shall perform an assessment as applicable, and forward it to the competent authority in the member state where the financial holding company or the mixed financial holding company is established. From these criteria it's clear that the exemption was drafted with regard for the EU's vision of undertaking's organization and distribution of control for consolidated financial reporting and consolidated supervision. For instance, condition (a) clearly states that the function of the holding company or mixed financial holding company is acquisition meanwhile condition (b) emphasizes the solid financial position of the holding company by requiring that it is not in a financial difficulty or is a going concern due to wind up or resolution processes. Additionally point (c) ascertains higher standards for reporting and compliance because it requires that a credit institution which is usually a bank under Article 4 of EU Regulation No. 575/2013 which happens to abide with consolidated supervision requirements on prudential reporting and consolidated financial reporting. This is clear from the usage of the phrase "*prudential requirements on a consolidated basis and given the necessary tools and powers to perform these obligations in an effective way*". Meanwhile point (d) upholds the European Commission Delegated Regulation No.1126/2008 on notions of control which fall under the IFRS' definitions of control metrics for VIEs when it stated that the financial holding does not participate in taking managerial or operational or financial decisions that affect the group or its subsidiaries which are institutions or financial institutions. If anything, this meets specifically IFRS 3's requirements on business combinations and IFRS 9 on notions of control and reporting for financial instruments as adopted by European Commission Delegated Regulation No. 1126/ 2008. Lastly, in point (e) it is clear that ongoing supervision on consolidated basis for the group must be effective and free of obstacles which clearly focuses on structural, operational, and reporting impediments which are further specified in the bridging last paragraph regarding assessment and cooperation between supervisory bodies of both the subsidiary and the holding group. It follows, that cross-border operations and control within the group all fall under the principle of open transparency between the group and its subsidiaries on one end and the supervisors on the other as well as on a cooperation-coordination level between the supervisors themselves to eliminate interlocking directorates and double gearing.

(3) Exemption from Variable Remuneration Policy for Small and Medium Institutions:

Under Article 94 of EU Directive No. 36/2013, variable remuneration for management as related to performance as an established practice in joint stock companies and banks; is an exception that tackles excessive risk taking for the purposes of raising profit in order to raise remuneration. To this end, the EU established remuneration policies in Article 92. Accordingly, the directive specified in Article 94 elements which are considered as requirements to adjust and qualify variable remuneration that is based on performance, provided that the total amount of remuneration will **first** be based on a combination of the assessment of the individual's performance and of the business unit concerned as well as the overall results of the institution provided that when assessing the individual's performance, financial and non-financial criteria are taken into account. **Second,** the performance assessment is set in a multi-year framework to insure that the base assessment process is conducted on a long-term performance assessment of remuneration components as spread over a period that takes into account a credit institution's underlying business cycle and its risks. **Third,** the total variable remuneration must not limit the institution's ability to strengthen its capital base. Lastly, **the guaranteed variable remuneration** is treated in the light of it being an exception since it is not consistent with sound risk management because the "pay-for-performance" principle is not part of prospective remuneration plans as determined by the EU. In its reasoning, the EU considers guaranteed variable remuneration as an exception because it only occurs when hiring new staff and where the institution has a sound and strong capital base and is limited to the first year of employment. To this end, point 3 of Article 94 states that by way of derogation from the terms set for variable remuneration specified generally in Article 94's first paragraph (enumerations **(a)** to **(d)** above); these terms shall not apply to institutions that do not fall under the term "large institution" as defined in point 145 of Article 4(1) of EU Regulation No. 575/2013. According to that regulation, a large institution means an institution that meets any of the following conditions: (a) it is a G-SII (Group of Systemically Important Institutions); (b) it has been identified as other systemically important institution (O-SII) in accordance with Article 131(1) and (3) of EU Directive No. 36/2013; (c) it is listed in the member state in which it is established as one of the three largest institutions in terms of total value of assets; and (d) its total value of assets on an individual basis is thirty billion Euros on the basis of its consolidated situation in accordance with EU Regulation No. 575/2013 and EU Directive No. 36/2013 (these values also apply to defining large institution subsidiaries as well). In this sense, an institution which does not fall under the large institutions'(parent or subsidiary) definition is valued assets' wise on average and on an individual basis equal to or less than five billion Euros over the four-year period immediately preceding the current financial year. To this end, variable remuneration for institutions that are not under the definition of large institutions for staff members that benefit from the variable remuneration exception must not exceed EUR 50 000 and must not represent more than one third of the staff member's total annual remuneration in accordance with both EU Directive No. 36/2013 and EU Regulation No. 575/2013 whose total assets on an individual or consolidated basis are equal to or less than five billion Euros. Meanwhile point 4 of Article 94 states that a member state may lower or increase the threshold referred to therein, provided that: (a) the institution in relation to which the member state applies this provision is not a large institution and provided that where it requires an increase for the threshold: (i) the institution is a small and non-complex institution, is not subject to any obligations, or simplified obligations, in relation to recovery and resolution planning in accordance with Article 4 of EU Directive No. 59/2014; and (ii) the threshold does not exceed EUR 15 billion. Furthermore, the appropriateness of threshold modification is done by taking into account the institution's nature, scope and complexity of its activities, its internal organization or, if applicable, the characteristics of the group to which it belongs. Lastly under point 5 of Article 94 of EU Directive No. 36/2013 regarding institutions within fifty thousand Euros, member State may decide that staff members entitled to annual variable remuneration below the threshold and share in this point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members. From these specifications, it is clear that both the EU's directive and regulation have chosen to apply the principles of proportionality and flexibility with transparency in terms of suitability of variable remuneration with the institution's risk-taking profile based on performance, staff function, and going concerns for the said institution in accordance with the 11th principle of Basel's guideline on corporate governance framework for banks(1).

(4) Exemption from Maintaining a Capital Conservation Buffer:

In addition to the common equity tier 1 capital required to be maintained under the own funds requirements set out in points (a), (b) and (c) of Article 92(1) under EU Regulations No. 575/2013, member states are to require institutions they supervise to maintain a capital conservation buffer of common equity tier 1 capital that is equal to 2.5% of their total risk exposure amount to be calculated as per requirements of Article 92(3) of the said regulation on an individual and consolidated basis as applicable in accordance with title 2 of part 1 of EU Regulation No. 575/2013. However, under point 2 of Article 129 of the said regulation, a member state may exempt small and medium-sized investment firms from maintaining a capital conservation buffer if such an exemption does not threaten the stability of the financial system of that member state. It follows that, decisions on the application of the said exemption shall be fully justified via an explanation regarding why the said exemption does not threaten the stability of the financial

(1) EU Directive No. 59/2014 and Basel Committee on Banking Supervision, Guidelines Corporate Governance Principles for Banks, Bank for International Settlements, published July 2015, page 34, via respective URLs accessed June 21, 2021: https://bit.ly/3xo0xQd and https://bit.ly/3j687th .

system of the said member state. The said explanation shall contain the exact definition of the small and medium-sized investment firms which are being considered for exemption. Furthermore, members states that decide to apply the exemption from capital conservation buffer shall notify the ESRB who shall in turn forward these notifications to the EU Commission, and then to the EBA and to the competent and designated authorities of the member States concerned without delay. The said reference to member states concerned is due to the fact that an undertaking could comprise of a financial or mixed financial holding or be a parent company with subsidiaries in other member states. It follows, that the said exemption gives member states' regulators flexibility and discretion to apply the exemption whilst maintaining the interests of the EU's financial system's supervision mechanics necessary for upholding the EU's financial markets' stability.

(5) Exemption from Maintaining An Institution-Specific Countercyclical Capital Buffer:

Under Article 130 of EU Directive No. 36/2013, member states are to require institutions they supervise to maintain an institution-specific countercyclical capital buffer to cope with economic cycles equivalent to their total risk exposure amount calculated as per requirements of Article 92(3) of the said regulation multiplied by the weighted average of the countercyclical buffer rates specified in Article 140 of EU Directive No. 36/2013 on an induvial and consolidated basis as per title 2 of part 1 of EU Regulation No. 575/2013. The said buffer shall consist of common equity tier 1 capital. However, point 2 of Article 130 of EU Directive No36/2013 allows member states to exempt small and medium-sized investment firms from complying with the requirement of maintaining an institution-specific countercyclical capital buffer. The said exemption is conditioned on the fact that it does not threaten the stability of the financial system of that member state. Additionally, decisions on the application of the exemption shall be fully justified via an explanation that justifies why the exemption does not threaten the stability of the financial system of the concerned member state. It shall also contain the exact definition of small and medium-sized investment firms to which the exemption shall apply. Accordingly, member states who decided to apply the said exemptions are required to notify the ESRB who shall forward the said notification to the EU Commission and to the EBA as well as the competent and designated authorities of the member states concerned without delay. To this end, member states shall designate the authority responsible for applying this article who should also be the competent or designated authority. Meanwhile, point four states that for the purposes of applying this exemption on invest firms, the said firms shall be classified as small and medium sized firms as per EC Directive No. 361/2003's recommendations.

(6) Exemption for Non-Performing Securitization Exposures a COVID-19 measure:

Whereas securitization operations are regulated specifically via EU Regulation No. 2402/2017 and under EU Regulation No. 575/2013 for definition, and capital requirements as well as deductions; on the onset of COVID-19's repercussions on financial markets, the EU amended EU Regulation 2402/2017 via EU Regulation No. 557/2021. In the said amending regulation, the EU included a promulgating preamble consisting of thirty-one points introducing and justifying the usage of non-performing exposures in securitizations as a means for recovery and coping with the financial repercussions of COVID-19. In the said preamble, the EU Commission's communication of May 27 of 2020 titled "Europe's Moment: Repair and Prepare for the Next Generation" was cited as the commission's stress on the fact that liquidity and access to finance will continue to be a challenge in the upcoming months. Accordingly, the EU found it crucial to support recovery from severe economic shock caused by COVID-19 via amending EU Regulation No. 2407/2017 targeting existing pieces of financial regulation with pandemic and exceptional containment measures that have far reaching-impact on the economy. The regulation was envisioned to allow credit institutions and investment institutions to utilize their capital where most needed while EU's regulatory framework facilities ensure that the said institutions act prudently with a flexibility applied to rules included in EU Regulation No. 2402/2017 to serve as an additional tool for recovery. Given COVID-19's crisis risks that increased the number of non-performing exposures (NPEs); it became vital that risks are isolated away from systemically significant portions of the financial system and that lenders reinforce their capital positions. As a means to execute this strategy, synthetic securitization was chosen as an example to raise new own funds. However, under Article 5 of EU regulation No. 2402/2017 as amended by EU Regulation No. 557/2021 only securitizations by special purpose entities (SSPEs) that are established in third countries that are not listed by the EU on the list of non-cooperative jurisdictions for tax purpose or the list of high-risk third countries with strategic deficiencies in their regimes regarding anti-money laundering and counter terrorism financing shall be utilized. Accordingly, an investor for the purposes of enhancing national authorities abilities for countering tax avoidance, must notify its competent tax authorities in the member state in which he/she is resident for tax purpose whenever it decides to invest in an SSPE established after the date of this regulation's application in a jurisdiction mentioned in Annex II for the reason of operating a harmful tax regime. The said information shall be used to assess whether the investor derives a tax benefit. Furthermore, the regulation's preamble referred to the EBA's opinion on the necessity of treating NPEs exposures from securitization operations regarding risks associated with assets backing NPE securitizations as economically distinct from regular performing securitization assets. To this end, NPEs are to be securitized based on discounting their nominal or outstanding value to reflect the market's assessment of their debts' likelihood's workout in generating adequate cash flow and asset recovery. In effect, for investors, the risk would be that the debt workout for the assets does not produce adequate cash flow and asset recovery to cover the net value at which the NPEs have been purchased. Meanwhile, the actual risk of loss for investors does not represent the nominal value of the portfolio but instead the discounted value of the net price discount at which underlying assets were transferred. To this end, NPE securitizations under this regulation will calculate the amount of the risk retention on the basis of that discounted value (under Article 6 of EU regulation No. 2402/2017 as amended by EU Regulation No. 557/2021). By doing so, the said risk-retention requirement aligns the interests of three groups: the originators, the sponsors and the lenders who are involved in a securitization with those investors. In effect, if in performing assets securitizations' predominant interest is set on the sell-side of the originator who is often the original lender; then in NPE securitizations originators shed the defaulted assets from their balance sheets since they do not wish to be associated with them anyway. Accordingly, the servicer of the assets has a greater interest in the debt working out for the assets and in value recovery. Consequently, during the financial crisis of 2008 some securitization activities applied the "originate to distribute" model which lead to assets of inferior quality to be selected for securitization to the detriment of investors since they were burdened with more risk than they might have intended to undertake; the requirement to verify the credit granting standards utilized in the creation of securitized assets was introduced to prevent such practices. However, under NPE securitizations' the credit granting standards that apply at origination of securitized assets should be of minor importance due to the specific circumstances that include purchase of those non-performing assets and the type of the securitization itself. Conversely, the NPE scenario differs from performing exposures in its application of sound selection and pricing standards of exposures. To this end, the regulation aims to amend the verification of credit granting standards to enable investors to conduct a due diligence on the quality and performance of the non-performing assets necessary to reach a sensible and well- informed investment decision whilst securing that the said derogation from regular credit granting requirements for securitizations is not abused. To this end, competent authorities shall review applications for NPEs for sound standards for selection and pricing of the related exposures (under Article 9 of EU Regulation No. 2402/2017 as amended by EU Regulation No. 557/2021). In effect, Article 2(24) of EU Regulation No. 2402/2017 as amended by EU Regulation No. 557/2021 states that a non-performing exposure (NPE) shall mean an exposure that meets any of the conditions set out in Article 47(a)(3) of EU Regulation No. 575/2013. To this end, Article 47a(1) of EU regulation No. 575/2013 which is titled "Non-Performing Exposures" states on the deduction of holding of common equity tier 1 instruments where an institution has a significant investment in a financial sector entity states that for the purposes of applying Article 36(1)(i) institutions shall deduct from the common equity tier 1 the applicable amount of direct, indirect, and synthetic holdings by the institution of the common equity tier 1 instruments of financial sector entities where the institution has a significant investment in those entities such that the applicable amount deducted from the common equity tier 1 item shall exclude underwriting positions held for five working days or fewer and shall be determined in accordance with Articles 44 and 45 as well as sub-section 2. Meanwhile, point 25 of Article 2 of EU Regulation No. 2402/2017 defines NPE securitizations as securitizations backed by a pool of non-performing exposures whose nominal values make up not less than 90% of the entire pool's nominal value at the time of origination and at any later time where assets are added to or removed from the underlying pool due to replenishment, restructuring or any other relevant reason. Lastly, Article 8 of EU Regulation No. 2402/2017 as amended by EU Regulation No. 557/2021 placed a ban on resecuritization for NPE unless it meets the exemption requirements set out in Article 8(3)(3) where the competent authority consults with the resolution authority to grant permission for inclusion of securitization positions as underlying exposures in a securitization and informs ESMA(directorate of EU Commission) of its decision if the underlying exposures are non-performing for the preservation of investors' interests.

Paragraph Two — Specialized Audit and Compliance Regulations a Means for Holistic Financial Governance and Compliance

Internalization of Baseline Standards and international standards for audit, financial reporting and compliance best practices falls under the ESFS' holistic approach to wealth management CG in its aim to consistently manage systemic risk throughout the European Single Market[(1)]. Accordingly, this paragraph shall first explore the EU's specialized legal framework for the audit function as a means for financial transparency governance then proceed to explore the EU's specialized legal framework for the compliance function as a means for holistic financial compliance governance.

A- <u>EU's Legal Framework for Audit a Means for Financial Transparency Governance:</u>

As of 2021 the EU has amended its Commission's Delegated Regulation, No 1126/2008[(2)], thereby adopting international technical accounting, auditing, and reporting standards: IAS, ISA, and IFRS. The said regulation utilizes the economic undertaking in governing obligations on financial reporting within entities, in supervisors' coordination and supervision, and in governing both internal and external auditors in their relations with entities they audit and entities they hail from as professional auditors. Accordingly, because this regulation transposes various technical

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(1)Anthony Bottoms, Understanding Compliance with Laws and Regulations: A Mechanism-Based Approach, Chapter 1 of Maria Krambia Kapardis, Financial Compliance: Issues, Concerns and Future Directions, first edition, Palgrave MacMillan, publication under license from Springer Nature, Cham, Switzerland, 2019, pages 1-29.

(2) EC Commission Regulation No. 1126/2008 of November 3, 2008, on Adopting Certain International Accounting Standards in Accordance with Regulation EC No. 1606/2002 of the European Parliament and Council, as last amended, modified, and corrected on January 1, 2021, available via URL accessed on July 1, 2021: https://bit.ly/38CN6BV .

and specialized financial standards into the EU's audit legal framework; we opted to provide in three separate technical explanatory notes as an overview on: (1) EU's Specialized Audit's Framework's technicalities[(1)] which are now hard laws (2) EU's utilization of the IFRS' concept on VIEs[(2)] which is now an accounting hard law, and (3) EU's technique for governing financial consolidations[(3)] which is a baseline principle that is now a hard law as well. Thus, this specialized legal framework on audit, commands its own sets of principles, concepts, approaches, and methods with respect to the audit function on two levels: the external level identified as statutory audit[(4)] (external audit) and the internal level identified as internal audit as specialized functions required for Basel III's internal control function. Basically, the EU's specialized audit legal framework utilizes the IFRS' VIE concept to regulate entity control under auditors applying IFRS standards to formulate their audit plans and financial reports under the consolidation principle which is required for supervision and financial governance as specified in Basel III's framework. Accordingly, this subparagraph shall provide a legal overview of the EU's specialized legal framework for audit and internal audit committee as follows:

(1) <u>EU's Specialized Legal Framework for Audit in PIES, Credit Institutions, and Investment Firms:</u>

The EU Commission's delegation legislation powers lay down <u>two sets of standards for internal audit</u> in the EU: **one for investment firms** which are mainly PIEs and another for **credit institutions** i.e., banks. To this end, it is worth noting that the latter group's internal audit standards are function specific since they are more detailed in EU Regulation No. 575/2013 and its implementing directive, EU Directive No. 36/2013 compared to the commission's delegated regulation for investment firms and PIEs. For instance, under EU Commission's Delegated Regulation No. 565/2017's[(5)] 24th Article which implements Article 16(5) of EU Directive No. 65/2014 as amended on March 29, 2021, it is stipulated that investment firms are required where appropriate and proportionate with respect to the nature, scale and complexity of their businesses and the nature and range of their investment services and activities to establish and maintain an internal audit function that is separate and independent from other functions and activities in the said investment firm. The said internal audit function shall be charged with: (a) establishing,

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(1) Refer to Explanatory Note No 11 in the List of Explanatory Notes under Annex 3, page 364 of this research.

(2) Refer to Explanatory Notes No 12 and 13 in the List of Explanatory Notes under Annex 3, page 370 of this research.

(3) We have previously discussed prudential consolidations under paragraph one Legal Structure and Patrimony a Vice for Financial Governance of Section Legal Structure and Exemptions a Vice for Financial Transparency of Chapter One's Lebanon's Legal Framework a Vice of Micro Application. Under EU Regulations No 575 of 2013 and Directive 36 of 2013, the two consolidations constitute mandatory consolidations for Banking and Financial Operations.

(4) Due to EU's application of IFRS and VIE as per Basel III's requirements which are not applied in Lebanon; we opted to segregate statutory/external audit in EU under Explanatory Note No 14 in the List of Explanatory Notes under Annex 3, page 374 of this research.

(5) EU Commission Delegated Regulation No. 565/2017, Supplementing EU Directive No. 65/2014 of EU Parliament and Council as Regards Organizational Requirements and Operating Conditions for Investment Firms and Defined Terms for the Purposes of that Directive, as last amended on March 29, 2021, available online via URL accessed on August 2, 2021: https://bit.ly/3tfufpZ .

implementing, and maintaining an audit plan to examine and assess the adequacy and effectiveness of the investment firm's systems, internal control mechanisms, and arrangements; (b) issuing recommendations based on the result of the work carried out as per point (a) as well as verifying compliance with these recommendations; and (c) reporting on internal audit issues as per Article 25(2)[1]. Meanwhile, under EU Regulation No. 575/2013, the internal audit function for credit institutions is addressed by allocating to it certain tasks such as: (a) periodic internal audit of policies and procedures for trading book positions required for capital requirements as per risk management capabilities and practices; (b) annually reviewing institutions' rating systems and operations mainly those of credit functions; (c) revision of risk-measurement systems for business trading units and independent risk-control units; (d) revisions of an institutions' system for estimation of volatility and volatility adjustments as well as integration of the said adjustments; (e) revision of counterparty credit risk and its management system; and (f) revision of risk measurement system for business trading units and the independent risk control unit. With this, we now move on to discuss the internal audit committee.

(2) The Audit Committee under the EU's Specialized Legal Framework for Audit:

Given the fact that internal audit is part of EU undertakings' CG requirements; EU Regulation No 537/2014 charges member states with ensuring that each PIE has an audit committee that is either a standalone committee or a committee within the administrative or supervisory body of the audited entity. To this end, Article 39(6) first specifies that the audit committee shall be responsible for informing the administrative body of the audited entity of the outcome of the statutory audit and explain how the said audit contributed to the integrity of the financial reporting as well as the audit committee's role in the said process. Additionally, it shall be responsible for monitoring the financial reporting process and the submittal of recommendations/proposals to ensure integrity. Furthermore, the audit committee is responsible for overseeing the effectiveness of the undertaking's internal quality control, risk management systems, and its internal audit with respect to the financial reporting of the audited entity without breaching its independence. To this end, the said article charges the audit committee with monitoring the annual and consolidated statements of the statutory audit mainly its performance, taking into account its findings and conclusions. Furthermore, the audit committee according to this article is responsible for reviewing and monitoring the independence of statutory auditors or audit firms as per the requirements of both EU Directive No. 56/2014 and EU Regulation No. 537/2014; and handling the selection procedure of statutory auditors/audit firms as well as recommending either for appointment as per the requirements of Regulation No. 537/2014.

(1) EU Parliament and Council Directive No. 65/2014: On Markets in Financial Instruments and Amending EC Directive No. 92/2002 and EU Directive 61/2011 (recast), issued on May 15, 2014, as consolidated and amended last on March 26, 2020, available online via URL accessed August 2, 2021: https://bit.ly/3zJdc1P

Meanwhile Article 39 of EU Regulation No. 537/2014 stipulates that the audit committee must be comprised of non-executive members of the administrative body of the audited entity with its members appointed by the general shareholders' meeting. Furthermore, at least one member of the said committee should be competent in accounting and/or auditing whereas the committee members as a whole must be competent in the audited entity's operations' relevant sector. The said members shall also be independent of the audited entity with its chairman appointed by its member or its audit entity's supervisory body. Additionally, member states may mandate that the committee's chairman be annually elected by the audited entity's shareholders' general meeting. However, there are exceptions to this stipulation. For example, member states may decide to allow small or medium sized enterprises whose average number of employees is less than 250 and whose total balance sheet and annual net turn overs respectively do not respectively exceed 43 million euros and 50 million euros, to have the functions of the audit committee performed by the administrative or supervisory body as a whole. This exception is conditional on the fact that if the chairman of such a body is an executive member, the said member does not act as chairman whilst such body is performing the functions of the audit committee. Conversely, where an audit committee is part of the administrative body of the audited entity, member states may permit or require the said administrative body to perform the functions of the audit committee for the purpose of the obligations set out in EU Regulation No. 537/2014. Another exception would be when member states decide to exempt PIEs from standalone audit committees if they are subsidiary undertakings controlled by a parent undertaking if they fulfil the criteria mentioned earlier with all their audit committee members being members of the administrative body of the audited entity who were exempted by their supervisory member state from the independence requirements mentioned above for the purposes of fulfilling requirements of additional reports to the audit committee in Article 11(1&2) as well as the proposal to the general shareholders' meeting or members of the audited committee appointment of statutory auditors or audit firms with recommendations and preference as per Article 16(5) of E Regulation No. 537/2014 at group level. A third exemption would be in the case of PIEs that are Undertakings for Collective Investments in Transferable Securities (UCITS) whose sole object is to invest in transferable securities or other liquid financial assets or whose sole object is to invest with units at the request of holders and the case of alternative investment fund (AIF) that are collective investment undertaking including investment compartments that either raise capital from a number of investors to invest them according to a defined investment policy; may be exempted from having a standalone audit committee. In this line, any PIE whose business is to act as an issuer of asset backed securities and any credit institution that is an undertaking whose business is to take deposits or other repayable funds from the public and to grant credits for its own account whose shares are not admitted to trading on a regulated market of any member state and which has, in a continuous or repeated manner, issued only debt securities admitted to trading in a regulated market, provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under EC Directive No. 71/ 2003[1]; may also be exempted from having a standalone audit committee. However, PIEs that issue asset bank securities shall be required to justify to the public their reasons for considering that having an audit committee or an administrative body carry out the functions of an audit committee is not appropriate for them. Furthermore, where member states allow or require PIEs not to have audit committees due to them having bodies performing equivalent functions of an audit committee; these entities must disclose which bodies carry out these functions and how they are composed.

B- EU's Legal Framework for Compliance a Means for Holistic Financial Compliance Governance:

The EU's holistic approach to compliance governance is manifested in the supervision mechanism exercised by the ESAs, ECB, EU Commission, various EU bodies, and national authority supervisors in EU member states under various regulations and directives that address the compliance function and compliance supervision on two levels which are:

(1) Market Level Micro Governance Applications of Compliance Function:

Direct reference to the financial compliance function is found under EU Directive No. 65/2014 and the EU's Commission delegated regulation, EU Regulation No. 565/2017 regarding technical implementations concerning the compliance unit. Meanwhile EU's compliance governance is directly addressed under rules for coordinated supervision of compliance for banks and financial institutions as specified in EU Directive No. 87/2002 as well as CRD IV's EU Regulation No. 575/2017 and EU Directive No. 36/2013, and EU Regulation No. 679/2016 (GDPR) as a result of the Lamfalussy mechanism affecting how information is exchanged and coordinated via the Joint ESAs Committee[2] on an intra-agency level[3]. For this reason, this subparagraph shall address the compliance function within investment firms as an example of financial undertakings' compliance.

The compliance function within investment firms as an example of financial undertakings compliance requirements in EU is addressed under the title "Organizational Requirements" under

(1) EC Directive No. 71/2003 of the EU Parliament and Council on the Prospectus to Be Published when Securities are Offered to the Public or Admitted to Trading and Amending EC Directive 34/2001, published November 4, 2003, and lastly amended on July 21, 2018, available online via URL accessed August 2, 2021: https://bit.ly/3DNsntx

(2) Refer to figures 15, 20, 21, and 23 in the List of Figures under Annex 2, page 328, 332,333, and 335 of this research.

(3) Intra-Agency level compliance supervision governance is also specialized on its own in two aspects: GDPR compliance supervision governance between EU supervisory bodies and AMLCT RBA Compliance Supervision Governance under the AMLD. However, because this research is comparing Lebanon with the EU on a legal framework level and Lebanon is not a plurilateral democratic regime like the EU; we have migrated this aspect to two respective explanatory notes one for GDPR intra-agency compliance supervision governance and one for AMLCFT Explanatory Notes No. 15 and No. 16 in the List of Explanatory Notes under Annex 3, pages: 381 and 384 of this research.

Article 16 of EU Directive No 65/2014 and "*Compliance*" under Article 22 of the EU Commission's Delegated Regulation No. 565/2017 its implementing regulation. Article 16 addresses product approval processes for financial instruments, prevention of conflict of interests, design, marketing, and distribution strategies' appropriateness of financial instruments of targeted markets on risk-based approaches as well as furnishing all relevant information pertaining to the financial instruments produced including the approval process. It also addresses documentation of operations regarding financial instruments' sale and distribution to clients, maintaining records of the said transactions, obligations to safeguard interests of clients when investment firms hold financial instruments for clients via adequate arrangements, prohibitions of certain collateral transfer arrangements regarding retail clients, and cooperation among member states' competent authorities on information exchange regarding branches of investment firms. Meanwhile, the last paragraph in the said article empowers the EU Commission to issue implementing regulations for the said directive. To this end, Article 22 of the EU Commission's delegated regulation, EU Regulation No. 565/2017 stipulates that investment firms shall establish, implement, and maintain adequate policies and procedures designed to safeguard investment firms from any risk of failure to comply with their obligations under EU Directive No. 65/2014 including associated risks. Accordingly, investment firms are required to have adequate measures and procedures designed to minimize these risks and enable competent authorities to exercise their powers effectively as per EU Directive No. 65/2014. They are also required to consider the nature, scales, and complexity of their businesses as well the nature and range of the investment services and activities they undertake in the course of that business. To this end, Article 22 stipulates that investment firms must establish and maintain a permanent and effective compliance function that functions independently. The said function shall monitor on a permanent basis and assess on a regular basis the adequacy and effectiveness the firm's measures, policies, and procedures as well as take actions to address any deficiencies in the firm's compliance with its obligations. Moreover, it shall advise and assist relevant persons responsible carrying out investment services and activities in their endeavors to comply with the firm's obligations under EU Directive No. 65/2014. The article further requires the compliance to report to the management's body at least once on an annual basis regarding the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified. The said report shall also include complaints, how reporting is handled, and the remedies undertaken or to be undertaken. To this end, the compliance function shall monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities. Similarly, it shall conduct an assessment on the basis of which it shall found a risk-based monitoring programme that considers all the areas of the investment firm's investment services and activities including relevant ancillary services and relevant information gathered for the purpose of monitoring complaints-handling. The monitoring program shall set the priorities determined by the compliance risk assessment to ensure that compliance risk is comprehensively monitored. In effect, the article stipulates that the compliance function must have the necessary authorities, resources, expertise, and access to all relevant information. Additionally, management shall be responsible for the compliance officer's appointment and replacement and to receive the compliance function’s direct and specific reports of detected significant risks of non-compliance with EU Directive No. 65/2014’s obligations. However, the compliance function's staff shall not be involved in performing services or activities they monitor such that their remuneration schemes do not compromise their objectivity. Nevertheless, investment firms may be exempted from the prior requirements of independence from operations and remuneration if they can demonstrate due to the nature, scale, and complexity of their business as well as the range of investment services activities that these requirements are not proportionate if their compliance function remains effective upon a regular assessment that certifies that the compliance function has not been compromised. In the light of Article 22's requirements, Article 23 specifies investment firms' actions pertaining to managing risks. It requires firms to establish, implement and maintain adequate risk management policies and procedures that identify investment firm's activities' related risks, and processes. It mandates that firms set where appropriate its risk level tolerance and adopt effective arrangements, processes, as well as mechanisms to manage the identified risks in the light of its risk level tolerance. To do so, the firm is required under Article 23(c) to monitor its risk management policies and procedures' adequacy and effectiveness, its levels of compliance including its relevant staff regarding adopted arrangements, processes, and mechanisms in the light of its risk tolerance, and the adequacy and effectiveness of its measures for addressing any deficiencies in those policies, procedures, arrangements, processes, and mechanisms including failures of relevant personnel to comply with or follow them. Also, an investment firm's established risk management function which is monitored by the compliance function shall be proportionate and appropriate to the firm's business' nature, scale, complexity as well the nature and range of investment activities and services it undertakes. The said risk management function shall be charged with implementing the firm's policies and procedures, providing reports, and advising senior management. However, if the investment firm does not establish or maintain a risk management function it shall still be required to be able to demonstrate upon request that its adopted policies and procedures are in accordance with the requirements of this article(1). Meanwhile, under Article 8(5) of EU Directive No.

(1) Stuart Bazley, Risk-Based Financial Regulation and Compliance Officer Liability, Chapter 6 of Maria Krambia Kapardis, Financial Compliance: Issues, Concerns and Future Directions, first edition, Palgrave MacMillan, publication under license from Springer Nature, Cham, Switzerland, 2019, pages: 137 – 163.

87/2002, the ESAs through their Joint Committee shall issue common guidelines aimed at the convergence of supervisory practices within the EU regarding the application of supplementary supervision of intra-group transactions to avoid duplications and to ensure the application of supervisory tools as well as specific common guidelines regarding participations of financial conglomerates in cases where national company law obstructs the application of Article 14(2) of this directive. Meanwhile Article 9(a) follows on to specify the role of the Joint Committee in accordance with Article 56 of EU Regulations No. 1093/2010, 1094/2010, and 1095/2010 to ensure coherent cross-sectoral and cross-border supervision and compliance with EU Legislation. To this end, Article 9(b) stipulates that member states may require a coordinator to ensure appropriate and regular stress testing of financial conglomerates wherein relevant competent authorities shall be required to fully cooperate with the coordinator for the purposes of Union-wide stress tests the ESA may require through the Joint Committee and in cooperation with the ESRB. To this end, Article 10 specifies that the competent authorities in member states shall be responsible for exercising supplementary supervision via the coordinator. However, the said coordinators under Article 11 are tasked with coordinating the gathering and dissemination of relevant or essential information in going concerns and emergency scenarios. Additionally, they are responsible for the dissemination of important information for competent authorities' supervisory tasks under sectoral rules such as supervisory overview and assessment of the financial situation of a financial conglomerate and assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions. In the same line, they are also tasked with disseminating information on assessment of financial conglomerate's structure, organization, and internal control systems, planning and coordination of supervisory activities going concern as well as emergency situations in cooperation with relevant competent authorities involved(1). Meanwhile, in line of the coordinated supervision of the compliance function governance, EU Directive No. 36/2013 specifies under Article 4(2,3,5, & 6) that member states are required to ensure that their competent authorities monitor the activities of institutions and that appropriate measures are in place to enable the competent authorities to acquire the information necessary to assess the compliance of institutions and where applicable for holding companies and mixed financial holding companies with the directive’s requirements on compliance as well as investigate possible breaches to these requirements. To this end, member states shall require institutions to provide the competent authorities of their home member states all the necessary information for assessing these institutions’ compliance with the rules adopted in EU Directive

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(1) See further from Luca Amorello, Macroprudential Banking Supervision & Monetary Policy: Legal Interaction in the European Union, first edition, Palgrave MacMillan imprint of Springer Nature, Cham, Switzerland, 2018 and Urton Anderson, Michael Head, Sridhar Ramamoorti, Cris Riddle, Mark Salamasick, and Paul Sobel: Internal Auditing: Assurance and Advisory Services, fourth edition, an Internal Audit Foundation publication sponsored by the Institute of Internal Auditors Chicago Chapter and The Institute of Internal Auditors Dallas Chapter, California, United States of America, 2017.

No. 36/2013 and EU Regulation No. 575/2013 such that they ensure that internal control mechanisms and administrative and accounting procedures permit the checking of their compliance with such rules at all times. Lastly, member states shall ensure that institutions register all their transactions and document systems as well as processes that fall under EU Directive No. 36/2013 and EU Regulation No. 575/2013 in a manner that enables competent authorities to check compliance with the directive and regulation at all times. To this end, Article 4(1)(2) specifies that competent authorities of home member states shall without delay ensure via appropriate measures that credit institutions concerned remedy their non-compliance or take measures to avert the risk of non-compliance. Additionally competent authorities of home member states shall communicate those measures to the competent authorities of the host member state without delay. Lastly Article 88(1)(b) specifies that the management body of financial institutions shall ensure the integrity of the accounting and financial reporting systems including financial and operational controls with applicable EU laws and relevant standards.

(2) Entity Level Micro Governance Application of Holistic AMLCFT Compliance:

On June 6, 2021, the EU issued its sixth AMLD[(1)] amending EU Regulation No. 849/2015 as a response to FATF's March 2021 guideline on supervisors' risk-based approach (RBA[(2)]) to AMLCFT compliance implementation and governance on both sectoral and entity levels. Previously, RBA was being applied by entities managing risks under CG requirements for regulatory and financial compliance purposes guided by FATF's AMLCFT 2012 recommendations[(3)].To this end, the EU's sixth AMLD mirrors FATF's shift to the abovementioned RBA supervisory approach whilst implementing both its AMLCFT recommendations and methodological criteria on technical compliance and effective compliance governance systems[(4)]. However, the EU goes beyond the FATF's supervisory RBA guideline in its recommendations, and methodological criteria when it specifies cooperation mechanisms between member states supervisors, the ESAs, the EBA, and the EU commission with member states' financial intelligence units (FIUs) for compliance governance purposes within European undertakings and entities. These purposes give the AMLD an extraterritorial aspect when it covers crimes committed outside the EU and applies to third party AMLCFT compliance for crossborder transactions. They are also grouped in the EU's sixth AMLD framework under the following

(1)AMLD: Anti- Money Laundering Directive: EU Directive No. 849/2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, available via URL accessed on August 17, 2021: https://bit.ly/3jYR9yS .

(2)AMLCFT: Anti Money Laundering and Counter Financing Terrorism, FATF (2021), Guidance for applying a Risk-Based Approach to Supervision, FATF, Paris, as last updated on March 2021, available via URL accessed on August 17, 2021: https://bit.ly/3C1nJX1.

(3) FATF (2012-2021), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, as last updated on June 2021, available via URL accessed on August 17, 2021: https://bit.ly/3k30iGM .

(4) FATF (2013-2020), Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems, FATF, Paris, France, as last updated on November 2020, available via URL accessed on August 17, 2021: https://bit.ly/3tyQsPN .

categories: (a) information exchange, (b) sanction application, (c) judicial cooperation, and (d) management of third country due diligence requirements regarding AMLCFT risks for crossborder operations. To this end, the AMLD which has sixty-nine articles and four annexes, provides under Article 1 for a harmonized definition of money laundering acts which involve either the: (a) conversion or transfer of property knowing it's derived from criminal activity or participating in such activity for the purpose of concealing or disguising its illicit origin or assisting those involved in committing these acts to evade legal consequences of such action, (b) concealing or disguising the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing the said property is derived from criminal activity or from an act of participation in such activity, (c) acquisition or possession or use of property knowing at the time of receipt that it is derived from criminal activity or from an act of participation in such activity, and (d) participation in, association to commit, attempts to commit, as well as aiding and abetting, facilitating and counselling the commission of any of the actions listed under (a),(b), and (c). Meanwhile, Article 3 lists twenty-two predicate crimes that generate illicit moneys including insider trading, market manipulation and environmental crime[(1)]. Entities or undertakings bound by the AMLD are designated as obliged entities under Article 2 and are classified under one of the following categories: (a) credit and financial institutions, (b) service providers including gambling, exchange services for virtual and fiat currencies, custodian wallets, trading in art work, (c) professional activities whether natural or legal persons such as notaries, auditors, external auditors, tax advisors, estate agents acting as intermediaries in leasing immoveable properties, and (d) other persons trading in goods with payments that exceed ten thousand Euros whether carried out in a single or multiple related operations. The said article further provides member states with two mechanisms one for identifying threshold risks and another for well-defined exemptions to the threshold risks. Accordingly, Article 4 specifies that member states shall apply supervisory RBA to professions and categories of undertakings in addition to the obliged entities categorized under Article 2. The said RBA supervisory approach is clear from the AMLD's articles on internal procedures, training and feedback under Articles 45 to 46 which are followed by articles on supervision namely Articles 47 to 48 which are based on cooperation obligations set out in subsequent articles by category such as: (a) national cooperation under Article 49, (b) cooperation with EBA under Article 50, (c) inter member state cooperation under Article 50a, (d) cooperation between FIUs with the EU commission under Articles 51 to 57, and (e) cooperation between competent authorities supervising credit and financial institutions and other authorities bound by professional secrecy under Articles 57a and

(1) Refer to Figure 27 in the List of Figures under Annex 2, , page 338 of this research..

57b. However, Article 5, allows member state supervisors to apply stricter AMLCFT provisions for sectoral compliance for certain entities within the limits of EU laws. On the other hand, Article 7 specifies that member states must take appropriate steps to identify, assess, understand, and mitigate AMLCFT risks affecting their states including GDPR concerns and keep their risk assessments up to date when guiding their local entities. The said article prescribes a mechanism for risk assessment within member states by specifying that states use their assessment to improve their AMLCFT regimes regarding identifying areas that obliged entities must apply enhanced measures and where necessary. Meanwhile Article 9 specifies third country jurisdictions with strategic deficiencies in their national AMLCFT regimes that are considered significant threats to the EU's financial systems in order to identify them as high-risk third countries which is necessary to protect the proper functioning of the European internal market. In this regard, the European commission is empowered to issue delegated acts in accordance with Article 64 to identify high-risk third countries according to the following deficiencies' criteria: (a) criminalization of AMLCFT, (b) customer due diligence(CDD) measures, (c) record-keeping requirements, (d) reporting suspicious transactions, (e) availability of accurate and timely information of beneficial ownership of legal persons and arrangements to competent authorities, (f) the powers and procedures of the third country's competent authorities for combating AMLCFT whether they are appropriately effective, proportionate and dissuasive as well as their cooperation and exchange of information with member states' competent authorities; and finally the effectiveness of the third country's AMLCFT system in addressing AMLCFT risks. Furthermore, the directive sets out under Articles 10 to 14 general provisions for customer due diligence then identifies two types of mechanisms for it which are entity level requirements depending on whether the mechanism is done when initiating a business relationship or a client initiating a transaction which are: (a) simplified due diligence under Articles 15 to 17 and enhanced customer due diligence under Articles 18 to 24 which target customer identity from verifiable records, entity structure and organization, sector of operations, and type of transactions with threshold values for each. In this, sense, entities must abide with the said thresholds when applying due customer diligence requirements. The said mechanisms involve steps for due diligence performed by third parties under Articles 25 to 29 and beneficial ownership information that must be collected under Articles 30 to 31 including member states' implementing acts under Article 31a. Meanwhile reporting obligations are grouped under Articles 32 to 38 followed by prohibition of disclosure of detection or investigation under Article 39 as well as data protection and record retention under Articles 40 to 44. Furthermore, internal procedures, training and feedback are under Articles 45 to 46 followed by supervision under Articles 47 to 48 and cooperation by category: (a) national under Article 49, (b) with EBA under Article 50, (c) inter member state under Article 50a, (d) between FIUs with the EU commission under Articles 51 to 57, and (e) between competent authorities supervising credit and financial institutions and other authorities bound by professional secrecy under Articles 57a and 57b. Meanwhile sanctions which apply to both natural and legal persons are under Article 58 to 62. This subparagraph concludes chapter one of part two and paves the way for chapter two which explores financial markets' governance a vice and means in micro implementation.

Chapter Two —Financial Markets' Governance a Vice and Means in Micro Implementation

*"Regulation follows ingenuity, governance efficiency, because without conformity, money corrupts authority". **Pasithea Chan***

Applying effective wealth management CG entails having a legal framework that governs key players within entities and financial markets to safeguard market dynamics' efficacy and the sustainability of a given economy. In financial markets, innovation or ingenuity determines business continuity because innovators establish themselves as market share leaders via their financial significance and contribution to the market. In doing so, their risk appetites might not always be aligned with their risk management approaches because profit which comes with risk drives their decisions to initiate, resume, expand, or halt doing business in a market. Accordingly, supervisory authorities must step in to balance their risk-taking approaches with requirements that guide market participants' risk management strategies. However, regulation as enforced by financial market authorities is always a step behind innovation which means that money in the hands of major financial players can undermine regulatory authorities when they circumvent regulations or slip from a regulator's grip using legal structures of indirect ownerships or complex business models that allow them to pick which regulations to apply and which regulators to be governed by. Given the fact that systemic risk entails both risks from financial and non-financial entities; authority must be able to identify and tackle all those risks. But given that systemic risk in one sector can be carried or spread to another sector, then regulators must coordinate their efforts. They must do so in order remain in power otherwise they cannot protect the majority's interests from being exploited or perverted for the benefits of those with money. In other words, if a supervisor lacks the power to tackle risks, it loses its title as authority to those with money because it cannot maintain conformity. To this end, regulators must maintain the said balance via clear, up to date, resilient, holistic, and consistently applied regulations. However, because regulations come in different forms that may give both the regulators and those being regulated room for interpretation or derogation via existing gaps in application; section one discusses how **financial markets' regulations are a vice for governance** since they can be either limited or hyper regulatory due to their complex mechanisms. Meanwhile, section two highlights **regulatory reforms as a means for recovery and sustainability**.

Section One — Financial Markets' Regulations a Vice for Governance

This section explores **Lebanon's Business and Market Conduct Regulations a vice for limited governance** in paragraph one versus the **European hyper financial regulation, a vice for inconsistent governance** in paragraph two.

Paragraph One — Lebanon's Business and Market Conduct Regulations a Vice for Limited Governance

In general, Lebanon's financial market's regulations that govern financial operations: (a) are structural regulations that lack technical standards and criteria for application and assessment, (b) are limited in scope and regulatory governance aspects because they lack enforceability mechanisms in terms of deterring sanctions, (c) misalign specific functions by assigning tasks differently, (d) vary due to supervisory arbitrage and discretion, (e) lack a compliance management system for conformity and uniformity, and (f) are co-dependent and interconnected with regulations regulating banking operations. To this end, both the CMA's Business Conduct 3000 Series and the Market Conduct 4000 Series mirror the CMA's co-dependent and interconnected BDL deficiencies in the way they regulate market dynamics' efficacy and compliance management's efficiency. Hence, this paragraph addresses Business Conduct 3000 Series as a vice of market governance under **part (A)** and the Market Conduct 4000 Series as a vice of sectoral governance in financial services operations in **part (B)**.

A- Business Conduct 3000 Series a Vice for Market Governance:

As a financial market regulation, the Business Conduct 3000 Series has an ambitious set of introductory principles of conduct which require all authorized entities and persons to act honestly and with integrity according to Article 3002. Later, Article 3101 charges authorized entities' BOD with the responsibility of compliance with applicable laws and regulations. However, Article 3102 brings back the regulator's supervisory arbitrage when it allows the CMA to exempt authorized entities from all or part of the series' rules. Furthermore, the article has no limitation or specification on situations including criteria that might help curb the arbitrage created by the CMA's exercise of its discretionary powers. In this sense, it does not provide grounds that require the CMA to justify its decision to exempt authorized entities from applying the regulation such as public interest or business continuity of the authorized entity. The danger of this article lies in the fact that the CMA's discretionary powers regarding exemptions is also coined with its discretion in informing or not informing market players since the regulation uses the term "may inform" to describe the way the CMA exempts a given entity from the rules of the 3000 series without even requiring it to indicate which obligation it chose to exempt an entity from and for which aspect of its securities' business operations. Additionally, the 3000 series contributes to the financial market's distortion when it summarizes governance as the sole charge of authorized entities' BODs, senior management, and managers under Article 3201 leaving out the concept of holistic or enterprise-wide governance. This is followed by Articles 3202 and 3203 which set governance requirements in authorized entities to be that of having policies and regulations for processes without providing a means for assessing their effectiveness on the financial operations of authorized entities' governance. For example, Article 3204 which mandates that authorized entities have a code of ethics does not mention a disciplinary panel responsible for applying the said code. It also lacks stipulations requiring entities to take disciplinary actions and apply sanctions for incompliance with the code. Also, the said article does not mention sanctioning entities for not having a code of ethics or those with inadequate codes makes matters even worst for compliance assurance[1]. Yet because of its awareness that major market players are investment banks that are subject to BDL's supervision, Article 3205 makes the compliance committee an optional organ compared to the compliance unit which is obligatory. The irony lies in the fact that the committee is part of the BOD who is initially charged with control and compliance according to Article 3201 since it sets the compliance and control policies which is what is expected according to international best practices including those of Basel. However, the punchline is that Article 3204 places the compliance unit under monitoring when in fact it should have been aligned with a compulsory compliance committee in investment banks practicing securities' business since according to international standards of compliance management systems it is an internal control's watchdog. Consequently, the article's usage of the term "monitored" is wrong and should be rectified with the term "audited" for controls which entails an affirmation of management's governance and supervision of compliance policies' applications as required internationally. This discrepancy makes us want to ask the regulator how can compliance act as control on management's functions when it is being monitored by management itself when in fact it should be independent of management and only answer to the BOD according to international best practice? Another example is Article 3206 which uses the term "supervision of activities" for management when it should be using the term "effective operations management and execution" to indicate responsibility for decision making, implementation, and accountability for consequences. The series' misgivings continue in Article 3207 regarding risk management policies and regulation when it only mentions rules without mechanisms or approaches for risk management systems that address specific risks such as third country risks, cross-border risks, indirect ownership or control risks, and anonymous contributions. Similarly, Article 3208 on AML management also lacks in the area of regulating applicable mechanisms since it does not specify a risk-based approach for managing risks or regulatory risk-based approach for risk management in terms of cross-border operations for information exchange purposes. This comes as a blow to

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(1) To further explore the importance of accountability and sanctions via corporate governance codes, see: Andrew Keay, An Analytical Study of Board Accountability in Transnational Codes of Corporate Governance, Gill North, Corporate Sustainability Practices and Regulation: Existing Frameworks and Best Practice Proposals, and Sandeep Gopalan, Sustainability to Conflict Minerals: The Creeping Codification of Non-Financial Disclosure, from the book Corporate Governance Codes for the 21st Century: International Perspectives and Critical Analyses, first edition, Springer International Publishing, Springer Nature, Cham, Switzerland, 2017, pages in respective order: 117 – 144, 145 – 168, and 169 – 188 .

the Lebanese legal framework since Lebanon had passed Law No. 55/2015 as a result of signing, ratifying, and implementing the treaty on information exchange between countries and supervisors to combat corruption. On the same track, the 3000 Series offers the audit function the same treatment under Article 3208 when it skips stipulating on audit standards and approaches and likens its audit committee to that of the compliance committee by making it an optional organ. Again, the CMA here relies on BDL's framework to govern the audit unit's function for banks which again showcases the interconnection between both banking and financial markets sector as well as co-dependence in governance matters on entity and regulator levels. Meanwhile, Article 3210 only mentions the statutory auditor in terms of informing the CMA and stakeholders of the external auditor's name. Furthermore, Article 3215 requires authorized entities to have business continuity plans aligned with BDL's circulars' stipulations on this issue which marks another area of interconnectedness and co-dependence between the banking and financial markets' sector. Furthermore, Article 3216 follows its preceding articles when it allows outsourcing functions in authorized entities except for banks that fall under BDL's Basic Circular No. 128 regarding the compliance function. However, one might ask pursuant to Article 3102 in the 3000 Series whether the regulator can exempt authorized entities from BDL's prohibition regarding outsourcing the compliance function in banks. We believe the CMA can do so for securities business since: (a) both regulators are only topically divided, (b) both the CMA and BDL currently have one head i.e., BDL's current governor, and (c) both regulators and regulations are of the same level with no rules that can deny or limit the regulator's discretionary powers. In this sense, these loopholes will allow entities, mainly investment banks to utilize supervisory arbitrage to evade banking governance framework requirements by choosing to apply the CMA's more lenient rules. Another side of the 3000 Series' limitations of the 3000 is its limited rendition of informed financial consent since it is only used to indicate the need for informed assessment specifically in the case of dealing with prospectus clients under Article 3301. Of course, the article also lacks mechanisms and criteria to identify or verify if the client was effectively informed as well as specifications on how the client's consent was obtained especially that Lebanon had passed Law No. 574/2004 on Patients' Rights and Informed Consent which details how consent is to be obtained and the limitations as well as mechanisms to withdraw or adjust its scope[1]. Investors whether they are experts or novice investors should be properly informed in order to ascertain that their consent was obtained duly and lawfully. Some scholars might raise the issue that BDL had issued Basic Circular No. 134/2015 on Principles of Banking and Financial Operations with Customers which

(1) See Law No. 574/2004 which is a limited version of its French counterpart Law No. 303/2002 on the Rights of Patients and the Quality of the French Healthcare System . See further, our research on both laws:

سحر قدورة، موجب الطبيب بإعلام مريضه (دراسة مقارنة بين القانون اللبناني والفرنسي) ، الجامعة اللبنانية، كلية الحقوق والعلوم السياسية والإدارية، الفرع الأول، الحدث، لبنان، ٢٠٢٠.

vaguely touched the topic of informing clients and obtaining consent but even that circular lacks the wording and sanctions that can render its stipulations as concrete obligations that can lead to accountability or enforcement. This principle is essential for protecting both investors and market players as clients of securities business operating entities[1]. Similarly, the same deficiencies apply for Article 3314 regarding informing the client of risks related to securities' business giving entities a loophole to appear compliant just by abiding with the informed assessment standard in dealing. This explains why customer due diligence (CDD) under the 3000 Series is basic and limited since it lacks specifics on enhanced CDD especially for AML purposes and indirect beneficial ownership since Article 3307 refers its adherents to BDL's circulars on AML regulation as an implementation of Law 44/2015 on AML. Additionally, Article 3309 allows delegation of client orders to their ascendents and descendants which creates more loopholes for puppets to be used in indirect beneficial ownerships for politically exposed persons and persons prohibited from engaging in mercantile activities such as lawyers and judges. Lastly, Article 3311 which regulates how conflicts of interests should be managed does not identify or define what constitutes a conflict of interest or the sanctions that apply for breaching this article. In conclusion, all of the above deficiencies show how the 3000 Series is a generalist structural regulation that is co-dependent on BDL's circulars and re-enforces the connection between the banking and financial markets operations, regulations, internal governance requirements and framework. With this evaluation, we now move on to discuss and evaluate the CMA's Market Conduct, the 4000 Series.

B- <u>Market Conduct 4000 Series a Vice for Sectoral Governance:</u>

Given the cooperation agreement between the Lebanese and French financial market regulators to exchange information regarding market conduct and compliance regulation mentioned in part two's introduction; one would wonder how the notion of competition was left out of the Market Conduct 4000 Series considering that the European Competition Law within the TFEU was already applicable in France. Meanwhile, the fact that Lebanon practices legalized market monopoly via exclusive agency and distribution under Legislative Decree No. 34/1967[2], which protects exclusive commercial agents; one can see the regulator's outlook and policy in drafting the 4000 Series' rules. However, the CMA's choice to refrain from regulating competition in the Lebanese financial markets has exposed the financial market to a systemic risk of its own aside from the fact that it had already contracted banks' systemic risk carried via investment banks conducting securities' business. This new systemic risk is a distorted financial market that is

(1) Marnix Wallinga, From Lamfalussy to De Larosière: Institutional Consolidation, and Interaction Between MiFD and MiFID II Conduct of Business Rules and Private Law Norms: Subordination Versus Complementarity, from the book: EU Investor Protection Regulation and Liability for Investment Losses: A Comparative Analysis of the Interplay between MiFID and MiFIDII and Private Law, first edition, Springer Nature Switzerland, Cham, Switzerland, 2020, pages 29 - 35 and 75-108.

(2) Legislative Decree No. 34/1967 on Commercial Representation, issued on August 5, 1967, amended twice by Decree No. 9639 of 06/02/1975 and Law No. 671 of 05/02/1998, published in the Lebanese Official Gazette, Issue No. 64, on 10/08/1967.

closed to new entrants, plagued with low turnover, and lacks market discipline due to a want for market governance. Consequently, the banking and financial markets' interconnectedness and co-dependence on banking regulations have led to a total standstill of the capital market amidst the current Lebanese financial crisis as that the regulation itself limits market dynamics whilst being limited in its scope of governance. For example, Article 4201 only identifies market distortion within the limits of price manipulation or fixing, and collusion to mislead market players via acts such as: (a) divulging insider information, as well as (b) deceiving or misleading clients, potential buyers, or market stakeholders about an entity's performance or expected turnover. The said article constitutes a manifesto of prohibited market distorting practices with respect to market manipulation. This is further supplemented by Article 3203 which stipulates on the prohibition of deceptive or manipulative practices which are entirely transaction level practices or acts. Hence, the regulation does not regulate acts of tying or unfair commercial practices in contracts, abuse of market dominance, horizontal or vertical distortion of the market via respective agreements, merger, and acquisition operations control, as well as limitation or control of products and services via agreements to put other market players in competitive disadvantage. By precluding rules on competition regulation, the CMA deprived itself from the opportunity to regulate its market and use its powers to protect the public's interest by efficiently regulating unfair competition for the purpose of instilling market discipline(1). For instance, the CMA deprived itself from the opportunity of utilizing competition regulations in combating money laundering crimes that result from financial crimes attributed to breaching competition regulations which are crimes that invest in destabilizing the Lebanese market. Had the CMA invested in competition regulation, it could have utilized the fact that Lebanon abides by FATF regulations and apply FATF's new risk-based consolidated supervisory approach to combat AMLCFT in a manner that overarches the personal theory of personal punishment for penal crimes. For instance, the CMA could have enforced punishments that make AMLCFT crimes related to financial crimes or competition crimes a misdemeanor by referring to them as crimes that undermine the state's financial welfare (under Article 319 of the LPC for decision makers and natural persons) whilst creating a register for corporate entities that list crimes and fines that this corporate citizen has been involved in. This register is important because reputational risk affects credit worthiness for financial entities. Additionally, the regulation's articles are poorly structured because while each article was structured to govern transactional conduct by assigning prohibitions, each article addressed both: discretionary and non-discretionary wealth management service providers without segregating their respective

(1) To learn more about the opportunity that the CMA forfeited by not regulating competition, see: Adrienne Héritier and Magnus G. Schoeller, Governing Finance in Europe a Centralization of Rule-Making?, and Johannes Karremans and Adrienne Héritier, The Emergence of Transnational Hybrid Governance: How Private Risks Trigger Public Intervention, from the book: Governing Finance in Europe: a Centralization of Rule-Making, first edition, Edward Elgar Publishing Limited, Cheltenham, United Kingdom, 2020, respectively pages: 1 -31 and 137 - 163.

obligations in separate chapters or articles. If anything, this reflects a generalist attempting to regulate a specialized financial services' sector. Accordingly, since each one of these service providers has a different set of mandates and authorities, the 4000 Series' rules prove to be a limitation on market governance due to its generalist approach to regulating discretionary and non-discretionary service providers' conduct in a manner that falls short of what is expected of them compliance wise based on these wealth managers' specialization and authorizations. The articles need to be redrafted to reflect the limitations and burden of responsibility of each operator based on his/her mandate. To this end, the 4000 Series' articles lack criteria for assessing service providers' market conduct, performance, and approaches with respect to compliance management and enforcement for conformity and uniformity purposes. Like its preceding 3000 Series, the 4000 Series lacks deterring sanctions for non-compliance and falls flat since it does not define what public interests the regulation aims to protect and how. A good example of the void created by the vices enshrined in this regulation would be the role it assigns for the compliance department under Article 4202. According to Article 4202, the compliance department's involvement with authorized entities' market conduct compliance is abridged to acting as inspector responsible for verifying that the registered mail between the CMA, clients, and licensed authorities are sent and that the mailing list's contact details are kept up to date. Given that all of the above-mentioned discrepancies; this regulation is a vice for market discipline's governance . This evaluation concludes paragraph one to explore the notion of hyper regulation in the European financial markets as a vice for inconsistent financial market governance in the paragraph below.

Paragraph Two ─ European Hyper Financial Regulation, a Vice for Inconsistent Governance

The EU's Single Market Single Supervision Mechanism (SSSM) is about consistent application of EU level laws in the Single EU Rulebook which is comprised of various regulations and directives(1) such as EU Regulation No. 575/2013 and EU Directive No. 36/2013 in addition to the EU's sixth AMLD Directive No. 849/2015. However, the EU Commission's assessment reports on recent alleged money laundering cases involving EU credit institutions, supranational risks, and the FIUs cooperation(2) show governance inconsistencies. Hence, this paragraph shall discuss the EU's AMLCFT textual hyper regulation then the EU's AMLCFT hyper regulation in application.

(1) Review Figure 22 in the List of Figures of Annex 2, page 334 of this research.. See also: Jurgita Malinauskaite , Harmonization of EU Competition Law Enforcement, first edition, Springer Nature, Cham, Switzerland, 2020 and Adriana Almășan et all, The Consistent Application of EU Competition Law: Substantive and Procedural Challenges, Studies in European Economic Law and Regulation, Volume 9, first edition, Springer Nature, Cham, Switzerland, 2017.

(2) Impact Assessment Accompanying the Anti-Money Laundering Package, SWD 190/2021, Supranational Risk Assessment COM/370/2019 final, on FIU cooperation COM 371/2019, via respective URLs accessed on August 21, 2021: https://bit.ly/3zmqznJ , https://bit.ly/3lyZngG , and https://bit.ly/3ErC8Ol.

The EU Commission's anti-money laundering package assessment report describes the textual hyper regulation issue as the different levels of compliance and implementation among member states triggered by the discretion afforded to them when applying European directives compared to European regulations. However, the real problem with the existing EU Single Rulebook is the interconnectedness of each regulation or directive with other directives or regulations comprising the said rulebook. For example, the EU's AMLD directive was amended six times despite it being connected to three other elements of the Single Rulebook which are: EU Directive No. 2366/2015 on payment services, EU Directive No. 49/2014 on deposit guarantee schemes, and EU Regulation No. 847/2015 on wire transfers. Given the hierarchy gap between directives and regulations with respect to the direct implementation of regulations compared to the need to internally transpose directives and adjust member states 'legal frameworks to apply directives; we see the interconnectedness of the AMLD's sixth amendment as a destabilizing element that causes confusion. This point was hinted in the EU Commission's anti-money laundering package assessment report under the issue of clarity. However, whatever coherence brought by EU Regulation No. 847/2015 on wire transfers in the case of the sixth AMLD, was constantly shifted with every amendment to the European AMLD(1) to meet AMLCFT requirements until the sixth finally revealed the end result which is differences in this directive's applications among member states resulting in varying levels of compliance and effectiveness. Accordingly, if we compare the disclosure requirements iterated in EU Directive No. 36/ 2013 to those specified in EU Regulation No. 575/2013, one notices that the directive which is an implementing tool for the regulation does not elaborate much on the technical standards of the disclosure obligations specified in EU Regulation No. 575/2013. In fact, Article 40 in the directive prescribes general reporting requirements as periodic obligations on credit institutions having branches in host member states for information or statistical purposes only and are subject to professional secrecy requirements allowing competent host member states to require information that allows them to assess whether the branch is significant. Meanwhile Article 47 sets specifics on notification requirements concerning third country branches and conditions for credit institutions with such branches. Additionally, Article 143 only sets general disclosure requirements by competent authorities as per the EBAs(2) developed technical standards in format, structure, contents' list, and annual publication which have also been amended several times. Meanwhile, Article 144 lays down specific disclosure requirements by referring competent authorities to Articles 405 to 409 of Regulation No. 575/2013. On the other hand, Regulation No.

(1) To see how AMLDs one to four had repercussions on uniformity, see :Domenico Siclari, Pierpaolo Fratangelo, Roberto Formisani, Pierluigi Tonnara, Andrea Zaccagna, and Elena Giacone , The New Anti-Money Laundering Law: Perspectives on the 4th European Union Directive, first edition, Palgrave MacMillan, imprint by Springer Nature via Springer International Publishing AG., Cham, Switzerland, 2016.

(2) Refer to Explanatory Note No. 17 in the List of Explanatory Notes under Annex 3, page 386 of this research..

575/2013, lays down in Articles 430 to 455 extensive requirements of information to be disclosed with technical standards set either by the EBA or delegated regulations of the EU Commission which are also updated constantly.

Hence, by reading EU Directive No. 36/2013 we notice its reliance on the EU Commission issuing implementing delegated regulations(1) for technical standards, but the of the EU commission's assessment report speaks of differences even in templates used to collect information and those for information exchanged between FIUs for combating economic and financial crime mainly AMLCFT. To illustrate our take on the hyper regulation problem, we refer the reader to figure 28 wherein Company A has several direct and indirect natural and legal owners. In this example, this figure shows how according to each member state the AMLD customer's due diligence mechanism is applied to identify the ultimate beneficial owner. Not only will the ultimate beneficial owner differ according to each state because of the approach each state uses, but also because each state differs in degrees of transparency imposed regarding beneficial ownership of companies and trusts. Hence the AMLD's implementation will result in different thresholds for disclosures since it is a directive, and each state has the right to set its own thresholds. For example, the majority of states impose a 25% holding threshold of shares in a company to be entered into the register of beneficial owners compared to only Latvia and Spain who have opted for a 10% threshold to enhance corporate ownership transparency. Another issue connected to this dilemma is when the directive involved has rules that are subject to interpretation which may result in different methods of identifying beneficial owners eventually resulting in inconsistent ways of identifying indirect ownership which can be used to hide ultimate beneficial owners. This issue weakened the fight against AMLCFT whose criminals relied on layering and disguising moneys from criminal activity to evade law enforcement. Swedbank is a recent example of these different assessments(2) for business-related risks concerning specific transactions, clients, and products which eventually lead to varying degrees of due diligence with respect to prospective clients and business relationships. The said differences resulted in inconsistent decisions regarding initiating and maintaining business relationships as well as reporting and identifying suspicious transactions. Consequently, Swedbank's Baltic subsidiaries found themselves involved in high-risk money laundering payments worth 37.7 billion Euros between 2014 and 2019. If anything, this shows that the absence of timely and effective action from supervisors to consistently take AMLCFT concerns into account regarding cross-border

(1) Refer to Explanatory Note No. 12, in the List of Explanatory Notes of Annex 3, page 370 of this research..

(2) Clifford Chance, Report on Swedbank Branches and Business Lines and Related Risks, March 2020, available via URL accessed August 21, 2020, available via URL accessed on August 21, 2021: https://bit.ly/2Z1nQn7 and the European Commission's report on the assessment of recent alleged money laundering cases involving EU Credit institutions, COM 373/2019 final, available via URL accessed August 21, 2021: https://bit.ly/3Am6wXZ .

operations since most supervisors focus on national risk. Danske Bank is a clear example of national risk focus since the lack of cooperation between Danish and Estonian supervisors lead the Estonians to shut down their operations by 2019 after 200 Billion Euros of payments from non-resident clients were suspected of AMLCFT[1]. Hence with differing interpretations comes different applications and with different applications comes different approaches that lead to different priorities and eventually different corrective or preventive measures. Moreover, the EU's usage of directives to amend regulations or modify regulations in some aspects has led to some issues slipping from AMLCFT regulations within member states such as crowdfunding platforms which are replete with horizontal risks and vulnerabilities that affect the EU market as a whole since inconsistent identification of these platforms leads to the AMLCFT's framework's failure in monitoring anonymous cross-border financial cashflows which is the general case for crowdfunding platforms. The said failure to identify beneficial ownership is due to supranational risk which manifests in the fact that around 20 -30% of all AMLCFT proceeds are being laundered within non-financial sectors in the EU. With most EU disclosure requirements and compliance supervision systems focusing on financial sectors, this failure is due to inconstancy, lack of clarity and hyper regulation amidst interconnected rules becomes EU's main weakness. In this regard, the EU Commission, in its assessment report on supranational risks identified three major weaknesses through which criminals may target the EU's financial markets due to the unharmonized beneficial ownership identification schemes which are: (a) complex corporate structures registered in third countries since the AMLD directive's registers only cover legal entities and arrangements in member states, (b) false information or documentation that may hide their identity, and (c) usage of loopholes in member states' registers of beneficial ownership due to individual application of technical implementation or management standards which allows criminals to shift their businesses to member states with less effective frameworks. Meanwhile in its report on FIUs' cooperation, the EU Commission showed the difference in efficient reporting, cooperation, and catching of AMLCFT suspicious transactions due to the lack of prioritization of such fractions or a culture of trust shared between supervisor and obliged entity. In the latter scenario, obliged entities were offered guidance and instructions, but the suspicious transactions were never followed up because AMLCT was not a high priority[2]. As for FIUs' cooperation effectiveness, according to the EU Commission's report in 2019, there was an average of 50,000 suspicious reports per FIU wherein less than half were actively followed up with about only 70 transactions suspended on average amounting to 60 million Euros only. This makes the ratio of FIUs ability to

(1) Public Statements of Estonian and Danish Supervisors, available via URL accessed August 21, 2021: https://bit.ly/3tSBch8 and https://bit.ly/3zjXUj2 .

(2) Europol, Does crime still pay? Criminal Asset Recovery in the EU – Survey of statistical information 2010-2014, 2016, available URL accessed on August 21, 2021: https://bit.ly/3zmsjNP .

stop suspicious transactions a 1:100. In its assessment the EU commission found that inadequate feedback from the FIUs to private sectors' obliged entities regarding cross-border transactions was mainly responsible for this looming negative cycle aside from problems such as confidentiality and false positives which accounted for 10% exacerbated the problem. The above findings show the importance of clarity and methodology in applying law and policy because piecemeal legislation destabilizes a plurilateral legal environment(1). More regulations is not the answer; precision in compliance management is. This concludes paragraph two summoning section two to explore regulatory reform a means for recovery and sustainability.

Section Two— Legal Framework and Regulatory Reform a Means for Recovery and Sustainability

This section addresses providing specialized reforms that address their respective vices. To this end, the first paragraph shall tackle **legal framework reform for recovery in Lebanon as a means for financial stability**. Meanwhile because of EU's hyper regulation, paragraph two addresses **regulatory reform for compliance management systems a means for sustainability in EU**.

Paragraph One — Legal Framework Reform for Recovery in Lebanon a Means for Financial Stability

In order to address legal framework reform for recovery as a means for financial stability in Lebanon, this paragraph shall address two sets of reforms: **(A)** structural reforms as a means of decision-making accountability for financial stability purposes and **(B)** operational reforms as means of sectoral sustainability for economic stability purposes.

A – Structural Reforms as a Means of Decision-Making Accountability:

Having compiled Lebanon's legal framework's vices in a comprehensive table vis a vis international standards that apply to CG; we resolved to compile a corresponding structural and operational framework for the necessary legal reforms(2). These reforms were classified by types of functions to set the tone at the top for CG across Lebanese governmental, regulatory, market, and entity levels. They are consecrated in legal texts drafted and applied by specifically qualified specialized decision makers empowered with specific powers affixed to a clear liability matrix to implement specialized laws. To this end, the said specialized laws are based on a set of specifically identified public interests that are set as policies from which subsequent laws must be promulgated with implementing micro and macro regulations. We entrusted compliance management systems

(1) See further: Touko Piiparinen, Jan Klabbers, Silke Trommer, Andre Nolkaemper, Rain Liivoja, Katja Creutz, Ulla Liukkunen, Timo Kallinen, Pontus Troberg, and Larry May, Normative Pluralism, and International Law: Exploring Global Governance, ASIL Studies in International Legal Theory Series, first edition, Cambridge University Press, New York, United States of America, 2013.

(2) Refer to Table No.5 for vices and Table No. 17 for reforms in the List of Tables in Annex 2, pages: 246 and 292 of this research..

to designated watchdogs or compliance control manager/trouble-shooters such as audit, compliance, and accounting personnel. To this end, we resolved to perform a structural and operations interrelated cross-referenced legal due diligence for Lebanese legal texts vis a vis international standards based on these texts' functions, scopes, classes, and interconnectedness. The laws we suggested, redefine legal concepts on market discipline, competition, unfair competition, abusive market practices, corporate control, CG obligations, conflicts of interest, related party transactions, due diligence, disclosures, transparency, personal and group liability, acts of sovereigns, governmental business enterprises, accounting and auding standards for both public and private sectors, compliance functions, potential risk and damage, personal incarceration and redress for public servants acting as regulators, BOD committees, reporting lines, legal relationships, and decision-making processes based on areas of specialization not areas of specialty. Moreover, we have endeavored to abolish Article 171 of the LCC regarding statutory limitation of five years in banks, financial crimes, CG breaches, and environmental crimes as well as Article 168 that bars class action and limits lawsuits for mismanagement in joint stock specifically and other forms generally to allow public oversite over corporate management. We added new regulators such as the LBDPR, GINCOM, NIMEX, CurEx, LCOMP, LebTres, LFIU, LBPPO, SFCC, LSRB, and LESCAB which includes the LFMPR[(1)] department reports directly to MESAGE for private sectors and GINCOM for the public sector. We also restructured both BDL and CMA taking away functions that clouded their accountability due to their special legal personas and to enhance their performance on micro and macro levels for both entities and markets they govern. We have also reshaped Lebanese ministries providing regulators with necessary independence from appointing ministers whilst constraining all ministerial functions within seven sovereign ministries. Additionally, we have enhanced the Lebanese Parliament's oversight of governmental functions and policymaking through a specialized parliamentary committee GovPer which liaisons with a specialized governmental committee "MESAGE*" for ESG purposes comprised of ministerial and regulators' general managers. We have also separated the functions of income collection/revenue and expenditure by charging ministries to collect revenue for LebTres who is charged with managing governmental expenditure and budget for proper oversight. These structural changes are shown in the table through laws that need to be amended, abolished, or drafted[(2)].

(1) Abbreviations in respective order: Lebanese Data and Privacy Protection Regulator, Governmental Investigations and Commissariat, National Import and Export Regulator, Lebanese Currency and Foreign Exchange Regulator, Lebanese Competition Regulator, Lebanese Treasury, Income and Budget Regulator, Lebanese Financial Intelligence Units' Regulator, Lebanese Public Prosecutors' Office, Specialized Financial Crimes' Court, Lebanese Systemic Risk Board, Lebanese Economic Sectors, Corporations, and Business Enterprises Regulator, and the Lebanese Fit Management and Performance Regulation Department.

(2) * Ministry of Enforcement, Regulatory Research, Social Accountability, Governance, Environment Compliance. See Figures No. 32, 33, and 34 in the List of Figures in Annex 2, , pages 343-345 of this research..

B – Operational Reforms as Means of Sectoral Sustainability:

Operations wise, for the purposes of achieving sectoral sustainability; we've introduced managerial accounting and ESG compliance by opting for specialized operations' laws that cover the regulators' competencies, authorizations in governance, decision-making, two-tiered management models, internal controls' management systems, specialized compliance, and audit laws for both public and private sectors, application international IAS and IPSAS for both external and internal audit. We have fleshed out this aspect via creating subcommittees in regulators such as BDL, CMA, LBDPR, LebTres, and CurEx responsible for overseeing how audit functions and audit service providers locally and internationally function under the terms InA for internal audit and ExA for external audit. We have also resolved to vanquish special legal patrimony and indivisible patrimony, shares and votes' based corporate control in economic groups by type, the divide between commercial and civil dispositions, the notion of corporate form limiting liability matrix via opting for applying the notion of economic undertaking, the limitation of liability redress on risk/potential damage (amending Article 134 of the LOC). We have also decided on regulating conflicts of interest for both private and public sector BOD and regulators alike, creating the notion of corporate citizen with market locator compliance tracking technology via the LBDPR, creating electronic databases for UBEO, BEO, AMLCFT, FI disclosures, and ESG scores. We have also resolved to including the MOFJ and LBPPO in the BODs of BDL and CMA whilst maintaining the independence of the SFCC and LBPPO from the MOFJ by having lawyers elect the members of the LBPPO and judges elect the members of the SFCC as well as relying on LFIUs to replace the SIC and current governmental commissariat with GINCOM for public sector oversight and investigation. We have also abolished all limitations created by the LBS and discretionary powers of all regulators. Furthermore, we have chosen to subject all licensing and incorporation to the LCOMP to manage competition and plan market share planning and entry based on protected public interests that need to be identified. In this line, MESAGE in the Lebanese Government will oversee all internal control, governance, and compliance matrix in both public and private sector regulations. MESAGE also oversees adherence with international standards on public and private auditing and accounting, disclosure, and financial reports' quality and integrity. Also, we opted to introduce a law determining the capacities and qualifications to be on a parliamentary legislative committee with the involvement of both public and private sector market players whilst allocating parliamentary seats-based on issues divided amongst parliamentary committees. We have also included laws that enhance coordination and cooperation by detailing how FI is used between MOFIN, MECON, MIND, MOTELS, MOFJ, MTCS, and

MIEWES[1] in cooperation with FIUs who are required to sign strategic and operational international agreements as well as LBDPR. Moreover, we recommended that all infrastructure projects' payments are secured via escrow agreements whose unlocking will be based on a law passed in the Lebanese parliament making all public office servants subject to audit, accountability, and prosecution. Lastly, we introduced the notion of performance scorecards and the passing of a law protecting the Lebanese consumer of public services implemented by a specialized department in every ministry DOBCOP that handles bureaucratic services and consumer protection.

Paragraph Two — Regulatory Reform for Compliance Management Systems a Means for Sustainability in EU

This paragraph discusses the EU Commission's proposals for reforming AMLCFT compliance supervision and regulation along with Europe's recent economic reforms under the Taxonomy Regulation (TR i.e., EU Regulation No. 2088/2019) and Financial Sustainability Disclosure Regulation (SFRD i.e., EU Regulation No. 852/2020) . The EU Commission only saw the need to perform structural reforms concerning the gaps revealed in its assessment reports as an opportunity for AMLCFT compliance supervision management. However, both the TR and SFRD further complicated the hyper regulation problem due to the fact that the financial disclosure's technical standards were postponed due to Covid19 leaving these regulations' application stuck at level one. Hence, this paragraph shall discuss the EU Commission's AMLCFT proposal for structural reform in **part (A)** then refer to the difficulties of applying both the TR and SFDR as another aspect of hyper regulation that must addressed in **part (B)**.

A- <u>European Commission's AMLCFT Structural Reform:</u>

On the 20th of July 2021, the EU Commission proposed two regulations: (a) an AMLD Regulation establishing a Single AMLD Rulebook for the EU market and (b) an AMLD single Regulator called AMLA (Anti Money Laundry Authority). These two proposals followed the shockwave resulting from sustainability regulations: (a) EU Regulation No. 2088/2019 sustainability-related disclosures in the financial services sector and (b) its supplementing regulation EU Regulation No. 852/2020 on the establishment of a framework to facilitate sustainable investment. Coining these regulations with the AMLD matters as under the sustainability regulations, assets or funds or fund managers who benefit from the categorization of their products as sustainable investments to achieve more market share from products benefit from this categorization if they abide with sustainability regulations' disclosure requirements since the EU had allocated a budget and plan

(1)Abbreviations in respective order: Financial Information, Ministry of Finance, Ministry of Economy, Ministry of Interior and Defence, Ministry of Telecommunication Services, Ministry of Justice and Foreign Affairs, Ministry of Treasury, Customs, and Revenue Services, and Ministry of Industry, Electricity, Water, Environment Services.

to shift to an environment neutral and circular economy. However, should their disclosures be fictitious, then their profits are illicit moneys that were greenwashed for starters and ultimately moneys from this predicate money laundering offense which falls within the scope of Article 1 of the sixth AMLD. Despite the fact that the current sixth AMLD allows more than pecuniary sanctions and includes personal penal sanctions to natural persons who are decision makers in European undertakings under the AMLD(1); the lack of harmonization manifests in the fact that the AMLD is a directive that suffers from compliance irregularities due to supervisory authorities' discretion in applying European Directives. Now the EU criminalizes environmental offenses on their own under EU Directive No. 99/2008 in a manner that also includes legal entities and their agents. However, both the EU's sustainability regulations' framework along with their criteria for categorizing sustainable investments and products have had their regulatory technical standards deferred for application until 2025. This is why the EU Commission proposed a comprehensive AMLCTF compliance policy via an AMLD regulation that will encompass rules targeting six priority pillars: (a) ensuring effective AMLCFT framework implementation, (b) providing a Single AMLCFT Rulebook, (c) establishing an EU-level supervision of AMLCFT, (d) founding a mechanism to support and coordinate FIU functions, (e) enforcing EU-level criminal law provisions and information exchange, and (f) enhancing the EU's AMLCFT's framework on international level. In this line, the European Commission believes that points (a), (e), and (f) are being implemented but require the creation of a centerpiece of an integrated AMLCFT supervisory system. The said authority will include national AMLCFT supervisory bodies and will be directly supervising and issuing decisions necessary to manage the riskiest cross-border financial sector obliged entities. To this end, it shall be charged with enforcing the six priority pillars enshrined in the proposed regulation to bring about consistency with other union policies since the EU's AMLCFT regulation interacts with several other pieces of EU legislation in the financial services and criminal law areas. Hence both proposed regulations on AMLA regulation and the AMLCFT shall address inconsistencies in EU legislations concerning payments and transfers of funds, inclusion of crypto asset service providers by introducing information requirements for transfers of virtual assets to complement the EU's recent Digital Finance Package of September 24, 2020, to ensure consistency between EU's framework and FATF Standards. Additionally, the same approach applies for crowdfunding service providers, and handling CDD inconsistencies for better CDD framework rules in cases of remote customer onboarding via providing a framework for

(1) This was the result of applying FATF's recent shift towards risk based AMLCFT supervision in the sixth AMLD which entailed the application of CDD and enhanced CDD via the notion of VIEs with respect to corporate control for the purposes of determining the ultimate economic beneficiary that can no longer hide behind the limitations of liability within corporations under the notion of legal form being the basis for determining such liability. This is a big step towards combating economic and financial crime by holding decision makers in legal entities and economic undertakings accountable for distorting the market with financial crime and market abuse for the purpose of preventing the utilization of the European Single Market as a means to facilitate or commit financial crime.

European Digital Identity in line with the EU's upcoming Digital Finance Strategy requirements. The purpose of both proposals is to establish an EU-Level AMLCFT supervision of all obliged entities. Hence, both proposals rely on enhancing and upgrading FIU cooperation and information exchange by either one of the following techniques: (a) transforming EU FIUs' platform into a comitology committee leaving the EU Commission to adopt implementing acts to define operation standards for FIUs, (b) empowering EU FIUs' platform to become an EU-mechanism that is capable of issuing guidelines and technical standards to organize joint analysis and training as well as carry out trends and risks' analysis, or (c) turning EU FIUs platform into an EU-level FIU that will replace national FIUs. Accordingly, the EU Commission favors applying step (b) compared to (a) or (c). Furthermore, the proposed AMLA regulation proposal provides standards for regulatory fitness and simplification of compliance and assessment of compliance. Additionally, the EU Commission's proposal stipulates that AMLA will no longer have to deal with multiple supervisors in European member states regarding high-risk cross-border financial entities. Furthermore, the creation of the EU-level coordination mechanism will simplify and facilitate cooperation between FIUs in a uniform consistent manner. Hence, AMLA will handle two existing infrastructures financed by the EU: which the AMLCFT database which is currently managed by the EBA and the secure FIU communication network. Thus, the proposed AMLA Regulation makes AMLA an EU level supervisory body represented by its chair and consisting of a board or college comprised of EU AMLCFT supervisors in member states. The proposal affords AMLA direct supervision, investigative, executive, and sanctioning powers such as the power to take decisive decisions and issue pecuniary sanctions for non-compliance. Both proposals' drafts are comprehensive in curing supervisory gaps for AMLCFT issues providing a consistent harmonious single approach for AMLCFT compliance management and supervision under AMLA. However, the said proposals only tackle the supervision of AMLCFT compliance function but not the gaps created by variations of compliance implementation and supervision as enshrined via directives.

B- <u>European Union's Economic Sustainability Reform:</u>

Consecutive global financial crises followed by the difficulties of recovering from economic aftermaths of climate change influenced EU's first shift from simple corporate governance to corporate social responsibility governance to environment social governance(1). Realizing financial supervision must consolidate across the Single European Market for both financial and non-financial entities, the EU decided to take legislative action that would implement its action plan concerning shifting towards a circular economy and a climate-neutral union in

(1) Refer to Figures No. 30 and 31 in the List of Figures of Annex 2 to see overview diagrams for the said shift, pages: 341 and 342 of this research..

pursuit of economic sustainability. This happened when EU passed the TR as a legal instrument that classifies sustainable investments or businesses and sustainable financial products via the SFDR which establishes a framework for facilitating sustainable investment. To this end, The EU amended the TR which was initially adopted under EU-level legislative principles within the TFEU's 114th Article concerning matters under Article 26 of the treaty related to identifying the union's strategic interests, determining objectives, and issuing guidelines on common foreign and security policies. With sustainability being an environmental strategic security issue, the TR was supposed to provide(1) for the harmonization of rules that apply to financial market players and advisers regarding transparency for integrating sustainability risks and consideration of adverse sustainability impacts on their processes as well as furnishing sustainability related information which are necessary for classifying sustainable financial products and sustainable economic activities. Hence, the regulation established the principle of do no significant harm under Article 2(a) of the TR which applies to sustainable investments as identified under point 17 of Article 2. It also set sustainability risk policies' transparency requirements under Article 3 and disclosure obligations concerning transparency of adverse sustainability impacts at entity level under Article 4. Meanwhile Article 5 stipulated on transparency requirements regarding remuneration polices in relation to integration of sustainability risks. Meanwhile Article 6 specified the transparency requirements for integration of sustainability risks depending on each type of obliged entity and its respective sector from fund and investment managers to manufacturers to credit institutions, insurance undertakings and their intermediaries as well as AIFMs. This was followed by Article 7 which specified the transparency requirements of adverse sustainability impacts at financial product level which in turn provides details on how the requirements of Articles 4(1) and 6(3) are implemented via clear reasoned explanations on how financial products consider principal adverse impacts on sustainability factors in addition to a statement that information on adverse impacts on sustainability factors is available in the information to be disclosed as per the stipulations of Article 11(2) must only rely on the regulatory technical standards adopted under Articles 4(6) and 7 for information on adverse impacts on sustainability with respect to quantifying adverse impacts. In the same line, Article 8 specified the transparency requirements of the promotion of environmental or social characteristics in pre-contractual disclosures including whether an index has been specified as a reference benchmark as well as information regarding the index's consistency with the required environmental or social characteristics. These stipulation were followed by Article 9 which specifies the requirements of sustainable investments in pre-contractual disclosures and those of promotion of environmental or social characteristics and of

(1) Refer to Table No. 10 on Environmental Objective and Financial Compliance and Table No. 9 on SFDR Compliance Requirements by banks, pages 270 & 272 of in Annex 2.

sustainable investments on websites and in periodic reports under Articles 10 and 11. Furthermore, the TR subjects disclosures to reviews under Article 12. However, Article 17 exempts insurance intermediaries that provide insurance advice regarding IBIPs[1] and investment firms that provide investment advice if they are enterprises irrespective of their legal form including natural persons and self-employed persons on the condition that they employ less than three persons. Additionally, the said article allows member states to apply the regulation to insurance intermediaries that provide insurance advice on IBIPs, or enterprise investment firms provided they notify the EU Commission and the ESAs of their decisions. Additionally, the SFDR establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. It applies to EU and member states' measures concerning obligations of financial market participants or issuers regarding financial products or corporate bonds that are offered as environmentally sustainable and undertakings that are required to publish non-financial statements or consolidated non-financial statements according to Article 19(a) of EU Directive No. 34/2013. The regulation sets 4 criteria to determine environmentally sustainable economic activities which are: (a) contributes significantly to one or more of the environmental objectives specified under Article 9 as per requirements of Articles 10 to 16; (b) does not significantly harm any environmental objective specified in Article 9 as per Article 17's requirements, (c) is carried out in compliance with minimum safeguards specified in Article 8 and (d) complies with the European Commission's technical screening criteria as per Articles 10(3), 11(3), 12(2), 13(2), 14(2), or 15(2).The said criteria must be applied by the EU and its member states in accordance with Article 3's requirements to determine the obligations of financial market participants or issuers regarding financial products or corporate bonds offered as environmentally sustainable. Given the delay of technical standards issuance despite the EU’s reliance on the Taxonomy Compass that is available on the EU Commission’s website that provides guidance on Taxonomy Compliance by sector, activity, as well as process and entity level; the hyper regulation revealed many problems that need to be addressed for sustainability compliance[2] supervision and enforcement. First, there is the data challenge of compiling and classifying financial and non-financial data on regulators and adherents without raising costs and making compliance an onerous confusing task. Then there is the impossibility of compliance uniformity in the absence of harmonized technical scientific

(1) Refer to the List of Definitions’ before the introduction under the section of EU Regulation No. 2088/2019.

(2) Christopher V. Gortsos, The Taxonomy Regulation: More Important than Just as an Element of the Capital Markets Union, Chapter 11, Danny Busch, Sustainability in the EU Financial Sector, Chapter 12, Veerle Colaert, Integrating Sustainable Finance into the MiFID II and IDD Investor Protection Frameworks, Chapter 13 of the book: Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets, EBI Studies in Banking and Capital Markets Law, first edition, Palgrave MacMillan imprint by Springer Nature, Cham, Switzerland, 2021, respectively pages: 351- 396 ,397-443, and 445-475. See also Dariusz Adamski, Filippo Annunziata, Jens-Hinrich Binder, and others, Sustainable Finance in Europe Corporate Governance, Financial Stability and Financial Markets, first edition, EBI Studies in Banking and Capital Markets Law, Palgrave MacMillan exclusive imprint by Springer Nature, Cham, Switzerland, 2021 and Dudi Valbona and Gabriella M. Baldarelli and others, Current Global Practices of Corporate Social Responsibility In the Era of Sustainable Development Goals, first edition, Springer International Publishing, Springer Nature, Cham, Switzerland, 2021.

standards (TSC) for qualifying disclosures and environmental objectives' compliance due to the delay caused by Covid19. Third, the Comply or Explain Approach[1] applied by the TR allows financial market participants and advisors a leeway to explain away their non-compliance with no punishment or repercussion which renders the TR lacking enforcement and compulsory effect. Meanwhile, the fourth problem, lies in the lack of clarity on the TR's principle of " do not harm to environmental objectives" in its relation with the SFDR's concept of "do not significantly harm". Hence, the fifth problem, lies in the limitation of available raw ESG data which is necessary for calculating adverse impacts that are essential for investment companies and investors in their decision-making processes since they should be available in reports/disclosures required by SFDR obliged entities which means that markets' best practices have yet to be set. Sixth, the EU lacks a general supervisor to oversee ESG compliance for financial sustainability purposes and TR compliance. In this line, the seventh problem lies in the lack of harmonization of liability law in the TR since the SFDR and the TR have no sanctions for non-compliance. The eighth problem lies in the lack of harmonization in administrative sanctioning regimes since members states are required to ensure that competent authorities monitor compliance, but the directive does not provide an assessment for supervision efficiency regarding compliance and implementation. Finally, the nineth problem lies in the fact that even the ESAs proposed Regulated Technical Standards (RTS) is dependent on third party data providers based on their claim of having access to adverse impact information methodologies required for completing SFDR requirements[2]. So long as the EU dismisses the hyper regulation issue; adherents and regulators will suffer leaving the Single European Market's discipline threatened because rules are divided between directives and regulations on one hand and due to the technical standards, that are either being issued by ESAs as guidelines or EU Commission regulations by virtue of delegated legislation on the other hand. We believe that the hyper regulation crisis can only be resolved once all matters related to supervision and compliance are regulated strictly via regulations for the purposes of clarity and uniformity for conformity such that they are issued complete with their respective implementing instruments i.e., their respective TSCs. This is mainly because guidelines by ESAs are constantly updated and compliance timetables for preceding assessment for improvement and efficiency[3]. Furthermore, it is already perplexing enough for a directive which is lower in legislative power to delegate power to the EU Commission to issue a regulation to implement the said directive. Hence, we wonder why not begin with a regulation that is directly

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(1) Refer to Table No. 14 in the List of Tables in Annex 2 to explore how this approach is applied page 282 of this research.

(2) Review Tables No. 10 and 14 in the List of Tables in Annex 2 to read the principles on RTS that guide market participants on the comply on explain application for SFDR compliance pages: 272 and 282 of this research.

(3) See Table 15 in the List of Tables of Annex 2 to see the Sixth AMLD EU Directive member states' compliance timetables as an example of hyper regulation problem page 288 of this research.

applicable and supplemented with a technical standards' implementation regulation for simplifying compliance and evening out or harmonizing the supervision mechanism for the purposes of uniformity in conformity?

Conclusion

International standards such as Basel III's framework provide for criteria and scientific methodologies to efficiently supervise and run banking and financial operations. They encompass concepts from various financial and legal disciplines that must be taken into consideration when being transplanted into a local legal framework. Efficient regulation is the art of providing a disciplined legal framework that balances the transposition of policies' objectives into laws that delimit conceptual requirements in application with comprehensive implementation tools for operational efficacy to ward incompliance, abuse, casuistry circumvention, and exigence. Lebanon needs a modern, holistic, dynamic, flexible, realistic, and proportionate economic law to efficiently govern its wealth. Real reforms must set the tone at the top and target the legal framework's vices starting from one-man show regulators because that is a recipe for abuse of power that negates accountability and democracy. As a legal system claiming to be inspired by the French legal system, the researcher reminds readers that it was the French "Conseil de Etat" who instilled and upheld overruling decisions that abuse or distort the law under the concept of "le détournement de pouvoir" by declaring these administrative decisions as null and void if they abuse or distort the law. In this respect, the Lebanese banking and financial markets' regulators' abuse of power was shown in this research under the concept of arbitrary supervision via masked capital control and financial engineering mechanisms since both procedures utilized authorities for purposes foreign to public interest yet akin to banks' interests in retaining profits to delay announcing banks eminent bankruptcy. The law is clear: any decision from an authority to serve an interest that is not a public interest is an abuse of power(1) because banks' profitability is not the Lebanese Republic's public interest. Verily, where a regulator loses its independence to political leverage governance falls back as political compromise rules at the expense of lawfulness, integrity, and financial stability. This research has shown that abstract regulations based on special interpretation of discretionary powers equates lawlessness just as legal evolution is not a piecemeal process but rather a holistic approach capable of addressing wealth management's ever-evolving self-regulation.

Self-regulation is good but like soft law it has its drawbacks because money corrupts authority and regulation follows ingenuity. Given the EU's history of individually adopting voluntary standards such as International Standards of Organization (ISO); enforceability names

(1) See: فوزت فرحات، القانون الإداري العام :القضاء الإداري – مسؤولية السلطة العامة، الجزء الثاني، الطبعة الأولى، بدون دار نشر، بيروت لبنان، ٢٠٠٤، صفحة ١٤٨-١٥٧ ويوسف سعد الله الخوري، القانون الإداري العام، القضاء الإداري مسؤولية السلطة العامة، الجزء الثاني، الطبعة الثالثة، المنشورات الحقوقية صادر، بيروت، لبنان، ٢٠٠٢، صفحة: ٢١١- ٢١٨.

who reigns as an authority in a given market. For example, the European Payments Council applies ISO standards that rely on global open standards to safeguard stakeholders' exchange of data that is commonly understood to conduct payment schemes in the Single Euro Payments Area (SEPA). Currently, financial undertakings in the EU must comply with these standards in order to engage in payment schemes within the European market via utilizing ISO-20022 as the language of payments under SEPA data formats regarding how transactions' data for credit transfers or direct debits are represented in IT systems for universal processing. Additionally, under SEPA these schemes utilize international bank account numbers (IBAN) as identifiers and business identifier codes (BIC) which are also ISO standards namely ISO 13616 and ISO 9362[(1)]. In this respect, there's a new wave that's taking over self-governance trends in the EU and first world countries which is the mass application of ISO standards in wealth management corporate governance with the shift from ISO-19600:2014 on compliance management systems followed by ISO-140001:2015 on environmental management systems, then by ISO-37000:2016 on anti-bribery managements systems, then ISO-37301:2021 on compliance management systems, then ISO-37002:2021 on whistleblowing management systems, and finally ISO-37000:2021 on governance organizations. Although these standards are centralized around Europe's action plan on ESG requirements regarding transitioning to a circular economy to push for sustainable finance and investment, the danger of these standards is that entities pay money to be certified as ISO compliant and even more the fact that these standards cannot be accessed unless one pays a hefty sum and is a member or a subscriber to one of the bodies that apply these standards. These standards will slowly take from regulators the reins of compliance and regulation and mutate compliance into a best market practice that is governed by trends in innovation, driven by competition to make more profit. Despite the fact the EU has been working steadily towards providing a framework to secure adherence of self-governance supervising entities or international bodies, these standards are developed by multinational entities who are influenced by the lobbyists of the countries they are headquartered in. The question that remains is, how will EU protect its interests and markets from exorbitant extra-territorial soft law if these standards become the norm as many of them have become in the field of wire transfers and banking transactions.

As the researcher writes this conclusion, the European regime along with other first world regimes are collaborating and unifying their efforts on regulating and governing the application and utilization of artificial intelligence in exacting financial, legal, and regulatory compliance for both public and private sectors' operations. And while the Lebanese system is still trying to decide which version of the financial truth they prefer to present to the IMF regarding the actual losses

(1) European Payments Council AISBL, SEPA Payment Scheme Management, an article published on the European Payments' Council website, available via URL accessed August 2, 2021: https://bit.ly/3h25BUU . For further mentioned ISO standards review list of international standards in the list of references' table of international standards.

of the Lebanese banking and financial sectors; the society of wealth management industry leaders is lobbying within first world countries ways to curb artificial intelligence’s regulation in wealth management applications. If Windows has Windows 11, wealth management now has a standalone home edition or an enterprise wealth management desktop. Similarly, while BDL is still allowing banks to fill its forms for EU GDPR compliance requirements without being able to prevent harmful and fraudulent apps such as “Binance Fund[(1)]” from stealing Lebanese traders and investors’ private information and moneys; the EU is negotiating with the USA on ways to regulate AI applications in managing enterprise and corporate inboxes of decision makers in major economic undertakings. Lebanon still has to address cryptocurrencies and bitcoin despite the fact that the first Bitcoin ATM machine now stands in Hamra when in fact the world is now regulating the future i.e., NFTS. If Lebanon wishes to recover and remain an economically viable country, both public and private decision makers need to do things differently starting with necessary reforms and ending with enforcing accountability for all through laws that make corporate governance a legal obligation under company and economic laws under the sanction of jail time enforced by courts capable of charging and sentencing regulators, judges, and politicians alike. Maybe then regulators would not need to defend or exonerate themselves, or even justify their actions in the course of investigative measures via the press[(2)]. Will the European Union’s Parliament allow the European Union’s Commission to pass its proposed directive on sustainability disclosures for non-financial entities thereby further crowding out non-financial firms outside the European Union[(3)]? To believe is to perceive how to achieve and we believe hyper regulation is just as bad as limited regulation as both achieve financial ruin.

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(1) LebanonDebate, Hundreds of Lebanese Have Been Scammed Online and the Losses Surpass 125 Million USD, an article published under the miscellaneous section of the online news platform of LebanonDebate, on Wednesday, October 20, 2021, available via URL accessed on November 25, 2021: https://bit.ly/2ZQTfcO . See also, Reuters, Hackers Stole Bitcoin Worth 41 Million USD from Binance, One of the World's Largest Cryptocurrency Exchanges, an article republished online via MTV Lebanon, on May 8, 2019, available via URL accessed on June 21, 2021: https://bit.ly/3GaLYnz .

(2) LebanonDebate: Riad Salameh Issues an Important Statements Revealing Important Details for the First Time, an article published on November 17, 2021, available via URL accessed on November 22, 2021: https://bit.ly/3xUaI0M ; An Important Statement from the Lebanese Central Bank Regarding the Forensic Audit, an article published on November 23, 2021, available via URL accessed on November 24, 2021: https://bit.ly/3ppOS15 ; No Agreement Has Been Reached, Salameh " There is 14 Billion USD as Reserve", an article published on November 23, 2012, available via URL accessed on November 24, 2021: https://bit.ly/3y5kZax ; Salameh Reveals the Reason Behind Personal Attacks on Him, and This Is What He Had to Say About the Lira, an article translated by LebanonDebate from the online news platform "La rédaction de Mondafrique" for an exclusive with EC-Beirut regarding the economic crisis going on in Lebanon, published on November 29, 2021, available via URL accessed on November 30, 2021: https://bit.ly/3DsYb5C .

(3) Proposal for a Directive Of The European Parliament And Of The Council Amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC And Regulation (EU) No 537/2014, As Regards Corporate Sustainability Reporting COM/2021/189 final available via URL accessed on February 18, 2021: https://bit.ly/3sWLlJw and https://bit.ly/3t13RjQ .

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- Number 28: Financial Intermediation Institutions dated on January 14, 2017.
- Number 37: Obligation of Providing Financial Statements dated on July 26, 2018.
- Number 39: Amendment of the Market Conduct Regulation Series 4000 dated on June 20, 2018.
- Number 48: Amendment of Announcement 41 and Licensing and Registration Regulation in Capital Markets Series 2000, dated December 28, 2018.
- Number 51: Repeal of Decisions 14 on Collective Investment Schemes of 10/02/2014 and 15 related to Islamic Collective Investment Schemes of 13/02/2014 dated on March 5, 2019.
- Number 53: Repeal of Decision No 1 of July 11,2013, No 2 of June 11, 2013, No 8 of December 27, 2013, No 9 of December 27, 2013, dated on March 12, 2019.
- Number 54: Amendment of Regulation on Business Conduct in Capital Markets Series 3000 and Regulation on Licensing and Registration in Capital Markets Series 2000 dated on April 10, 2019.
- Number 55: Amendment of Business Conduct Regulation in Capital Markets Authority Series 3000 dated on May 13, 2019.
- Number 56: Amendment of Capital Markets Licensing and Registration Regulations Series 2000 dated on May 21, 2019.
- Number 64: Regarding Abidance with BDL's Intermediate Circular No 531 issued on 01/11/2019 regarding unaudited financial statements and Market Conduct Regulation Series 4000 dated on December 4, 2019,
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Note: Available the European Union's EurLex Website: https://bit.ly/3lov7Wv/ Readers are advised to observe when looking up European Union regulations or directives if the said regulation or directive are still in force, if they been amended or repealed, if they are current or if the available version includes EEA relevant text and if the said version is a plain current consolidated version or a corrected consolidated version.

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TFEU — Treaty of the Functioning of the European Union: https://cutt.ly/KTqRaVD	
TEU — Treaty of the European Union: https://cutt.ly/kTqRf7P	
EC — Treaty of European Community: https://cutt.ly/fTqRknC	
European Regulations	**European Directives**
EC Regulation No. 2271/1996, of 22 November 1996, Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom.	**EC Directive No. 46/1995,** Of The European Parliament and the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data.
EC Regulation No. 807/2003, Council Regulation of 14 April 2003 Adapting to EC Decision 468/1999 the Provisions Relating to Committees which Assist the Commission in the Exercise of Its Implementing Powers Laid Down in Council Instruments Adopted in Accordance with the Consultation Procedure (Unanimity).	**EC Directive No. 87/2002,** of the European Parliament and of the Council of 16 December 2002 on the Supplementary Supervision of Credit Institutions, Insurance Undertakings and Investment Firms in a Financial Conglomerate and Amending Council Directives EEC 239/73, EEC 267/79, EEC 49/92, EEC 96/92, EEC 6/93, and EEC 22/93, and Directives EC 78/98 and EC 12/2000 of the European Parliament and of the Council.
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3	Preliminary Ruling, European Court of Justice for Hoge Raad – Netherlands, European Union	Case C-126/97, Judgment of the Court, official text in Dutch with official English translation issued on , June 1, 1999.	Eco Swiss China Time Ltd v Benetton International NV, Application by an arbitration tribunal, of its own motion, of Article 81 EC (ex-Article 85) - Power of national courts to annul arbitration awards.	European Court Reports, 1999 I-03055, ECLI: EU:C: 1999:269, available online at Eur-Lex-Europa via URL accessed May 5, 2021: https://bit.ly/3xcR9zr .

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5	Commission Decision, EU Commission, European Union	Case COMP / E-2 / 37.533 - Choline Chloride, official texts in English, French, & German, issued on December 9, 2004	Akzo Nobel BV, Akzo Nobel Chem Int, Akzo Nobel Funct, Akzo Nobel NV, Akzo Nobel Nederland, BASF AG, Biorpoducts Inc, Chinook Group Ltd, DuCoa L.P., and UCB, relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement; held Akzo Nobel NV, the parent company, liable together with its subsidiaries' cartel participation which was also upheld by the CJEU.	EU Commission, decision issued on December 9, 2004, Brussels, Belgium, available via Eur-Lex Access to European Union Law in two forms: official summary and full decision via URLs in respective order accessed on December 12, 2021: https://bit.ly/3ruHrqx & https://bit.ly/33Ezzur .
6	Judgment of Court of First Instance, European Court of Justice European Union	Case T-112/05, First Instance Court, Second Chamber, official text in English, issued on December 12, 2007.	Akzo Nobel NV and Others v Commission of the European Communities, Competition - Cartels in the vitamin products sector - Choline chloride (Vitamin B4) - Decision finding an infringement of Article 81 EC and Article 53 of the Agreement on the European Economic Area - Attributability of the infringement.	European Court Reports 2007 II-05049, ECLI:EU:T:2007:381, available via URL accessed December 12, 2021: https://bit.ly/3GJGt05

7	Judgment Of The Court appealing the European Commission's Decision, European Court of Justice European Union	Case C-97/08 P, Third Chamber, official text in English, issued on September 10, 2009.	Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals International BV, Akzo Nobel Chemicals BV, and Akzo Nobel Functional Chemicals BV, vs European Commission of the European Communities, on peal – Competition – Agreements, decisions and concerted practices – Article 53(1) of the EEA Agreement – Article 23(2) of Regulation (EC) No 1/2003 – Groups of undertakings – Imputability of infringements – Responsibility of a parent company for the infringement of competition rules by its subsidiaries – Decisive influence exercised by the parent company – Rebuttable presumption where the parent company has a 100% shareholding.	European Court Reports, ECLI:EU:C:2009:536, available via URL accessed on December 12, 2021: https://bit.ly/33OOvGq
8	Judgment of the General Court, appealing the European Commission's Decision, European Court of Justice, European Union.	Case T-38/07, Judgment by the General Court, First Chamber, official text in English, issued on July 13, 2011.	Shell Petroleum NV, Shell Nederland BV, Shell Nederland Chemie BV vs. European Commission, on Competition - Agreements, decisions, and concerted practices - Market in butadiene rubber and emulsion styrene butadiene rubber - Decision finding an infringement of Article 81 EC - Imputability of the offending conduct - Fines - Gravity of the infringement - Aggravating circumstances.	European Court Reports 2011 II-04383, ECLI:EU:T:2011:355, Paragraph No. 70, available via URL accessed on December 12, 2021 : https://bit.ly/3fH9j58.
9	Judgment of the General Court, appealing the European Commission's Decision,	Case T-38/07, Judgment by the General Court, First Chamber,	Shell Petroleum NV, Shell Nederland BV, Shell Nederland Chemie BV vs. European Commission, on Competition	European Court Reports 2011 II-04383, ECLI:EU:T:2011:355,

	European Court of Justice, European Union.	official text in English, issued on July 13, 2011.	- Agreements, decisions, and concerted practices - Market in butadiene rubber and emulsion styrene butadiene rubber - Decision finding an infringement of Article 81 EC - Imputability of the offending conduct - Fines - Gravity of the infringement - Aggravating circumstances.	Paragraph No. 70, available via URL accessed on December 12, 2021 : https://bit.y/3fH9j58.
10	Judgment of the General Court, appealing the European Commission's Decision, European Court of Justice, European Union.	Case T-217/06, Judgment by the General Court, Fourth Chamber, official text in French with official English Translation, issued on June 7, 2011.	Arkema France, Altuglas International SA and Altumax Europe SAS v European Commission, on Competition - Agreements, decisions and concerted practices - Market for methacrylates - Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement - Imputability of the unlawful conduct - Obligation to state reasons - Principle of equal treatment - Principle of sound administration - Fines - Gravity of the infringement - Actual impact on the market - Deterrent effect of the fine - Repeat infringement - Ne bis in idem principle - Principle of proportionality - Attenuating circumstances - Actual non-application of the agreements - Attribution of liability for payment within a group of companies - Unlimited jurisdiction.	European Court Reports 2011 II-02593, ECLI:EU:T:2011:251, paragraph No. 223, available via URL accessed on December 12, 2021: https://bit.ly/34VTUMl.
11	Judgment of the General Court, appealing the European Commission's Decision, European Court of Justice, European Union.	Case C-501/11P, Judgment by the General Court, Fifth Chamber, official text in German	Schindler Holding Ltd and Others v European Commission, on Appeal — Agreements, decisions and concerted practices — Market for the installation	European Court General Digital Reports 2013:522, ECLI:EU:C:2013:522, paragraphs 113 - 114,

		with official English Translation, issued on July 18, 2013.	and maintenance of elevators and escalators — Liability of the parent company for infringements of the law on cartels committed by its subsidiary — Holding company — Internal compliance programme — Fundamental rights — Principles of the rule of law in the context of determination of the fines imposed — Separation of powers, and principles of legality, of non-retroactivity, of the protection of legitimate expectations and of fault — Regulation (EC) No 1/2003 — Article 23(2) — Validity — Legality of the 1998 Commission guidelines.	available via URL accessed on December 12, 2021: https://bit.ly/3qvDoLc .
12	Judgment of the CJEU, General Court, 6th Chamber, European Union.	Case T-436/10, HIT Groep BV v European Commission, issued on July 5, 2015.	Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Price-fixing, market-sharing and exchange of commercially sensitive information — Decision finding an infringement of Article 101 TFEU — Rules on the imputability of the anticompetitive practices of a subsidiary to its parent company — Presumption of actual exercise of decisive influence — Reasonable time.	European Court Digital Reports, general reports section, ECLI identifier: ECLI:EU:T:2015:514, available via URL accessed on December 12, 2021: https://bit.ly/33sS9Ga
13	Judgment of the CJEU, General Court, 6th Chamber, European Union.	Case T-393/10, Westfälische Drahtindustrie GmbH and Others v European Commission, issued on July 15, 2015.	Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Price fixing, market sharing and the exchange of commercially sensitive information — Complex infringement — Single and continuous infringement — Distancing — Gravity of	European Court Digital Reports, general section, ECLI identifier: ECLI:EU:T:2015:515 available via URL accessed on December 12,

			the infringement — Mitigating circumstances — Equal treatment — Principle that penalties must fit the offence — Appraisal of ability to pay — 2002 Commission Notice on cooperation — 2006 Guidelines on the method of setting fines — Unlimited jurisdiction.	2021: https://bit.ly/3FIo9Ty
14	Judgment of the CJEU, General Court, 6th Chamber, European Union.	Case T-422/10, Trafilerie Meridionali SpA v European Commission, issued on June 15, 2015.	Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Price-fixing, market-sharing and exchange of commercially sensitive information — Decision finding an infringement of Article 101 TFEU — Single and continuous infringement — Proportionality — Principle that the penalty must fit the offence — Unlimited jurisdiction	European Court Digital Reports, general section, ECLI identifier: ECLI:EU:T:2015:512, available via URL accessed on December 12, 2021: https://bit.ly/3AlTCKf
15	Preliminary Ruling, by the European Court of Justice for the Juzgado de lo Contencioso Administrativo(Administrative Court) No 4 de Madrid — Spain, European Union.	Case C-74/16, Judgment by the Court, Grand Chamber, official text in English, issued on June 27, 2017.	Congregación de Escuelas Pías Provincia Betania vs Ayuntamiento de Getafe, on Reference for a preliminary ruling — State aid — Article 107(1) TFEU — Meaning of 'State aid' — Meaning of 'undertaking' and 'economic activity' — Other conditions for the application of Article 107(1) TFEU — Article 108(1) and (3) TFEU — Meaning of 'new aid' and 'existing aid' — Agreement of 3 January 1979 between the Kingdom of Spain and the Holy See — Tax on construction, installations and works — Exemption for buildings belonging to the Catholic Church.	European Court General Digital Reports 2017:496, ECLI: EU: C:2017:496, available via URL accessed on May 9, 2021: https://bit.ly/3dJpb6K and https://bit.ly/3GNl5XQ .

16	Preliminary Ruling, by the European Court of Justice request from the Oberster Gerichtshof (Supreme Court), Austria, European Union.	Case C-375/15, Judgment of the Court, Third Chamber, official Text in German with official English Translation, issued on January 25, 2017.	BAWAG PSK Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG v Verein für Konsumenteninformation, on Directive 2007/64/EC — Payment services in the internal market — Framework contracts — Prior general information — Obligation to provide that information on paper or on another durable medium — Information transmitted by means of the electronic mailbox of an online banking website.	European Court General Digital Reports 2017:38, ECLI:EU:C:2017:38, available via URL accessed on July1, 2021: https://bit.ly/3nLlnqJ .
17	Commission Decision Summary, European Union Commission, European Union.	Case AT.40135 – Forex-Three Way Banana Split, notified under document number C(2019) 3521, Only the English text is authentic, Text with EEA relevance), issued on May 16, 2019.	UBS AG, The Royal Bank of Scotland Group plc and NatWest Markets Plc, Barclays PLC, Barclays Services Limited, and Barclays Bank Plc (collectively 'Barclays'), Citibank N.A. and Citigroup Inc. (collectively 'Citigroup'), and J.P. Morgan Europe Limited, J.P. Morgan Limited, JPMorgan Chase Bank, N.A. and JPMorgan Chase &Co; on a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement.	Official European Journal of the European Union under C 226/5-226/05, July 9, 2020, available via URL accessed on June 9, 2021: https://bit.ly/3B7ml5u.
18	Preliminary Ruling, by the European Court of Justice (Grand Chamber) request from Hanseatisches Oberlandesgericht Hamburg , European Union.	Case C-124/20, Bank Melli Iran, Aktiengesellschaft nach iranischem Recht v Telekom Deutschland GmbH, judgement issued on December 21, 2021.	Reference for a preliminary ruling – Commercial policy – Regulation (EC) No 2271/96 – Protection against the effects of the extraterritorial application of legislation adopted by a third country – Restrictive measures taken by the United States of America against Iran – Secondary sanctions adopted by that third	European Court Digital Reports, unpublished decisions' section, ECLI identifier: ECLI:EU:C:2021:1035, via URLs accessed on January 3, 2021: https://bit.ly/3IkwiPI and

			country preventing persons from engaging, outside its territory, in commercial relationships with certain Iranian undertakings – Prohibition on complying with such a law – Exercise of the right of ordinary termination.	opinion of General advocate via: https://bit.ly/3fdkkLF .
19	Preliminary Ruling, by the European Court of Justice (Grand Chamber) request from Hof van beroep te Brussel — Belgium, European Union.	Case C-483/2021, Facebook Ireland Ltd, Facebook Inc., Facebook Belgium BVBA v Gegevensbeschermingsautoriteit, issued on June 15, 2021.	Protection of natural persons with regard to the processing of personal data — Charter of Fundamental Rights of the European Union — Articles 7, 8 and 47 — Regulation (EU) 2016/679 — Cross-border processing of personal data — 'One-stop shop' mechanism — Sincere and effective cooperation between supervisory authorities — Competences and powers — Power to initiate or engage in legal proceedings)	Official Journal of European Court, C -310, August 8, 2021, point 75, pages 3-4, , ECLI:EU:C:2021:483, available via URL accessed on August 17, 2021: https://bit.ly/3u79Cg2

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No	Court and Decision No.	Date and Issue	Reference
1	Lebanese Penal Supreme Court, 5th Chamber, Decision No. 46/1975,	Issued on March 3, 1975, on Fraudulent Bankruptcy and the BOD's responsibility	Samir Aliyah, Collection of Penal Supreme Courts' Caselaw Both Chambers, volume 4, 1974-1987, second edition, Majd Publications, Beirut, Lebanon, 1987, pages 241 – 242.
2	The Lebanese State's Council Decision No 195/95-96 Presiding Judge Iskandar	Nasr African Lebanese Bank vs Banque du Liban on the Lebanese Central Bank's Special Legal Persona	Lebanese University's Center for Legal Information, pages 2-3, via URL accessed on

	Fayyad and Advisors Khalil Abu Rjaili and Nizar Alamin		February 17, 2021: https://bit.ly/39z6alr .
3	Beirut First Instance Court, Fourth Chamber, Decision No. 76/1994.	Issued on March 23, 1994, litigation in joint stock companies as shareholders' and joint stock company's exclusive right.	Ghalib Ghanim, Jurisprudential Treasures in Commercial Law, first edition, Sader Legal Publishers, Beirut Lebanon, 2001, page 329.
4	First Instance Penal Judge in Jib-Jineen, Decision No. 653/2014.	Issued on December 16, 2014, Public Right vs Ibtisam Nasiredine and Associates on mental and moral doers in relation to decision-makers' crimes and their subordinates.	Al - Adil Journal of Beirut's Syndicate of Lawyers, Issue No. 1, year 52, 2018, pages: 513 - 518.

Annexes

Annex ─ 1 List of Definitions

Term	Definition
Accrual-Basis Accounting:	A financial accounting method that allows companies to record revenue prior to receipt of payment for goods or services as well as expenses as incurred prior to companies paying them out such that these transactions are recognized in the same period.
Audit Opinion Usage and Type	**Usage of Audit Opinions:** Auditors use all types of qualified reports to alert the public as to the transparency, reliability, and accountability of companies. Auditor opinions place pressure on companies to change their financial reporting processes and incorporate practices like ESG and cybersecurity healthcare governance so that they're clear and accurate. Companies, investors, and the public highly value unqualified reports. **Unqualified Opinion – Clean Report** An unqualified opinion is considered a clean report. This is the type of report that auditors give most often. This is also the type of report that most companies expect to receive. An unqualified opinion doesn't have any kind of adverse comments and it doesn't include any disclaimers about any clauses or the audit process. This type of report indicates that the auditors are satisfied with the company's financial reporting. The auditor believes that the company's operations are in good compliance with governance principles and applicable laws. The company, the auditors, the investors and the public perceive such a report to be free from material misstatements.

	Qualified Opinion or Modified Opinion – Qualified Report: An audit report is said to be a qualified report or a modified report if the auditor's report is modified to add emphasis or highlight a matter affecting the financial statements. One of the main reason for qualifying an audit report or modifying an audit report is if there are concerns to the auditor regarding a going concern problem and the going concern question is not resolved, and relevant disclosures have not been made in the financial statements. In these situations, an auditor isn't confident about any specific process or transaction that prevents them from issuing an unqualified, or clean, report. Investors don't find qualified opinions acceptable, as they project a negative opinion about a company's financial status. Auditors write up a qualified opinion in much the same way as an unqualified opinion, with the exception that they state the reasons they're not able to present an unqualified opinion. Here's an example of a modified report includes a phrase such as the following in the audit report: "Without qualifying our opinion, we draw attention to Note II of the Schedule to the financial statements. The entity is defendant in a lawsuit alleging patent infringement. The ultimate outcome of the matter cannot presently be determined, and no provision for any liability that may result has been made in the financial statements. **Disclaimer of Opinion – Disclaimer Report** If there is a limitation on the scope of the auditor's work or if there is a disagreement with management regarding the usability of the accounting policies selected, the method of their utilization or the adequacy of financial statement disclosure, then an adverse or disclaimer of opinion is issued. Whenever an auditor issues an audit opinion that is qualified or adverse or a disclaimer of

	opinion, a clear description of all the reasons is included in the audit report. A disclaimer of opinion is expressed by an Auditor when the possible effect of limitation on the scope of the audit is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence. In these situations, an auditor issues a disclaimer of opinion report, it means that they are distancing themselves from providing any opinion at all related to the financial statements. Some of the reasons that auditors may issue a disclaimer of opinion are because they felt like the company limited their ability to conduct a thorough audit or they couldn't get satisfactory explanations for their questions. They may not have been able to decipher the correct nature of some transactions or to secure enough evidence to support good financial reporting. Auditors that aren't allowed an opportunity to observe operational procedures or to review particular procedures may feel like they're not able to express a definite opinion, so they feel a disclaimer is necessary and in order. The general consensus is that a disclaimer of opinion constitutes a very harsh stance. As a result, it creates an adverse image of the company. **No Opinion – No Opinion Report** When an external auditor refrains from giving an opinion. **Adverse Opinion – Adverse Audit Report** An adverse opinion is expressed when the possible effect of a disagreement with management is material and pervasive to the financial statements. Hence, the auditor concludes that the qualification of the audit report is not adequate to disclose the misleading nature of the financial statements. In case an adverse opinion is issued, the board of directors of the company are legally bound to submit an explanation to the members of the company. The explanation should inform the members the reason for the

	adverse opinion. In these situations, auditors who find that they aren't at all satisfied with the financial statements or who discover a high level of material misstatements or irregularities know that this creates a situation in which investors and the government will mistrust the company's financial reports. Hence, because an auditor's adverse opinion is a big red flag, an adverse audit report usually indicates that financial reports contain gross misstatements and have the potential for fraud. Adverse opinions send out a high alert that the company's records haven't been prepared according to IFRS or GAAP. Financial institutions and investors take this opinion seriously and will reject doing any kind of business with the company. **Sources:** Simon Finley, Forming an Audit Opinion, Technical Articles on Audit and Assurance Study Courses, Kaplan Publishing, available online via ACCA Think Ahead, via URL accessed December 9, 2021: https://bit.ly/3sjSROi Nicholas J. Price, Understanding the Four Types of Audit Reports, article written on July 1, 2019, for Diligent.com, available online via URL accessed on December 9, 2021: https://bit.ly/3rvB7jL
CAMELS-BCOM:	An acronym for Capital Adequacy Asset Quality Management Earnings Liquidity and Sensitivity. It is an international system recognized and used by banking supervisory bodies to rate financial entities according to the six criteria mentioned in its acronym. In this sense a rating of one is considered best and five is the worst for each factor alone. See further: Hari Gopal Risal and Sabin Bikran Panta, CAMELS-Based Supervision and Risk Management: What Works and What Does Not, research article for FIIB Business Review from Sage Publications, Volume 8, Issue No 3, 2019, pages 194-204, available via URL accessed on March 2, 2021: https://bit.ly/3zJo7c5 .
Cash-Basis Accounting:	An accounting system that only recognizes revenues and expenses when cash is exchanged and is not generally acceptable under neither the Generally Accepted Accounting Principles (GAAP) nor the International Financial Reporting Standards (IFRS).
Centralized Debt Obligation:	A complex structured financial product backed up by a pool of loans and other assets. As a particular type of derivative, they are sold to institutional investors as their

	value is derived from other underlying assets which are converted into collateral when a loan defaults.
Clawback Measures:	A clawback is a contractual provision that requires an employee to return money already paid by an employer, sometimes with a penalty. Clawbacks act as insurance policies in the event of fraud or misconduct, a drop in company profits, or for poor employee performance.
Contagion Risk:	A systemic risk that causes a shock in a given economy or specific region or what is commonly known as the contagious spread of an economic crisis from one market or region to the other. The said outbreak can either be local or international since all markets are virtually connected through both monetary and financial systems.
Going Concern:	An accounting definition used to indicate that a company/entity has the resources required to remain operational indefinitely until it furnishes evidence that contradict its continuity. Financially, the term refers to a company/entity's ability to generate sufficient income for the entity/company to continue operations or avoid bankruptcy. Hence, if a company/entity is no longer a going concern, then it has gone bankrupt with its assets liquidated.
From IPSAS – 2006 and PSAS CPA Canada PSA Handbook	
Government Business Enterprise:	GBEs include both trading enterprises, such as utilities, and financial enterprises, such as financial institutions. GBEs are, in substance, no different from entities conducting similar activities in the private sector. GBEs generally operate to make a profit, although some may have limited community service obligations under which they are required to provide some individuals and organizations in the community with goods and services at either no charge or a significantly reduced charge. IPSAS 6, "Consolidated and Separate Financial Statements"

	provides guidance on determining whether control exists for financial reporting purposes, and should be referred to in determining whether a GBE is controlled by another public sector entity. GBE's characteristics as extracted from states that a government business enterprise is a government organization that: (a) is a separate entity with the power to contract in its own name and that can sue and be sued; (b) has been delegated the financial and operational authority to carry on a business; (c) sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and (d) can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity. **Source:** IPSAS-1/2006, on Presentation of Financial Statements point 12, IFAC, 2006, page 32, available via URL accessed on December 17, 2021: https://bit.ly/3gbUp7j and PSAB, How to Evaluate a GBE's Financial Self-sufficiency, Public Sector Accounting Board, March 2021, Canada, page: 3, available via URL accessed on December 23, 2021: https://bit.ly/3HkctIc .
Related Parties Risk:	According to ISA 550, a related party is a party that: (i) Controls or significantly influences, directly or indirectly through one or more intermediaries, the entity; (ii) The entity controls or significantly influences, directly or indirectly through one or more intermediaries; or (iii) Is under common control with the entity (such as through having common management or a common controlling shareholder) When the applicable financial reporting framework provides additional criteria or more specificity in defining related parties, the definition in the framework is used in addition to (i) to (iii) above. See the original ISA 550 document issued on February 2007 by the International Auditing and Assurance Standards Board, page: 21, available via URL accessed on June 29, 2021: https://bit.ly/3I2SfDS.

Volcker Rule:	This rule prohibits banking entities generally from engaging in proprietary trading or investing in or sponsoring hedge funds or private equity funds.
From EU Regulation No. 2088/2019:	
IBIP:	According to Article 1(a) this is an Insurance undertaking which makes available an insurance-based investment product .
IORP:	According to Article 1(c) is an institution for occupational retirement provision.
Sustainable Investment:	According to Article 2(17) means an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labor relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.
Sustainability Risk:	According to Article 2(22) means an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment.

Sustainability Factors:	According to Article 2(24) mean environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.
From EU Regulation No. 852/2020:	
Climate Change Mitigation:	According to Article 2(5) means the process of holding the increase in the global average temperature to well below 2 °C and pursuing efforts to limit it to 1,5 °C above pre-industrial levels, as laid down in the Paris Agreement.
Climate Change Adaptation:	According to Article 2(6): means the process of adjustment to actual and expected climate change and its impacts.
Circular Economy:	According to Article 2(9) means an economic system whereby the value of products, materials and other resources in the economy is maintained for as long as possible, enhancing their efficient use in production and consumption, thereby reducing the environmental impact of their use, minimizing waste and the release of hazardous substances at all stages of their life cycle, including through the application of the waste hierarchy.

Annex — 2 Tables and Figures

List of Tables:

Boilerplate Clauses	Specialized Wealth Management Clauses
(a) Entirety of Agreement Clauses **(b) Commencement Clauses** **(c) Product Framework Clauses** **(d) Wealth Owner Rights and Obligations Clauses** **(e) Wealth Manager's Rights and Obligations Clauses** **(f) Fees and Expenses Clauses** **(g) Commissions and Calculations Clauses** **(h) Governing Law Clauses** **(i) Methods of Solving Disputes,** **(j) Exclusive Jurisdiction for Competent Courts or Arbitration Seats Clauses** **(k) Severability Clauses** **(l) Contract Amendment Clauses** **(m) Confidentiality Clauses** **(n) privacy protection Clauses** **(o) Record keeping methods Clauses** **(p) Numbers of Copies Clauses** **(q) Official or Acknowledged Copies Clauses**	**(a)** Client Profile, Financial assessment, strategy, and recommendations **(b)** No warranties and limitations on duty of care **(c)** Bank or firm's relation with financial advisors and limitations of liabilities **(d)** Acknowledgement of nature of mandate as discretionary or non-discretionary with respect to authorizations given to financial/investment advisor **(e)** Relationship, representation, and indemnities common among banks operating through investment banking centers or investment arms where the bank specifies who are considered employees or outsourced specialized experts **(f)** Limitation of Liabilities and regulation of compensation schemes **(g)** Terms of Insurance for Financial Liability **(h)** Authorized Client Personnel and their Liability (each party will have a separate clause) **(i)** Ownership of Accounts and Management of Borrowing **(j)** Accounting and Financial reporting standards **(k)** Coordination Mechanisms **(l)** Tailored products including intellectual property management **(m)** Language and risk appetite assessment **(n)** Acknowledgement of consulting with lawyers and financial experts **(o)** Protection of trade secrets **(p)** Foreign exchange rates for currencies in trading and bank accounts **(q)** Trading types and methods along with portfolio diversification schemes. **(r)** Authorized platforms and trading software **(s)** Legal entities creation and directorship schemes **(t)** Borrowing and loaning schemes **(u)** Offset and account closure terms and clearance **(v)** Financial stability clauses

Table 1 Boilerplate and Specialized Wealth Management Clauses

Table 2 Financial Engineering Swaps by Type and Effect

SWAP #	Type of Operation and Implication The operations are best understood with the following central bank objectives in mind: Increasing US Dollar reserves, meeting government liquidity needs, bolstering bank profits to weather the storm, and increasing bank capital adequacy requirements to meet new regulatory conditions. BdL reported three steps to their operations, mapped out according to how they play into their objectives and their implications in what follows.
1	Central Bank owns LL treasuries and swapped them with the government for newly issued USD treasuries, international bonds not native to Lebanon
	Implication 1: The government has now increased USD liabilities and BdL has converted part of its assets from LL to USD. The increase in dollar liabilities for the government can reduce the cost of debt because of the lower interest required on the debt, but also decreases the demand for liras that people would need to hold to buy LL denominated treasuries. In effect, as long as the lira holds, the cost to the government decreases.
2	Central Bank, now with a promised inflow of dollars from the government, sells certificates of deposits (CDs) to commercial banks against the newly swapped USD treasuries. Commercial banks deposit their customers' USD at BdL, ensuring that it has the foreign reserves to protect the lira against the mounting current account deficit. A current account deficit refers to a government economy that is consuming, investing, and spending more than it is producing.
	(1) Customer USD deposits are held in BDL at an attractive interest rate to protect the Lebanese Lira, which bolsters Central Bank's reserves and increases the interest margins at commercial banks. This operation's implications are two sided. On the one hand, Central Bank is using customer deposits to protect the lira, which is inherently risky seeing as the trade deficit is growing. When imports exceed exports, the necessary dollars needed to protect the lira are more likely to leave the country and those dollars effectively belong to depositors. That being said, commercial banks pushed depositors to fix their deposits for longer terms which, in terms of balance sheet health, is positive and reduces the liquidity strains on the financial system. The downside is that the currency system is being held up by USD depositors, and the dollar liquidity in the system is contingent on the growth of USD deposits. One can argue that the dollars and the deposits are guaranteed by Central Bank and that is as safe as one can ask for in Lebanon, but fundamentally, the dollars are leaving the country unless the foreign currency deposits grow. These deposits grow either by attractive interest rates, which is possible seeing as internally interest rates are falling and hence the attractiveness of Lebanese deposits is growing, or if the CEDRE money comes in and flows through the Lebanese financial system enough to alleviate the dollar liquidity stress. Otherwise, it's a game of musical chairs. **(2)** Equally as important as the central bank's ability to protect the pegged LL–USD exchange rate is the commercial banks' ability to meet capital adequacy requirements set by Basel III, international banking regulations promoting stability in the international financial system and comply with the 2018 International Financial Reporting Standards, which increase required provisions on assets. Meeting these requirements will allow the Lebanese banks to maintain international operations through the international banking system and their operations with their correspondent banks. This requirement is met with the technical knowledge of how risk-weighted assets are calculated according to Basel III. Simply put: The riskier the asset, the higher the weight, and consequently, the lower the capital adequacy ratio. In turn, had the commercial banks bought the USD treasuries directly, their risk would have been weighted at 100 percent. Because Central Bank sold them to commercial banks as CDs, which are weighted at 50 percent, the capital adequacy ratio is increased. Modifying risk weighting to account for this exposure and testing the measure on one of the local banks, the capital adequacy ratio was nearly halved and still met both the requirements set by both Basel III and the Banking Control Commission of Lebanon (BCCL).

3	Commercial banks own some LL treasuries that Central Bank bought. The purchase was unique in that BdL did not pay the market price for the bonds, but instead paid 50 percent upfront, with all future coupon payments and the bonds' par value discounted at 0 percent.
	This converted long term assets of the banks to liquid LL cash, providing much needed liquidity to the system, albeit in the Lebanese currency. The flush of commercial banks with Lebanese Liras should be able to promote much-needed credit to the private sector. Loans to the private sector peaked one year later in December 2017, with a five percent growth. Data in May 2019 revealed it saw a steady decline to reach a three-year-low and an 8 percent decline from that peak. In addition to shrinking private sector credit, the performance of these loans has also deteriorated. That being said, new regulatory requirements have pushed banks to set aside an appropriate amount of provisions for loans.
Source:	BDL's Official Document on Financial Engineering Objectives available via URL accessed February 29, 2021: https://bit.ly/3lvYxkX and Jamil Chaya, Breaking Down Banque Du Liban's Financial Engineering, a report for Beirut Today, published on August 27, 2019, available via URL accessed on February 29, 2021: https://bit.ly/3nNvAn0

Table 3 Management Models in Lebanese Alpha Banks

Lebanese Alpha Banks by Tiers of Management			
Alpha Bank	**Chairman**	**General Manager/CEO**	**Group Chairman/CEO**
Audi SAL Bank	Honorary Chairman, Raymond Audi, Chairman of the Board: Samir Hanna	Samir Hanna	Group Chief Executive Officer: Samir Hanna
Bank Beirut	Salim Sfeir	Salim Sfeir	-
Bank MED	Raya Haffar El-Hassan	Michel Accad	-
Byblos Bank	Francois Bassil	Semaan Bassil	-
Credit Libanais	Joseph Torbey	Joseph Torbey	-
Fransabank	Adnan Kassar	Adnan Kassar	-
IBL Bank	Salim Y. Habib	Salim Y. Habib	
SGBL	Antoun Sehnaoui	Antoun Sehnaoui	-

Note: *These findings are based on organograms, charters, and corporate governance sections published on these banks' official websites and annual reports.*

Table 4 CG Requirements under BDL's BCCGR and SCCGR

Corporate Governance Requirements by BDL Circulars	
Circular No.	**Basic Circular Corporate Governance Requirements (BCCGR)**
106/2006	Sets out commercial and Islamic banks as well as financial institutions' corporate governance duties based on articles 70 and 174 of the CMC as specified by the Central Bank's Committee's Decision No. 9382 on July 12, 2006. The decision charges general directors, chief executive officers, head of the board of directors and all assistant general directors as well as major departments and specialized committees with senior executive management duties for the purposes of managing the banks or financial institutions' daily business transactions. It also mandates that banks and financial institutions work to diligently apply and abide with Baseline international requirements and standards for enhancing corporate governance. Furthermore, it requires banks and financial institutions set their own corporate governance guidelines provided they include at least: (a) an organizational structure chart, (b) an organizational chart for parent and subsidiary or affiliate entities, (c) chosen approach for applying Baseline requirements for corporate governance, (d) size of board of directors, roles, responsibilities, number of independent members, executive and non-executive members, (e) standards for remuneration calculation for board of directors and senior executive managers' pay, (f) subsidiary board of directors' committees as well as their respective operations' charters, (g) methods of communication between board of directors and senior executive management, (h) performance assessment standards applied on senior executive management and board of directors regarding implementation of corporate governance requirements, (i) succession plans for board of directors and senior executive management, (j) summarized code of ethical conduct and disclosures conduct, financial reporting policy and conflict of interests management policy, (k) policy on acquiring shares, (L) Parent bank or financial institutions' conduct policy for investment arms, affiliated bodies, and subsidiary banks or financial institutions. Additionally, it requires that banks recognize the Central Bank's Central Committee's discretion upon consulting with the Banking Supervisory Body to exempt foreign banks' branches operating in Lebanon as well as Lebanese subsidiary banks from furnishing their own corporate governance code. This exemption applies if the parent bank had already set a code for the said branch or subsidiary bank or if the foreign bank's code included information regarding the subsidiary's corporate governance rules. Moreover, the decision charges banks with publishing a summary of their corporate governance guides on their websites and in their annual reports as well as furnishing the Banks Supervisory Body with a paper copy along with a copy on a CD inclusive with all the amendments. It also requires internal audit departments in banks and financial institutions to oversee compliance throughout the different bank's or financial institution's divisions with the corporate governance policies and supplementary procedures set by the institution's management which shall include the principles mentioned in the first point. Additionally, the internal audit is required to carry out necessary assessments for the bank's or financial institution's corporate governance systems, policies, processes and opine regarding their efficiency, competency, and sufficiency. To this end it must prioritize implementing corporate governance systems especially in cases where the said bank or financial institution have a presence outside Lebanon as well as in mergers and acquisitions for the purposes of reconciling differences in regulatory charts and data within the banking or financial group.

112/2007	Basic Circular No. 112/2007 which was passed via Decision No. 725 on September 27, 2007, governs their requirements for corporate governance which is based on Law 575/2004 and BDL's Central Commission's decision on September 26, 2007. Accordingly, Islamic Lebanese Banks performing Islamic Finance Operations are required to draft corporate governance's necessary framework and internal bylaws according to international principles and recognized best practices that don't contravene with applicable Lebanese laws and regulations; mainly Basic Central Bank Decision No. 9382 regarding corporate governance Basic Central Bank of Lebanon's Circular No 106/2006. They must set up a specialized corporate governance department that is independent of its operations' management sans executive authorities to oversee compliance and development of internal regulations concerning corporate governance; provided that the said department be comprised of at least: a member or more of the board of directors' non-executive members, a member or more of the consultative committee within the said Islamic Bank as required under Article 9 of Law No. 575/2004, chief of internal audit specified in Central Bank's Basic Decision No. 7737 dated on December 15, 2000, Chief Islamic Audit mentioned in Article 9 at the bottom of the said circular. Furthermore, they must have a corporate governance committee/department responsible for supervising, coordinating, and developing necessary internal processes regarding corporate governance management and execution via a bank or financial institute's departments as well as the consultative committee. It must also safeguard the bank's clients' interests via offering suggestions to the senior executive board regarding issuance of instructions and internal guidelines for managing all issues related to the bank's dealings with its clients including transparency, disclosure, releasing dividends. It must also furnish the board of directors every six months or as necessary with reports and recommendations based on the results it derives whilst exercising its charges. Additionally, Islamic banks must appoint a chief for the corporate governance unit, allocate his or her pay, notify the Banking Supervisory Body of his/her name and any further changes. Moreover, Islamic banks must abide with applicable laws and regulations to matters of disclosure and transparency; mainly those related to deposits the bank receives irrespective of their natures such that Islamic Banks must abide with the disclosure requirement's form accompanying the said circular. Moreover, Islamic banks must adopt a solid investment strategy that takes into consideration investment risks and those acceptable to the client including the client's earnings' expectations whilst explicitly distinguishing between discretionary and non-discretionary investment accounts. Accordingly, their senior executive management is liable and responsible for verifying that their bank is complaint with the rules and principles of Islamic Sharia in its operations such that the said senior executive management's liability shall be limited to opining independently regarding the bank's operations' compliance with Islamic Sharia Rules and Principles. That said, Islamic banks are required to draft (1) summary reports of opinions issued from the consultative committee for informing shareholders in the annual general assembly and enabling all shareholders to have full access to full texts of opinions and reports prepared by the said committee, (2) to annually publish in one of the daily newspapers a summary of the reports and opinions issued by the consultative committee whilst indicating in a clear explicit manner the availability of the full texts for the said opinions and reports as soon as one is issued as well as their availability on the bank's website. They are also required to set up an independently managed department/unit designated as Islamic Audit Committee charged with auditing, evaluating, and following up

	the Islamic Bank's compliance in executing its operations in accordance with the opinions issued by the consultative committee. Their board of directors is also required to appoint a chief Islamic Audit Committee. The said board of directors must determine determining the chief Islamic Auditor's compensation and notify the Banks' Supervisory Body of his/her name and any further changes provided that the said appointee is not a member of the consultative committee. Additionally, the said committee shall be required to furnish quarterly reports or as necessary to both the board of directors and consultative committee within the bank. In this line, the circular also requires that Islamic banks abide with Basic Circular No. 112/2007 as long as it does not contravene with other laws regulations, and principles that apply to banks and financial institutions related to Islamic Banking and Financing operations. Accordingly, Islamic banks shall adhere with the criteria mentioned in the required disclosures' form which are: (a) On a quarterly basis to disclose investment allocation and diversification policies inclusive with associated risks, expected returns, rates of bank's direct and direct participation in projects and investments, along with valuation schemes for redistribution of investment allocations; (b) On a quarterly basis as well every six months at least: (a) methods of calculating and distributing earnings pertaining to discretionary and non-discretionary investment accounts, calculations for allotments of reserves from profits in addition to all reports and opinions issued by the consultative committee; provided that the said disclosed information follow the following principles: (i) necessary disclosures are in Arabic Languages but can be published in a second language as a supplement if the bank deems that necessary; (ii) that the said disclosures are published in a daily newspaper and or a special booklet and or a bank's annual report and or the bank's website or any other specialized website; (c) To inform all stakeholders, clients, suppliers that deal with the bank via publication in a daily newspaper of the methods that shall be utilized to conduct the disclosures; and (d) to disclose urgent and necessary information via the disclosure mechanisms mentioned earlier as necessary without being constrained with specified timetables.
Circular No.	**Specific Circular Corporate Governance Requirements (SCCGR)**
77/2000	Mandated the promulgation of an independent internal audit in Banks and Financial Institutions provided the said unit does not possess executive authorities in the bank or financial institution it audits internally. The circular mandates that the said unit applies international standards in financial reporting (IFRS) without elaborating on how the Central Bank shall oversee these reports or the body that shall perform supervisory functions. It also specified the board of directors' audit unit's duties in supervision and application of international standards without giving the internal audit unit the right to convene with the board of directors without the presence of executive directors.
81/2001	Regarding committees on authorizing large investments and approvals for credit as well as real estate and other matters; obliges banks to form such committees to appraise investments depending on their business transactions and apply applicable laws and regulations whilst abiding with international standards in financial reporting for investment feasibility studies without specifying how or if there is an assessment for their compliance. It also provided a list of prohibited practices such as: acquiring shares or partnerships with unlimited liabilities, concentrating their investments and funding directly or indirectly such that the said investments or funding should not exceed 10% of the banks' private funds in order to effectively diversify investments on companies and sectors. However,

	the said prohibition excludes participations and investments in Lebanon and abroad in banks, financial institutions, leasing firms, financial intermediation institutions, funds, and insurance companies all of which fall under their specific laws and regulations regarding funding and investment. The circular also prohibited financial entities from providing facilities for clients guaranteed by more than 5% of bank shares or financial institutions without informing the Central Bank of the said facility beforehand within a month and furnishing a copy of the lien or usufruct contracts along with the appraisals for concerned shares according to market value. The said circular also prohibited commercial banks from loaning specialized banks or specialized Islamic banks along with deposits of a commercial bank within a specialized bank whereas the said specialized bank or specialized Islamic bank may deposit at a commercial bank. Furthermore, under this circular, banks and financial institutions are prohibited from loaning directly or directly persons that operate loan facilities that are regulated under articles 183 and 184 of the CMC. The circular also prohibits banks and financial institutions from performing any financial or banking or non-financial or non-banking operation recorded on or off a bank's balance sheet with mutual investment companies or funds whose shares or stocks are partially or totally owned bearer shares or bearer stocks or via mutual investment companies or funds whose shares or stocks are totally or partially owned as bearer stocks or shares. Furthermore, the circular prohibits banks and financial institutions from conducting any kind of financial or banking or non-financial or non-banking transactions recorded on or off-balance sheets with exchange persons or companies that operate in accordance with articles 183 and 184 of the Code of Money and Credit unless the said exchange entities are listed on the Central Bank's list of exchange entities as Credit Counters. This prohibition includes shareholders and participants in firms unlisted on the previously mentioned lists in addition to their management and provided that all transactions with entities or firms or companies listed on the lists of exchange companies or credit counters follows applicable laws and regulations that govern these operations.
83/2001	Specifies banks and financial institutions anti money laundry duties as well as anti-money laundry procedures, and authorities responsible for overseeing and regulating anti money laundry operations as a basis for banks and financial institutions compliance guideline to combat money laundering and financing terrorism.
103/2006	Regulated minimum skills, experience, and qualifications for banking and financial institutions employees despite the fact the fact that according to article 5 of the said circular exempts the board of directors and duly appointed manager from undergoing competency and efficiency exams.
104/2006	Required that banks apply Basel II capitalization and liquidity requirements according to the standardized approach to calculate credit and operational risks. The said circular was not updated to require banks to comply with Basel III requirements or allow banks to practice flexibility and proportionality to decide an approach commensurate with their risk appetite and operational risks.
108/2007	Regulates relationships between banks and credit rating agencies claiming that it's based its requirements on Basel II for classifying credit rates but requires application of the Lebanese Central Bank's rating standards. The said credit rating agencies in Lebanon are regulated by the Central Bank's terms such as prohibition of dealing with credit rating agencies that were given facilities or prohibition of banks from providing credit facilities for credit rating agencies or their management according to article 3 of the said circular whether directly or indirectly irrespective if they were natural or legal entities or even third parties.

	In this line, Basel II applies Standard and Poor's rating standards in rating credit. Meanwhile under this circular the Banking Supervision Committee is tasked with reconciling selected ratings standards via certified credit rating agencies with those of Standard and Poor's which is counterproductive in terms of independence since it prolongs and complicates credit rating mechanisms' approval for banks in the name of Basel II compliance.
114/2007	Sets banks and financial institutions' framework for disclosing personal, financial, and professional information for persons managing banks. The disclosures are forms that need to be filled without specifications on how the information is utilized or evaluated or any further input on qualifying efficiency of disclosures or their availability for the banking sector and stakeholders in the market.
118/2008	sets out the audit committee framework which should be comprised of three non-executive board of directors' members and set the minimum required times that the board should meet which should be four times a year two of which in Lebanon. The said circular further mentions that banks' board of directors, members of audit, risk management, and remuneration committees shall attend training sessions regarding corporate governance. Meanwhile, articles four to six sets criteria for members of the audit committee requiring an independent head of audit experienced in financial or accounting or audit management. These lose criteria are questionable since the said committee is responsible for setting policies for internal audit in a bank and its chief will oversee internal audit operations. The Central Bank should've set the minimum criteria for the head of internal audit committee to be an accounting and internal audit expert, or an internal control expert specialized in financial management. The circular centralizes internal control and its standards or policies to be focused mainly on combating money laundry and financing terrorism without reference to international standards in internal audit required for internal control and internal audit efficiency. It also allows that a member in the said committee be also a member in the risk management committee which is also a red flag since both committees handle different operations in separate committees and both require complete independence for effective oversight of processes. Furthermore, under article seven of the said circular, banks are obliged to set up a risk management committee that is comprised of three members at least with experience in the financial or banking sector without specifying a banking risk management specialization. This criteria itself endangers this committee's efficiency since it is tasked with setting up and implementing risk management policies in banks since the latter face various risks such as operational, capital, reputational, and regulatory risks. Meanwhile article thirteen of the said circular under miscellaneous provisions, contravenes with Basel II requirements since it allows after consultation with the Banking Supervision Body for subsidiary Lebanese Banks of Lebanese Banking Groups to have shared internal audit or risk management committees between parent and subsidiary banks. This is alarming since it cultivates conflict of interest in internal operations between parent companies and their subsidiaries. Under Lebanese Law, legal entities have independent capacities to transact as well as financial independence that subject them to applicable laws and regulations concerning supervision, control, audit, accounting, and publications for disclosure purposes[1].

(1) Malik Hafeez, Corporate Governance, and Institutional Investment: Rules, Regulations and Best Practices to Monitor Corporate Affairs and Balance the Interests of Managers and Shareholders, first edition, 2015, Universal Publishers Boca Raton, Florida, United States of America, P 111.

123/2009	Requires banks to set a succession and business continuity plan in case of financial crisis. The said circular classifies banks' operations into three basic categories: vital, necessary, and elective and set general mechanisms for operational continuity in case of crisis whilst specifying the persons tasked with drafting these plans, training them, transferring data and making backups to be copied on CDs. It also set safety measures and methods to select plans, implementing and updating them. CDs are now outdated with a cyclic access lifespan but since cloud computing which provides a regulated organized and safe information management system does not exist in Lebanon for banks' databases, Lebanese banks' data remains vulnerable to accuracy, reliance, and accessibility risks aside from the fact that data bases are not being utilized or evaluated or indexed for the purposes of developing services and operations within the banking sector for productivity and efficiency purposes(1).
126/2012	Sets the basic framework for Lebanese parent companies with subsidiary companies and focuses on combating money laundry and financing terrorism in cross border operations whilst cooperating with the Special Investigative Unit promulgated in Laws 318/2001 and 44/2015 (combating money laundry and financing terrorism). Additionally, it covers supervision of payments conducted via corresponding banks with enhanced due diligence, roles of statutory auditors such that non-compliance subjects persons to sanctions provide under article 208 of the Code of Money and Credit. The circular however does not mention due diligence measures for monetary stability, fit and proper operation of banks or conflicts of interests between parent companies and subsidiaries or methods of cooperation with banking supervisory bodies for entities that are outside Lebanese soil(2).
128/2013	Requires banks to set up a compliance unit comprised of a legal compliance department and anti-money laundering department for the purposes of evaluating and supervising conduct that contravenes, or breaches legal requirements related to risks, policies, procedures, and violations. The said circular limits compliance with legal compliance and combating money laundry and financing terrorism only. Furthermore, its head is only required to be experienced with legislative requirements aka laws without mentioning financial, audit or accounting experience as required under Basel standards. Additionally, the circular permits combining both legal and anti-money laundering compliance departments in one unit under one chief. This regulation contravenes with the essence of regulatory compliance and constricts it within the premises of legal text compliance that is not enough to meet Basel's standards in corporate governance despite prohibiting outsourcing compliance functions in banks to external specialized service companies partially or totally.

(1) Bernardo Nicoletti, Governance of Cloud Computing in Financial Services, Studies in Banking Financial Institutions, Palgrave MacMillan, first edition, 2013, London, United Kingdom, P 87.

(2) Ionel Bostan and Veronica Grosu, The Role of Internal Audit in Optimization of Corporate Governance at the Group Companies, Theoretical and Applied Economics, Volume 17, Issue 2 (543), 2010, pages: 89-110, available via URL accessed on February 29, 2021: https://bit.ly/3kWEifV.

Table 5 Table of Lebanese Wealth Management Corporate Governance Legal Framework's Vices

Acronym	Definition
BCBSP	Baseline Consolidated Banking Supervision Vices by Principle
BCSP	Baseline Consolidated Supervision Principle
BFP, CB, CRS, FIA & FS	Banking and Financial Professionals, Cross Border, Common Reporting Standards, Financial Information Assistance, and Financial Sovereigns
FI, LBS, & UEBO	Financial Information, Lebanese Banking Secrecy Law, and Ultimate Economic Beneficial Owner
IAS, ISA, JD, PRC, RP, & UN	International Accounting Standards, International Standards of Audit, Job Description, Professional Credentials, Reporting Lines, and United Nations.
BCGBVP	Baseline Corporate Governance for Banks Vices by Principle
BCGP	Baseline Corporate Governance Principle
LFSSVF	Legal Framework Specialized Services Vices by Function
LFSVD	Legal Framework Structure Vices by Definition

Category		Vice	Result
BCBSVP	**BCSP 1** An effective banking supervision will have a clear set of responsibilities and objectives for every involved authority in supervising banks and their respective banking group. Additionally, a commensurate legal framework for banking supervision is essential to legally empower the supervisory authority to authorize banks, exercise its supervision, administer compliance with laws and provide judicious corrective measures for safety and soundness.	• **Lack of JD & RP** • **Lack of internal regulation and governance** • **Governor's vast discretionary powers** • **Lack of clear regulations and mechanisms for issuing regulations** • **Lack of efficient and deterring sanctions**	• Interlocking directorates, duplication, and functional dependence for supervisory bodies. • Opaque decision making and liability matrix. • Omnipotent, concentration of power, 0 checks and Balances. • Arbitrability of compliance, supervision, exemptions, topical legal and financial compliance with logistic difficulties. • Want for banking market discipline, facilitates breaches, banking arbitrary practices, and a want for regulatory compliance.
BCBSVP	**BCSP 2** The Banking Supervisor authority possesses independence in operations, transparency processes, implementing sound governance, budgetary processes that do not affect autonomy and commensurate resources allocation. It is also liable for its duties and utilization of resources with adequate legal protection for the supervisor within the banking supervision's legal framework.	• **BDL's special legal persona**	• Bars performance assessment and accountability whilst making implementing internal audit of BDL impossible due to multiple capacities, relations, and transactions' mix-up; • Infringes MOE & MOF powers in currency pricing and financial planning for investment policies; • Obscures transactions' financial transparency allowing room for political influence in regulatory decisions; and • BDL is a related party risk for the Lebanese banking sector.
BCBSVP		• **Financial engineering a tool for banks' illicit gains and delay of banks' mass bankruptcies.**	Breaches depositors' rights and the Lebanese Constitution and LCC.

BCBSVP		• **CMC excludes BDL from performance revision for accountability purposes.**	Protects governor from being removed in cases of abuse of power, corruption, AMLCFT, and gross negligence.
		• **CMC allows duplication of BDL's governor and governorship throughout BDL's sub-supervisory committees.**	Governor controls all functions of BDL committees, prevents uncovering inconsistencies, instilling controls, managing, and dispersing financial information, as well as delays in AMLCFT discovery and hindering BCCL functions.
		• **BDL's AMLCFT risk supervision is not risk-based or proactive**	• BCCL is irrelevant as it is dependent on SIC lifting banking secrecy off the names of UEBO of suspected accounts or transactions; • Governor and SIC control how AMLCFT risk is reported, managed, and mitigated; and • Lack of criteria to determine breaches of AMLCFT risk management and technical financial standards for FI disclosure requirements for AMLCFT identification.
	BCSP 3 The country's legal framework provides a framework for cooperation and coordination regarding domestic and foreign supervisors whilst safeguarding confidential information.	**Limited FIA for FS**	• Unclear methodology for legal assistance and FIA; • Discretionary powers for Lebanese regulators/ministers, BDL's governor and SCIC regarding cooperation with FS requests; • Defective application of CRS treaty; • Ineffective application and utilization of UEBO; • Defective deterring sanctions for non-compliance with FI disclosure requirements; • No designated authority responsible for collecting and managing FI in non-banks; • Lack of CB operations governance; and • Loss of effective FS cooperation and FI support due to lack of clear and effective reciprocal treatment because of LBS shielding criminals and criminal activity due to SIC.
	BCSP 4 Authorized and regulated activities of institutions licensed and subject to the supervisory banking authority are clearly defined using the word bank for activities it regulates and controls.	**Unclear technical & scientific standards for banks and securities businesses' licensing, rejections, and approvals or equivalences for JD, & PRC vetting.**	• Overlap of banking and financial licensing powers with market share planning due to topical separation of BDL & CMA as presided by BDL's governor; and • Lack of international standards for PRC and JD requirements and assessments for BFPs.

	BCSP 5 Supervisory body is empowered to set licensing criteria and rejections for applications of entities that do not meet the licensing requirements. The licensing framework should at least comprise of an assessment of ownership structure and governance including fitness and properness of board members and senior management of the bank and its wider group, its strategic and operating plans, internal controls, risk management and projected financial status including capital base. In case of a foreign bank being the proposed owner or parent organization, supervisor must require prior consent of the said bank's home supervisory.	• **Assessment are limited to the notions of corporate control vested in ownership of shares or voting powers;** • **Fitness and properness are not scientifically categorized** • **Exemptions from fitness and properness requirements are subject to the regulators' discretionary powers that lack transparency of criteria of these exemptions and the requirement to inform stakeholders of types and reasons for such exemptions;** • **Regulators' requirements on operating plan, internal controls, and risk management projections are according to the regulator's personalized version of international standards, do not apply international standards and are basic.**	• Arbitrary decisions in licensing and rejections due to full discretionary powers; • Lack of definition of protected public interests; • Fitness and properness are not explicitly stated as a requirement to be maintained; • Fitness and properness are not according to international standards and scientific criteria; • Fitness and properness are a matter of the regulator's discretion; and • Assessments for approvals or rejections' assessments for operating plans, internal controls, and risk management projections are topical pro-forma and are not up to international standards for vetting, feasibility, appropriateness, flexibility, and efficiency.
BCBSVP	**BCSP 6** The Banking Supervising authority is authorized to accept or reject or impose prudential requirements regarding proposals to transfer significant ownership or control as well as controlling interest held directly or indirectly in existing banks to other parties. **BCSP 7** The supervisor is charged with approving, rejecting, and imposing prudential conditions on, major acquisitions or investments by a bank, against prescribed criteria, including the establishment of cross – border operations, and to determine that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.	**Lack of definitions of control in corporations and banks,**	• Defective and limited definition of corporate control in legal entities since control is defined only within the premises of owning shares or voting rights; • Lack of adherence with IAS & ISA standards on VIE control matrix for computing financial decision-making power and resulting legal liability; • Rampant use of shell companies, puppets, and under the table agreements for meeting proforma requirements for company formation and company control requirements; and • Continuous mismanagement of bearer and order shares despite Lebanon's commitment to OECD and UN CRS and FATF requirements which makes UEBO difficult to trace and establish.
	BCSP 8 To be effective as a banking supervisory authority, a supervisor	**Lack of assessment and classification of banks based on their size, risk taking appetites**	• Reactive banking and financial supervision; • Lack of identification of business and investment risks,

	must: (a) develop and maintain a forward-looking assessment of the risk profile of individual banks and banking groups, commensurate with their systemic importance; (b) identify, assess and address risks emanating from banks and the banking system as a whole; (c) provide a framework for early intervention; and have plans in place, in partnership with other relevant authorities, to take action to resolve banks in an orderly manner if they become non-viable.	**and strategies as well as their business models.**	and business concentration risks; • Rampant spread of contagion risk; • Lack of investment strategy and poor available liquidity; and • Shortage in foreign currency, mainly USA Dollars.
	BCSP 9 The supervisor utilizes commensurate techniques and tools to implement its supervisory approach and allocates its supervisory resources on a proportionate basis that takes into consideration banks' risk profile and systemic importance.	**BDL never classified banks based on their risk appetites or risk-taking strategies or complexity of their operations. Hence BDL's technique are not flexible or proportionate making them a one size fits all approach that relies on a banking monologue of regulator issuing requirements without assessments or feedback to adjust policies based on performance.**	• BDL's techniques are reactive measures, and its implementation relies on tightening or loosening loaning facilities. It is driven by profit-making for banks treating banks as governmental debt funders. BDL does not allocate resources for banks but instead facilitates banks reeling in dollars because banks are BDL's resources.
BCBSVP	**BCSP 10** The Banking Supervisor collects, reviews, and analyzes prudential reports and statistical returns from banks on both a solo and a consolidated basis, and independently verifies these reports through either on-site examinations or use of external experts.	**Lack of reliable, accessible, and accurate FI database or FI management.**	• Regulators collect FI for proforma reasons without utilizing the data collected for policy shaping or performance guidance and assessment or even market discipline; • Topical abidance with international banking, financial, accounting, and financial reporting standards, and practices; • Lack of banking and financial market forward looking strategy to safeguard financial stability from bubbles; and • Lack of risk-based consolidated financial supervision of banks and financial corporations/firms.
	BCSP 11 Corrective and sanctioning powers of supervisors: The supervisor acts at an early stage to address unsafe and unsound practices or activities that could pose risks to banks or to the banking system. The supervisor has at its disposal an adequate range of supervisory tools to	**Lack of Proactive Measures or effective deterring sanctions.**	• BDL's circulars specify requirements not guidelines or criteria for risk identification, mitigation, and management. • Absence of proactive risk management policies in banks. • Banks' breaches of BDL circulars/regulations are never announced; • BDL aids banks in circumventing the laws;

	bring about timely corrective actions. This includes the ability to revoke the banking license or to recommend its revocation.		• Sanctions are administrative and corrective measures are unheard of. • BDL only practices forced mergers or temporary management of banks with mergers happening only when a bank is about to declare bankruptcy.
BCBSVP	**BCSP 12** The Banking Supervisor exercises a consolidated basis for its supervision of banking groups to adequately monitor and, as appropriate, apply prudential standards to all aspects of the business conducted by the banking group worldwide.	**Lack of consolidated basis for BDL's supervision.**	• BDL's notions for identifying corporate and financial control for legal entities' decision makers and financial operators further triggers gaps in identifying subsidiary and affiliate entities within banking and financial groups for key transaction partners and operation transparency patterns for financial stability and AMLFCT free banking operations; • Concentration risk is normalized; and • Massive banking group risk transfers among mother and subsidiary and affiliate banking entities.
	BCSP 13 Home and host supervisors of cross – border banking groups share information and cooperate for effective supervision of the group and group entities, whilst effectively handling crisis situations. Supervisors should apply the same standards they require for local operations of foreign banks as those applied on domestic banks.	• **Lack of economic conglomerate/group risks identification and supervision; and**	• Obstruction of group financial transparency; • Creates opportunities for insolvent entities to create credit bubbles and avoid announcing eminent bankruptcy; and • Triggers inflation of assets and mass inflation via credit bubbles created by banking and financial groups that spread them to the entire national economy.

BCBSVP	**BCSP 14** The supervisor assesses whether banks and their groups have robust corporate governance policies and processes covering mainly strategic direction, group and organizational structure, control environment, responsibilities of the banks' Boards and senior management, and compensation. The Banking supervisor will assess if policies and processes are commensurate with the risk profile and systemic importance of the bank.	• **Lack of differentiation between consolidated and integrated banking supervision.**	• Deprives BDL and CMA from regulated tertiary financial entities that are unregulated as well as entities that are within the shadowbanking sector, prevents banks from overseeing shadowbanking operations, and hinders BDL and CMA's cross-sector supervision of financing and investment activities; • Prevents BDL and CMA from regulating cross-border operations for banking and financial groups; and • Emphasizes limited onsite inspection that overshadows offsite supervisory inspection for regulatory and financial compliance due to the lack of financial, technical, and scientific assessment and performance criteria for ongoing inspections.
	BCSP 15 The supervisor assesses if banks possess a comprehensive risk management process which includes effective Board and senior management oversight to identify, measure, evaluate, monitor, report and control or mitigate all material risks on a timely basis and to assess the adequacy of their capital and liquidity in relation to their risk profile and market and macroeconomic conditions. The Supervisor will also oversee the development and revision of contingency arrangements including robust and credible recovery plans where warranted such that these arrangements consider the specific circumstances of the bank. Additionally, the supervisor oversees that the risk management process is commensurate with the risk profile and systemic importance of the bank.	**Personalized version of Baseline CG standards in regular banks and securities businesses performed by investment banks.**	Lead to a one size fit all RM and CG process in banks for regulatory and financial compliance supervision by regulators.

	BCSP 16 The supervisor establishes prudent and apt capital adequacy requirements for banks that reflect the risks assumed by, and presented by, a bank in the context of the markets and macroeconomic circumstances in which it operates. The supervisor defines the elements of capital, taking into consideration the bank's ability to assimilate losses. At minimum for internationally active banks, capital constraints should not be less than the applicable Basel requirements.	• **Lack of classification of banks based on business model and complexity of operations lead to an unclear micro-macro prudential regulations that lacked objectives that had matching tools;** • **Lack of proportionality and flexibility in supervising how CG is applied in banks regarding capital adequacy and risk mitigation;**	• Lead to misapplication of the Baseline Standardized Approach in banks for RM and formulation of banks internal organization policies for proforma reasons to achieve topical regulatory and financial compliance making RM strategy a one size fits all BDL RM strategy. • There are no regulations that clearly provide for criteria for determining credit risk and assessing risk appetites nor clear regulations/circulars that stipulate when BDL is providing micro or macro prudential policies for credit risk in banks.
BCBSVP	**BCSP 17** The supervisor determines adequacy for banks credit risk management process that deems their risk appetite, risk profile and market and macroeconomic conditions adequate. This incorporates prudent policies and processes to detect, measure, assess, observe, report, and manage or mitigate credit risk (including counterparty credit risk) on a timely basis. The full credit lifecycle is covered including credit underwriting, credit evaluation, and the ongoing management of the bank's loan and investment portfolios.	• **Banks were never classified based on risk appetites prior to transposing Basel for capital adequacy requirements. Banks are also not truly classified based on significance or importance for micro and macro regulation. Banks are not classified based on risk appetite or credit risk exposures.**	• A one size fits all applies to banks regarding credit risk weighting and product/service margin allowances. • Credit bubble triggered the Lebanese economic crisis.
	BCSP 18 The supervisor decides the adequacy of banks' policies and processes for the early detection and management of problem assets, and the preservation of adequate requirements and reserves.	• **There are no criteria or evaluations for banks' policies. Requirements are only set as proforma. The concept of reserves is not a true reserve but rather a liability (depositors' moneys).**	• Capital buffers exceeded risk-taking margins and risk mitigation liquidity cushions thus nullifying any RM policies set by banks for BDL requirements on Baseline CG; and

	BCSP 19 The supervisor determines the adequacy of banks' policies and processes necessary to detect, assess, gauge, observe, report and control or mitigate concentrations of risk on a timely basis. Supervisors establish prudential limits to limit banks' exposures to single counterparties or groups of linked counterparties.	• **BDL dictates risk-taking, profit-making strategies, and limits banking products/ banking facilities sans a clear financial and investment strategy.**	• BDL and CMA's discretionary powers extended arbitrary exemptions set in regulations that triggered systemic risk embodied in turning banks into financers of governmental spending and public debt accumulated due to corruption of public officials. .
	BCSP 20 For the purposes of preventing abuses arising in transactions with related parties and addressing risks of conflict of interest, the supervisor mandates an arm's length basis entry for banks regarding transactions with related parties; to take suitable measures to control or mitigate the risks; and to set aside exposures to related parties in agreement with standard policies and procedures.	• **BDL does not apply ISA and IAS standards fully and does not practice these standards' requirements on related party risk and conflict of interest since both the CMC and LCC do not identify conflict of risk and these standards contend with BDL's special legal persona which thrives on discretionary power and related party actions (BDL is a related party risk, and they know it).**	• Related parties transactions are not efficiently and realistically managed due to weaknesses in internal audit requirements and accounting differences for both public and private sectors as well as BDL's special legal persona
	BCSP 21 The supervisor determines adequacy of banks' policies and processes to identify, measure, evaluate, monitor, report and control or mitigate country risk and transfer risks in their international lending and investment activities on a timely basis. **BCSP 22** The supervisor determines adequacy of banks' market risk management process that reflects their risk appetite, risk profile, and market & macroeconomic circumstances and the risk of a substantial decline in market liquidity. This includes prudent policies and processes to identify,	**Lack of distinction between macro and micro prudential regulation for banking and financial markets and their associated risks.**	• Oversaturation of Lebanese market with Lebanese Lira due to continuous senseless unregulated printing of currency coined with illegal pricing of BDL for Lebanese Lira vs USA Dollar; • Unreasonable interest rates in banks to reel in USD deposits to finance public debt; • Turned lending cycles/loan products into a credit bubble with concentration risk in real estate; and • Forced SMEs out of the market as banks stopped lending to small businesses which disrupted the Lebanese economy by increasing reliance on imports to utilize LC and LG from banks or facilities in

	measure, evaluate, monitor, report and control or mitigate market risks on a timely basis.		BDL for purchasing or transacting in USA dollars.
	BCSP 23 The supervisor determines adequacy of banks' systems to identify, measure, evaluate, monitor, report and control or mitigate interest rate risk in the banking book on a timely basis. These methods reflect the bank's risk appetite, risk profile and market and macroeconomic circumstances.		
	BCSP 24 The supervisor establishes careful and proper liquidity constraints for banks to mirror banks' liquidity requirements. The supervisor determines that banks possess a strategy that allows prudent administration of liquidity risk and compliance with liquidity constraints. The strategy reflects the bank's risk profile as well as market and macroeconomic circumstances and incorporates prudent policies and processes, consistent with the bank's risk appetite, to detect, measure, evaluate, monitor, report and control or mitigate liquidity risk over an appropriate set of time horizons. Nonetheless for internationally active banks, liquidity constraints should not be lower than the related Basel requirements.	**BDL's piecemeal regulatory controls of banks tier 1 and tier 2 capital were not balanced against risk taking margins as capita regulations were set separately from risk-taking margins' regulations for banks.**	Lead banks to circumvent tier 1 and tier 2 capital buffers via continuous adherence with BDL's requirements for mandatory placements to finance public debt by investing in T-bills and even by relying on previous purchases or paying subscribers with more T-bills instead of amortization of these bills or paying in cash.
	BCSP 25 The supervisor determines adequacy of banks' operational risk management structure that reflects their risk appetite, risk profile and market and macroeconomic conditions. This includes prudent policies and processes to identify, assess, evaluate, monitor,	**Like the CMC and LCC BDL's regulations are structural regulations hence they do not address operational matters specifically risk management structure and operation and definitely do not include prudent policies and process either by definition or classification. Hence mitigation is a general practice and risk-based approach is a generic**	Lead banks to circumvent tier 1 and tier 2 capital buffers via continuous adherence with BDL's requirements for mandatory placements to finance public debt by investing in T-bills and even by relying on previous purchases or paying subscribers with more T-bills instead of amortization of these bills or paying in cash.

	report and control or mitigate operational risks on a timely basis.	**term that lacks regulation on methods and assessment.**	
BCBSVP	**BCSP 26** The supervisor determines adequacy of banks' internal control structures to create and maintain an effectively controlled operational environment for the conduct of their business considering their risk profile. These include clear measures for delegating authority and charges; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding the bank's assets; and appropriate independent internal audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.	**BDL only defines what internal control is but does not have methods for determining if banks have adequate internal control measures or policies or practices since all its circulars are proforma structural circulars that do not provide competency areas for determining what constitutes basic and what criteria is used for assessing performance of the internal control function.**	• Banks are left to devise their own internal control measures which usually contain policies and bylaws that stipulate on basic functions but leave detailed operational and decision-making processes vague and critically away from any possible further scrutiny or evaluation; • Codes of conduct or liability matrixes are not well developed since banks as join stock companies have a proforma sample of bylaws that is entered in the Lebanese Commercial Register; • The public and stakeholders do not have access to these operational manuals which lack specifications on all the elements required in these principles since issues such accounting, reconciliations, liabilities and methods for safeguarding practices are all untackled in both the CMC and LCC.
	BCSP 27 The supervisor regulates how banks and banking groups keep suitable and consistent records, prepare financial statements in accordance with accounting policies and practices that are widely accepted internationally and annually publish information that fairly reflects their financial condition and performance and bears an independent external auditor's opinion. The supervisor also decides if banks and parent companies of banking groups have sufficient governance and oversight of the external audit function.	**BDL controls via regulations thresholds for bank account withdrawals and transfers, as well as foreign exchange rates for bank account transactions;** **BDL controls LC and LG facilities for imports and exports in USA Dollars and Euros;**	• Legalized banks arbitrary and illegal masked haircut and capital control on bank accounts, bonds, shares, securities, and transfers. • BDL dictates prices of commodities and Lebanese Lira purchasing ability by facilitating or delaying import and export of goods; and • BDL sets the price of the Lebanese Lira vs USA Dollars through banking operations something which is not within BDL's powers
	BCSP 28 The supervisor determines that banks and banking	**BDL allows eight prices for Lebanese Lira exchange rates vs USA Dollars;**	• BDL with MOF enable black market prices under the term "real value".

	groups recurrently publish information on a consolidated and, where appropriate, solo basis that is easily accessible and fairly reflects their financial condition, performance, risk exposures, risk management strategies and corporate governance policies and processes.	**BDL applies the MOF’s decision which allows the keeping of two books for accounts that reveal multiple exchange rates for items on one balance sheet for Lebanese corporations and SMEs.**	• BDL relied on its regulation calling for recapitalization of banks via inflation of assets to assimilate the repercussions of the financial engineering profits; and • BDL allows exchange firms, banks, and SMEs to apply the MOF’s multiple exchange rates’ categories in balance sheets which allows room for adjusted balance sheets since multiple exchange rates prevent reconciliation of balance sheets.
	BCSP 29 The supervisor determines adequacy of banks’ policies and processes, including rigorous customer due diligence rules to promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.	**BDL continues to print Lebanese Lira without coverage to pay public sectors’ employees.**	• BDL hastened the Lebanese Lira’s depreciation and triggered the massive hyperinflation in the Lebanese market.

	Principle	Vice From BDL's BCCGR & SCGGR	Result
BCGBP	**BCGBP 1** The board of directors (BOD) is fully responsible for the bank, including authorizing and supervising management's implementation of the bank's strategic goals, governance structure and corporate culture	The CMC does not specify distinct responsibilities for joint stock companies that are banks from those in the LCC. Meanwhile, the LCC states on the board's responsibilities in general but does not distinguish between board of directors and executive directors with respect to governance and management requirements.	• Two Tier requirement for banks' management is not set as hard law but rather a soft law; • Corporate governance for bank is a best practice not a legal duty; • Corporate Governance as an obligation is not a specialized function with specific tasks allocated around a corresponding liability matrix per lack of performance of a specific task; and • The concept of policy shaping decisions is absent;
	BCGBP 2 Board members should be and remain qualified, individually, and collectively, for their positions. They should understand their oversight and corporate governance role and be able to exercise sound, objective judgment about the affairs of the bank.	The CMC covers basic capacity defects but does not tackle issues of conflicts of interest, internal control, impartiality, independence, and liability for mismanagement beyond basic agency theory liability matrix.	• BOD and executive directors function with complete discretion, control/power concentration; • CEO can be member of the board which prevents BOD oversight of management; • There are no controls/policies/checks and balances for situations of control override; • Decision making is opaque, and accountability is a matter of litgation risk.
	BCGBP 3 The board must commensurately define governance frameworks and practices for its own tasks and establish means for compliance and implementation of these practices which should be frequently reviewed for ongoing effectiveness.	Governance is not a legal requirement, but a soft law best practice and the compliance committee is clearly not a mandatory organ in the BOD. Due to lack of economic conglomerate regulation, groups are likely under one compliance committee or under the audit committee, and banking groups do not distinguish between legal, regulatory, and financial compliance.	• Governance framework is not defined and tasks for applying the framework are not clear; • Governance practices are within the discretionary power of the BOD; • Compliance units exist but do not undergo continuous assessment nor are they equipped to handle risks individually within the group. The same deficiency applies for the compliance committee in group compliance which makes room for group risk transfer; • Audit or risk management committee are overwhelmed with tasks that from both compliance and audit which makes the board members generalists not specialists; • Compliance is overseen by audit which is against international practice which mandates that audit is under compliance; and • Both audit and compliance functions lack assessments which reflects on efficiency which remains inapplicable.

	BCGBP 4 Under the board's direction and oversight, senior management should carry out and manage the bank's activities in a manner consistent with the business strategy, risk appetite, remuneration and other policies approved by the board.	Both the CMC and LCC do not regulate on strategy and risk explicitly nor do they tie these activities with remuneration policies. Remuneration is either vetted through external audit and approved by shareholders or questioned and subject to investigation.	•Risk Management is clearly not a legal obligation in hard laws such as the CMC & LCC; •Remuneration is not transparent and is not subject to clear policy since the law does not offer ways to justify a remuneration scheme or subject it to review beyond litigation; •Shareholder activism is limited to voting or litigating; •Risk appetite and risk taking are not regulated clearly. The BOD decides and management abides with no competency fields for evaluating the decision-making process; and •The divide between BOD and management in contriving policy and implementing decisions is blurred since management and the BOD are one with no clear hierarchy ergo no concept of oversight.
	BCGBP 5 For group structures, the parent company's board has the total responsibility for the group and for safeguarding the institution and operation of a clear governance framework commensurate with the group's structure, business, and risks as well as its entities. The board and senior management must recognize and comprehend the bank group's organizational structure and the risks that it presents.	Organizational structure for decision making liability in economic conglomerates/groups is not clearly regulated in LCC or CMC or CMA or BDL regulations since economic conglomerates are not clearly defined and control is constricted within voting or share ownership. CMC and LCC do not stipulate distinctively on specific obligations for institutional and operational requirements for groups but is rather focused on singular entities offering texts that govern entities' managerial requirements depending on an entity's form. Banking groups only comprehend structure through the concepts of voting and shares ownership not on a transactional or operational approach.	•CMC and LCC's lack of legislation on reporting lines in their connection to establishing liability matrix requirements for BODs in entities vs Groups & their managements reflects on holistic corporate governance within banking groups and consolidated risk based corporate governance in banking groups; •Economic conglomerates practice structural management/governance not an operations/risk-based approach for their governance; •Group risks are clearly not commensurately managed; and •Banks only comprehend organizational structure from a loss-profit rationale not as a risk-dependence culture/approach.
	BCGBP 6 Banks should have an effective independent risk management function, under the direction of a chief risk officer (CRO), with sufficient stature, independence, resources, and access to the board.	CMC and LCC along with both BDL and CMA regulations do not specifically tackle risk management as a legally defined function. The said function falls under the umbrella of managerial tasks placed on both the BOD and management under the concept of the agency theory. CROs are treated as employees who are dependent on being instructed by the BOD or executive directors with no room for override or developing internal control in banks.	• Independence is a matter of professional discretion to achieve selected tasks delivered by the BOD or the executive board for CROs; • CROs are not strategists or proactive troubleshooters since they are implementers who are basically employees who lack independence; and • Reporting lines are only between the BOD and the executive board or the executive board and the key employees at a bank; and • Access for CROs is dependent on pending internal investigations or governmental/regulatory inquiries for AMLCFT.

BCGBVP	**BCGBP 7** Risks must be recognized, observed, and controlled on an ongoing bank-wide and individual entity basis. Sophistication of a bank's risk management and internal control infrastructure must keep abreast with changes to the said bank's risk profile as well as its external risk landscape and in industry practices.	Since CMC and LCC do not specify risk management as a legal obligation; BDL's set of identified risks applies. However, only individual entity based-risk identification is applied since the concept of economic conglomerate management beyond shares and votes is practiced. Internal control is a pro-forma since management can override internal control and since internal control policies are often generally vague to fit the one size fits all in a banking group.	• Banks do not identify risks for operations beyond services offered within an entity which leaves banking groups open to contagion risk within groups; • Risk management in banking groups is basic and not sophisticated; • Risk profiles may be available for entities within a bank or one risk profile for an entire banking group; • External risk landscape is not thoroughly explored, and industry practices are shaped by BDL's circulars.
	BCGBP 8 Effective risk governance framework requires robust communication within the bank about risk, both across the organization and through reporting to the board and senior management.	BDL's regulations specify the situation of audit, compliance, and financial functions management within banks such that internal audit and compliance only report to management who then reports to the BOD. Additionally, internal audit and compliance disperse their reports only via management.	• Reporting is for proforma requirements since only external audit is relied on for assurance; • Internal audit culture is absent and is often charged with preparing the statement of accounts or financial reports hence 0 independence; • Risk governance is a general practice that does not cover non-compliance risk, managerial override, and internal audit risks; and • Reporting does not offer assurance or transparency since it has no competency to analyze and utilize financial information for accountability and efficiency purposes.
	BCGBP 9 The bank's compliance risk is the bank's board of director's responsibility. The board must oversee compliance and establish a compliance function as well as approve the bank's policies and processes which are necessary for identifying, assessing, monitoring, reporting, and advising on compliance risk.	Both the LCC and CMC acknowledge this principle but lack the means for implementation since the laws do not define legal operations and do not specifically stipulate on internal bank management processes, reporting mechanisms, or oversight. The concept of lack of compliance as a risk that banks must manage is not clearly stipulated in the laws.	• Non-compliance is treated as a breach of legal duties with no means to measure or identify this act as a risk; • Banking operations are only regulated structurally but do not offer means to allocate responsibility for the BOD or executive management breaching their duty to maintain compliance or manage non-compliance risk; and • Reporting non-compliance is not enhanced by safeguarding whistleblowers beyond the stipulations on AMLCFT; • BCCL as the banking control commission does not provide on how they aid whistleblowing for breach of compliance risk duties nor are they capable of accessing the said data if it contains identities of account holders related to suspicious activities due to the LBS.

	BCGBP 10 The internal audit function must provide independent assurance to the board and ought to support both the board and senior management in fostering effective governance processes as well as the bank's long-term soundness.	Internal audit as a culture is absent in both the LCC and CMC since both rely on external audit. ISA and IAS standards are not specifically mentioned in Lebanese laws.	• Internal Audit is not defined in scope, function, liability, and professional standards of operation and conduct; • Internal audit as a unit is mandatory in BDL and CMA regulations but the Internal Audit Committee is not in CMA. In fact, banking groups may have a group internal audit unit and a group committee that oversees the said group audit unit; • Financial information accuracy and assurance is not something internal audit provides in banks since they do not have the required independence, power, impartiality, and professional skepticism; and • Internal auditors fall back in front of external auditors who are considered the only form of financial assurance vis a vis BCCL.
	BCGBP 11 The bank's compensation structure ought to sustain comprehensive corporate governance and risk management.	CMC and LCC do not relate remuneration/compensation to corporate governance and risk management obligations for BOD and executive management.	Management and BOD are driven by excessive risk-taking for profit and breach various Lebanese laws mainly LCC on depositors' rights under the auspices of BDL.
	BCGBP 12 A bank's governance must be adequately transparent to its shareholders, depositors, other related stakeholders, as well as market partakers.	BDL and CMA regulations require that banks' management provides for corporate governance codes but there are no criteria that specify how these codes are implemented. Decision making and implementation remain a discretionary power and stakeholders are dormant activists. Depositors are the weaker link in banks with the practices of BDL's supervisory arbitrage and masked capital control.	Corporate governance is a proforma that offers a proforma transparency and keeps depositors and stakeholders in the dark as both the regulator and financial operators continuously infringe their rights.
	BCGBP 13 Supervisors should provide guidance for and supervise corporate governance at banks, including through comprehensive evaluations and regular interaction with boards and senior management, should require improvement and remedial action as necessary, and should share information on corporate governance with other supervisors.	The only guidelines BDL provides are within its circulars which specify proforma requirements such as requirement to abide with Baseline standards without specifying which standard it is applying in its circulars, without assessments, and without deterring sanctions for non-compliance beyond fines.	BDL only intervenes post catastrophe or crisis. It's guidelines are umbrella principles that lack enforcement and implementation framework since they have no criteria or areas of competency or means to measure performance for efficiency and since both regulator and market players do not practice assessment or scorecard utilization for performance gauging requirements.

		Vice	Result
LFSVD	Discretionary Financial Market Exemptions	Specialized Patrimony	• False financial reassurance due to abuse of off-balance sheet items to achieve complete disconnection between debt creator and SPV in securitization and funds operations; • Opaque balance sheets in regular and investment banks due to a lack of reliable FI necessary for identifying financial losses; • Inefficient UEBO mechanisms in legal entities and economic groups/conglomerates which allows group risk contagion across sectors; • Lack of definition of informed financial consent and limitation of financial market governance within notions of transaction abuse sans competition regulation; • Surplus of defaulting banks forcing early amortization of shares, bonds, and stocks to obtain foreign currency, liquidity, and benefit from the previous 1507 LBP to USD then to 3900 LBP, and currently 8000 LBP.
		Licensing exemptions in CMA regulations	• lead to: (a) foreign currency exchange rate manipulation, (b) detrimental speculative trading vis a vis Lebanese Lira, (c) enabling securities' traders to create credit bubbles through shadowbanking practices that thrive on ancillary securities' activities exempted from licensing; and (d) extended group risks' transfer repercussions due to limited notions of financial independence between groups and corporate control;
		Exemptions from Securities' Offering Requirements by Waiver	• lead to ineffective FI disclosure and allowed the issuer to withhold detrimental information from investors;
		Exemptions from Supervisory Revision for Public Offering	• further involved investment banks in financing public spending through attracting USD Dollar and T-bills investment without regard for change in entity control;
		Exemptions from Supervisory Revision for Private Offering,	• allowed to fix securities prices and limit entry into the market in a manner detrimental to the investors and the market's sustainability;
		Exemptions Regarding Foreign Instruments and Subsequent Offers	• augmented supervisory arbitrage with more room regarding what may be allowed a re-run in the Lebanese financial market and what needs to go through the licensing system of approvals and once again vagueness that serves the regulator not the market's optimal performance or investors' interests; and
		Exemptions from Corporate Governance Requirements by Waiver	• created the financial markets' systemic risk that spells domino effect of financial collapse of the financial market.
LFSSVF		**Lack of a modern economic law, systemic Risk Governance, Shadow Banking, & CB Operations Governance**	• Lack of specialized laws for both the accounting and audit function lead to the lack of internal audit culture for a total reliance on external audit that does not rely on ISA and IAS standards; • Systemic and contagion risk spread from the banking market to the financial market and then to the entire Lebanese economy; • Deficient compliance functions due to lack of BOD committee requirement for a compliance committee and a lack of distinction between 3 compliances: financial, regulatory, and legal compliance; and • Lack of competition regulation led to barring entry for new investors, permeation of concentration, systemic, and contagion risk; abuse of market dominance, and violation of financial services' consumers' and users' rights.

Table 6 The Comply or Explain Principle for Compliance Function in Banks by ESAs

ECB "Comply or Explain" Responses to EBA Guidelines and Recommendations		
EBA Guidelines Number	**EBA Guideline** **Source:** ECB's Official Website: https://bit.ly/3nrn8YT	**Date on which ECB notified EBA of compliance or intention to comply**
EBA/GL/2021/01	Guidelines specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' set out in Article 403(3) of Regulation (EU) 575/2013 for large exposures purposes	21.05.2021
EBA/GL/2020/15	Guidelines amending Guidelines EBA/GL/2020/02 on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis	28.01.2021
EBA/GL/2020/14	Guidelines on the specification and disclosure of systemic importance indicators	08.02.2021
EBA/GL/2020/13	Guidelines on the appropriate subsets of sectoral exposures to which competent or designated authorities may apply a systemic risk buffer in accordance with Article 133(5)(f) of Directive 2013/36/EU	28.05.2021
EBA/GL/2020/12	Guidelines amending Guidelines EBA/GL/2018/01 on uniform disclosures under Article 473a of Regulation (EU) No 575/2013 (CRR) on the transitional period for mitigating the impact of the introduction of IFRS 9 on own funds to ensure compliance with the CRR 'quick fix' in response to the COVID-19 pandemic	27.01.2021
EBA/GL/2020/11	Guidelines on supervisory reporting and disclosure requirements in compliance with the CRR 'quick fix' in response to the COVID-19 pandemic	27.01.2021
EBA/GL/2020/10	Guidelines on the pragmatic 2020 supervisory review and evaluation process in light of the COVID-19 crisis	14.09.2020
EBA/GL/2020/09	Guidelines on the treatment of structural FX under Article 352(2) of Regulation (EU) No 575/2013	18.12.2020
EBA/GL/2020/08	Guidelines amending Guidelines EBA/GL/2020/02 on legislative and non-legislative moratoria	24.07.2020
EBA/GL/2020/07	Guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis	04.08.2020
EBA/GL/2020/06	Guidelines on loan origination and monitoring	17.08.2020
EBA/GL/2020/05	Guidelines on Credit Risk Mitigation for institutions applying the Internal Ratings Based approach with own estimates of loss given default	06.10.2020
EBA/GL/2020/04	Guidelines on the determination of the weighted average maturity (WAM) of the contractual payments due under the tranche	09.06.2020
EBA/GL/2020/03	Guidelines on the equivalence of confidentiality regimes	16.10.2020
EBA/GL/2020/02	Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis	24.07.2020
EBA/GL/2019/05	Guidelines on harmonized definitions and templates for funding plans	30.04.2020
EBA/GL/2019/04	Guidelines on ICT and security risk management	12.01.2021

EBA/GL/2019/03	Guidelines for the estimation of LGD appropriate for an economic downturn	16.07.2019
EBA/GL/2019/02	Guidelines on outsourcing arrangements	16.08.2019
EBA/GL/2019/01	Guidelines on specification of types of exposures to be associated with high risk	03.05.2019
EBA/GL/2018/10	Guidelines on disclosure of non-performing and forborne exposures	12.01.2021
EBA/GL/2018/09	Guidelines on the STS criteria for Non-ABCP securitisation	29.05.2019
EBA/GL/2018/08	Guidelines on the STS criteria for ABCP securitisation	29.05.2019
EBA/GL/2018/06	Guidelines on management of non-performing and forborne exposures	01.07.2019
EBA/GL/2018/04	Guidelines on institutions' stress testing	15.02.2019
EBA/GL/2018/03	Guidelines on the revised common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing	15.02.2019
EBA/GL/2018/02	Guidelines on the management of interest rate risk arising from non-trading book activities	01.07.2019
EBA/GL/2018/01	Guidelines on uniform disclosures under Article 473a of Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds	07.02.2018
EBA/GL/2017/16	Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures	20.06.2018
EBA/GL/2017/15	Guidelines on connected clients	12.04.2018
EBA/GL/2017/14	Guidelines on supervision of significant branches	20.03.2018
EBA/GL/2017/11	Guidelines on Internal Governance	22.05.2018
EBA/GL/2017/06	Guidelines on credit institutions' credit risk management practices and accounting for expected credit losses	18.01.2018
EBA/GL/2017/05	Guidelines on ICT Risk Assessment under the Supervisory Review and Evaluation process (SREP)	04.01.2018
EBA/GL/2017/01	Guidelines on LCR disclosure to complement the disclosure of liquidity risk management under Article 435 of Regulation (EU) No 575/2013	01.10.2017
EBA/GL/2016/11	Guidelines on disclosure requirements under Part Eight of Regulation (EU) No 575/2013	18.08.2017
EBA/GL/2016/10	Guidelines on ICAAP and ILAAP information collected for SREP purposes	17.02.2017
EBA/GL/2016/09	Guidelines on corrections to modified duration for debt instruments under the second subparagraph of Article 340(3) of Regulation (EU) 575/2013	06.03.2017
EBA/GL/2016/08	Guidelines on implicit support for securitization transactions	23.01.2017
EBA/GL/2016/07	Guidelines on the application of the definition of default under Article 178 of Regulation (EU) No 575/2013	27.12.2017
EBA/GL/2016/05	Guidelines on communication between competent authorities supervising credit institutions and the statutory auditor(s) and the audit firm(s) carrying out the statutory audit of credit institutions	05.01.2017

EBA/GL/2016/04	Guidelines on stress tests of deposit guarantee schemes under Directive 2014/49/EU	15.12.2016
EBA/GL/2016/03	Guidelines on the provision of information in summary or collective form for the purposes of Article 84(3) of Directive 2014/59/EU	14.09.2016
EBA/GL/2016/01	Revised guidelines on the further specification of the indicators of global systemic importance and their disclosure	06.07.2017
EBA/GL/2015/22	Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013	05.08.2016
EBA/GL/2015/21	Guidelines on the minimum criteria to be fulfilled by a business reorganization	19.07.2016
EBA/GL/2015/20	Guideline on the limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(2) of Regulation (EU) No 575/2013	03.08.2016
EBA/GL/2015/17	Guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU	05.02.2016
EBA/GL/2015/16	Guidelines on the application of simplified obligations under Article 4(5) of Directive 2014/59/EU	12.01.2016
EBA/GL/2015/09	Guidelines on payment commitments under Directive 2014/49/EU on deposit guarantee schemes	18.12.2015
EBA/GL/2015/08	Guidelines on the management of interest rate risk arising from non-trading activities	24.11.2015
EBA/GL/2015/07	Guidelines on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail under Article 32(6) of Directive 2014/59/EU	06.10.2015
EBA/GL/2015/03	Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU	23.09.2015
EBA/GL/2015/02	Guidelines on the minimum list of qualitative and quantitative recovery plan indicators	01.09.2015
EBA/GL/2014/14	Guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) No 575/2013 (3 mandates)	05.06.2015
EBA/GL/2014/13	Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)	02.04.2015
EBA/GL/2014/10	Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs)	01.04.2015

Joint Guidelines Number	Guideline	Date on which ECB notified EBA of compliance or intention to comply
EBA/GL/2017/12	Joint guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU	22.05.2018
JC/GL/2016/01	Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector	07.07.2017
JC/GL/2014/01	Joint Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates	08.01.2021

Recommendation Number	EBA Recommendation	Date on which ECB notified EBA of compliance or intention to comply
EBA/Rec/2018/03	Recommendations amending EBA/Rec/2015/01 on the equivalence of confidentiality regimes	05.08.2019
EBA/Rec/2018/01	Recommendations amending Recommendations EBA/Rec/2015/01 on the equivalence of confidentiality regimes	31.10.2018
EBA/Rec/2017/03	Recommendations on outsourcing to cloud service providers	20.06.2018
EBA/Rec/2017/02	Recommendation on the coverage of entities in the group recovery plan	26.03.2018
EBA/Rec/2017/01	Recommendations amending EBA/Rec/2015/01 on equivalence of confidentiality regimes (amending EBA/Rec/2017/01)	12.01.2017
EBA/Rec/2015/01 (as amended)	Recommendations on the equivalence of confidentiality regimes	02.04.2015

Note: *Last updated: 18 June 2021*

Table 7 Audit by Function, Scope, and Relations

Description			
Audit: An audit is an evaluation of a subject matter with a view to express an opinion on whether the subject matter is fairly presented. There are different types of audits that can be performed depending on the subject matter under consideration, for example: Audit of financial statements, Audit of internal control over financial reporting, and Compliance audit. *Fraud Investigation: An examination that investigates all types of monetary issues pertaining legal claims, forgeries, work injuries, or any issue that can be fraudulent. The said process involves going through records, interviewing claimants, and go undercover to pursue evidence.*			
	Internal Auditor	**External Auditor**	**Investigative Auditor**
Definition	A professional who valuates a firm's internal controls including accounting processes and corporate governance, ensure compliance with laws and regulations, and make sure accurate and timely financial reporting and data collection, aiding and maintaining operational efficiency by identifying issues and correcting lapses before they are discovered by the external auditor.	A professional who determines whether a firm or an organization is providing a fair, complete, and accurate representation of its financial position by examining all available information such as bookkeeping records, bank balances, and financial transactions.	A professional who seeks to prevent, detect and quantify fraud, money laundering, terror financing, and corruptions. The said process involves examining accounts, use of accounting procedures to unravel financial irregularities and trace funds and assets in and out of firms, companies, and organizations.
Objective	Seeks to form an opinion on financial statements for continuous improvement to meet strategic goals. Their opinion is discretionary with no compulsion.	Seeks to report and give an opinion on fair financial reporting and other compliance matters. Their opinions have to be considered as rooms for correction or taking action for management, regulators, and stakeholders.	Seeks to answer engagement letter questions on: Identification of suspects and financial activity, determination, quantification, and prevention of damages, and tracing financial assets. Some firms also provide fraud prevention, fraud vulnerability studies, integration of controls and enforcement, fraud quantification, evaluation and proof of financial securities fraud, cyber fraud, liquidation, dissolution, and cessation of payment fraud, lifting corporate veil, due diligence prior to mergers and acquisitions fraud and non-profit organization fraud.
Nature & Evidence	General Examination of persuasive nature, where evidence	General Examination with a professional guiding nature, where	Critical and in-depth Examination with a compulsory nature. Evidence is unquestionable and decisive. Their reports are

	provides room for improvement.	evidence provides room for corrections.	confidential, obligatory, and with legal repercussions for management or company.
Qualification	Chartered accountant	performed by a CPA and overseen by a CPA.	Performed by an expert in financial, accounting, and fraud matters.
Scope	To review routine processes as well as activities, and provide suggestions wherever there is room for improvement.	To analyze and verify a firm or company's financial statements.	To examine, investigate, and determine facts, assess decisions, and uncover financial fraud.
Reporting Responsibilities	Independent of the firm or company's management yet reports functionally or directly to the board through the audit committee.	Is responsible towards company shareholders or a regulator. They do not answer to the company or firm's management or the body that is being audited such that management does not direct the extent or scope of their work.	Is responsible towards the shareholders or regulators who appointed him.
Types of Reports	General Report that is historical and of the future of the firm/company.	A primarily historical report that focuses on financial statements but may vary in contents based other compliance matters.	A historical report on matters related to the investigation but may vary based on the engagement letter.
Users of Reports	Management is a main user of internal audit reports for identifying loopholes before an external auditor captures and reports them.	Shareholders, regulators, and public users or stakeholders are main users of external audit reports.	Shareholders, regulators, and public users/stakeholders.
Relationship to Company	Employed by the company or firm	A third party that is independent of the company or firm.	An independent third party that may be appointed by shareholders or regulator.
Timing	Annually or quarterly	Annually or quarterly	As per engagement or requirement.

Table 8 Lebanese Alpha Banks Audit & Risk BOD Committees & Units

Data is based on Basic Circular No. 106/2006 of Basic Decision No. 9382 of July 26, 2006, requiring banks to apply Baseline requirements relating to Corporate Governance; Intermediate Circular No. 255 of Intermediate Decision No. 10708 of April 21, 2011 amending Basic Decision No. 9382 of July 26 of 2006's Article 2's requirements for Lebanese banks to disclose information on corporate governance; and Basic Circular 118 of Decision No. 9956 of July 21, 2008 as amended by Intermediary Decision No 10706/2011 of April 21, 2011, as published in the Official Lebanese Gazette, Issue No. 20, published on May 5, 2011, pages: 1512 – 1515:

Article 2 point 2 of Intermediary Decision 10706/2011: replacing Articles 1, 2, 3, 4, and 5 of Decision No. 9956/2008, the new Article 4, requires Lebanese Banks' BODs to have an audit committee comprised of at least three non-executive BOD members such that the chair of this committee is an independent BOD member.

Article 2 point 3 of Intermediary Decision 10706/2011: New Article 7 of Decision 9956/2008 requires Lebanese Banks' BODs to establish a risk management committee of three members at least provided that the chair is an independent BOD member.

Notes: Information compiled is based on these banks' official websites, published annual reports, corporate governance charters, organization charts, officially published biographies, and the Lebanese ALMANAC of Banks in Lebanon 2021 as published by Lebanon's Association of Banks, published by Anis Commercial Printing Press, June 2021, available via URL accessed on December 2021: https://bit.ly/34nGoku

Alpha Bank	BOD COM TYPE	Audit Committee	BOD Class & ID disclosed	BOD Class or ID not disclosed	Audit Unit	BOD COM TYPE	RM Committee	BOD Class & ID disclosed	BOD Class or ID Not disclosed	RM UNIT
	Group	**Chair: Marwan** Ghandour, **Members: Abdallah** I. Al Hobayb and **Khalil** M. Bitar	**Chair & Members** are Independent.	-	**Entity:** Rana Nassif	Group	**Chair: Khalil** M. Bitar **Member: Marc** J. Audi	**Chair** independent, **Member:** not independent.	-	**None**
	Entity	**Chair:** Krikor Sadikian, **Members: Pierre** Gaspard and **Sarkis** Nassif*	**Chair :** independent **Members:** 1 member is non-executive	-	**Group:** Bassem Nohra	Entity	**Chair: Pierre** Gaspard **Member: Krikor** Sadikian	**Chair & Member** Are independent	-	**Group RM** Antoun Samia
	Group	N/A	**X**Raya**-El Hassan – Haffar Chairman/GM **Nazek** El-Hariri BOD member	**X** GroupMed SAL Holding Is a BOD Member Type Not disclosed**	**Group:** Samer Jumaa	**Group**	**N/A**	**X**	**X**	**Group:** Credit Risk

	Entity	**Chair:** Nicolas N. Saade **Members:** **Ahmad** G. Shaker **Marwan** T. Jaroudi **Jassim** A. Al-Mannai	**Chair & members** are independent	**-**	**Group:** Rania Derian	**Group**	**Member:** **Fahim** Mo'adad **Fadi** Khalaf **Saeb** ELZein **Amr** Azhari **Emile** Kharrat	**No Chair** **Member :** 2 are non- Executive 2 are independent	**-**	**Group RM:** Gerard G. Rizk
	Entity	**Chair:** Samir A. Mouawad **Members:** Yves R. Jacquot Faisal Al Tabsh	**Independence** is not disclosed	**-**	**Group:** Fadi Abu Abdallah	**Entity**	**Chair:** Des S. O'Shea **Members:** Ahmad Tabbara Yves R. Jacquot	**Independence** is not disclosed	**-**	**Group RM:** Semaan Bassil
	Group	**X**	**-**	**X** Marwan Hemadeh***	**Group:** Elie Abi Mrad	**Group**	**X**	**X**	**X**	**Group** Elie Abi Mrad
	Entity	**Members:** **Walid** Daouk **Mohamad Ali** Beyhom	**Lacks a Chair and class is not disclosed Members: 1 is non-executive 1 is independent**	**-**	**International:** **Anthony** Nassar **Branch Head:** **Ahmad** El-Hajj	**Entity**	**Chair:** **Henri** De Courtivon **Members:** **Mohamad Ali** Beyhom	**Chair:** is non-executive **Member:** is independent	**-**	**Entity:** Sami Samaha
	Entity	**Chair:** **Mounir** Kh Fathallah **Member:** **Tony** N. El Choueri	**Chair:** is independent **Member** is independent	**X****	**Entity:** Gaby Mezher	**Entity**	**Chair:** Tony N. El Choueri **Members:** MM. Bicom SAL. Holding	**Chair:** is independent **Member**: Non-executive represented by Mazen El Bizri	**X**** **Mohammad** Abdel Hamid Baydoun **Prince Sager** Sultan Al-Sudary	Tanya Tayyah

Table 9 Compliance Function by Department, Unit and Committee under GRC Principles in Lebanese Alpha Banks

COMPLIANCE FUNCTION BY COMMITTEE AND UNIT IN ALPHA LEBANESE BANKS								
ALPHA BANK	BDL BOD SPC's AS PER BC 118/2008	SCU	GCU	CU Reports to	Non-BDL BOD SPCS	RISK BASED COMPLIANCE	Published BOD CC'S Charters On Its Website	Applies Holistic Risk Based Compliance
BANK AUDI	✓	✓💧⊙		BOD C+AMLCFT	REM, CC & AML, CG & NOM	✓		
BANK BEIRUT	✓	✓		BOD CC	CRD, REM, CC			
BANKMED	✓	✓💧		BOD C+AMLCFT	REM, CC & AML, CG & NOM			
BLOM BANK	✓★	✓★		BOD CC	NOM, REM, CNS, STR, & CG, DG	✓©	✓	
BYBLOS BANK	✓		✓C	BOD RM	CC +AMLCFT, HR, REM, CG	✓		
CREDIT LIBANAIS	✓💧	💧		BOD AML/CFT	CG, NOM, HR, REM, CRD			
FRANSABANK	✓		✓C💧	BOD AML/CFT	REM, CG, AMLCFT			
IBL BANK	✓★			BOD AML/CFT	REM, AMLCFT, ALCO, MNG, SCRD, JCRD, ITS, BCM, CMNG, OMTD, IT, PRC, EXCI,			✓
SGBL BANK	✓💧	💧		BOD AML/CFT	CG, REM, AMLCFT			

TABLE LEGEND	
ALCO = ASSET LIABILITY COMMITTEE **BDL BOD SPC'S = BOD AUDIT COMMITTEE + RISK COMMITTEE** **BC= BASIC CIRCULAR** **BCM= BUSINESS CONTINUITY MANAGEMENT** **BOD = BOARD OF DIRECTORS** **C + AML/CFT= COMPLIANCE + ANTI MONEY LAUNDERING & COMBATING FINANCIAL TERRORISM** **CC = COMPLIANCE COMMITTEE** **CG= CORPORATE GOVERNANCE** **CMNG= CHANGE MANAGEMENT COMMITTEE** **CNS, STR, & CG, DG = CONSULTING, STRATEGY AND DIGITAL COMMITTEES** **CRD= CREDIT** **CU = COMPLIANCE UNIT** **EXCI= EXECUTIVE COMMITTEE FOR IRAQ** **GRC= GOVERNANCE, RISK, COMPLIANCE** **GCU = GROUP COMPLIANCE UNIT** **HR= HUMAN RESOURCES** **IT= INFORMATION TECHNOLOGY COMMITTEE** **ITS= INFORMATION TECHNOLOGY SECURITY COMMITTEE** **JCRD = JUNIOR CREDIT COMMITTEE** **MNG= MANAGEMENT COMMITTEE** **NOM= NOMINATION COMMITTEE** **OMTD = ORGANIZATIONAL METHOD COMMITTEE** **PRC= PROCUREMENT COMMITTEE**	REM= Remuneration SCRD= Senior Credit Committee SCU = Standalone Compliance Unit SPCS= Specialized Bod Committees ✓★= All risk, audit, internal control are under BOD Group Committees, but compliance is group compliance that reports to the risk committee. ✓★= Compliance unit + compliance committee + charters + governance committee. The red star is for transparency and disclosure regarding CG. ✓© = Segmented compliance committee covering AML Risk, FATCA Risk, CRS risk, and Legal Risk. The C in red is to emphasize international practices specialized compliance. ✓ = existing ✓💧= Compliance +AML/CFT ✓💧⊙ = Compliance +AML/CFT where subsidiary compliance departments report a Head of Compliance MLRO who reports to the Group C+AMLCFT. The dotted circle is to emphasize the limited reporting and compliance units in subsidiaries to the group compliance committee as it only focuses on AML/CFT which means they rely on the legal department for legal compliance. 💧 **= AML/CFT** ✓C= Group Compliance with senior management ✓C💧 = Group Compliance+ AML/CFT with senior Management ✓★= Holistic Risk Basked Compliance + Asset, Liability, Credit, & Specialized Corporate Governance BOD Committees. IA and the Audit Committee are attached to the BOD. The RM unit is attached to the BOD chairman and RM committee. All RM and its officers are members in all bank's committees for risk awareness and compliance with risk appetite.

Type of Right	*Case, Issue, and Article*
Right to be Informed	The following cases covered the issue of transparency of information under GDPR's 12th Article: CJEU, C-473/12, Institut Professionnel Des Agents Immobiliers (IPI) v. Englebert, 2013 CJEU, C-201/14, Smaranda Bara and Others v. Casa Naţională De Asigurări De Sănătate and Others, 2015.
Right of Access	The following cases covered the issue of right of access to one's own data under Article 15(1) of the GDPR: CJEU, C-553/07, College Van Burgemeester En Wethouders Van Rotterdam V. M. E. E. Rijkeboer, 2009 And CJEU, Joined Cases C-141/12 And C-372/12, YS V. Minister Voor Immigratie, Integratie En Asiel And Minister Voor Immigratie, Integratie En Asiel v. M and S, 2014, CJEU, C-434/16, Peter Nowak v. Data Protection Commissioner, 2017.
Right to Rectification	Under the GDPR's 16th Article, the following cases covered the issue of rectification of inaccurate personal data: ECtHR, Cemalettin Canli v. Turkey, No. 22427/04, 2008 and ECtHR, Ciubotaru v. Moldova, No. 27138/04, 2010
Right to Erasure	Under the GDPR's 17th Article, the following cases covered (1) the erasure of personal data in ECtHR, Segerstedt- Wiberg and Others v. Sweden, No. 62332/00, 2006 and (2) the right to be forgotten in CJEU, C-131/12, Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD), Mario Costeja González [GC], 2014 and CJEU, C-398/15, Camera di Commercio, Industria, Artigianato e Agricoltura di Lecce v. Salvatore Manni, 2017.
Right to Object	Under GDPR's 21(1)'s Article, the following case covered the issue of the right to object due to the data subject's particular situation in: CJEU, C-398/15, Camera di Commercio, Industria, Artigianato e Agricoltura di Lecce v. Salvatore Manni, 2017.
Source: *FRA European Union Agency for Fundamental Rights, European Court of Human Rights, Council of Europe, and European Data Protection Supervisor, Handbook on European Data Protection Law, 2018 Edition, Publication Office of the European Union, Luxembourg, Switzerland, pages 204-205.*	

Table 10 GDPR Articles Case Law by Issues

GDPR Fines for Non-Compliance		
COMPANY	FINE IN EUROS	COUNTRY OR REGULATOR
Twitter	450,000	EDPB, 2020
Google	303 Millions	Ireland, Sweden, and France, 2020
Amazon	1 Billion	Luxembourg, 2020
Garante	70 Millions	Italy, 2020
Banco Bilbao Vizcaya Argentaria & Caixa Bank	5 and 6 Millions	Spain, 2020
Marriot International	20,450,000 Millions	UK, 2020
British Airways	22,045,000 Millions	UK, 2020
TIM Telecom Provider	27,800,000 Millions	Italy, 2020
H&M Hennes & Mauritz	35,258, 708 Millions	Germany, 2020
Facebook for WhatsApp	302 Millions	Ireland and Belgium 2020
Vodafone Italia	12.25 Millions	Italy
Vodafone Spain	8.15 Millions	Spain
Wind Tre S.p.A.	16,700,000 Millions	Italy
Carrefour France	2.25 Millions	France
Source: **20 Biggest GDPR Fines so Far in 2019,2020, and 2021, available via URL accessed on August 17, 2021: https://bit.ly/3ltUS7e**		

Table 11 GDPR Fines by Company, Value, and Regulator

GDPR Compliance Checklist	
Principle	**Meaning**
Lawful Basis & Transparency	
Conduct an information audit to determine what information the entity processes and who has access to it.	Organizations that have at least 250 employees or conduct higher-risk data processing are required to keep an up-to-date and detailed list of their processing activities and be prepared to show that list to regulators upon request. The best way to demonstrate GDPR compliance is using a data protection impact assessment Organizations with fewer than 250 employees should also conduct an assessment because it will make complying with the GDPR's other requirements easier. In the entity's list, it should include: the purposes of the processing, what kind of data it processes, who has access to it in its organization, any third parties (and where they are located) that have access, what it is doing to protect the data (e.g., encryption), and when it plans to erase it (if possible).
Have a legal justification for the entity's data processing activities.	Processing of data is illegal under the GDPR unless the entity can justify it according to one of six conditions listed in Article 6. There are other provisions related to children and special categories of personal data in Articles 7-11. Review these provisions, choose a lawful basis for processing, and document the entity's rationale. Note that if the entity chooses "consent" as its lawful basis, there are extra obligations, including giving data subjects the ongoing opportunity to revoke consent. If "legitimate interests" is the entity's lawful basis, the entity must be able to demonstrate the entity has conducted a privacy impact assessment.
Provide clear information about the entity's data processing and legal justification in the entity's privacy policy.	The entity needs to tell people that it is collecting their data and why (Article 12). The entity should explain how the data is processed, who has access to it, and how the entity is keeping it safe. This information should be included in the entity's privacy policy and provided to data subjects at the time entity collects their data. It must be presented "in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child."
Data Security	
Take data protection into account at all times, from the moment the entity begins	The entity must follow the principles of "data protection by design and by default," including implementing "appropriate technical and organizational measures" to

developing a product to each time the entity processes data.	protect data. In other words, data protection is something the entity now has to consider whenever the entity does anything with other people's personal data. The entity also needs to make sure any processing of personal data adheres to the data protection principles outlined in Article 5. Technical measures include encryption, and organizational measures are things like limiting the amount of personal data the entity collects or deleting data the entity no longer needs. The point is that it needs to be something the entity and its employees are always aware of.
Encrypt, pseudonymize, or anonymize personal data wherever possible.	Most of the productivity tools used by businesses are now available with end-to-end encryption built in, including email, messaging, notes, and cloud storage. The GDPR requires organizations to use encryption or pseudeonymization whenever feasible.
Create an internal security policy for the entity's team members and build awareness about data protection.	Even if the entity's technical security is strong, operational security can still be a weak link. Create a security policy that ensures the entity's team members are knowledgeable about data security. It should include guidance about email security, passwords, two-factor authentication, device encryption, and VPNs. Employees who have access to personal data and non-technical employees should receive extra training in the requirements of the GDPR.
Know when to conduct a data protection impact assessment and have a process in place to carry it out.	A data protection impact assessment (aka privacy impact assessment) is a way to help the entity understand how the entity's product or service could jeopardize the entity's customers' data, as well as how to minimize those risks. The UK Information Commissioner's Office (ICO) has a data protection impact assessment checklist on its website. The GDPR requires organizations to carry out this kind of analysis whenever they plan to use people's data in such a way that it's "likely to result in a high risk to [their] rights and freedoms." The ICO recommends just doing it anytime the entity is about to process personal data.
Have a process in place to notify the authorities and the entity's data subjects in the event of a data breach.	If there's a data breach and personal data is exposed, the entity is required to notify the supervisory authority in its jurisdiction within 72 hours. A list of many of the EU member states supervisory authorities can be found here. The GDPR does not specify whom the entity should notify if the entity is not an EU-based organization. For those in English-speaking non-EU countries, the entity may find it easiest to notify the Office of the Data Protection Commissioner in Ireland. The entity is also required to quickly communicate data breaches to the entity's data subjects unless the breach is unlikely to put them at risk (for instance, if the stolen data is encrypted).

Accountability And Governance	
Designate someone responsible for ensuring GDPR compliance across the entity’s organization.	Another part of "data protection by design and by default" is making sure someone in the entity’s organization is accountable for GDPR compliance. This person should be empowered to evaluate data protection policies and the implementation of those policies.
Sign a data processing agreement between the entity’s organization and any third parties that process personal data on the entity’s behalf.	This includes any third-party services that handle the personal data of the entity’s data subjects, including analytics software, email services, cloud servers, etc. The vast majority of services have a standard data processing agreement available on their websites for the entity to review. They spell out the rights and obligations of each party for GDPR compliance. The entity should only use third parties that are reliable and can make sufficient data protection guarantees.
If the entity is an organization outside the EU, appoint a representative within one of the EU member states.	If the entity processes data relating to people in one particular member state, the entity needs to appoint a representative in that country who can communicate on the entity’s behalf with data protection authorities. The GDPR and its official supporting documents do not give guidance for situations where processing affects EU individuals across multiple member states. Until this requirement is interpreted, it may be prudent to designate a representative in a member state that uses the entity’s language. Some organizations, like public bodies, are not required to appoint a representative in the EU.
Appoint a Data Protection Officer (if necessary)	There are three circumstances in which organizations are required to have a Data Protection Officer (DPO), but it's not a bad idea to have one even if the rule doesn't apply to the entity. The DPO should be an expert on data protection whose job is to monitor GDPR compliance, assess data protection risks, advise on data protection impact assessments, and cooperate with regulators.
Privacy Rights	
It's easy for the entity’s customers to request and receive all the information the entity has about them.	People have the right to see what personal data the entity has about them and how it is using it. They also have a right to know how long the entity plans to store their information and the reason for keeping it that length of time. The entity has to send them the first copy of this information for free but can charge a reasonable fee for subsequent copies. Make sure the entity can verify the identity of the person requesting the data. The entity should be able to comply with such requests within a month.

It's easy for the entity's customers to correct or update inaccurate or incomplete information.	The entity is required to do its best to keep data up to date by putting a data quality process in place and make it easy for the entity's customers to view (Article 15) and update their personal information for accuracy and completeness. Make sure the entity can verify the identity of the person requesting the data. The entity should be able to comply with requests under Article 16 within a month.
It's easy for the entity's customers to request to have their personal data deleted.	People generally have the right to ask the entity to delete all the personal data the entity has about them, and the entity has to honor their request within about a month. There are a five grounds on which the entity can deny the request, such as the exercise of freedom of speech or compliance with a legal obligation. The entity must also try to verify the identity of the person making the request.
It's easy for the entity's customers to ask the entity to stop processing their data.	The entity's data subjects can request to restrict or stop processing of their data if certain grounds apply, mainly if there's some dispute about the lawfulness of the processing or the accuracy of the data. The entity is required to honor their request within about a month. While processing is restricted, the entity is still allowed to keep storing their data. The entity must notify the data subject before the entity begins processing their data again.
It's easy for the entity's customers to receive a copy of their personal data in a format that can be easily transferred to another company.	This means that the entity should be able to send their personal data in a commonly readable format (e.g., a spreadsheet) either to them or to a third party they designate. This may seem unfair from a business standpoint in that the entity may have to turn over its customers' data to a competitor. But from privacy standpoint, the idea is that people own their data, not the entity.
It's easy for the entity's customers to object to the entity's processing their data.	If the entity is processing their data for the purposes of direct marketing, the entity has to stop processing it immediately for that purpose. Otherwise, the entity may be able to challenge their objection if the entity can demonstrate "compelling legitimate grounds."
If the entity makes decisions about people based on automated processes, the entity must have a procedure to protect their rights.	Some types of organizations use automated processes to help them make decisions about people that have legal or "similarly significant" effects. If the entity thinks that applies to it, the entity will need to set up a procedure to ensure it is protecting their rights, freedoms, and legitimate interests. The entity needs to make it easy for people to request human intervention, to weigh in on decisions, and to challenge decisions the entity has already made.
Source: Official EU GDPR Website's GDPR checklist for data controllers via URL Accessed August 8, 2021: https://bit.ly/3B5Zhoi .	

Table 12 GDPR Compliance Checklist

Table 13 FIUs, World Partnerships, and Strategic and Operational Agreements for AMLCFT within Europol and EU

EU FIU by Member State	Worldwide Partnerships	
FIU Point of Contact by Country	**Non-EU Liaison**	**USA Liaison Law Enforcement Agencies**
Austria: Ministry of the Interior - Bundeskriminalamt	Albania	Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Belgium: Belgian Financial Intelligence Processing Unit Cel voor Financiële Informatieverwerking - Cellule de Traitement de Informations Financieres Website: www.ctif-cfi.be	Australia	Customs and Border Protection (CBP)
Bulgaria: State Agency for National Security FID-SANS Financial Intelligence Directorate State Agency for National Security Website: www.dans.bg	Brazil	Drug Enforcement Administration (DEA)
Cyprus: Unit for Combating Money Laundering MOKAS Website: www.law.gov.cy	Canada	Diplomatic Security Service (DSS)
Croatia: Anti-Money Laundering Office	Colombia	Federal Bureau of Investigation (FBI)
Czech Republic: FAU-CR Financial Analytical Unit Financní analytický útvar Website: www.mfcr.cz	North Macedonia	Food and Drug Administration (FDA)
Germany: Zentralstelle für Finanztransaktionsuntersuchungen Financial Intelligence Unit Website: www.fiu.bund.de	Georgia	Immigration and Customs Enforcement (ICE)
Denmark: HVIDVASK – Hvidvasksekretariatet Stadsadvokaten for Særlig Økonomisk Kriminalitet State Prosecutor for Serious Economic Crime / Money Laundering Secretariat	Iceland	Internal Revenue Service (IRS)
Estonia: Rahapesu Andmeburoo Money Laundering Information Bureau Website: https://www.politsei.ee/en/financial-intelligence-unit	Israel	US Treasury – Financial Enforcement Network (FinCEN)
Spain SEPBLAC – Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales e Infracciones Monetarias Banco de Espada Executive Service of the Commission for the Prevention of Money Laundering and Monetary Infractions - Bank of Spain Website: www.sepblac.es	Japan	New York Police Department (NYPD)
FINLAND: RAP Keskusrikospoliisi-Rahanpesun selvittelykeskus National Bureau of Investigation Financial Intelligence Unit Website: www.poliisi.fi/krp	Moldova	Secret Service (USSS)

FRANCE: TRACFIN Traitement du renseignement et action contre les circuits financiers clandestins Unit for Processing Intelligence and Action Against Illicit Financial Networks Website: www.economie.gouv.fr/tracfin	Montenegro	Transportation Security Administration (TSA)
Greece: HAMLC - Hellenic Anti-Money Laundering and Anti-Terrorism Financing Commission Website: www.hellenic-fiu.gr	**Non-EU Liaison** New Zealand	
Hungary: Central Criminal Investigations Bureau of the Hungarian Customs and Finance Guard Hungarian Financial Intelligence Unit	Norway	
Ireland: MLIU - An Garda Síochána Bureau of Fraud Investigation Website: www.garda.ie	Serbia	
Italy: UIF - Banca d'Italia - Unità di Informazione Finanziaria: Financial Intelligence Unit Website: http://www.bancaditalia.it/chi-siamo/organizzazione/uif/index.html	Switzerland	
Latvia: Kontroles dienests - Noziedîgi iegûto lîdzeklu legalizâcijas novçrsanas dienests Control Service - Office for Prevention of Laundering of Proceeds Derived from Criminal Activity	Turkey	
Lithuania: FCIS - Finansiniu Nusikaltimu Tyrimo Tarnyba Prie Lietuvos Respublikos Vidaus Reikalu Ministerijos Pinigu Plovimo Prevencijos Skyrius Financial Crime Investigation Service Under the Ministry of the Interior of the Republic of Lithuania Website: www.fntt.lt/en/146	Ukraine	
Luxemburg: FIU-LUX Cellule de Renseignement Financier Financial intelligence Unit Website: www.justice.public.lu/FIU	United Kingdom	
Poland: GIIF Generalyny Inspektor Informacji Finansowej General Inspector of Financial Information Website: www.mofnet.gov.pl	United States of America	
Malta: FIAU - Financial Intelligence Analysis Unit Website: www.fiumalta.org		
Netherlands: FIU - Netherlands Financial Intelligence Unit Nederland Website: http://en.fiu-nederland.nl/		
Portugal: UIF - Unidade de Informação Financeira Financial Information Unit		

Romania: ONPCSB - Oficiul Nacional de Prevenire si Combatere a Spalarii Banilor, National Office for the Prevention and Control of Money Laundering, Website: www.onpcsb.ro	**EU-Level Agency Operational Agreements** ECB December 2, 2014
Sweden: FIU - Sweden FIPO Finanspolisen Rikskriminalpolisen NFIS - National Criminal Intelligence Service, Financial Unit	European Commission February 18, 2003
Slovenia: OMLP - Urad RS za Preprecevanje Pranja Denarja Ministrstvo za Finance, Office for Money Laundering Prevention	European Center for Disease Prevention and Control ECDC October 25, 2011
Slovakia: SJFP UBPOK Spravodajská jednotka financnej polície Úradu boja proti organizovanej kriminalite Financial Intelligence Unit of the Bureau of Organised Crime	European Agency for Network and Information Security ENISA June 26, 2014
United Kingdom: NCA - National Crime Agency Website: www.nationalcrimeagency.gov.uk	European Intellectual Property Office EUIPO November 4, 2013 United Nations Office on Drugs and Crime UNODC March 16, 2004

Strategic Agreements	Operational Agreements	
Brazil April 11, 2017	Australia February 20, 2007	Iceland June 28, 2001
China April 19, 2017	Bosnia and Herzegovina August 31, 2016,	Liechtenstein June 7, 2013
Russia November 6, 2003	Canada February 15, 2017	Moldova December 18, 2014
Turkey March 27, 2000	Columbia June 24, 2010	Monaco October 6, 2011
United Arab Emirates September 7, 2016	Georgia April 4, 2017	Montenegro September 29, 2014

Source: Europol: Partners and Agreements, Official Europol Website, available via URLs Accessed on August 19, 2021: https://bit.ly/2XpOiqn , https://bit.ly/3nHdBP5 , and https://bit.ly/3Ciq8MZ .

EU Taxonomy Regulations No 2088/2019 and 852/2020 Checklist
Environmental Objectives & Criteria Sustainable product/investment must meet one or more of the following conditions to be considered an economic activity that is directly linked to a substantial contribution to environmental objects specified in the European Taxonomy Regulations set below**. First,** it should not do significantly harm any other environmental objective**. Second,** it must be carried out in compliance with safeguards stated in Article 18 of EU Regulation No. 852/2020. **Third,** it must comply with Technical Screening Criteria (TSC) set by the European Commission. Hence, an economic activity shall be considered **substantially contributing to environmental objectives** if it ***(a) directly enables one or more environmental objectives*** without causing lock-in of assets that undermine environmental goals on the long term and has a substantial positive environmental impact on the basis of life cycle considerations; and ***(b) if it is an economic activity that has no technologically and economically feasible low carbon alternative*** that can be considered to qualify as substantially contributing to climate change mitigation provided that it supports transition to a climate-neutral economy that is consistent with a pathway towards limiting raising of temperatures above 1.5 degrees Celsius above pre-industrial levels. It *must* ***also have greenhouse gas emission levels that correspond to the best performance requirements in the sector or industry and should not hinder the development and deployment of low-carbon substitutes as well as not lead to a lock-in of carbon-intensive assets*** considering their lifetime transitional activity. These conditions apply to financial products and market players.
Climate Change Mitigation An economic activity complies with this criteria if it substantially contributes to the stabilization of greenhouse gas concentrations in the atmosphere within a level that prevents hazardous anthropogenic interference with the climate system in accordance with long-term temperature goals set in the Paris Agreement for limiting the increase of global temperatures to 1.5 degrees Celsius above pre-industrial levels via either avoiding or reducing greenhouse gas concentrations or even improving greenhouse gas removals through processes or product innovations that either: (a) generate or transmit or store or distribute or utilize renewable energy as per EU Directive 2018/2011 on promoting the utilization of renewable energy resources, (b) improving energy efficiency excluding power generation activities, (c) increasing clean or climate-neutral mobility and utilizing environmentally safe carbon capture and utilization (CCU)and carbon capture storage technologies (CCS), (d) by shifting to utilization of sustainable sourced renewable materials, (e) improving land carbon sinks via avoidance of deforestation and forest degradation, restoration of forests, sustainable management, and restoration of croplands, grasslands, (f) founding energy infrastructures necessary for decarbonization of energy systems, and (g) enabling any of the activities specified in Article 16 of EU Regulation No. 852/2020. An economic activity shall be considered enabling environmental objectives if it: (a) does not lead to locking in assets that undermine long-term environmental goals, considering lifetime of those assets, and (b) has a substantial positive environmental impact, on the basis of life-cycle consideration.
Climate Change Adaptation An economic activity substantially contributes to this objective in two scenarios. The first is if it includes adaptation solutions that either (a) substantially decrease the risk of adverse impacts of current and expected future climate on that economic activity or (b) substantially decreases that adverse impact without increasing the risk of an adverse impact on people, nature, or assets. The second scenario is if it provides adaptation solutions that meet Article 16's conditions and contributes substantially to preventing or decreasing the risk of the negative impact of current and expected future climate on people, nature or assets without raising the risk of an adverse impact on them.
Sustainable Use & Protection of Water & Marine Resources An economic activity substantially contributes to this objective if it either achieves good status of bodies of water including rations of bodies of water that are already in good statues or achieve a good environmental status of marine waters; or if it prevents the deterioration of marine waters that are already in good environmental status. These conditions are met via enabling activities and by either of the following applications: **first,** safeguarding the environment from adverse impacts of urban and industrial waste-water release including those from contaminants that are of emerging concern such as pharmaceuticals and microplastics, via ensuring adequate collection, treatment, and discharge of urban and industrial waste-water**;** **second**, by safeguarding human health against adverse effects of any water contamination intended for human consumption, ensuring it is from micro-organisms, parasites, and substances that could be potentially dangerous for health, and finally by increasing people's access to clean potable water; and **third,** by improving the management and efficiency of water via safeguarding and enhancing

Transition to a Circular Economy An economic activity substantially contributes to this objective: **first if it utilizes natural resources in producing more efficiently,** including decreasing the utilization of raw materials or increasing the utilization of by-products as well as secondary raw materials or even by utilization of efficiency measures for resources and energy; se**cond if it increases the durability, reparability, upgradability, usability, and recyclability of products or even utilization of secondary raw materials including their quality** (this includes high quality recycling of waste for the purpose of preparing the material for re-utilization and recycling of waste and the development of waste management infrastructures necessary for preventing and preparing re-utilized or re-cycled materials); **third, if it substantially reduces hazardous substance content in products throughout their life cycle** as per the EU laws' objectives including the replacement of these substances with safer alternatives and insuring traceability; **fourth, if it prolongs the utilization of products including through reuse, upgrades, repair, as well as sharing them; and** fifth, if it decreases or prevents the generation of waste including waste resulting from extracting minerals, construction, demolition of buildings as well as if it minimizes waste incineration and avoids waste disposal as per the principles of waste hierarchy or even avoids or reduces litter.
Pollution Prevention and Control An economic activity substantially contributes to this criteria **first if it prevents or reduces polluting emissions** from being released into air, water, or land other than greenhouse gases, or by the prevention or minimization of any adverse impacts on human health and the production environment or even the utilization of disposal of chemicals; and **second, if the activity improves air, water, or soil levels' quality** in areas where the economic activity is.
Protection & Reforestation of Biodiversity & Ecosystems An economic activity substantially contributes to this criteria if it protects, conserves or restores biodiversity or achieves the good condition of the ecosystem or protects the ecosystem which is already in good condition first by nature and biodiversity conservation; second by sustainable utilization of land and its management including appropriate agricultural practices and sustainable forest management or via enabling activities.
No Significant Harm to Any Other Environmental Objective Principle An economic activity must also meet this criterion under Article 2(17) of the SFDR in order to qualify as a sustainable economic activity. Hence an economic activity causes significant harm if it significantly first if it harms the climate change mitigation objective when it leads to an increased adverse impact on the current or expected climate, when it leads to significant greenhouse gas emissions, when it harms the sustainable use and protection of water and marine resources objective by proving to be detrimental to the good status or good ecological potential of bodies of water, and when it causes significant inefficient utilization of materials or directly or indirectly leads to the utilization of non-renewable energy resources. Second, an economic activity causes significant harm when it increases the generation of waste or third when it leads to the long-term disposal of waste, and fourth when it leads to a significant increase in the emission of pollutants into air or water or even land.
Compliance with Minimum Safeguards Principle Undertakings must abide with this principle when abiding with the do no significant harm principles by taking into account the Regulatory Technical Standards (RTS) that are adopted in accordance with the SFDR. This entails fulfilling the requirements of Technical Screening Criteria (TSC) which require disclosures that are applied on a comply or explain that covers financial products that promote environmental characteristics, sustainable investment, and non-financial reporting. The reader is to note that non-financial reporting falls under EU Directive No. 34/2013 that mandates that information to be disclosed must contain two pillars: (a) the proportion of profit resulting from products or services obtained from environmentally sustainable economic activities and (2) the proportion of capital expenditure (CapEx) as well as that of operations expenditures (OpEX) regarding assets or processes that are related to environmentally sustainable economic activities. These disclosures apply to financial products and financial participants including players and advisors regarding their risk policies on their websites and precontractual disclosures at product level, under the "Do Not Significant Harm" which differs from the Significant Harm to Environmental Objective.

Table 14 EU Taxonomy Compliance Checklist

TR & SFDR Disclosure Requirements under the Comply or Explain Principle

Regulatory Technical Standards' Statements (RTS) as per ESA RTS Proposal

The proposal that the adverse sustainability statement must be published according to the following prescribed format such that it consists of the following sections: (a) summary, (b) description of principal adverse sustainability impacts, (c) description of policies to identify and prioritize principal adverse sustainability impacts, (d) description of actions to address the principal adverse sustainability impacts, (e) engagement policies and (f) references to international standards. Moreover the descriptions identifying and prioritizing adverse sustainability impacts must contain the financial market participant's policies and assessment processes that lead to the identification, prioritization of those impacts and the indicators it used as well as how these policies have been maintained and applied to include at least: (1) the date of approving such policies by the governing body of the respective financial market player, (2) the responsibility allocation of those in charge of implementing the policies within the organizational strategies and procedures of the market player's entity, (3) the description of applied assessment methodologies for every principal adverse impact and mainly how they consider the probability of occurrence of each adverse impact including its severity as well its potential irremediable character, (4) an explanation regarding possible margins of error within the methodologies used, and (5) the description of the utilized data resources.

Should the section describing identification and prioritization policies for adverse impact lack any of the indicators mentioned above or suffer a lack of readily available information, it must also include details on best efforts utilized to acquire the said information either directly from the investee companies or via conducting additionally research as well as cooperating with third party data providers and even external experts and lastly by making reasonable assumptions. For this reason, the sections below will show how each market participant/adherent and by stage must conduct SFDR sustainability disclosures under the required disclosure format as per the comply or explain approach.

According to Article 4(2) of the SFDR and Table 1 of Annex 1 of the Joint Consultation Paper, ESG Disclosures, Draft Regulatory Technical Standards concerning Content, Methodologies, and Presentations of Disclosures Pursuant to Article 2(a), Article 4(6) &(7), Article 8(3), Article 9(5), and Article 11(4) of the TR Regulation (pages 53-63) and ESAs final joint report on February 21's section on Article 4(2) and Table 1 of Annex one (pages 59-66). See official documents via respective URLs accessed July 22, 2021: https://bit.ly/2Zjq5CX and https://bit.ly/3m2jfu3.

General Comply or Explain requirements for Financial Advisors (FAs) & Financial Market Participants (FMPs)

Comply with SFDR	**Explain under SFDR**
FAs must maintain and publish on their websites information whether they consider in their investment or insurance advice the principal adverse impact on sustainability factors by taking considering: (a) their activities size, nature, and scale as well as (b) the kinds of financial products they advise clients on. This is because Article 4(5) of the SFDR mandates that FAs who qualify as insurance intermediaries must communicate information referred to in the said article in accordance with Article 23 of EU Directive No. 97/2016 as per Article 15(2) of the SFDR. Both financial market participants and FAs are	FAs that qualify as insurance advisors and do not consider investments adverse impacts on sustainability factors such as environmental, social, employee matters, respect for human rights, anti-corruption, as well as anti-bribery matters (Article 2(24) SFDR) in their investment and insurance advice; are required to publish and maintain on their websites explanatory information pertaining to why they do not consider these adverse impacts including how and when they intend to consider such adverse impacts according to the comply or explain approach. To this end, unlike financial market participants, FAs who qualify as

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<td>required to include data on their remuneration policies that explains how these policies are compliant with the requirement to integrate sustainability risks and to publish the said information on their websites. Additionally, this requirement is also necessary as per sectoral legislation*.

*According to EC Directive No. 76/2009 (UCITS), EC Directive No. 138/2009 on Solvency II, AIFMD EU Directive No. 61/2011, CRD IV EU Directive NO. 36/2013, MiFID II EU Directive No. 64/2014, IDD EU Directive No. 97/2016, and IORPs EU Regulation No. 2341/2016 according to Article 5(2) of the SFDR).</td>
<td>insurance participants are always given the option to consider investment decisions' adverse environmental impacts on sustainability factors regarding these FAs' investment or insurance advice.

According to Article 4(5)(b) and Article 2(24) of the SFDR and Articles 15(2) and 23 of the EU IDD Directive No 97/2016.</td>
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<tr>
<th colspan="2">Applying SFDR Comply or Explain Principle by Adherent and Stages</th>
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<th>Stages and Products by Adherent</th>
<th>Comply</th>
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<td rowspan="3">General Precontractual Sustainability
Information for Product Level Disclosures
(FAs & FMPs)
This stage's disclosed information must be provided to end investors as prescribed by relevant sectoral legislation comprised of precontractual instruments as elaborate as prospectuses and even extremely concise instruments such as Key Information Documents (KIDs).
According to Article 6(3) of the SFDR concerning disclosures prescribed in Article 23(1) of AIFM's EU Directive No. 61/2011, Article 185(2) of EC Directive No. 138/2009 for insurance undertakings, Article 29(1) of EU Directive No. 97/2009, Article 41 of IORPs EU Directive No. 2341/2016, Article 13(1) for venture capital funds as per Article 13(1) of EU Regulation No. 345/2013, Article 14(1) of EU Regulation No. 346/2013 regarding social entrepreneurship, Article 69 of EC Directive No. 65/2009 regarding pension fund products, Article 24(4) of EU Directive No. 65/2014 regarding portfolio management and investment advice, as well as Article 29(1) of EU Directive No. 760/2015 concerning prospectuses of AIFMs of ELTFIFs and PEPP providers as per Article 26 of EU Regulation No. 1238/2019.</td>
<td>Financial market participants are required to disclose information regarding information on sustainability risks in a manner that is integrated in their investment decisions just as financial advisors are required to do so in a manner that integrates such information in their investment or insurance advice. Hence, financial market participants are required to disclose in the precontractual stage information concerning the impact assessment results concerning likely effects of sustainability risks on investment returns from the financial products they offer compared to financial advisors who are required to do the same as well for earnings made from investment or insurance advice they provide.
According to Article 6(1)(a) &(b), as well as Article 2(22) of the SFDR, Article 36(2) of the IORP EU Directive No. 2341/2016, and Articles 15 and 23 of the IDD EU Directive No. 97/2016.</td>
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<th>Explain</th>
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<td>In cases wherein FMPs consider sustainability risks irrelevant, disclosed information must include descriptions that offer explanatory reasons that are clear and concise .

According to paragraph two of Article 6(1) of the SFDR, paragraph two of Article 36 of the IORP EU Directive No. 2341/2015 and Articles 15(2) and 23 of the IDD EU Directive No. 97/2016.</td>
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Stages & Products by Adherent	Comply	Explain
Precontractual Sustainability Product Level Disclosures for products with adverse sustainability impacts (FAs & FMPs)	According to Article 2(24) and Article 7(1) of the SFDR, FMPs who chose to comply or may be compliant with transparent about adverse sustainability impacts at entity levels at the precontractual stage must include for each financial product a clear reasoned explanation that shows whether it considers a financial product considers principal adverse effects on sustainability factors including how conducts that consideration. It must also provide a statement on information concerning principal adverse effects on sustainability factors which must be disclosed and made available to end investors via periodic reports.	According to Article 7(2)of the SFDR, FMPs who chose to comply or are allowed to not comply with furnishing transparency regarding adverse sustainability impacts on an entity level are required to have for each financial product a statement stated that the said FMP does not consider adverse impacts of their investment decisions on sustainability factors as well as the reasons for doing for the said lack of consideration.
Precontractual Sustainability Product Promotion of Environmental and/or Social Characters FMPs	These products are called light green or Article 8 products and relevant information that must be disclosed concerning them under the SFDR includes how environmental and/or social characteristics are met and whether an index has been formulated as a reference benchmark as well as information on whether the said index complies with these characteristics and how. Additionally, the disclosed material must provide information on the environmental objectives to which the financial product promotes. The disclosure materials must describe how and to what extent investment in the respective financial product qualify as	For Financial products that are not subjected to precontractual transparency requirements that falls under the category of financial products that promote environmental and/ or social characteristics yet has sustainable investment as its objective; must be accompanied by the following statement: " The investments underlying this financial product do not take into account the European Union criteria for environmentally sustainable economic activities" as specified by Article 2(17), 8, and Article 9(1),(2), & (3) of the SFDR, as well as Article 7(1) o of the TR .

	environmentally sustainable economic activities by specifying the investment proportions that are environmentally sustainable economic activities particularly details on proportions of activities that enable and help transitioning into a concerning sustainable economy. To this end, FMPs must include in their precontractual sustainability disclosures the following statement: “The do no significant harm principle applies only to those investments underlying the financial product that take into account the European Union criteria on sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the European Union criteria for sustainable economic activities.	
Precontractual Sustainability Product has Sustainable Investment as its Objective FMPs	These products are called dark green or Article 9 products that have a reference benchmark index. FMPs for these products must include in their disclosure materials for these products information that explains how the specified index aligns with the sustainable investment object. The information must explain why and how the said index aligning with the product’s sustainable investment objective differs from the broad market’s index.	If a dark green or Article 9 product lacks a specified benchmark referencing index despite having sustainable investment as its object as an activity that contributes to an environmental objective as set out in Article 2(17) of the SFDR, the FMPs must include in their disclosure materials a clear and concise explanation that their product does not deem sustainability risks relevant as well as information on the environmental objective to which their financial product contributes to. Meanwhile Article 9 of the SFDR requires that all disclosure materials must describe how and to what extent investments in their financial product are economic

		activities that qualify as environmentally sustainable. The description must also specify the investment's proportions in environmentally sustainable economic activities that were selected for the financial product including details on proportions of enabling and transitioning activities such as the percentages of all investments related to the dark green financial product they offer. To this end, Article 7 of the TR and 2(17) of the SFDR specify that if such products are not subject to precontractual transparency regarding whether they promote environmental objectives or have sustainable investment; MFPs must include in their precontractual disclosure material the following statement: "The investments underlying in this financial product do not take into account the European Union criteria on environmentally sustainable economic activities
Product Level Sustainability Disclosures On Websites FMPs	According to Article 2(17) of the SFDR, FMPs offering financial products which have an environmental, social, or sustainable investment objective must publish and maintain the following information on their websites as part of their SFDR sustainability disclosure requirements. First their websites must include information that describes their products environmental or social characteristics or their sustainable investment objectives. The disclosed information on the website must include information on the methodologies used by the financial product for assessing, measuring, and monitoring environmental or social characteristics or the impacts of sustainable investments chosen for the financial products they offer including data resources, screening criteria for involved assets, and relevant sustainability indicators used to measure the financial products' social or environmental characteristics as well as the product's overall sustainable impact. Additionally, the website must include precontractual information on whether the relevant financial products promote environmental and/or social characteristics and/or have sustainable investment as their objective. Moreover, FMPs must keep disclosed information up to date including clear	

	explanations on when amendments to disclosed information on the website happen such that the said explanations must also be published on the same website.
Product Level Sustainability Disclosures in Periodic Reports FMPs	According to Article 2(17) of the SFDR, FMPs must include in their financial products' periodic reports for products that have social, environmental, or sustainable investment objectives information on the extent to which the environmental or social characteristics are met for financial products that have environmental or social objectives. Meanwhile, financial products that have a sustainable investment as an objective, periodic reports must include information on the financial product's overall sustainability-related impacts via relevant sustainability indicates. However, for financial products of the same kind that have an index utilized as a reference benchmark, FMPs must show in their periodic reports a comparison between the overall sustainability- related impact of the financial product they offer with the impacts of the utilized index versus the broad market's index via sustainable indicators. Also, for financial products that promote environmental objects via the investments to which the product contributes, periodic reports by FMPs must include information on the financial objectives of that product. Meanwhile, all periodic reports must describe how and to what extents investments in the FMPs' financial products are economic activities that qualify as environmentally sustainable by specifying the portions of investments that are environmentally sustainable economic activities related to their financial products. This criteria is met in period reports by FMPs when details on proportions of enabling and transitioning activities are shown as percentages of all investments related to the FMPs' offered financial products that fall under this category. Furthermore, FMPs offering this type of financial product must include in their periodic reports the following statement: " The do no significant harm principle applies only to those investments underlying the financial products that consider the European Union criteria for environmentally sustainable economic activities" according to Article 3 of the TR and 11(1) of the SFDR. However, if a financial product is not subject to pre-contractual transparency, the TR requires under Articles 8(1) and 2(17) of the SFDR that the following statement is included in FMPs' periodic reports: "The investments underlying the financial products do not take into consideration the European Union's criteria for environmentally sustainable economic activities.

Table 15 Comply or Explain Principle in EU TR and SFDR

Table 16 Sixth AMLD Compliance Timetable an Example of Hyper Regulation Related Delay

Guidelines Compliance Table

EBA/GL/2021/02
Issued: 01/03/2021
Application date: 07/10/2021
Table updated: 06/09/2021
Source: https://www.eba.europa.eu/

Revised Guidelines on money laundering and terrorist financing risk factors

The following competent authorities* comply or intend to comply with the Revised Guidelines on money laundering and terrorist financing risk factors:

Member State		Competent authority	Complies or intends to comply	Comments
BE	Belgium	Banque National de Belgique/ Nationale Bank van België (BNB)		
BG	Bulgaria	FID-SANS	Complies	As of notification date, i.e., 29.07.2021. http://www.dans.bg/bg/msip-091209-menu-bul
		Българска народна банка	Intends to comply	Intends to comply by application date.
CZ	Czech Republic	Česká národní banka (ČNB)	Complies	As of notification date, i.e., 04.08.2021. The CNB publishes applicable EBA guidelines on its website: https://www.cnb.cz/cs/dohled-financni-trh/legislativni-zakladna/legalizace-vynosu-z-trestne-cinnosti/metodicke-a-vykladove-materialy/.In addition, based on Art. 4(2) of the Decree No. 67/2018 Coll. of 11 April 2018 on selected requirements for the system of internal rules, procedures and control measures against legitimization of proceeds of crime and financing of terrorism, are obliged entities subject to the supervision of the CNB (a majority of financial institutions) obliged to take into consideration all EBA guidelines in the field of AML/CFT. Specifically the relevant provision states that: "Institution shall take into account in its internal regulations guidelines of the European Banking Authority2), the European Securities and Markets Authority3), the European Insurance and Occupational Pensions Authority4), and the Joint Committee of the European Supervisory Authorities5) in the field of prevention of legitimization of proceeds of crime and financing of terrorism within the scope in which they apply to the institution, published in Czech language by the Czech National Bank on its website." The full text of the CNB Decree is published in English on the website of the CNB: https://www.cnb.cz/export/sites/cnb/en/legislation/.galleries/decrees/decree_67_2018.pdf.
DK	Denmark	Finanstilsynet		
DE	Germany	Bundesanstalt für Finanzdienstleistungs aufsicht (BaFin)		
EE	Estonia	Finantsinspektsioon		

IE	Ireland	Central Bank of Ireland	**Complies**	As of the date of notification, i.e., 06 Sept 2021. The Central Bank of Ireland do not believe a requirement is needed to provide any details in response to this section as it relates to "national measures adopted to comply with the Guidelines/Recommendations", as noted above under Heading 6, section 30A of the CJA 2010 was introduced in 2018 so that it was not necessary to adopt any measures in this regard.
EL	Greece	Τράπεζα της Ελλάδος (ΤτΕ)		
HR	Croatia	Hrvatska narodna banka		
ES	Spain	Banco de España		
FR	France	Banque de France		
IT	Italy	Banca d'Italia		
CY	Cyprus	Κεντρική Τράπεζα της Κύπρου (ΚΤΚ)		
LV	Latvia	Finanšu un kapitāla tirgus komisija		
LT	Lithuania	Lietuvos Bankas		
LU	Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)		
HU	Hungary	Magyar Nemzeti Bank (MNB)		
MT	Malta	Bank Ċentrali ta' Malta/ Central Bank of Malta		
NL	Netherlands	De Nederlandsche Bank N.V. (DNB)		
AT	Austria	Finanzmarktaufsicht Österreich (FMA)		
PL	Poland	Komisja Nadzoru Finansowego		
PT	Portugal	Banco de Portugal		
RO	Romania	Banca Naţională a României		
SI	Slovenia	Insurance Supervision Agency	**Complies**	As of notification date, i.e., 26.08.2021.
		Banka Slovenije		
SK	Slovakia	Národná banka Slovenska		
FI	Finland	Finanssivalvonta (FIN-FSA)		
SE	Sweden	Finansinspektionen		
EEA – EFTA State				
IS	Iceland	Fjármálaeftirlitið		
LI	Liechtenstein	Finanzmarktaufsicht Lichtenstein (FMA)		
NO	Norway	Finanstilsynet		
EU Body				

ECB	European Central Bank	Single Supervisory Mechanism		

**The EEA States other than the Member States of the European Union are required to notify their compliance with EBA guidelines and recommendations relating to a legislative act which has been incorporated into the EEA Agreement, and otherwise provide the information on a voluntary basis.

** Please note that, in the interest of transparency, if a competent authority continues to intend to comply after the application date, it will be considered "non-compliant" unless (A) the Guidelines relate to a type of institution or instruments which do not currently exist in the jurisdiction concerned; or (B) legislative or regulatory proceedings have been initiated to bring any national measures necessary to comply with the Guidelines in force in the jurisdiction concerned.

Notes

Article 16(3) of the EBA's Regulations requires national competent authorities to inform us whether they comply or intend to comply with each Guideline or recommendation we issue. If a competent authority does not comply or does not intend to comply it must inform us of the reasons. We decide on a case-by-case basis whether to publish reasons.

The EBA endeavours to ensure the accuracy of this document. However, the information is provided by the competent authorities and, as such, the EBA cannot accept responsibility for its contents, or any reliance placed on it.

For further information on the current position of any competent authority, please contact that competent authority. Contact details can be obtained from the EBA's website www.eba.europa.eu .

Table 17 Lebanese Legal Framework Reforms for Efficient WMCG

Lebanese Structural Reforms for Efficient WMCG			
Classification		**Reform**	**Impact**
LFSVD by Concept for Policies	**Definitions for Structured Specialized Laws on Governance**	**Function:** 1. **Areas of Specialty (AS)** is determined based on type of interest protected whether it is public or private interest. (*related to the branches of Law, type of Sector, kind of regulated or unregulated Market, area of experience*). Legislators will pass laws to define these interests as they are the objectives policy makers, regulators, and cabinet that these people must protect and serve. **VS.** **Specialized Functions (SF)** is determined with respect to functions performed or required tasks (*e.g., market segment or part of a process*). Legislators will pass laws that align public interests with their servants' areas of specialization divided into tasks with competent authorizations to perform. 2. **Separation of Powers (SOPF)** for regulators, public utility heads/departments, and internal regulation that is based on function according to Areas of Specialization not Areas of Specialty (*branches of the law or court genre or minister reporting to or discipline such as military, customs*).	**1. AS vs. SF:** **(a)** Abolishes the distinction between commercial and civil acts within economic activities for both public and private market players and recognizes the state as a normal corporate entity when it is acting as a merchant not as a sovereign. **(b)** Forces legislators to define protected public interests, economic, financial, and logistic or strategic national security interests; **2. SOPF** **(a)** Establishes the difference between acts of sovereign power from other activities such as state trade for profit based on the criteria that determines if the said public interest is a sovereign act or an act of a public entity seeking income. **(b)** Creates the public liability matrix for organized financial and economic crime while in office according to scientific standards which are tasks, powers, and reporting hierarchy; **(c)** Prevents power and decision-making interlocking directorates leading to bureaucratic stalemate by separating regulators and policy makers' functions; and **(d)** Promotes policy-based legislations and strategy-based execution of regulations which achieves a proactive governance approach due full control of aspects of the area of specialization. This prevents blame games and speeds up criminal accountability for public utility agents and personnel.

	Definitions for Structured Specialized Laws on Governance	**Reserves:** **1. Capital Reserves for Banks and BDL's National Reserves:** The first is composed of mandatory banking operations reserve which covers risk taking and prevents credit bubbles. The Second is comprised of pure revenues attained by BDL from supervisory fees, and transactions with local and foreign banks. **2. CMA Reserves for Financial Markets & Financial Insurance Bank:** Regular premiums are paid to the regulator to create reserves paid up by investment banks, financial institutions, and financial intermediation institutions to cover excessive risk taking by securities' business operations. Meanwhile the Financial Insurance Bank covers acts of competition breaches, consumer and data protection rights violation, and unexpected financial shocks to the capital market.	➢ Protects depositors' rights and prevents banks and their regulators from abusing the law by recognizing that the current notion of mandatory reserves is a liability not a reserve because it is comprised of depositors moneys' which are owed by the banks to them. A reserve is not a liability. ➢ Serves as a financial deterring sanction that forces players to take calculated risks and plan risk taking. The more complex, diversified, and risky an operation is, the bigger the reserve premium. ➢ Provides banking and financial operations with a liquidity cushion that acts as a buffer against countercyclical banking and financial market triggers or financial crisis. ➢ Forces both market players (*banks and securities' business entities*) and regulators to have and maintain actual capital and devise investment and lucrative products/services. ➢ Ends the culture of borrowing to thrive or invest and replaces it with the culture of build to invest and plan to diverse/expand. ➢ Rids both regulated markets from bad credit, underperforming funds/shares/assets/stock, and insolvent or inefficient market players by enforcing a healthy competition that thrives on innovation and legal business.

Definitions for Structured Specialized Laws on Governance	**Governing Management:** **1. Mandatory Two-Tiered Corporate Management System (MTTRS)**: For CG requirements of proportionality, flexibility, transparency and accountability, board of directors must be distinct and responsible for the executive directors to establish a clear decision-making process. **2. Non-Person-Related Incarceration Punishments (NPRIP)**: Agency theory must extend to public servants acting as regulators or public utility directors and ministries. Actions that deviate from public interest must be punishable by personal imprisonment for accountability. **3. Mandatory Corporate Governance Obligation (MCGO)**: As part of management function wherein CG code along with code of ethics with articles that specify rectifying and disciplinary measures in both private and public interest companies as well as public utilities' internal organization rules. **4. EBO vs. UEBO & their Register (EBUEBOUR):** **EBO** is based solely on shares and voting power which is essential for proper decision-making governance on entity level. **UEBO** is essential for market and liability governance in organized financial crime such as environmental and currency manipulation and market abuse crimes whose liability matrix is based on future/probable risks/damages which are not covered in the Lebanese principles of liability. **EBO** focuses on current and visible control metrics but does not cover situations where management overrides internal control or where executive management implicates the board of directors in case of family business. **UEBO** tackles this point and provides for regulating revenue-based remuneration in joint stock companies and holds controlling interest decision makers accountable for being the actual reason for abusing market or breaching environmental or financial regulation. A register must be set up for both kinds with thresholds for registering users set at 10% to trace their control and influence in crossborder entities with higher thresholds for AMLCFT reasons.	**1. MTTRS:** **(a)** Enforces transparency of decision making by fleshing out internal control, situations of management override, business models and RM strategies; and **(b)** Instils CG codes that are enforceable with efficient policies for internal operation, control, and accountability w.r.t code of ethics, ethics, and active participation of stakeholders since knowing the entity's internal operational organization allows them to efficiently exercise corporate social responsibility. **2. NPRIP:** **(a)** Ends sectarian filled positions protected by interlocking directorates that enforce SPOF based on AS to instil SF; and **(b)** Enable tracing and recovering illicit funds by identifying UEBO in public utility who have powers that conceal or create evidence and prevents them from running for office since they serve jail time for committing AMLCFT crimes instead of paying fines or leaving the upcoming administration to take the fall. **3. MCGO:** Enables the application of criminal liability mechanisms for public and private entities as well as mixed entities beyond the agency theory's limitations of corporate form since CG codes allocate responsibilities of both management levels in private companies and heads of public utilities according to the decision-making organogram. **4. EBUEBOUR:** **(a)** Serves to uncover shell companies/entities, proforma puppets concealing unauthorized market participants due to conflicts of interest; **(b)** Enforces financial record transparency prior and after assuming public or private management ranks since UEBO fully tracks profits made by the real controllers of entity operations' revenue; and **(c)** Practically ends LBS power and SIC's FI filter function allowing regulators, investigators, and courts information key for apprehending white collar criminals; and **(d)** Fully applies consolidated banking and financial supervision as well as efficient risk based AMLCFT supervision that lifts the corporate veil ending its effect in limiting liability for financial crime (*lifts the constraints of entity's form on liability of entity's agents say LLC or joint stock companies BOD and executive directors*).

Definitions for Structured Specialized Laws on Governance	**1. Internal Audit, External Audit, and Management Audit (InExaM):** **(a)** Distinguishing the audit function from the accounting function and making internal audit part of management's obligations to establish and execute CG and internal control policies. **(b)** Establishing internal audit unit and committee as bodies within the corporate structure of companies in the LCC with a clear set of rules on scope of function, standards, conflicts of interest, and relation to internal audit regulator. **(c)** Designating external auditors as statutory auditors with a clear set of rules for liability, scope of function, conflict of interests, standards of operation and relation to external audit regulator. **(d)** Creating separate regulated syndicates that set exams and codes of practice as well as coordinate with both external and internal audit regulators including the Lebanese data privacy and protection regulator. **2. Internal and External Audit for Public Sectors:** Adopting internal audit standards of private sector inside GBE public institutions (ISA and IFRS) and IPSAS standards on other public institutions especially on matters of related party transactions IPSAS 20.	**1. InExaM:** **(a)** Creates the FI reliability and audit culture in Lebanon as a process that certifies numbers with processes/operations which lead to transparency and efficient disclosure. **(b)** Ends the era of family business overriding professional and specialized services' internal control practices. This also enhances stakeholders' activism to support audit function as a watch dog for CSR and public welfare. **(c)** Restores the balance between internal and external audit whilst creating a culture of internal governance assurance certified by an impartial professional external assurance that acts as control on both internal audit and management; and **(d)** **Separated regulated syndicates** **(i)** Enables audit professionals to participate in shaping a specialized modern, and pragmatic professional audit law whilst aiding the regulator in regulating the professional standards of the local practitioners to meet the international caliber; and **(ii)** Enhances auditors and audit service entities' governance by forcing CG codes of practice, rules, and regulations that regulate audit transactions, relations, sources of income transparency for the purposes of independence, impartiality, professionalism, and professional skepticism. **2.** Allows financial transparency and assurance for accountability purposes in the public sector to better manage public spending and allocate budget to further develop corporate governance practices.

	Definitions for Structured Specialized Laws on Governance	**Legal Compliance vs. Regulatory Compliance vs. Financial Compliance (LRFCMP):** **1. Legal Compliance (LCO):** The process through which entities comply with laws, regulations, policies, and processes that govern businesses/economic activities and operations. It requires a thorough understanding of the law and obligates entities to demonstrate their adherence to the said laws, regulations, processes, and operations. It entails having policies and procedures internally that ensure adherence with legal requirements depending on the roles and rank of people in the entity's internal operations and structure. **2. Regulatory Compliance (RCO):** The process through which entities adhere to the goals and policies aspired by regulators to attain through a series of steps required to comply with relevant laws, policies, and regulations. In this sense, regulatory compliance must provide guidance for entities seeking to adhere with their respective regulators' regulations which must provide for compliance internal management systems as well as compliance revision processes which include onsite and offsite processes that go beyond reporting or sampling to encompass assessing decision making and internal control, and compliance management systems. **3. Financial Compliance (FCO):** The process of regulating and enforcing financial and capital market laws to protect the financial system from being used as a means to commit financial crime or disperse credit bubbles and contagion risk via combating money laundering activities and enforcing policies that reinforce added value to the environment being regulated. It aims to protect investor confidence, market efficiency, financial transparency, and fair dealing between market players from market manipulation, ethical threats, and systemic risk. **4. Compliance Committee and Compliance Unit (CCCuR):** **(a) CC:** This body is part of the economic undertaking's BOD and is responsible for combining LCO, RCO, and FCO into a framework that branches out into policies that serve to guide and drive how laws,	**LRFCMP:** **1. LCO:** **(a)** Segregates legal support and litigation from legal compliance by making legal compliance about assessing legal risks and legal non-compliance risks thus turning legal support in corporations into a proactive task that contributes to internal control for decision making and processes; and **(b)** Develops best practices including enforcement of coordination between compliance committee within the BOD and the compliance unit in an entity. **2. RCO** **(a)** Enhances market discipline in regulated markets and professions such as banking, finance, audit, insurance etc.; **(b)** Enables the application of efficiency performance score cards for regulatory compliance by utilizing areas of competency for regulatory compliance; **(c)** Instils the necessity of having the compliance unit coordinate with the risk management unit; **(d)** Adds LCO, FCO, and RCO noncompliance into the list of risks to be considered when passing regulations and encourages a regulator-market-player dialogue to enhance cooperation and smooth transition to framework reforms necessary for efficiency and transparent operations. **3. FCO** **(a)** Enhances proper financial risk identification, classification, scoring, and mitigation; **(b)** Instils actuarial practices and modern damage assessment approaches such as the hedonic method; **(c)** Develops the best practice of disaster/crisis reserves besides emergency or mandatory reserves; and **(d)** Encourages the practice of subscribing for professional services insurance policies and operations insurance policies. **4. CCCuR** **(a)** Mandates that each entity with a legal persona/ patrimony in an economic conglomerate or group have its own compliance unit that oversees its legal, audit, accounting, processes, risk management and financial operations; **(b)** Clearly tasks the BOD through its compliance committee to develop and supervise the execution of its compliance policies for CG, decision making

		regulations, regulatory policies, and processes are complied with. **(b) Cu:** The body is charged with setting this mechanism via internal controls that permeate the entity's operations in a manner that creates a culture of compliance and allows cooperation with regulators whilst instructing the compliance unit it supervises on how to demonstrate compliance and train the entity's human resources on compliance requirements through daily processes.	transparency, and liability matrix clarity purposes. **(c)** Regulators by sector/function will be tasked to provide policies that assess CCCuR bodies' compliance management systems in economic undertakings triggering a data collection ad management process that will include costs, timelines as well as logistic and technical difficulties that relate to the efficiency of the regulators' supervision of the compliance implementation process. **(d)** Regulators will participate through data collected from CCCuR s in the legislation process of primary laws by providing insights on the required legislation due diligence for implementation efficiency and performance assessments necessary for market discipline.

Definitions for Structured Specialized Laws on Governance	**Banking Operations, Investment Operations, and Financial Management Operations (BIFMOP):** **1. NLFIWMs(**Non - Loaning Financial Institution Wealth Management Services**)** Abolishing the usage of financial institutions as entities that offer loans or exchange services as well as the concept of financial intermediation to group securities business operations. **2. BOPs** Banking Operations should be operations conducted by non-investment banks focused on savings and loaning services for individuals and SMEs. **3. IOPs** Investment Operations should be limited to investment banks. These banks shall be classified as custodian/underwriting banks or banks offering securities business banks as well as handling key financing facilities such as loans for infrastructure, import and export, mergers, and acquisitions, as well as industrial start-ups. **4. FMOPs** Financial Management Operations shall be financial firms either (a) one-man LLCs or typical LLCs, (b) joint stock companies engaged in funds and securitization or factoring, (c) wealth management firms incorporated as joint stock firms specialized in portfolio and asset management, or (d) PICs incorporated as LLCs specialized in brokerage of securities/shares/bonds, underwriting services, or distribution and marketing of stock.	**BIFMOP** **1. NLFIWMs** Segregates banking services from investment from wealth management from brokering and arranging services; thus, limiting loaning to banks and preventing group risk transfers. **2. BOPs** Distinguishes between SME and infrastructure loaning services; **3. IOPs** Distinguishes banking operations from investment/financing operations and further distinguishes custodian banks from investment banks operating as securities business operators and allows for the development of specialized services regulation within investment and financing operations. **4.** FMOPs **(a)** Encourages solo and firm practice for financial services for natural persons and SMEs say professional firms; **(b)** Distinguishes financial services offered to joint stock companies or economic conglomerates and even public funds such as the NSSF and encourages turning state aid and retirement funds into asset backed instruments that can generate more income; **(c)** Enhances market segmentation and financial management specialization by focusing on dividing financial services into competitive products for better consumer support and benefit; and **(d)** Develops the underwriting and brokerage market with more specialization requirements and allows developing better FI collection and management systems for both clients and offerors.

	Definitions for Structured Specialized Laws on Governance	**Unfair Competition & Market Discipline (UCP & MD):** **1. UCP** Unfair business practices must be distinguished from anticompetitive behavior. Anticompetitive behavior must include acts that are null and void such as tying, fixing prices, barring entry, control of production level processes, and market share collusion practices. Mergers and acquisition, change of entity control and abuse of market dominance must be clearly identified. **2. MD** Sectoral and cross-sectoral regulation must be planned according to a proactive approach. Market share and systemic risk must be considered vis a vis the concept of uniformity for conformity. Technical and scientific standards must be used to qualify ESG practices in firms via requiring entities and economic undertakings to develop CG and operations' codes that show clear competency fields and authorization/tasks. Regulators must develop performance efficiency score cards for market players to evaluate corporate citizens which should be included in their commercial register and UEBO registers.	**1. UCP** **(a)** Empowers regulators and market players by forcing an even field for a healthy competition; **(b)** Encourages market entry and technological and entrepreneurial innovation that benefits consumers with variety and better prices; **(c)** Enhances corporate control for clear UEBO and decision-making liability balance by making M&As more transparent; **(d)** Decreases group risk transfer/concealment/transfer; and **(e)** Prevents monopoly and overpricing or dumping practices. **2. MD** **(a)** Allows the state to plan investment strategies and more efficiently plan market segments; **(b)** Empowers regulators to control prices and enforce product/service transparency and consumer protection; **(c)** Reveals sector dependence or weakness for a balance public expenditure and wealth planning for infrastructural development; **(d)** Introduces the culture of performance assessment and efficiency scorecard for both regulators and market players via enhanced compliance, and strategy planning and execution.

	Definitions for Structured Specialized Laws on Governance	**Conflict of Interest & Entity Control Interest-Liability Matrix (***VIE based control matrix***) (CIEN &CIELM):** Statutes must define and distinguish between the following terms according to the following parameters: **1. CIEN:** **(a)** Identifies the categories of conflicts of interest for both public and private entities as well as natural persons/agents; and include the definition in corporate, commercial, and public administration laws including regulations for regulated markets; **(b)** Mandates that entities have a conflict-of-interest management policy as part of their CG duties which include applications of the Chinese wall as an essential tool to manage conflicts of interest; **(c)** Associates the control matrix in legal entities with the conflict of interests management mechanisms to clearly show how the BOD intends to safeguard its fiduciary and loyalty duties; **(d)** Requires public service figures who serve as regulators for regulated sectors such as BDL and CMA to have related party risk policies that employ conflict of interest management mechanisms; and **(e)** Requires other public service figures to undergo conflict of interest training and evaluation of assets post assumption of public office for transparency reasons. **2. CIELM:** **(a)** Adopts ISA and IAS requirements of VIE control matrix as key indicators to allocate conflicts of interest by type; **(b)** Identifies situations of actual control vs situations of control override; and **(c)** Adopts IAS and ISA standards of managing related party risk with respect to types of conflicts of interest and capacities regarding public authority/entity acts to be reflected in calculating possible damages.	**1. CIEN:** **(a)** Sets minimum requirements for CIEN policies and codes of conduct and management for public and private entities including natural and legal entity decision maker powers and processes; **(b)** Enhances disclosure requirements for financial, regulatory, and legal compliance purposes by properly grouping and managing FI for operations and organizational regulation purposes that turn liabilities for breaching CG duties in CIEN into crimes under the theories of positive liability or guilt by association for economic undertakings in environmental and economic crimes; **(c)** Ends group risk transfer for economic conglomerates and the multiple capacities in regulators such as BDL and CMA by enforcing a clear internal and external audit framework that in turn allows BDL or CMA to be responsible for their roles in a given transaction transparently; and **(d)** Introduces a proactive consolidated risk-based approach for regulatory operations that considers CIEN risks. **2. CIELM:** **(a)** Distinguishes between methods for managing conflicts of interest in entities beyond share and vote premises to determine control in entities; **(b)** Enforces setting policies and safeguards for managing situations of actual control and control override for the purpose of enhancing internal control and transparency in entities; and **(c)** Distinguishes consolidated accounts practices for PIEs, public entities and public services from best practices and standards that apply IAS and ISA standards for managing related party risk for matters of conflicts of interest within private sector entities and enables implementation of possible or potential damage as a basis for deterring breach and avoiding economic shocks due to balancing reliance on micro-prudential data to gauge macro prudential data for governance, transparency, and compliance purposes in regulation and implementation.

	Definitions for Structured Specialized Laws on Governance	**Economic Conglomerates, Affiliates (ECONA), and Group Risk (GRPR):** To define the following terms within the following scope: 1. **ECONA** entities (a) Identifies economic conglomerates as economic undertakings partaking in economic activities with objects that must align with the state's ESG principles and protected public interests. (b) Identifies control according to the VIE standard and control matrix set out in ISA in groups, sub entities, as well as affiliates and defines transactional or organizational association and dependence on operational and risk-taking levels; and (c) Holds parent entities responsible for subsidiary activity by lifting the corporate veil when they serve the same economic objective for competition, market discipline, and financial compliance purposes. 2. **GRPR** risks: **(a)** Identifies group risk depending on the type of group a regulator is handling; **(b)** Allows the regulator to provide specialized policies for each type of group risk; and **(c)** Prevents group risk from becoming a contagion risk that creates credit bubble or triggering financial crisis.	**1. ECONA:** **(a)** Addresses the following legal framework weaknesses: (i) deficient corporate governance framework for banks, (ii) absence of definition of corporate control beyond majority of shares and voting rights, and (iii) deficient delimitation of economic groups and lack of definition for economic conglomerates; **(b)** Classifies economic conglomerates as banking holding groups (BHC), financial holding groups (FHC), and mixed activity groups (MAG); and **(c)** Defines what an economic conglomerate or membership is beyond the notion of control through ownership or votes. **2. GRPR:** **(a)** Helps identify when risk is transferred mainly for credit risk; **(b)** Prevents collusion among big joint stock companies and economic groups/conglomerates to fix securities prices and limit entry into the market in a manner detrimental to the investors and the market's sustainability; **(c)** Ends opportunities to use adjusted financial reporting and inflating assets via issuance of securities for own account or constituting partnerships without supervision; **(d)** Fosters a healthy financial and banking markets' competition dynamic that roots out insolvent entities; **(e)** Enables identify correlations between parent companies using subsidiaries to operate SPVs or specialized patrimonies; and **(f)** Ends gap for cross-border operations regulation and supervision for economic conglomerates especially in scenarios of holding companies, mixed financial holding companies due to the Lebanese laws' limited notions of corporate control.

	Definitions for Structured Specialized Laws on Governance	**Divisible Patrimony and Off-Balance Sheet Items and Transactions:** Adopting divisible patrimony and distinguishing between off-balance sheet items from off-balance sheet transactions to: **1- Legalize One Man Companies for wealth management firms, audit firms, accounting firms, and commercial professional firms (** e.g., law firms local and international**) (OMCs)** since**:** **(a)** SMEs require one-man companies to support specialization and free the market from family business and exclusive agencies; **(b)** this allows the commercial practice of professional services such as audit, accounting, legal, staffing, and management services opens the market to international standards and investment by complying with the GAAT and allowing free trade; and **(c)** this opens the market for international ISO-certified firms and multinational groups to affiliate with local firms. **2- Distinguish between off-balance sheet items, transactions and abolishing off-balance sheet entities (OFBITs) in statutes** to**:** **(a)** Mandate reliable FI and fosters financial transparency; and **(b)** Maintain a clear understanding of an entity's credit score and financial position to inform financial stakeholders.	**1- OMCs:** **(a)** Encourages banks to loan for investment in the SME sector creating a new economic cycle of investment; **(b)** Introduces new technology, approaches, specialties, and trains local practitioners with international standards thus creating a culture of best practices based on areas of specialization by segment, product, service, and process not just sector or area of law; **(c)** Brings in international licenses, fresh foreign currency, and increases investment in infrastructure and human resources that drive competition and the economic cycle. **2- OFBITs:** **(a)** Prevents the usage of adjusted balance sheets and the manipulation of financial statements; **(b)** Enhances financial literacy and spreads the culture of informed financial consent that is centralized around consumer activism and investor best practices that focus on social, environment, and governance responsibility; **(c)** Prevents credit bubbles by avoiding total disconnection created by special patrimony under the current laws on fiduciary contracts and securitization regime; and **(d)** Provides local and international regulators with information necessary to track sources of moneys and financial position of investment and financial firms involved in securitization and fund management operations.

	Definitions for Structured Specialized Laws on Governance	**IAS, ISA, IFRS and IFRIC Standards:** Legislators must harden these standards by passing laws that specify which apply to enhance FI collection, management, and reliance. The laws must be passed into a code that includes specialized laws that organize the practice of accounting, internal and external audit as a specialized commercial practice, the entities allowed to offer these services including their practices on corporate governance, a disciplinary board, a register for offenders, a distinction between practitioners who serve public entities from private entities, and must include mandatory exams required to continuously accredit and train local practitioners, and finally, require local firms to be at least partnered or affiliated or certified from an international or multinational firm such any of the big four in audit. The law must specify disclosures on sources of income, clients, and a total breakdown of market share and prevent tax planning or entity planning practices for external auditors.	**(1)** Distinguishes between accountants and auditors' scope of responsibilities in a manner that provides for standards for professional accountability; **(2)** Spreads the culture of financial reliance, independence, assurance, and integrity; **(3)** Prevents arbitrary BDL and CMA practices in applying international standards on ISA and IAS mainly regarding ECL and IFRS standards by relying only on international IFRIC standards for interpreting these standards; **(4)** Instils a culture of standardized financial reporting practices that allow room for assessing market and financial data for prevention of financial crisis and credit bubbles; **(5)** Encourages international practice firms and licenses to train and affiliate with local practitioners; **(6)** Prevents financial crime in the private sector that rely on adjusted or manipulated financial reports and in the public sector by preventing unsettled budget by enforcing internal financial control and governance in public utilities and services; and **(7)** Prevents professional accounting and audit services from circumventing applicable laws and regulations through tax planning, abuse of dominant position, and keeping financial management know-how from the public.

	Definitions for Structured Specialized Laws on Governance	**Macro Prudential Regulation (MACPR) and Micro Prudential Regulation (MICPR):** **1. MACPR:** Macroprudential policies must be defined as policies designed to identify and mitigate risks to systemic stability that lead to reducing costs to the Lebanese economy as a result of a disruption in the financial services that hinder the proper function of financial market such as credit, insurance, payment, and settlement services. The said policy must address systemic risk's bidimensional nature which are time and cross-sectional dimensions. In this respect the time dimension designates the requirement to regulate financial growth spurts that result from both supply and demand agents and financial intermediation behavior. Statutes must identify the function of the macroprudential policy as one that sets the basics for establishing, maintaining, and promoting financial stability as the central bank's main macro-prudential policy obligation according to the central bank's charter along with grounds for the central bank's accountability in the said charter. The said policy must have clear implementation instruments by Lebanese statutes mainly for instance, dynamic provisioning, sector-specific, and countercyclical capital requirements. The statutes must also require the central bank to regularly coordinate with other regulatory bodies, agencies, and committees to help resolve disagreements over macroprudential measures to ensure the effectiveness of coordination regarding monetary policy which influences credit growth, asset price dynamics, and risk taking since they are the heart of financial stability risks. The said obligation to coordinate must recognize this mechanism's limitations which must stop at price stability. The statutes must set the following as objectives as the central bank's main objectives of having a macro-prudential policy for financial stability purposes: (1) promoting financial stability, (2) securing normal functioning of internal and external payments, (3) promoting resilience of the	**1. Regulatory Results:** ➢ Allows the proper identification of the macro-financial policy and its credit environment that helps reopen the Lebanese economy whilst identifying the inflationary reality and barriers to recovery and ensures that sovereign risks are contained at the current par. ➢ Addresses COVID-19's debt effects and its duration from current long-lasting market vulnerabilities and risks; ➢ Recognizes asset prices' sensitivity to risk shocks which are currently high; ➢ Identifies the non-bank financial sector issues such as loans and market-based credit supply shocks on stunted GDP growth; ➢ Addresses the current short term policy making approach and shifts it towards a long-term policy that supports addressing the current financial disaster and the future stumbling blocks for recovery; ➢ Enhances the Lebanese regulatory framework in a manner that secures long term resilience of the Lebanese financial system; ➢ Recognizes the role of macroprudential policy in utilizing governance to harness the continuous financial downfall by classifying governance measures into two categories: proactive governance and damage control governance. **2. Operational Results:** ➢ Puts a cap on loan to value ratios and loan loss provisions, ➢ Puts a cap on debt-to-income ratio, ➢ Puts a cap on leverage as a means to limit asset growth via tying banks' assets to their equity, ➢ Sets countercyclical capital requirement to prevent excessive balance sheet shrinkage for troubled banks, ➢ Levies on non-core liabilities in an effort to mitigate pricing distortions that cause excessive asset growth, ➢ Calibrates time-varying reserve requirements as a means control capital flow to be within prudential purposes, ➢ Prevents accumulation of excessive short-term debt via providing for liquidity coverage ratio, liquidity risk charges that penalize short-term funding, by keeping

		financial system in order to reduce financial stability risk, (4) promoting the soundness of institutions and oversight of markets and their infrastructure, (5) regulating credit in the financial system, (6) providing for the smooth function of the financial system, (7) monitoring the systemic financial risk and (8) restoring financial stability for optimal financial recovery. **2. MICPR:** Statutes must define microprudential regulation as one intended to limit the riskiness of individual business whilst identifying the impacts of microprudential regulation on systemic risk and identify which component of systemic risk is affecting the micro-macro prudential policy regulation balance i.e., whether it is individual risk or systemic linkage in the light of what has changed in these relationships due to the financial crisis. The statutes must specify the premises of the central bank's requirements for setting, developing, shaping, and implementing microprudential regulation to regulate capital and bank profitability from banking operations, supervisory control on banking operations, deposit insurance, monitoring private sectors and banks as a specialized private sector, regulate liquidity and banks' entry into the banking market as a main precursor and effective tool to reduce systemic risk in current financial crisis and after recovery from the crisis.	capital requirement surcharges proportional to the size of maturity mismatch, and ➢ Keeps haircut requirements within minimal levels on asset-backed securities, and to facilitate banks' recapitalization due to the financial crisis.

LFSSVF by Law	Implementation of Efficient WMCG Operations via Specialized ESG Laws	
	Laws	**Processes**
	Law reorganizing ministries as equally sovereign ministries under the supervision of the parliamentary committee GOVPER that oversees and assess governmental performance. The law must also promulgate the ministry of MESAGE (Ministry of Environmental Strategy Assessment Governance and Policy Enforcement)	Applying the concept of scorecards with commensurate competency fields and criteria for performance evaluation, assessment, and critical study.
	Law creating new regulators based on area of specialization requiring each regulator to adhere to a scorecard for performance, have a code of internal control and organization, reporting lines, and a clear process for operations, specific qualifications, limited tenure, and areas of governance and accountability.	Applying bidirectional and bidimensional reporting and coordinating mechanisms between policy makers, regulators, and market players.
	Law regulating accountants and auditors (internal and external), specifying applicable standards, scope of responsibilities, function, firms providing such services, regulator and syndicates overseeing these professionals.	Setting an overall holistic, reliable, and accurate data collection, classification, management, and distribution system by setting policies on collecting data, necessary disclosures, categories for classifying data collected and types of data disclosure obligations, reporting and coordination between authorities for the purposes of data collection, and setting standards for transparency and assurance.
	Law establishing the Lebanese Systemic Risk Stability Board that defines risks that the board monitors and the way it monitors risk qualification, mitigation, and management within financial and non-financial entities as well as regulators' policies and mechanisms.	Setting the framework for corporate governance that aims to implement efficient ESG on entity, sector, market segment, market, systemic, and supervisory levels.
	Law establishing the Lebanese General Data and Privacy Protection Regulator to gather, manage, and utilize FI across public and private sectors with divisions that are embedded in each regulator's board of directors.	Providing for provisions for all stakeholders to participate in drawing, shaping, and formulating policies that will be turned into laws by designing laws and mechanisms for true sectoral dialogue between market players, regulators, and policy makers.
	Law establishing the Lebanese Treasury (LebTres) to manage public income. The law must clearly state that LebTres handles the collection and expenditure of the Lebanese republic including coordination with other regulators on funding governmental infrastructure projects and is subject to the Lebanese Governmental Commissariat, the Lebanese Public Prosecutors' Office, and the Specialized Financial Crimes Court.	Dividing processes into milestones with realistic measurable timetables, objectives, steps, and assigning each milestone to bodies by function based on a clear hierarchical and operational organogram and operations pipeline. The specialized financial crimes court members will be elected by judges. Meanwhile the LBPPO members will be elected by lawyers in the Lebanese Lawyers Syndicate in Beirut and Tripoli.

	Law establishing the Lebanese authority for issuing currency, determining the price of the Lebanese Pounds against foreign currency, and regulating exchange rates between currencies (CurEx).	Regulating issues of conflicts of interest mainly actual, potential, and perceived conflicts as well as conflicts of duty, conflicts of public duties and private interests which must subdivide to address direct, indirect, financial, and nonfinancial interests via charters, internal regulations, and commensurate deterring penal sanctions.
LFSSVF by Law	Law establishing the Special Financial Crimes Court to try AMLCFT, corruption, organized financial crime with two specialized chambers one for competition and another for environmental crime along with its own set of summarized expedited procedural law that abolishes all immunities.	Regulating related party risk and making it mandatory to declare related party status and conflict of interest with respect to mechanisms of decision making and implementation of policies and regulation for both private and public sector bodies, as well as legal and natural persons especially in the cases of politically exposed persons, economic conglomerates, and involvement in cross-border operations.
	Law on Banking and Finance operations that specifically legislates on banking and financial operations, investment. Funding, and restructure operations, as well as wealth management operations.	Applying ISA and IAS standards for financial reporting, audit, and accounting to spearhead financial transparency, integrity, disclosure, and reliance in both public and private sector operations.
	Law establishing the Lebanese Competition Authority (LCOMP) to regulate markets in Lebanon across sectors for the entire Lebanese economy and abolishing exclusive agency agreements since such exclusivity is an unfair competition practice that bars market entry whilst embracing one man company reforms and commercial one-man companies for professional services such as law firms, as well as audit and accounting firms.	Segregating authorities that handle regulation from authorities that collect fees, taxes, or public income from authorities that exercise payment or release funds. For instance, a utility that manages and regulates providing power services may not handle collection of electric bills. Meanwhile the authority that practices collection may not be the one to allocate or utilize the fees collected for its own monetary purposes. A separate body shall be responsible for allocating budget segments of each utility and the said body may not be the one to provide certification of settlement or signing the financial report on governmental spending which indicates the status of public budget whether it be in excess or deficit.
	Law hardening corporate governance international standards set in Basel frameworks and the OECD mandating CG as an obligation punishable by penal sanctions for both public and private entity agents and bodies.	Having each regulatory body comprised of a board of directors and an executive board of directors to prevent one-man show regulators or omnipotent power to prevent supervisory arbitrage, abuse of power and abuse of discretionary power.
	Law reforming information exchange and cooperation for better crossborder operations management to uphold Lebanon's commitment to the United Nations CRS.	Enhancing the role of the governmental commissariat and the governmental investigators as well as the financial public prosecutors' office in a manner that allows them to practice proactive and preventive measures and approaches.
	Law identifying, regulating, and organizing how economic conglomerates are managed, divisible patrimony, abolishing off-balance sheet entities and special patrimonies.	Introducing and practicing informed financial consent as well consumer protection for both public and private sectors whether the services are financial or non-financial services.

	Law repealing the Lebanese Banking Secrecy Law, abolishing the SIC, instilling the FIUs and creating the Lebanese Government Commissariat Board to monitor all public sector bodies, utilities, divisions, establishments, companies, and operations. .	Introducing the usage of class action for consumers of both public and private sectors for both financial and non-financial services not only on a syndicate level but also for potential damages especially those related to unfair market or business practices and unfair competition.
LFSSVF by Law	Law reorganizing and restructuring BDL and CMA segregating both regulators and creating a BOD of directors as well as executive board for each.	Repeal all of BDL and CMA's discretionary authorizations, supervisory arbitrage, and piecemeal regulations in order to apply BDL and CMA's internal governance, supervisory governance, entity and market level governance, operations, product, service, contracts, as well as banking and financial professionals' governance.
	Law mandating that laws are passed according to a policy, are subject to revision. The law must also organize and specify how laws are passed, categorized, structured, and formulated mandating speciality for being in a legislative committee.	Strategically planning laws, drafting specialized targeted laws, amending laws periodically, involving market players and stakeholders in the legislation process.
	Law placing exchange firms under the new Lebanese Currency and Foreign Exchange Body that organizes issuance of currency, regulates prices of currencies and foreign exchange rates.	Ends BDL's capacity and authority to influence, manipulate, and depreciate the Lebanese pounds by creating a clear cut monetary and liquidity policy for financial stability and sustainability purposes.
	Repeal of Articles 41-46 of the CMC and Decree No. 16400 of May 22, 1964, regarding the government's commissariat.	Establish, train, engage, and empower internal control in both public and private financial and non-financial sectors and entities by providing government commissioners independence, impartiality, professional skepticism, and a clear sense of accountability and liability matrix.
	Law mandating the appraisal and classification of all banking, securities business entities, financial institutions, financial intermediation institutions, and exchange firms for viability, insolvency, risk exposure, and market share.	Assess the actual available capital of financial institutions and banks. Determine market shares, business models, risk appetites and risk-taking profiles, and determine those culpable of manipulating Lebanese pounds' hyperinflation and credit bubble.
	Law creating the Lebanese Import and Export Board that organizes investment in these operations through strategy and market needs to promote and sell local produce and allow entry of necessary items for production.	Assess the necessary imports and substantial exports that generate profit. Provide facilities for payment and financing key technological and raw material for local production processes by eliminating unfair business practices and anti-competitive conduct such as exclusive imports, distribution, practices of tying, price parity, etc. Lift BDL's control on LC and LG facilities.
	Law securing the independence of regulators from ministers they report to and subjecting them to the direct prosecution of the Lebanese Public Prosecutors' Office as well as the Specialized Financial Crimes Court and its procedures.	Determining clear tasks, reporting lines, authorizations, and scope of governance for both regulators and ministers. Appointment does not influence a regulator's independence nor does reporting but coordination for policy

		reasons, legislation implementation, and market regulation is obligatory.
	Law regulating investing, participating, funding, starting up, and utilizing charities that regulates matters of transparency, operations, impartiality from election campaigns, wealth management operations, and AMLCFT risk management requirements.	Surveying, classifying, and analyzing source of funds, methods of operations and management, business model, and key participants, projects, reach, impact, and involvement or affiliation with politicians or politically exposed persons to prevent AMLCFT activities and financial crime through charity.
	Law specifying notions of economic undertaking as a basis for CG obligation and accountability, liability for group control, competition breaches.	Instilling fair competition as a public order notion that makes observing its requirements mandatory based on economic activity that serves the purposes of providing the best product, best price, introducing technology, and abides with best commercial practices mainly professionalism and integrity. Segregating commercial law from corporate law and mandating the creation of the corporate regulator and register which is distinct from the commercial register with its specification on economic beneficial ownership, ultimate economic beneficial ownership within the threshold of 10%.
	Law criminalization of utilization of any currency besides the Lebanese Pounds..	Mandate that all regular payments within the republic are made in Lebanese pounds and considering accounts opened in foreign currency accounts payable in the same currency opened whilst prohibiting banks from conducting foreign exchange currency without authorization from CurEx. All exchange operations are to be conducted only through authorized exchange firms/institutions under strict AMLCFT processes. Prevent firms participating in shipping currencies from conducting small time or seasonal brick and mortar operations for small currencies. Mandate that firms that ship gold may not trade in cheques or USD for banks, regulators, NGOS, or charitable organizations.
	Law abolishing the distinction between civil and commercial acts, specialized patrimonies as off-balanced sheet transactions or entities, indivisible entities.	Define activities that contribute to the economic cycle as economic activities unless they are acts of a sovereign including those services provided by public utilities such as the National Social Security Fund.
	Law for protecting whistle-blowers in financial and non-financial entities for both public and private sectors.	The law shall cover all types of financial crime from corruption to abuse of power, utilization of influence, leverage, and breach of CG and ethical practices. Cash and benefits incentives shall be provided including utmost identity protection and confidentiality punishable as a felony if the whistle-blower is endangered or exposed or threatened or any of his family members or interests are endangered. The punishment can be life-time imprisonment if it involves corruption, crimes of

		political influence, abuse of power, or distortion of evidence.
	Law regulating carry on cash at points of entry into the republic.	Mandating a clear mechanism for KYC that is based on contacting, cooperating, and verifying with cross-border regulators regarding sources of the funds and the ultimate economic beneficial owners.
	Law abolishing public notaries, lawyers, judges, and non-wealth management companies and financial intermediation institutions from carrying on fiduciary contracts.	Limiting wealth management services to authorized entities and denoting fiduciary contracts as key wealth management products that are vetted, regulated, scrutinized and governed via the CMA.

LFSSVF by Function

Parliament, Ministries,	Coordination Process	Departments and Regulators
GovPer	Coordinates with MESAGE & Lebanese Parliament	Parliamentary Committees on: Committee on Government Efficiency & Performance Governance Assessment, Committee on Finance and Economics, Committee on Investment and Markets, Committee on Strategy and Policy
MESAGE	Coordinates with Ministries, GovPer, and the Lebanese Parliament.	Department of Ministerial Directors; Department of Ministerial Research and Evaluation Department of Ministerial Investigation, Discipline, Department of Ministerial Governance and Compliance
MIND Ministry of Defence and Internal Affairs	Coordinates with MOFJ, MOFIN, and MECON.	Department of Defence Department of Internal Affairs Department of Transport and Border Security.
MIEWES Ministry of Industry, Electricity, Water, and Environment Services	Coordinates with MOFIN and MECON	Department of Industrial Strategy Department of Energy and Electricity Department of Water Department of Environmental Security Department of Bureaucratic and Consumer Protection Services
MOFIN Ministry of Finance	Coordinates with MECON and MOTELS	NIMEX has two departments one for Import and another for Export to organize and regulate Import Export Transactions. It coordinates with the LBDPR and Data Registry and MECON's ISVR's Department of Sectoral, Cross-sectoral, and cross-border investment, Department of Investment Strategy, financing, and foreign partnerships.
		BDL is comprised of a Board of Directors lead by directors from MOFIN, MECON, MIND, GINCOM, MOFJ with the Lebanese Public Prosecutors' (LBPPO), and the Banking Management Compliance Inspection Regulator. It is also managed by a Board of Executive Directors comprised of the Investment Banking Director (InVB), External Audit Regulator(ExA), Internal Audit Director(InA), Compliance and Corporate Governance Director (CCG), Micro-Prudential(MicPr) and Macro-Prudential(MacPr) Director, Financial Information Data Protection Director,(FIDPR) Transactions and Cross-border Operations Director (TRCB)and the Systemic Risk and Risk Management Director (SRRM).
		CMA is comprised of a Board of Directors lead by directors from MOFIN, MECON, MIND, GINCOM, MOFJ with the Lebanese Public Prosecutors' (LBPPO), and the Financial Management Compliance Inspection Regulator. It is also managed by a Board of Executive Directors comprised of the Investment Banking Director (InVB), External Audit Regulator(ExA), Internal Audit Director(InA), Compliance and Corporate Governance Director (CCG), Micro-Prudential(MicPr) and Macro-Prudential(MacPr) Director, Financial Information

			Data Protection Director,(FIDPR) Transactions and Cross-border Operations Director (TRCB)and the Systemic Risk and Risk Management Director (SRRM).
		Coordinates with MECON and MOTELS	Department of Tax Collection (DOTXC), handles collecting taxes from institutions and individuals for LebTres.
		Coordinates with MECON and MOTELS	Department of Banking and Finance Information Data Protection Regulation (BFIDPR), handles data from the FIDPR of CMA and the BIDPR of BDL and relays it to the LBDPR who relays it to MESAGE.
	MECON Ministry of Economics	Coordinates with MOFIN and MOTELS	LESCAB is comprised of the following regulators by sector: corporations and commercial institutions, Insurance, Construction, Health Care, Industry, Agriculture, Non-Financial Services. It has the Corporate and Business Enterprises Regulators along with the department of LFMPR for fit management, and performance regulation. Department of Currency Emission and Foreign Exchange Pricing (CurEx) is comprised of the division of Currency Emission, Division of Currency Pricing, Division of Liquidity and Interest Rate Regulation, Division of Foreign Exchange Security and Pricing Management Lebanese Systemic Risk Board (LSRB) is comprised of the Department of Banking Systemic Risk, Department of Financial Systemic Risk, Department of ECSR Risk, Department of Risk Management Governance, Department of Financial Compliance. Department of Cross-border, Investment Strategy, and Regulation (ISVR) which coordinates with NIMEX of MOFIN with subdivisions of Import, Export, Import Export Transactions and the LDBPR Data Registry and the Department of Sectoral, Cross-sectoral, and cross-border investment, Department of Investment Strategy, financing, and foreign partnerships. Lebanese Competition Authority (LCOMP) is comprised of the Department of Mergers and Acquisitions, Department of Market Stability and Discipline, Department of Combating Unfair Business Practices, Department of Consumer Protection, Department of Quality Control, and Department of Local Commodities Classification, Promotion and Partnerships.
	MOFJ Ministry of Foreign Affairs and Justice	Coordinates with MIND, MOFIN, MOTELS, and MTCS	Specialized Financial Crimes Court (SFCC) comprised of Chamber of Competition, Chamber of Anti-Corruption, Chamber of AMLCFT Crimes, Chamber of Cross-border Fraud, Chamber of Environmental Crime.. Department of Justice and Corporate Governance (DOJCG) oversees election of the SFCC members and appointment of judges in regular courts, handles foreign affairs, communication, information exchange, cooperation and strategical and operation

			treaties for facilitating compliance, legal order and Lebanese International affairs. Governmental Investigations and Commissariats (GINCOM) is comprised of the Department of Financial Data Investigation, Department of Financial Professionals Discipline (Accountants, Auditors, Brokers, Investors, Intermediaries), Department of Ministerial Conduct Investigation, Department of Regulators Conduct Investigation, Department of Parliamentary Conduct Investigations, Department of Elections Investigations, and Department of Background check for public office servants (prior and post holding office). Lebanese Public Prosecutors' Office is made of 11 Public prosecutors six of which are in charge of prosecuting crimes of public office servants and five of which handle crimes from private sector against the Lebanese consumers, republic, and economy. The Office coordinates with the Board of Financial Intelligence Units (LFIU), which is comprised of 11 FIU officers six of which supervise detecting financial crimes regarding legal persons across governorates and five of which supervise detecting financial crimes regarding natural persons across governorates. Members of this board are appointed by election from members of MESAGE, GINCOM, LBPPO, MOFJ, and the SFCC with 1 vote per body such that the vote of the SFCC is the arbitrating vote. Bureau of Financial, Competition, Legal, and Corporate Governance Affairs (BFLCCG), this body is divided into the division financial, regulatory, and legal compliance. Each division is subdivided into two subdivisions one for private and another for public sector activities/entities. The Bureau cooperates with the LBPPO, FIU, SFCC, MIND, MESAGE, and GovPer during investigations of public office servants.
	MTCS Ministry of Treasury and Customs	Coordinates with MIND, MTCS, and MOFJ.	Lebanese Treasury for income, revenue, and budget (LebTres) is comprised of the Department of Income, Department of Revenue, Department of Income, Depart of Expenditure. Department of Customs (ports, airports, land, and online transaction charges), Department of Governmental Remuneration (RemGov), and Bureau of Expenditure Internal and External Audit (BEInExA)
	MOTELS Ministry of Telecommunication Services	Coordinates with MOFIN, MECON, MOFJ, MIND, and MESAGE.	Lebanese Data and Privacy Protection Regulatory Authority (LBDPR), Department of Communication Services (TELSER), Department of Online Transactions and AI Regulation (DOAR), and Department of Bureaucracy and Consumer Protection (DOBCOP).

List of Figures:

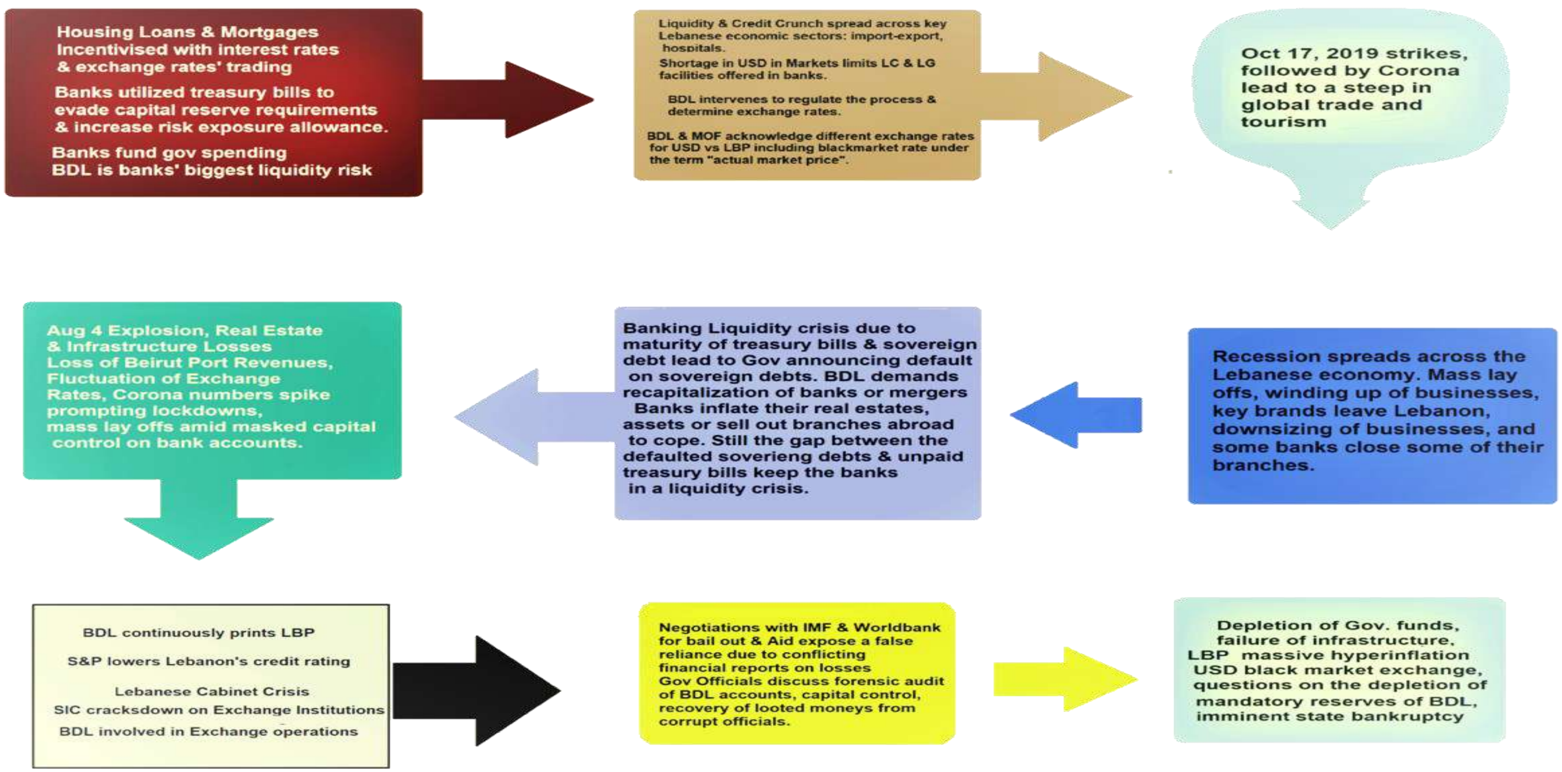

Figure 1 Lebanese Financial Crisis Scenario

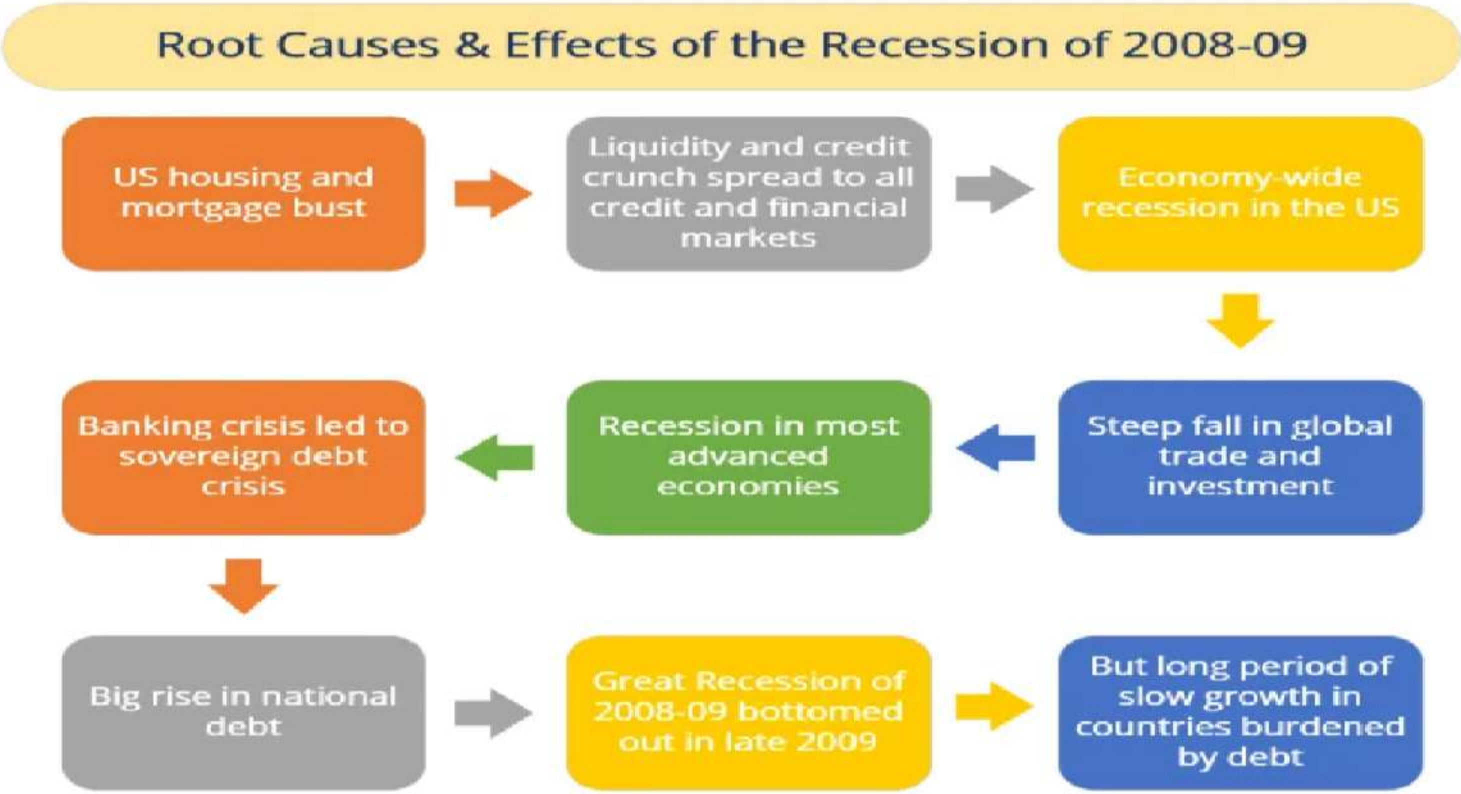

Figure 2 USA 2008 Financial Crisis Scenario

Source: CFI, What is Systemic Risk, USA 2008-2009 an Example of Systemic Risk: https://cutt.ly/UR6ST3p

BDL and BCCL Published Lists of Approved Entities	
Banks	**61**
Investment Banks	**15 out of 61**
Specialized Lending Entities (Comptoirs)	**26**
Brokerage Firms	**23**
Exchange Institutions	**311**
Financial Institutions	**74**

CMA Published Lists of Approved Institutions			
Business Securities Activity	**Banks**	**Financial Intermediation Institutions**	**Financial Institutions**
Dealing as principal, agent and underwriter	43	14	14
Managing Investment Funds and Discretionary Portfolios	19	9	9
Arranging Securities	20	11	11
Advising on Securities	18	13	13
Custody Services	32	5	5
Total	**63**	**18**	**40**

Figure 3 BDL List of Banks & Approved Entities.

Source: According to information published on both the Lebanese Central Bank (BDL) and the Banking Control Commission of Lebanon (BCCL) websites, there are 61 Banks in Lebanon, 15 out of which are investment banks. There are also 26 specialized Lending entities, 23 brokerage firms, 301 exchange institutions, and 74 financial institutions Meanwhile, according to the Lebanese Capital Markets Authority's (CMA) website, there are 63 banks, 18 financial intermediation institutions, and 40 financial institutions offering securities business services. Yet, according to the International Monetary Fund's (IMF) report of January 2017, Lebanon had a total of sixty-six banks accounting for 97 percent of its financial system's assets, which, was at 397 percent of GDP for that period(1).

(1) Lebanon: Financial System Stability Assessment, IMF Country Report No 12/21, issued on January 2017, International Monetary Fund Publication Services, Washington, D.C., United States of America, page 9, available online via URL accessed on February 28, 2021: https://bit.ly/3f9d6cE .

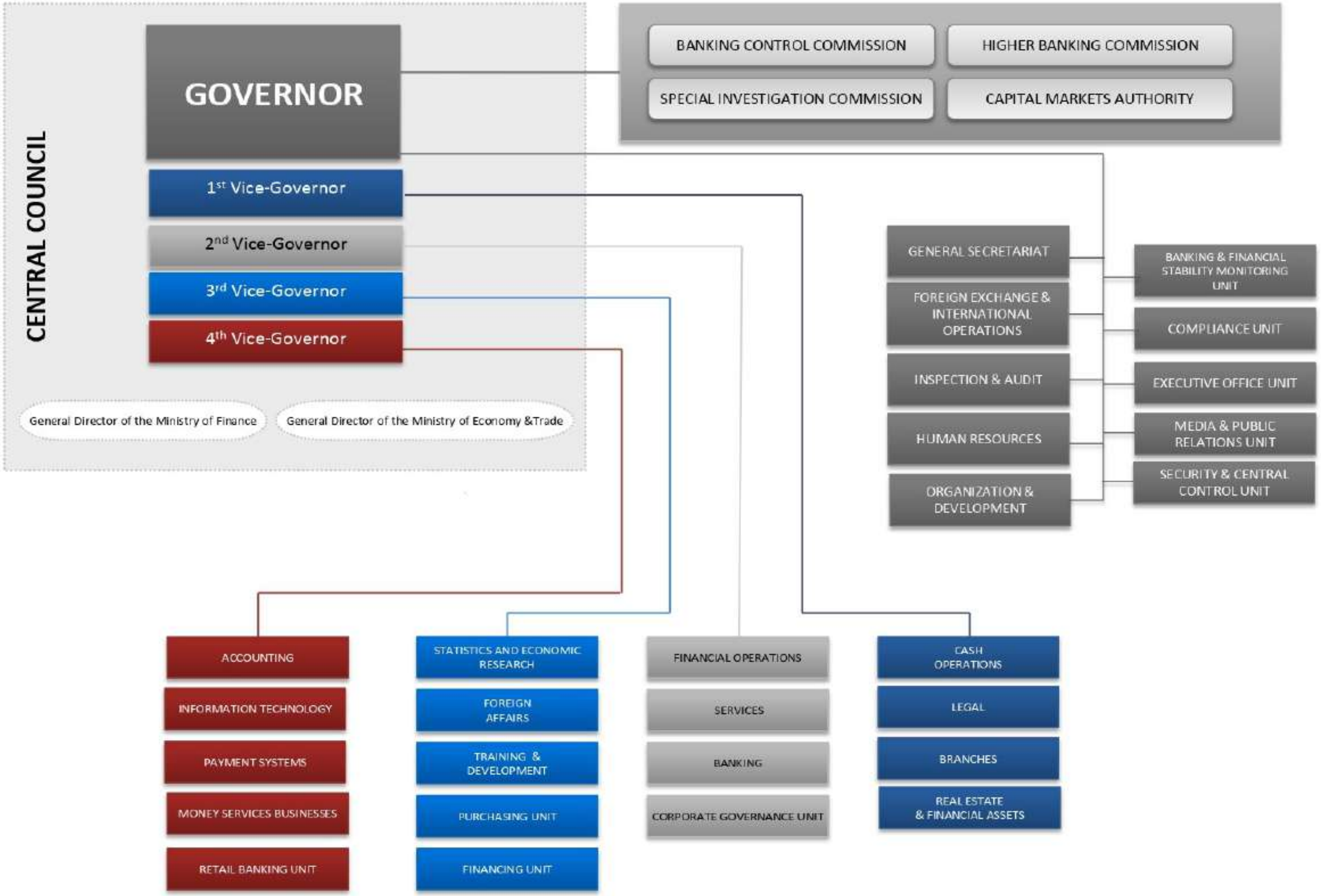

Figure 4 General Regulator's Organization Chart

Source: Official BDL Website available via URL accessed June 9, 2021**:** https://bit.ly/2Xqa0uo

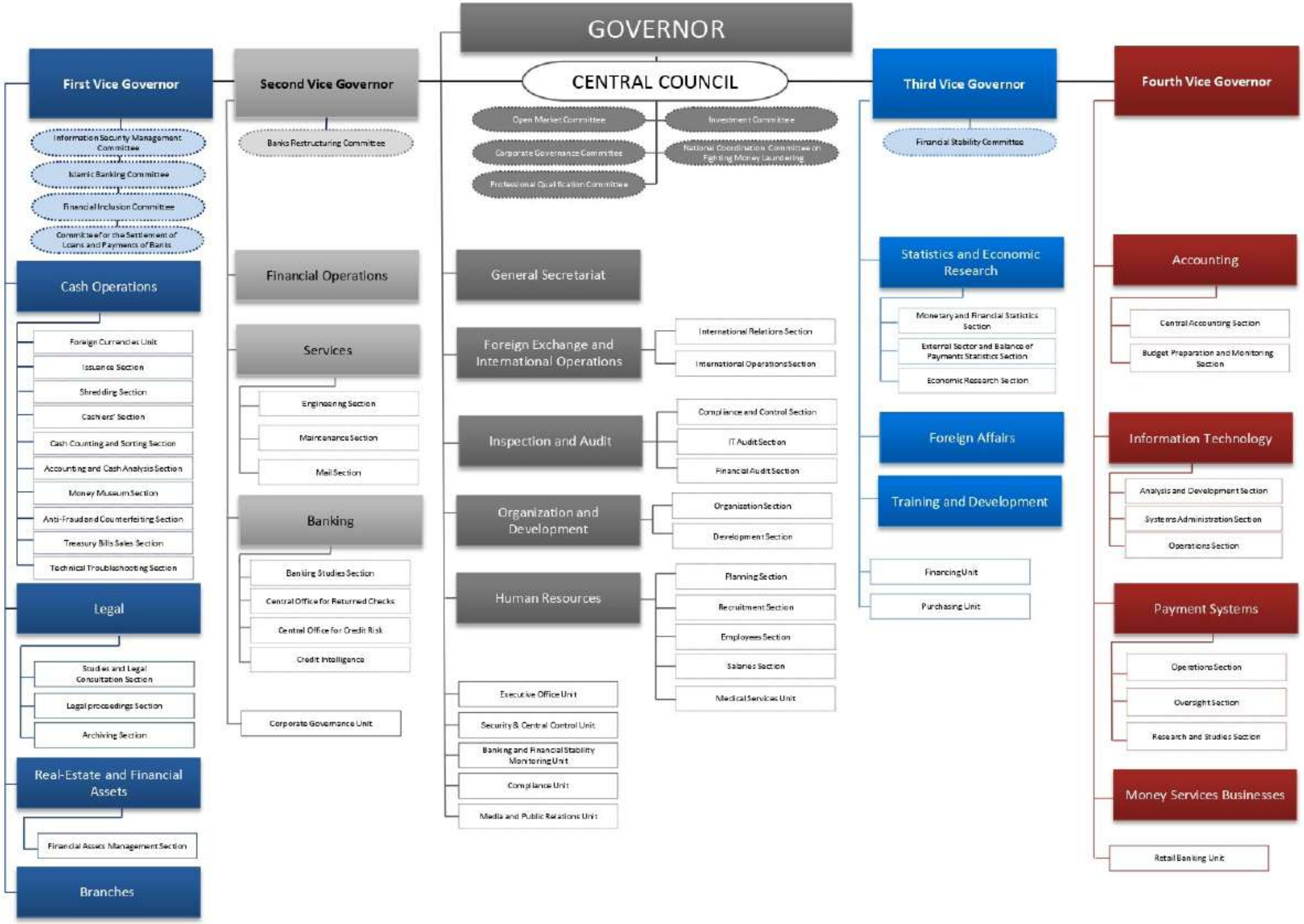

Figure 5 Detailed Governorship Organization Chart:
Source: Official BDL Website available via URL accessed June 9, 2021**:** https://bit.ly/3AhMy0r

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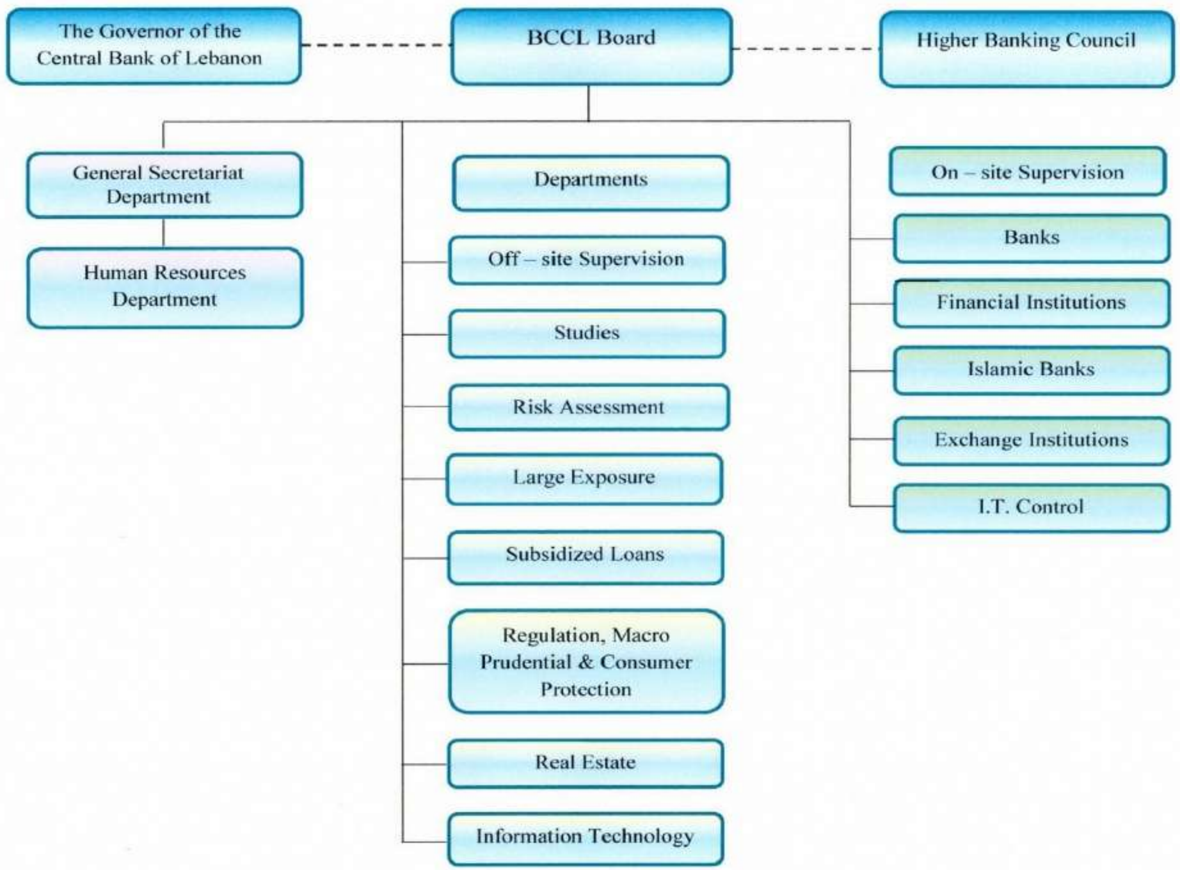


Figure 6 Regulation Main Control Chart by Functions
Source: Official BCCL's Website via URL accessed on June 9, 2021: https://bit.ly/3ErZgwb

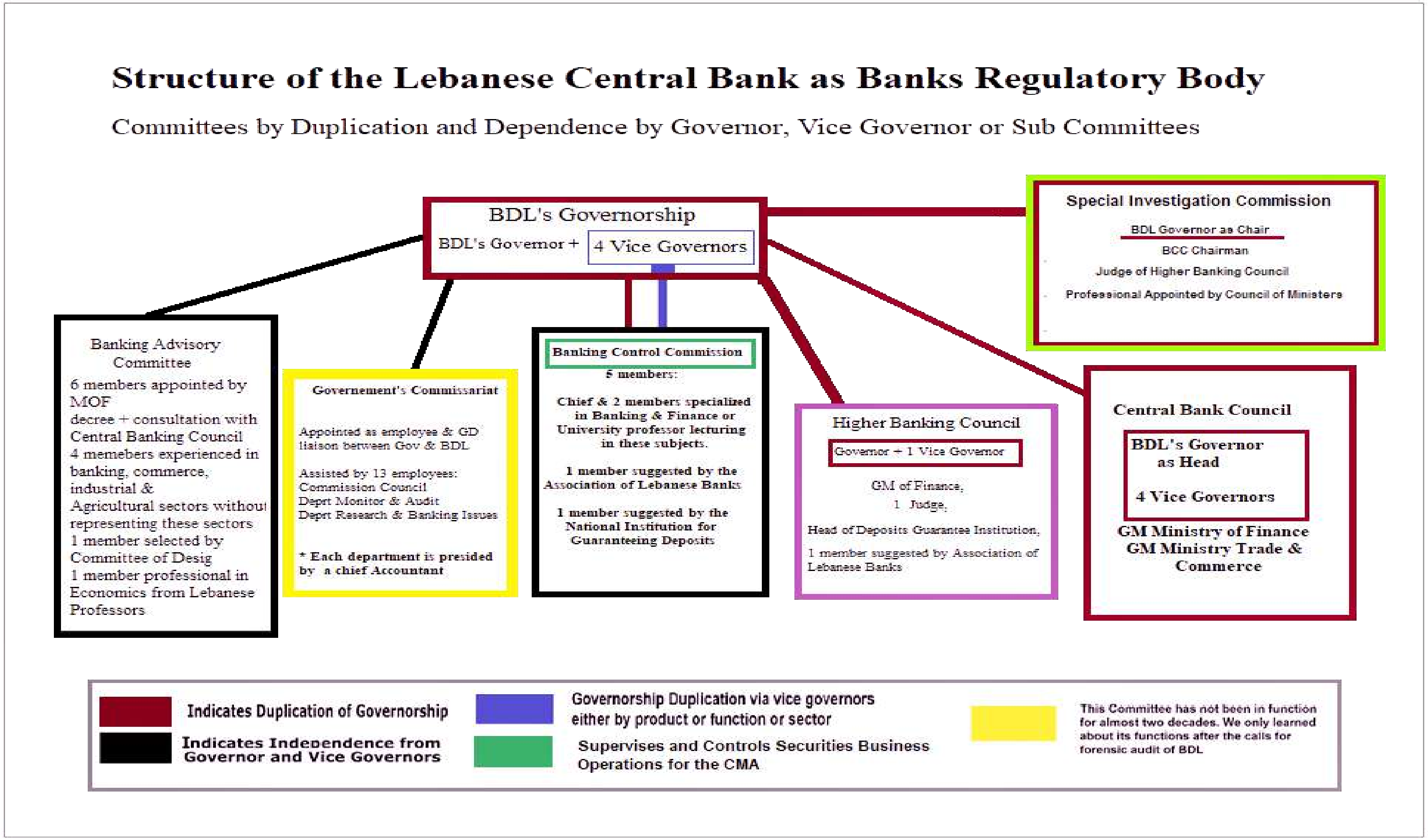


Figure 7 BDL Regulator Bodies by Dependence and Governorship Duplication

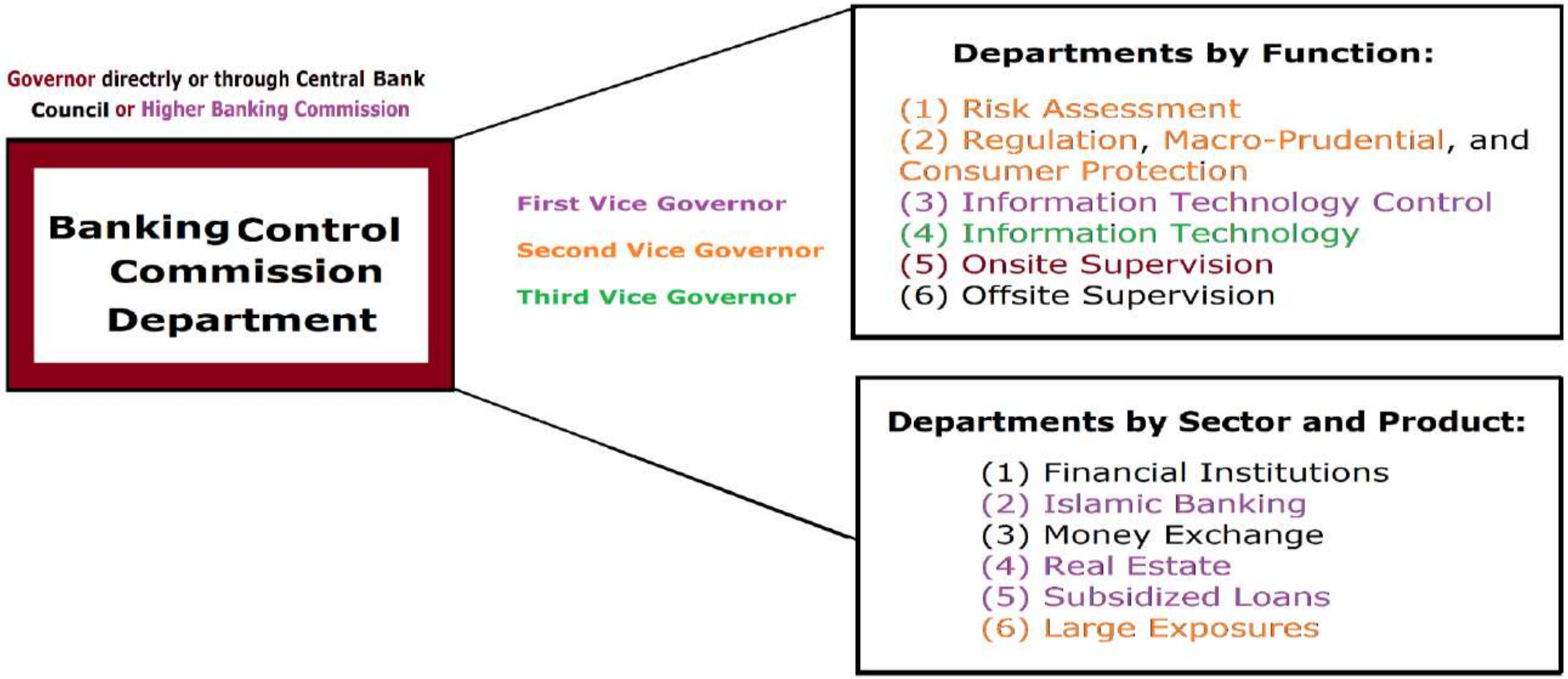


Figure 8 Banking Control Commission and Governorship Reporting Lines another side of Duplication and Dependence

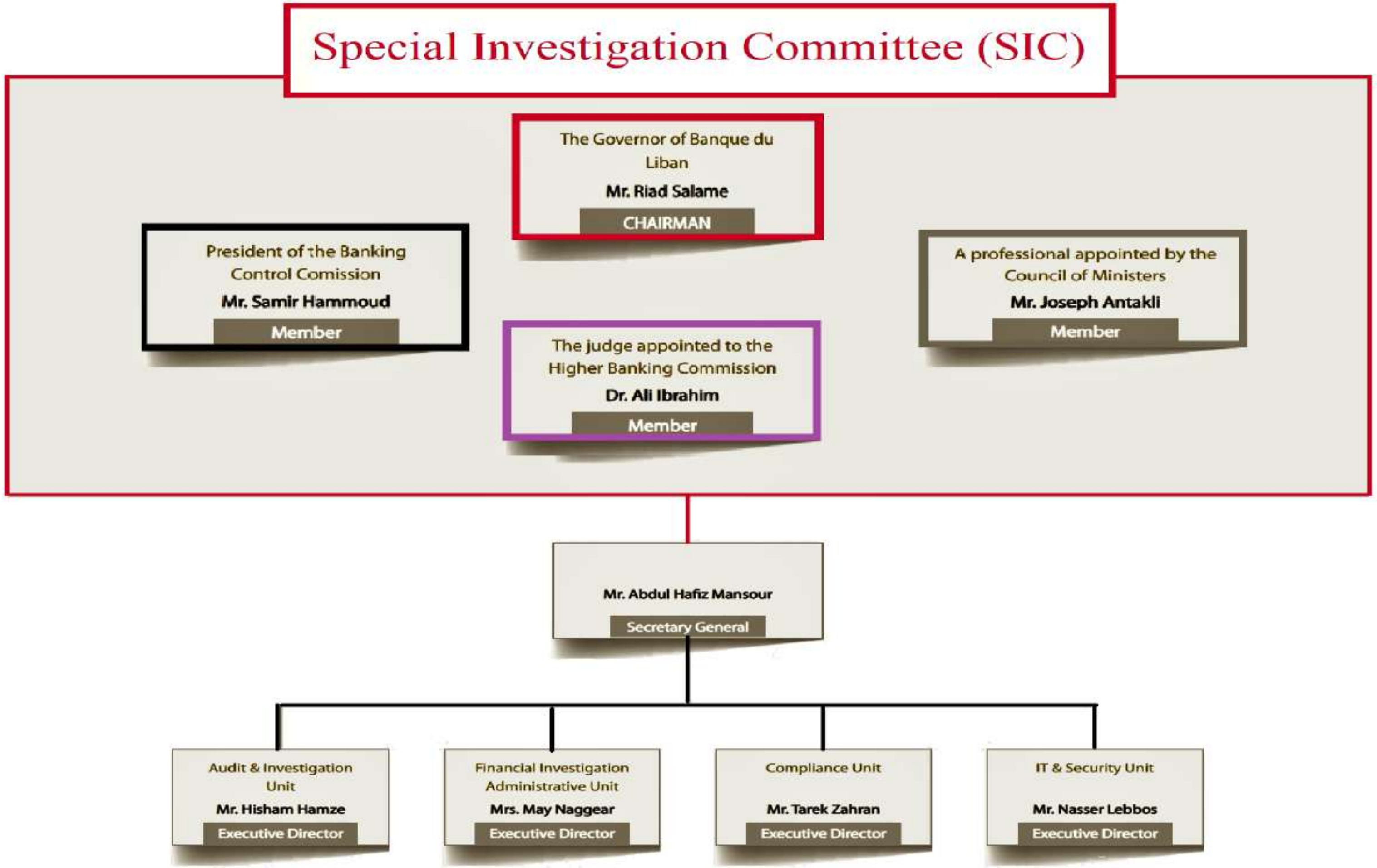


Figure 9 Special Investigation Committee Organization Chart

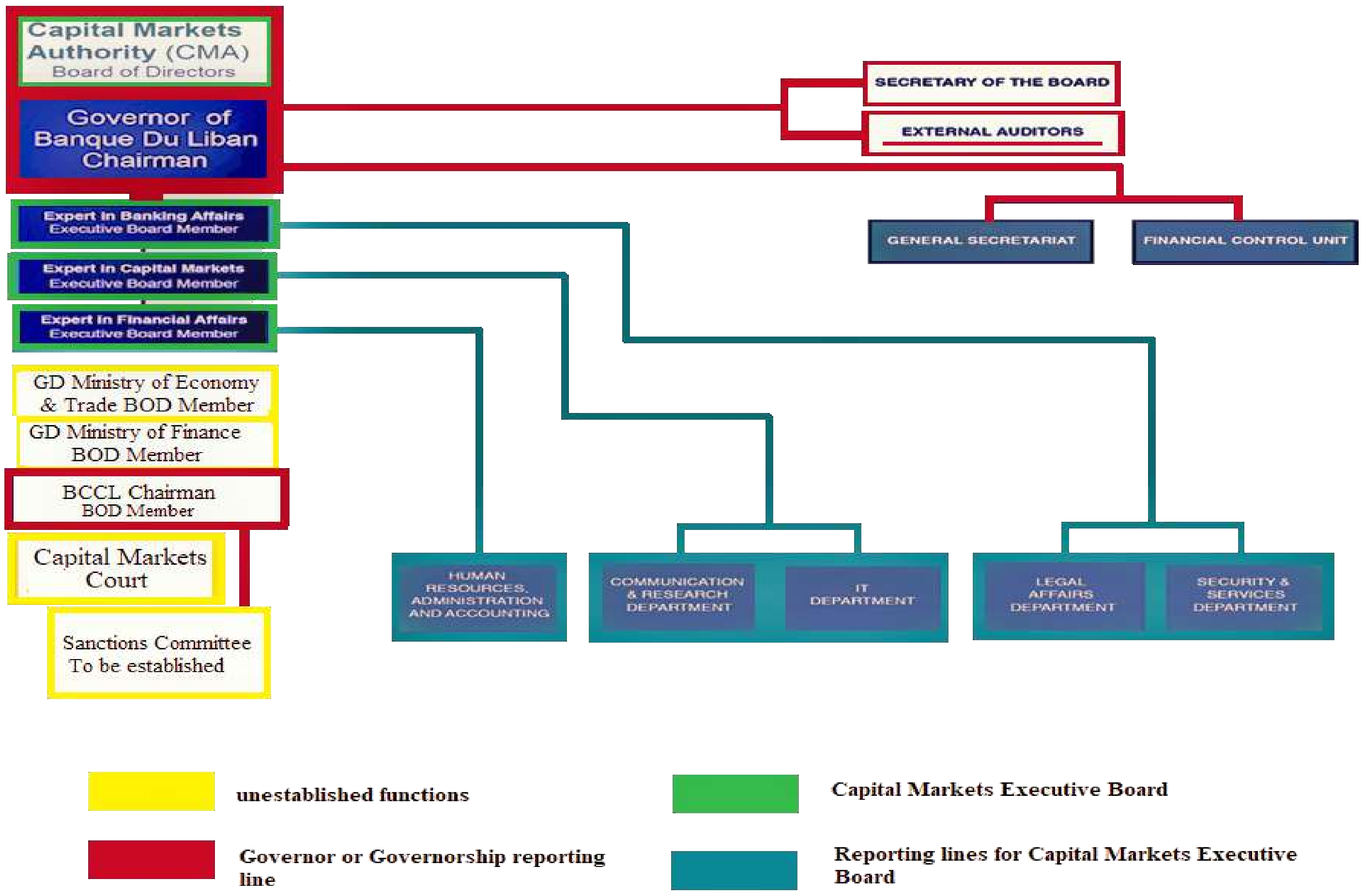


Figure 10 Banque Du Liban and Banks Control Commission Lists of Approved Entities

Category	Task/ Function ANY ADMINISTRATIVE SUPERVISOR OR HEAD OF DEPARTMENT OR ANY PERSON RELATED TO ANY OF THE FOLLOWING TASKS	Lebanese Financial Regulations 5&8	Risk in Financial Services 7	CAMS 3 & 11	Bank Credit 12	Combating Financial Crime 3 & 11	Professional Banker Certificate (PBC) 4&5	Banking Ethics 6	Certified Internal Auditor CIA
1	Branch Manager or Branch Head and those who act as delegate or vice as well as branch manager or regional manager	X				X		X	
2	Treasury (1)	X				X		X	
3	Risk Management (2)	X	X		X			X	
4	Accounting	X						X	
5	Financial Management and Oversight/Control	X	X					X	
6		X	X					X	
7	Credit (analysis, studies, marketing) credit Backoffice to execute all banking operations: asset management, private banking services such as payments, compliance, support, making, and executing purchases or trades,	X			X			X	
8	Establishment, marketing analysis, studies, follow up of retail services (4)	X			X		X	X	
9	Internal Audit and Control (9)	X						X	X
10	Compliance (legal and AML) (3)	X		X				X	
11	Human Resources, individuals: training, development, and recruitment	X						X	
12	Tellers/Head Tellers (4)	X					X	X	

Notes:

(1) The term Treasury means employees working in Middle and Back Office and in relationships with correspondent banks

(2) Only employees working in managing credit risk and credit and credit reviews/checks and not employees working in managing market and operational risks are subject to the exam of Bank Credit

(3) Employees who have an ICA from obtaining certificates in CAMS and Combating Financial Crime

(4) This category includes all those who work in management and branches including Customer Services Officers and Representatives

(5) No equivalence for Lebanese Financial Regulations and Professional Banking Certificates are admissible.

(6) Only an employee with a Business Conduct Certificate is exempted which is included in the CMA Circular from the Banking Ethics

(7) Holders of FRM Level I or CFA Level I are exempted from a Risk In Financial Service Exam.

(8) The Institute for Business Affairs Studies ESA along with the Institute for Banking Studies that is a subsidiary of the Banking Association giving courses for subjects on laws and financial regulations in Lebanon provided that the examinations are conducted in the ESA.

(9) Only those who conduct IT Audit are exempted from the category of Internal Audit and Control

(10) Any employee with 20 years' experience is exempted from all examinations provided he/she spent his/her last 8 years performing the same functions in banking and financial sectors without gaps until 16/08/2016

(11) Holders of a CAMs or Combating Financial Crimes Degree are exempted from the other degree requirement.

(12) The Institute for Banking Studies that is a subsidiary of the Banking Association will provide courses on the subject of Bank Credit provided that the examinations take place in the ESA.

Figure 11 Educational & Professional Skills by Function as of August 2017 according to Intermediate Circular 470

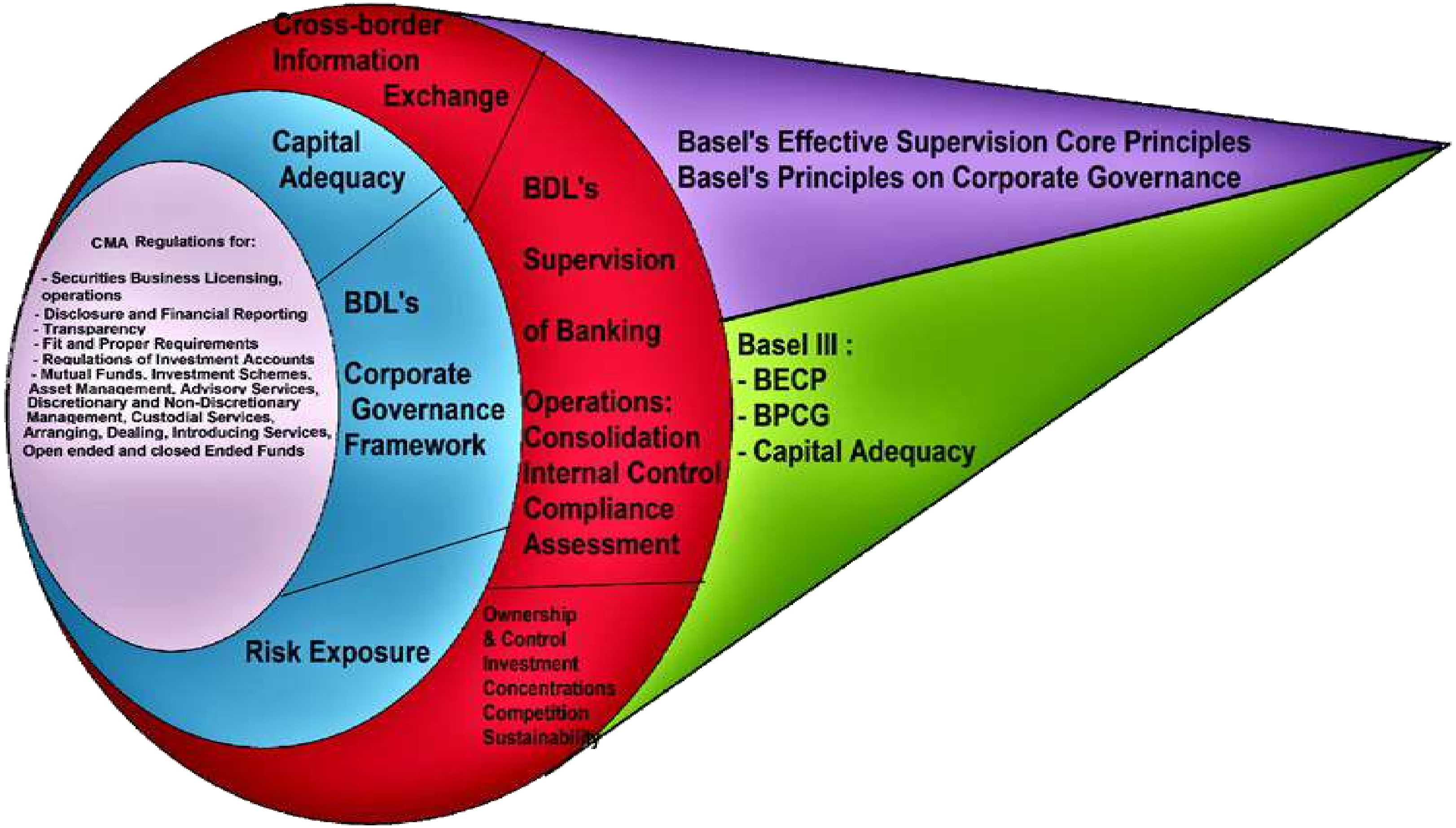


Figure 12 Effective Corporate Governance 3-Tiered System

Figure 13 Consolidated vs Integrated Supervision

Figure 14 Wealth Management Corporate Governance Cube

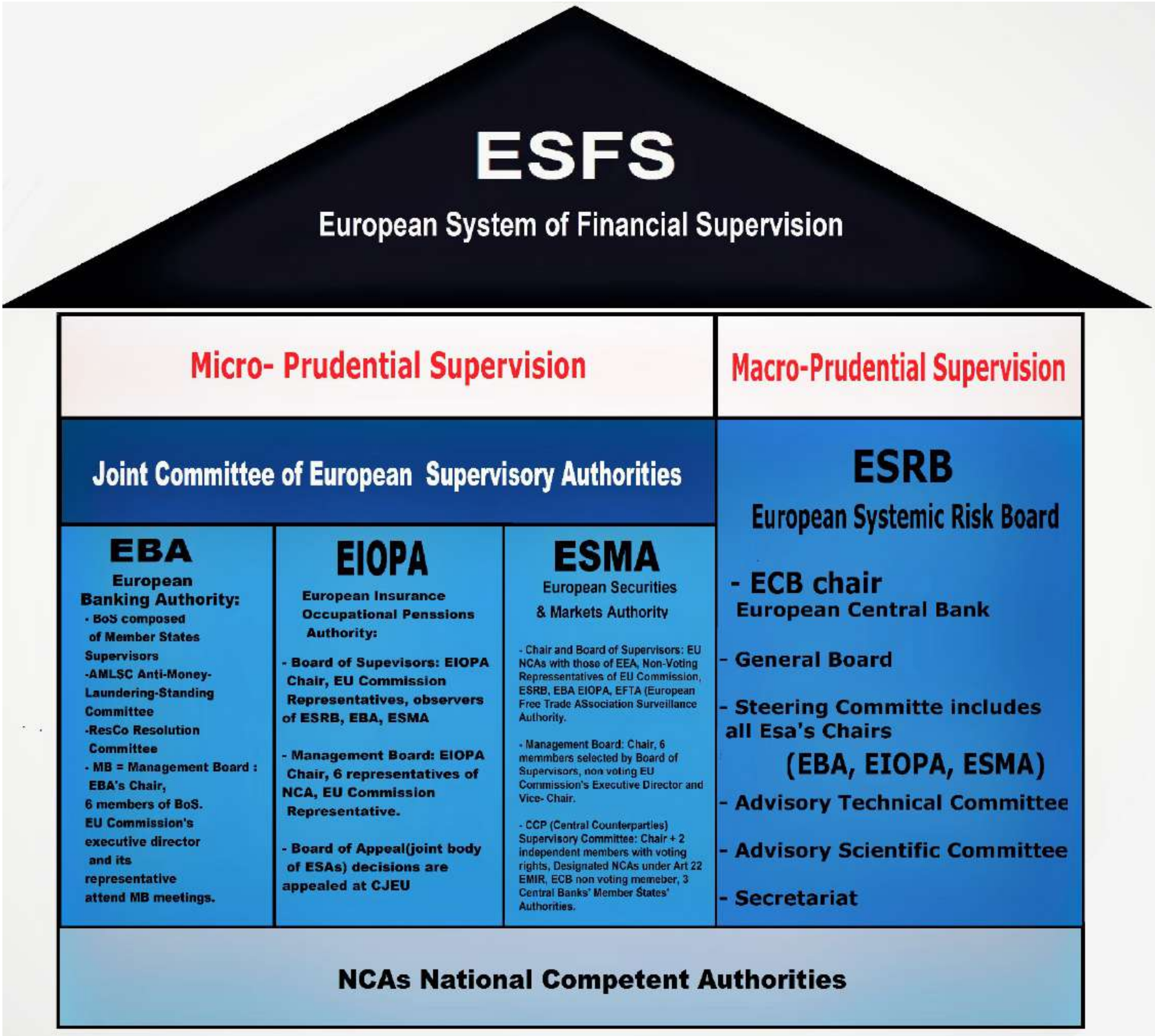


Figure 15 Financial Supervision System - Macro & Micro

Source: Official ESRB Website, available via URL accessed June 9, 2021: https://bit.ly/3nH81wq

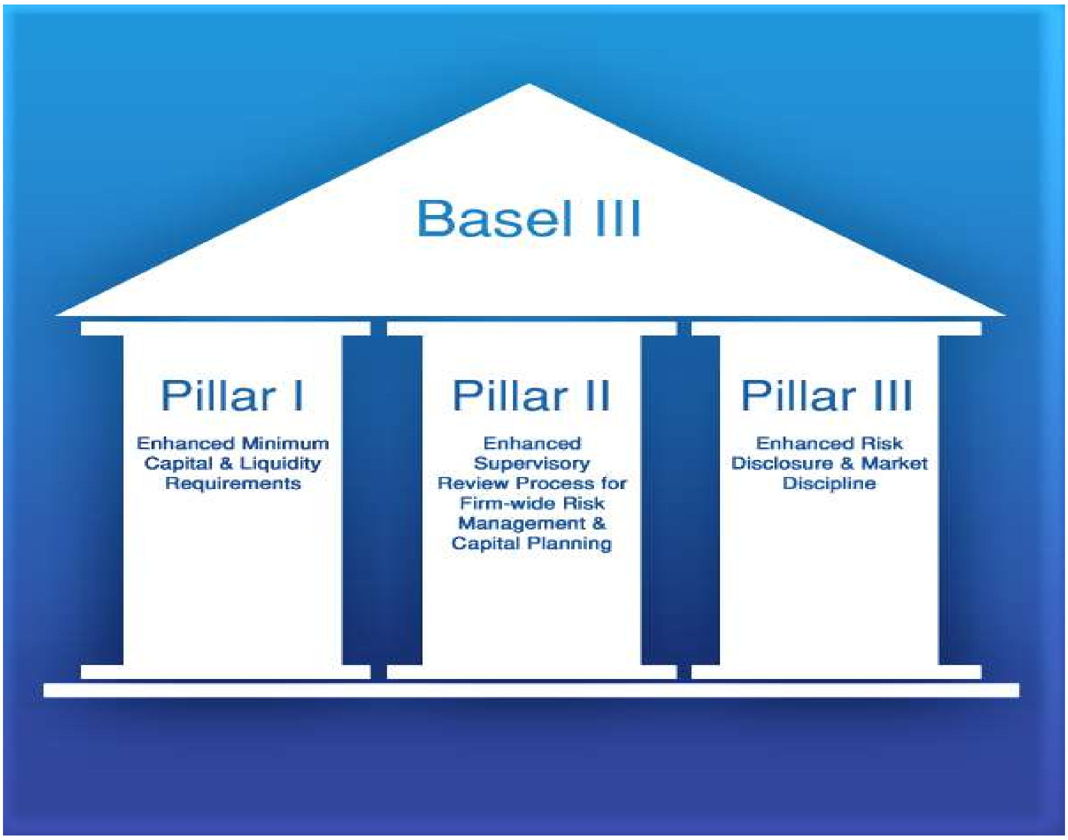


Figure 16 Basel III Pillars

Nea Matilainen, The European Banking Regulatory Framework in Turning Point: How are the Evolving Banking Regulations Reshaping Banking Business in the European Union, a 2014 International Business Bachelors Thesis from University of Haaga-Helia for Applied Sciences, published via Theseus Open Repository for Theses, page 27, available via link accessed on June 7, 2021 https://www.theseus.fi/bitstream/handle/10

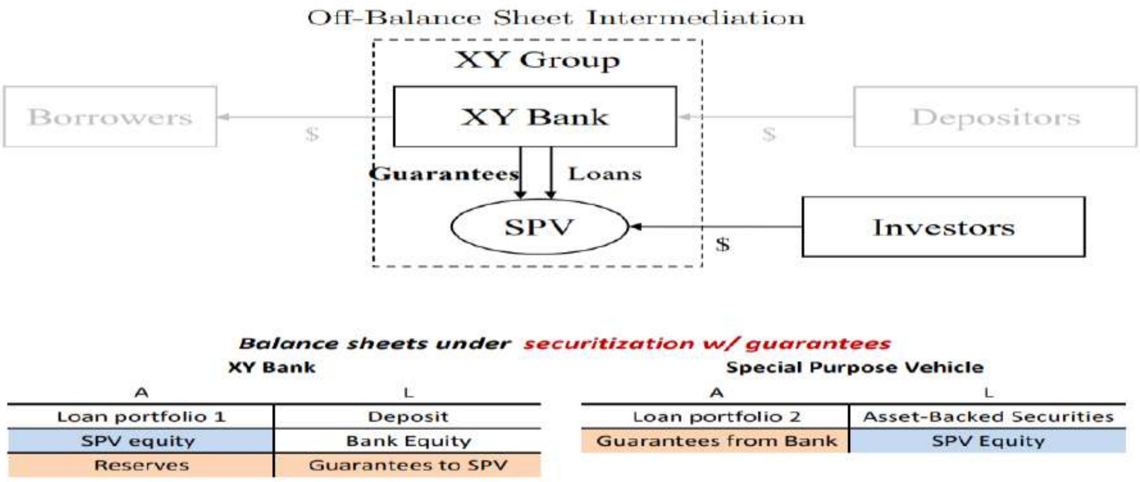


Figure 17 Balance Sheets of Bank and SPV in Securitization

Source: Ann Wang, Essays on Market Frictions and Securitization, a dissertation for the title of Doctor of Philosophy of Financial Economics and International Finance from the University of Maryland, United States of America, 2016, page 8, accessed via the University of Maryland's Research Digital Repository on May 7, 2021, via: https://bit.ly/2TXYAM6 .

Figure 18 EU Major Governing Bodies

Source: Official European Union Website via URL accessed on June 9, 2021: https://bit.ly/3hHYLUK

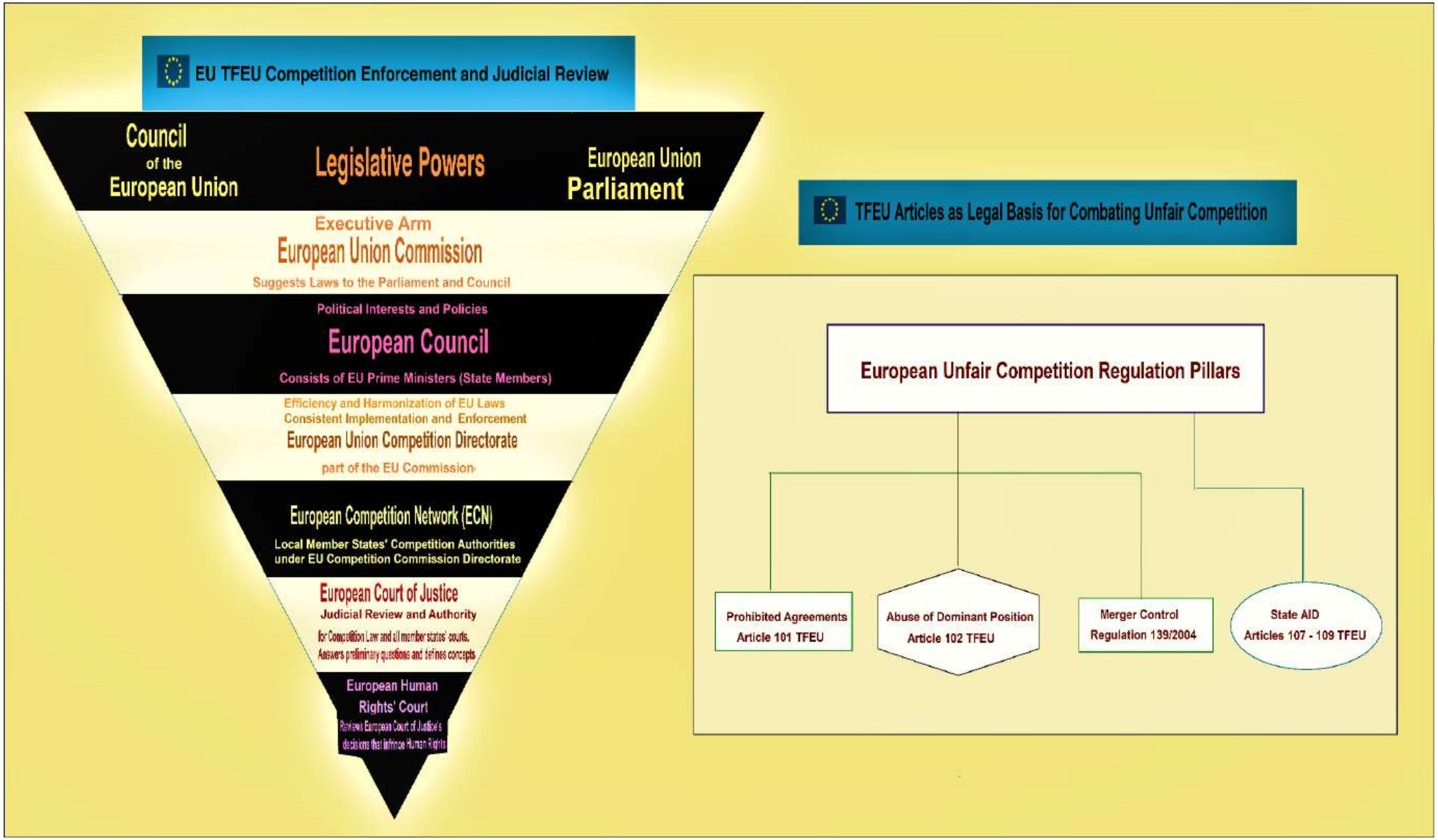


Figure 19 TFEU Competition Enforcement Regime and Pillars

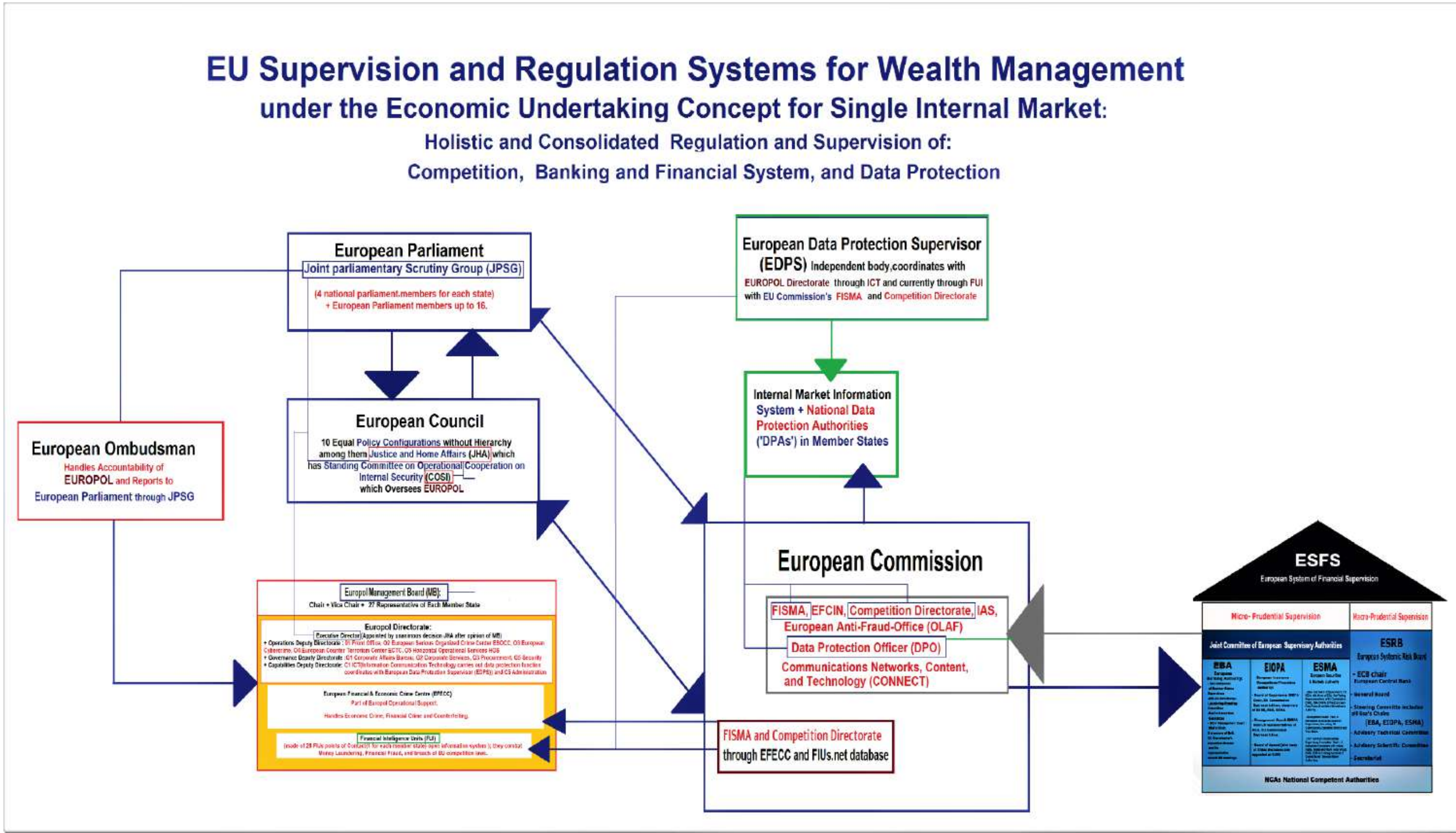


Figure 20 Holistic Wealth Management Corporate Governance in European Union

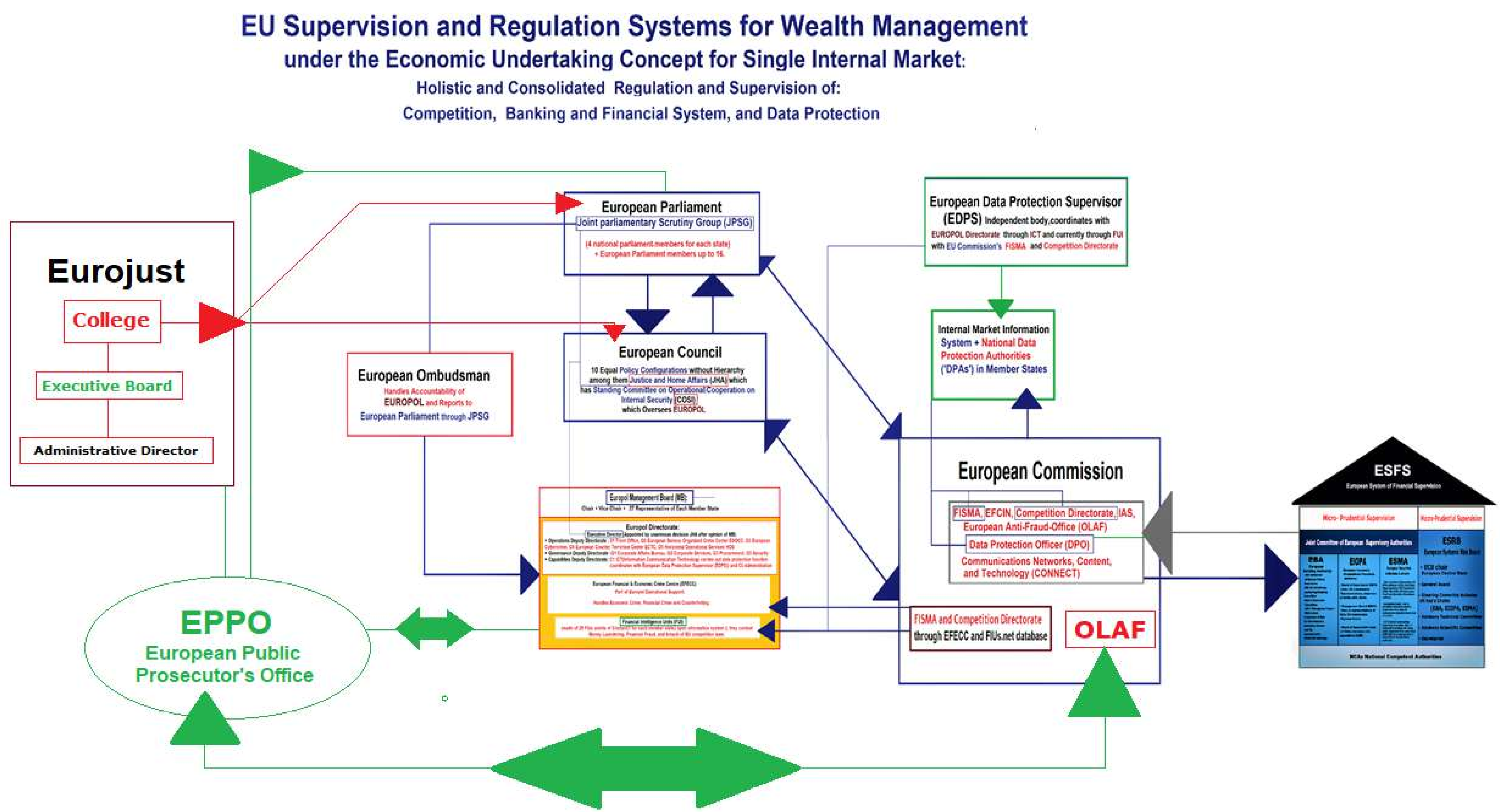
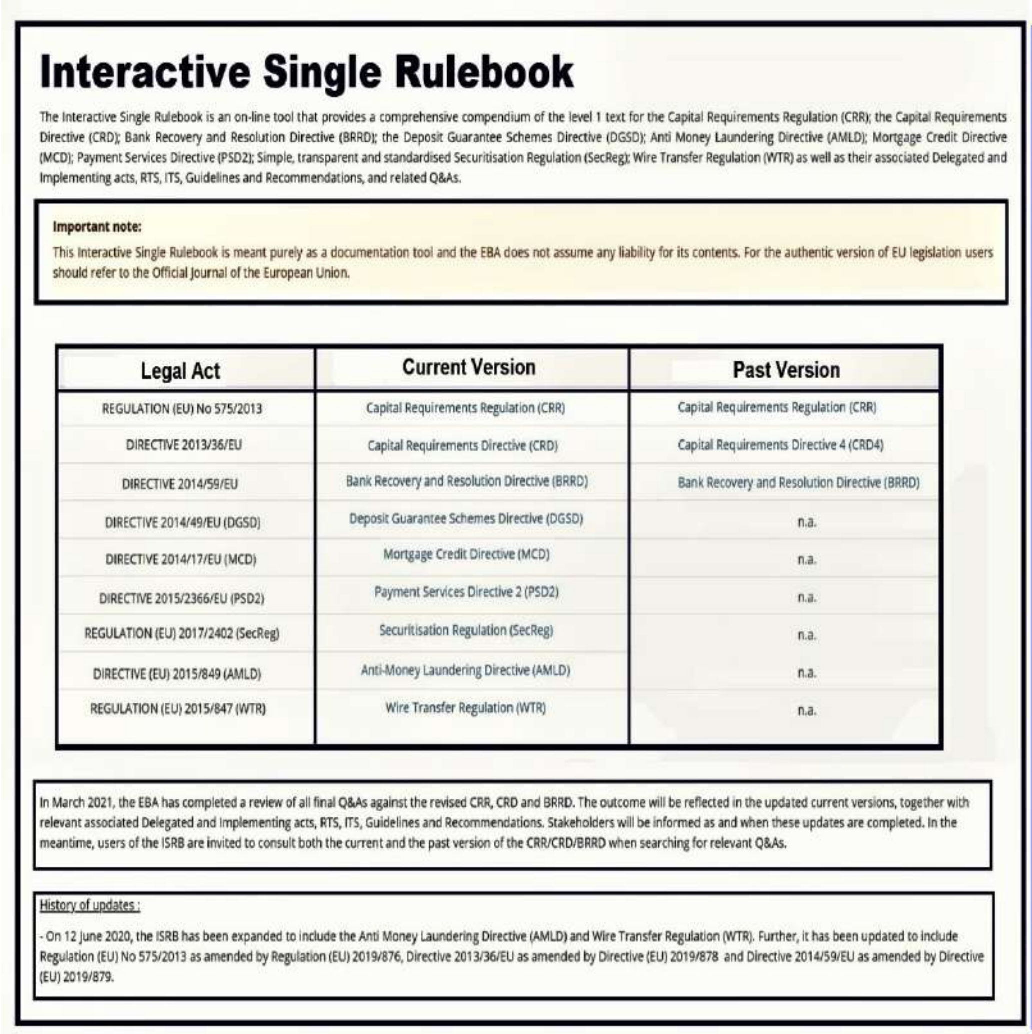


Figure 21 Holistic RBA Compliance Governance in EU



Interactive Single Rulebook

The Interactive Single Rulebook is an on-line tool that provides a comprehensive compendium of the level 1 text for the Capital Requirements Regulation (CRR); the Capital Requirements Directive (CRD); Bank Recovery and Resolution Directive (BRRD); the Deposit Guarantee Schemes Directive (DGSD); Anti Money Laundering Directive (AMLD); Mortgage Credit Directive (MCD); Payment Services Directive (PSD2); Simple, transparent and standardised Securitisation Regulation (SecReg); Wire Transfer Regulation (WTR) as well as their associated Delegated and Implementing acts, RTS, ITS, Guidelines and Recommendations, and related Q&As.

Important note:
This Interactive Single Rulebook is meant purely as a documentation tool and the EBA does not assume any liability for its contents. For the authentic version of EU legislation users should refer to the Official Journal of the European Union.

Legal Act	Current Version	Past Version
REGULATION (EU) No 575/2013	Capital Requirements Regulation (CRR)	Capital Requirements Regulation (CRR)
DIRECTIVE 2013/36/EU	Capital Requirements Directive (CRD)	Capital Requirements Directive 4 (CRD4)
DIRECTIVE 2014/59/EU	Bank Recovery and Resolution Directive (BRRD)	Bank Recovery and Resolution Directive (BRRD)
DIRECTIVE 2014/49/EU (DGSD)	Deposit Guarantee Schemes Directive (DGSD)	n.a.
DIRECTIVE 2014/17/EU (MCD)	Mortgage Credit Directive (MCD)	n.a.
DIRECTIVE 2015/2366/EU (PSD2)	Payment Services Directive 2 (PSD2)	n.a.
REGULATION (EU) 2017/2402 (SecReg)	Securitisation Regulation (SecReg)	n.a.
DIRECTIVE (EU) 2015/849 (AMLD)	Anti-Money Laundering Directive (AMLD)	n.a.
REGULATION (EU) 2015/847 (WTR)	Wire Transfer Regulation (WTR)	n.a.

In March 2021, the EBA has completed a review of all final Q&As against the revised CRR, CRD and BRRD. The outcome will be reflected in the updated current versions, together with relevant associated Delegated and Implementing acts, RTS, ITS, Guidelines and Recommendations. Stakeholders will be informed as and when these updates are completed. In the meantime, users of the ISRB are invited to consult both the current and the past version of the CRR/CRD/BRRD when searching for relevant Q&As.

History of updates :
- On 12 June 2020, the ISRB has been expanded to include the Anti Money Laundering Directive (AMLD) and Wire Transfer Regulation (WTR). Further, it has been updated to include Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876, Directive 2013/36/EU as amended by Directive (EU) 2019/878 and Directive 2014/59/EU as amended by Directive (EU) 2019/879.

Figure 22 EU Single Rulebook and Basel III vs EU Regulations

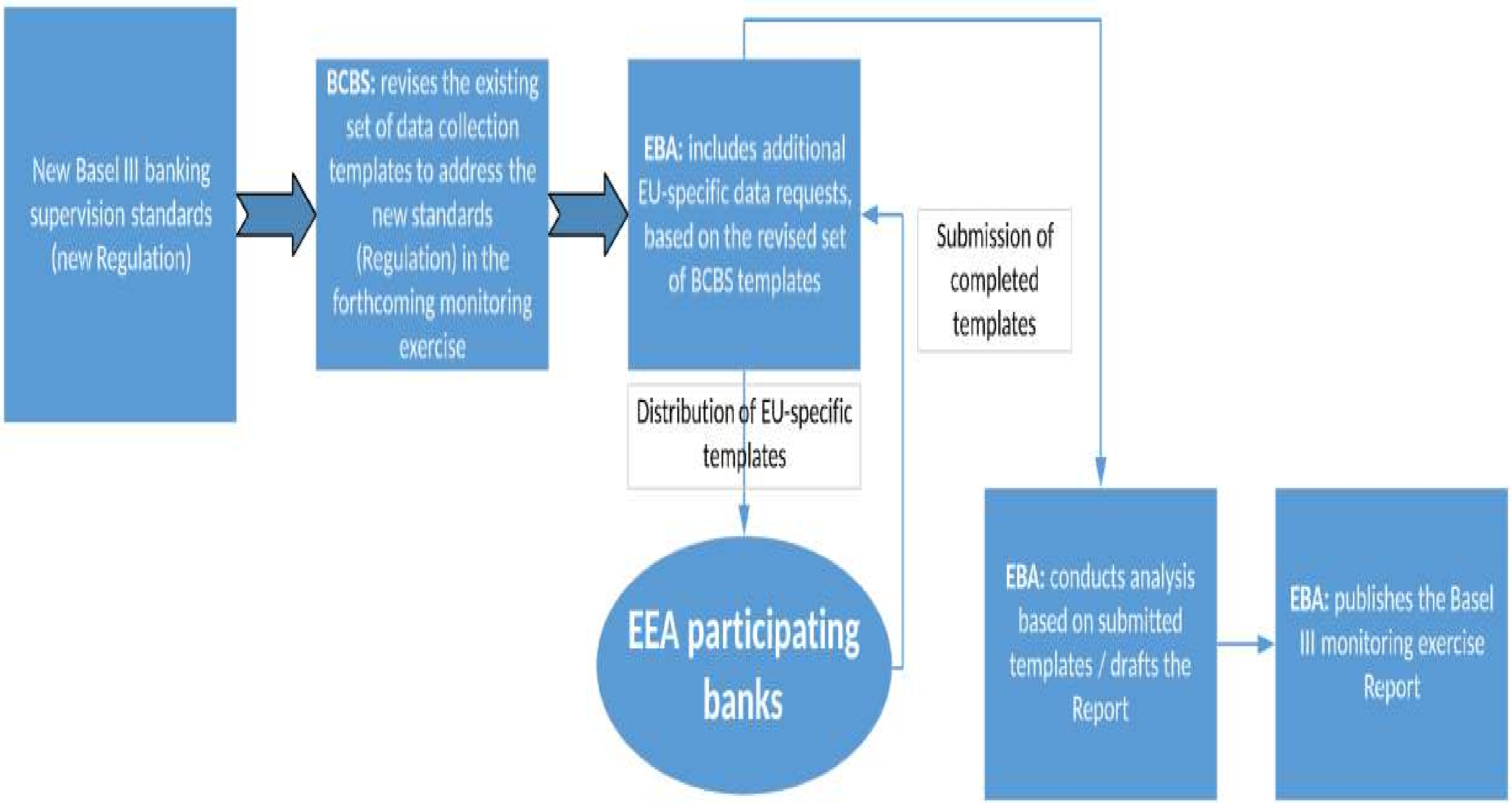


Figure 23 EBA Overseeing Basel III in EU
Source: EBA's Official Website, https://bit.ly/3tKQ7db

Figure 24 Five Tiers of Audit Competency

Source: Ann Butera, Mastering the Five Tiers of Audit Competency, The Essence of Effective Auditing, Internal Audit, and IT Audit Series, first edition, CRC Press, an Auerbach Book, by Tylor and Francis Group, New York, United States of America, 2016, page 19.

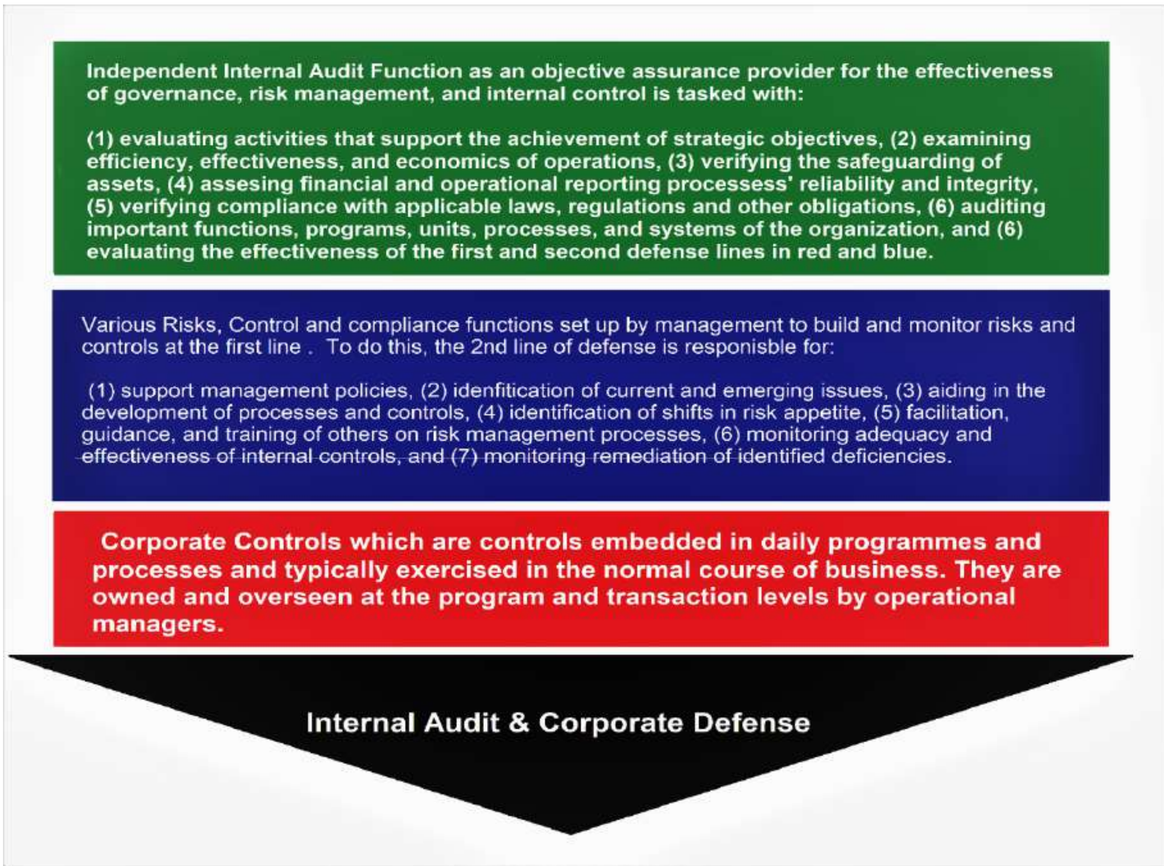


Figure 25 Internal Audit and Corporate Defense

Source: Sean Lyons, Corporate Defense and the Value Preservation Imperative, Bulletproof Your Corporate Defense Program, the Internal Audit, and IT Audit Series, first edition, an Auerbach Book, CRC Press, published by Taylor and Francis Group, Florida, United States of America, 2017, page 98.

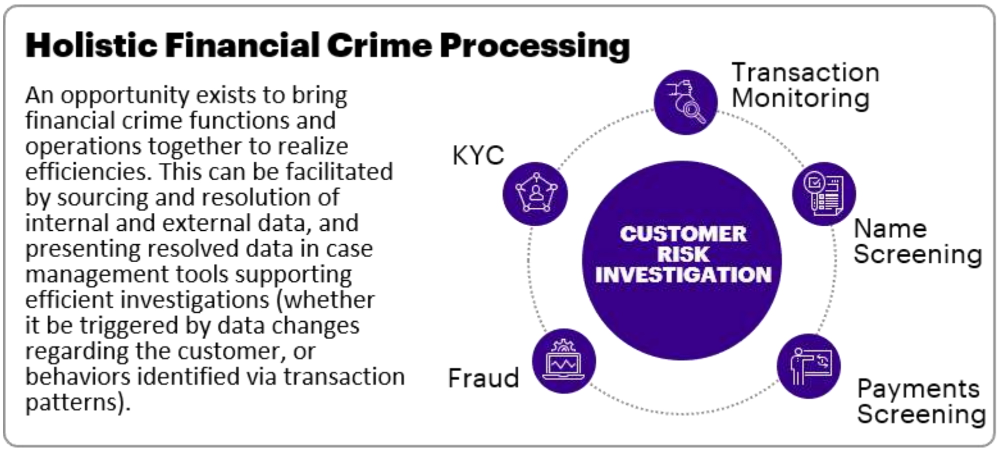
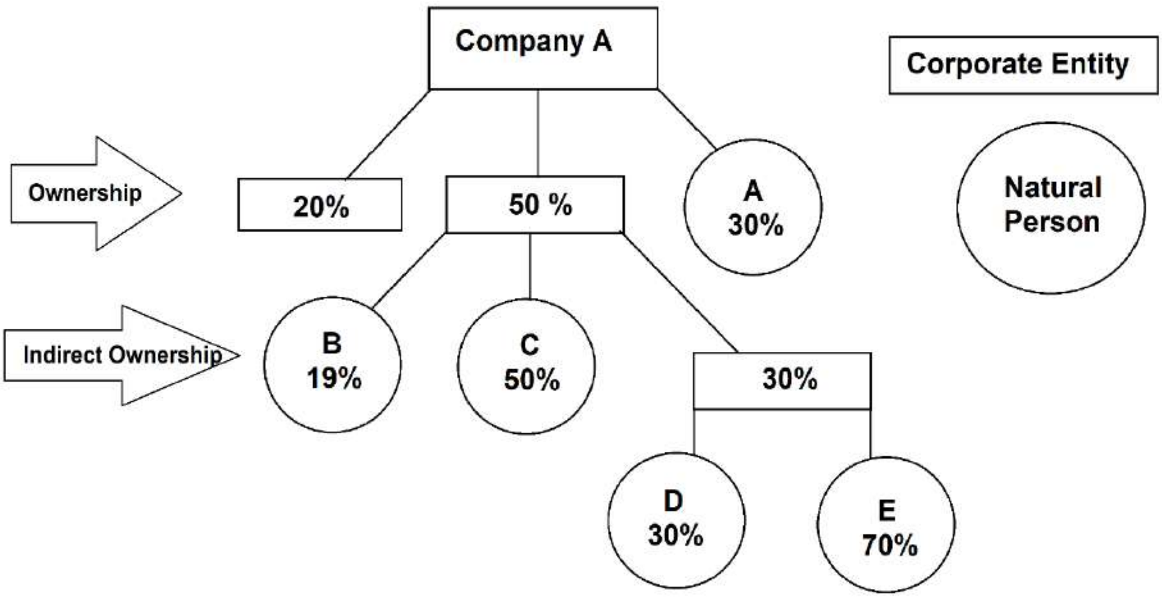


Figure 26 Holistic Financial Crime Processing

Source: Archit Chameria, The Path to Holistic Financial Crime Compliance, an Accenture Financial Services Blog article, published on June 26, 2020, available via URL accessed July 27, 2021: https://accntu.re/2YVsIds

Figure 27 Money Laundering Crimes under EU AMLD
Source: Comply Advantage: Looking Ahead to the 6th Anti Money Laundering Directive, via URL accessed on August 17, 2021: https://bit.ly/3tMjQlO



Who is the Ultimate Beneficial Owner of Company A according to the laws of the following countries?

Person	Germany Company Law Approach	Italy Bottom-Up Approach	Luxembourg Top-Down Approach
A	✓	✓	✓
B	✗	✗	✗
C	(✓)[1)]	✓	✗
D	✗	✓	✗
E	✗	✓	✗
Notes:	1) Should be considered risk-based		

Figure 28 Beneficial Ownership Identification Mechanism as an Example of Supranational Risk and Hyper Regulation for Compliance Management Systems in EU

Source: European Commission, Impact Assessment: Accompanying the Anti-Money Laundering Package, a Staff Working Document, No.190 final/(2021)SWD, July 20, 2021, Brussels, Belgium, page 16, via URL accessed on August 21, 2021: https://bit.ly/3EoPYAO

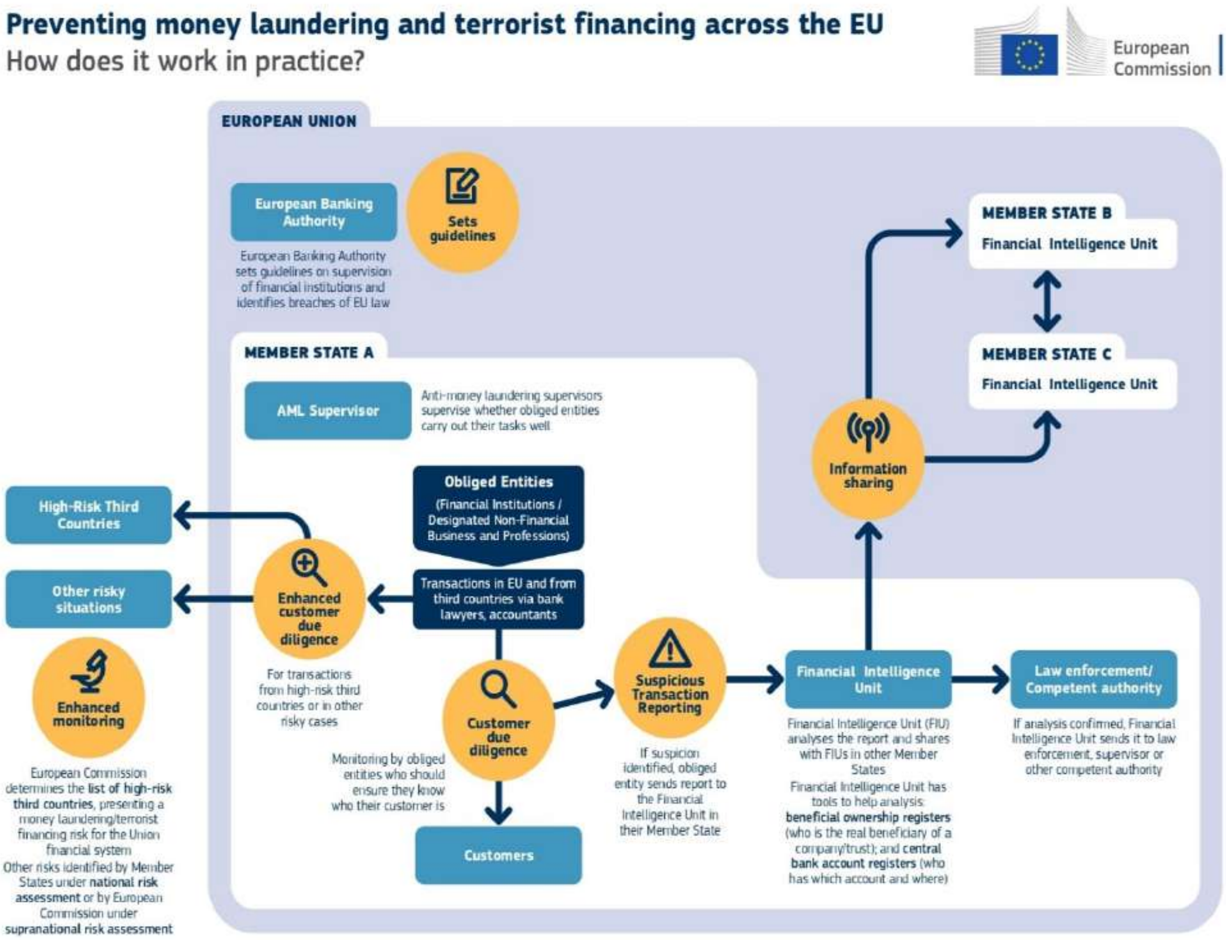


Figure 29 How the 6th AMLCT Directive Works

Source: European Commission's Official Website via URL accessed on August 21, 2021: https://bit.ly/3nEBzdW

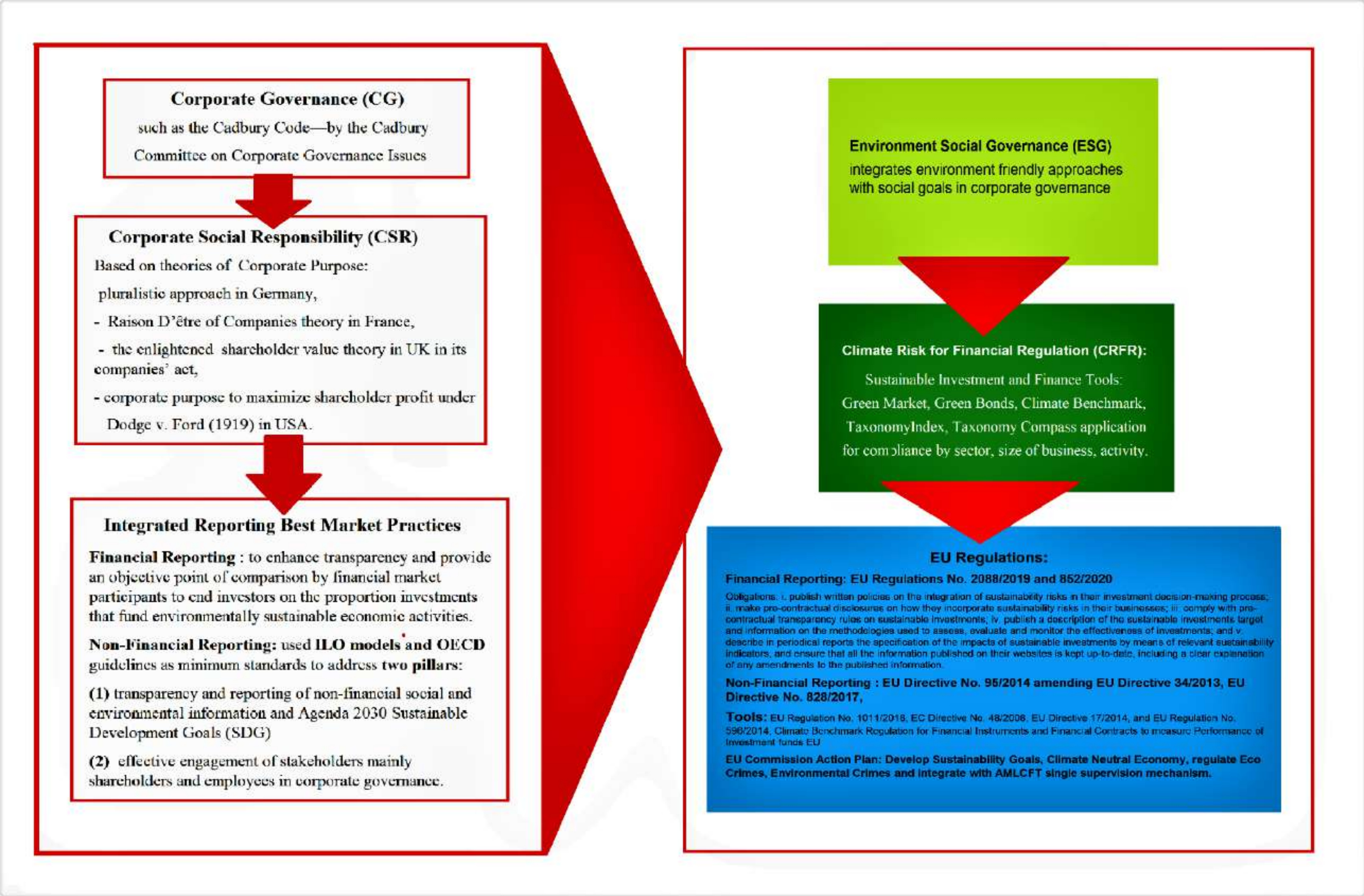


Figure 30 Evolution of CSR to ESG in the European Union with European Sustainability Framework

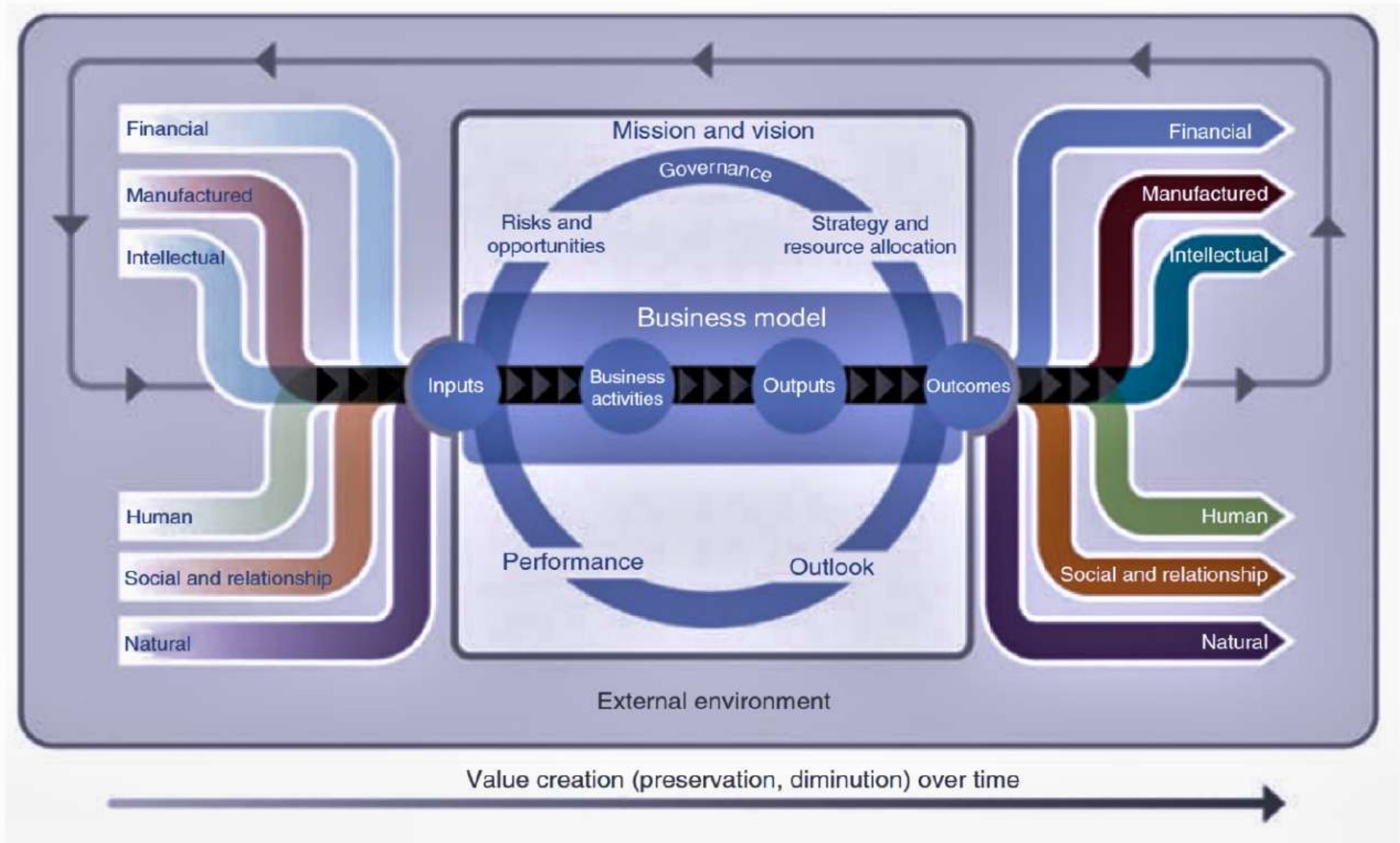


Figure 31 Integrated Reporting Holistic ESG Approach in EU

Source: International Integrating Reporting Council (IIRC), The International Integrated Reporting Framework, guide, published for the Value Reporting Foundation under the Sustainability and Accounting Standards Board (SASB), on December 2013, page 13, available via URL accessed December 29, 2021: https://bit.ly/3HqzJVh .

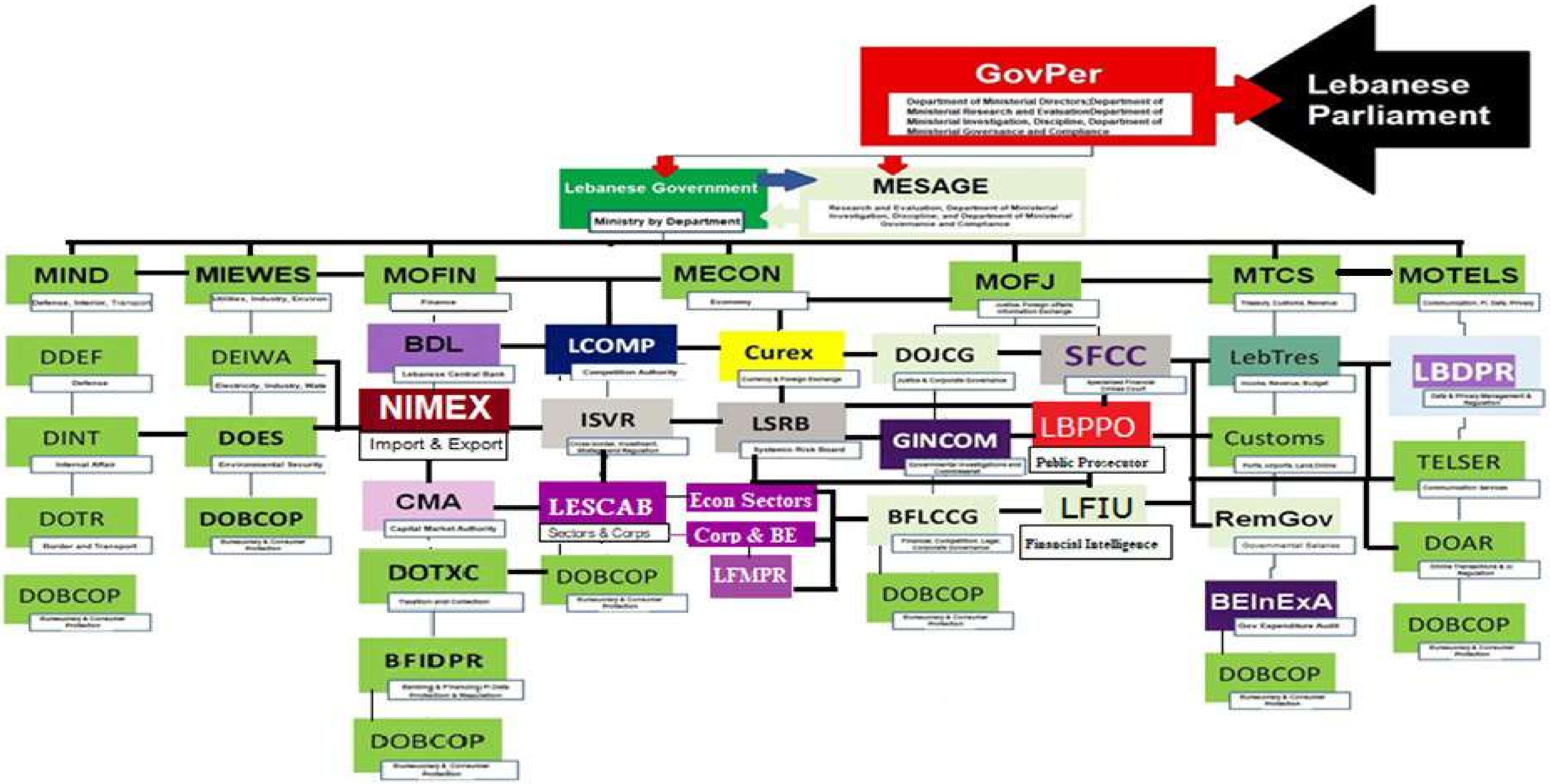
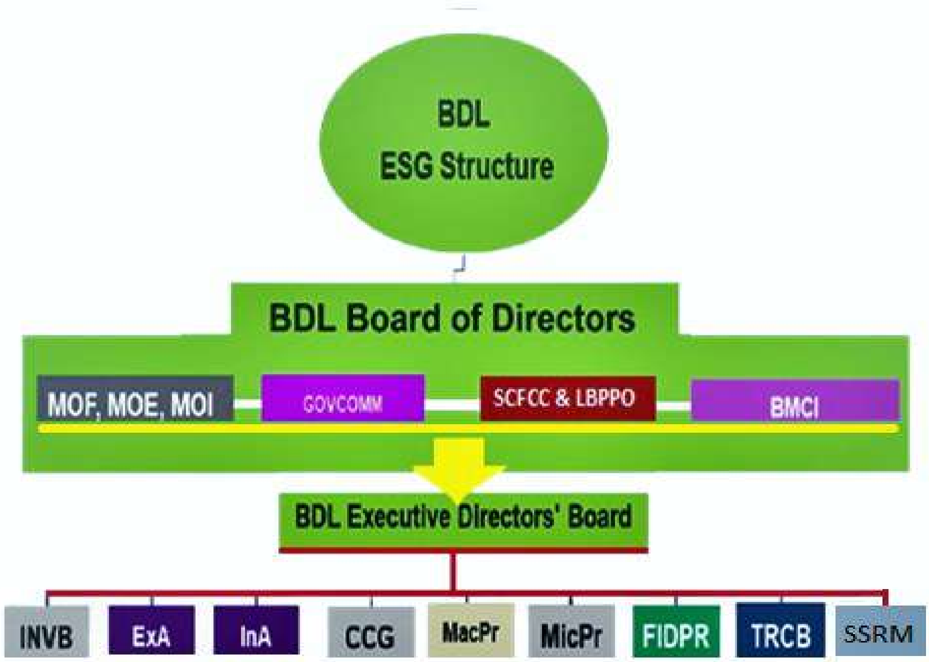


Figure 32 Setting the Tone at the Top: Ministries and Regulators

GovPer: Permanent Parliamentary Committee for Governmental Oversight; MESSAGE: Ministry of Enforcement, Regulatory Research, Social Accountability, Governance, Environment Compliance; MIND: Ministry of Interior, Defense, Transport and Border Control; MIEWS: Ministry of Industry, Electricity, Water and Environmental Services; MOFIN: Ministry of Finance; MECON: Ministry of Economy; MOFJ: Ministry of Foreign Affairs and Justice; MTCS: Ministry of Customs, and Revenue Services; MOTELS: Ministry of Telecommunication Services; LBDPR: Lebanese Data and Privacy Protection Regulator; LBPPO: Lebanese Public Prosecutors' Office; LFIU: Lebanese Financial Intelligence Units Regulator; GINCOM: Governmental Investigations and Commissariat; NIMEX: National Import and Export Regulator; CurEx: Lebanese Currency and Foreign Exchange Regulator; LCOMP: Lebanese Competition Regulator; LebTres: Lebanese Treasury, Income and Budget Regulator; SFCC: Specialized Financial Crimes' Court; LSRB: Lebanese Systemic Risk Board; LESCAB: Lebanese Economic Sectors Regulator; LFMPR: Lebanese Fitness Management and Performance; Econ Sectors Corp & BE: Corporations, and Business Enterprises Regulator;



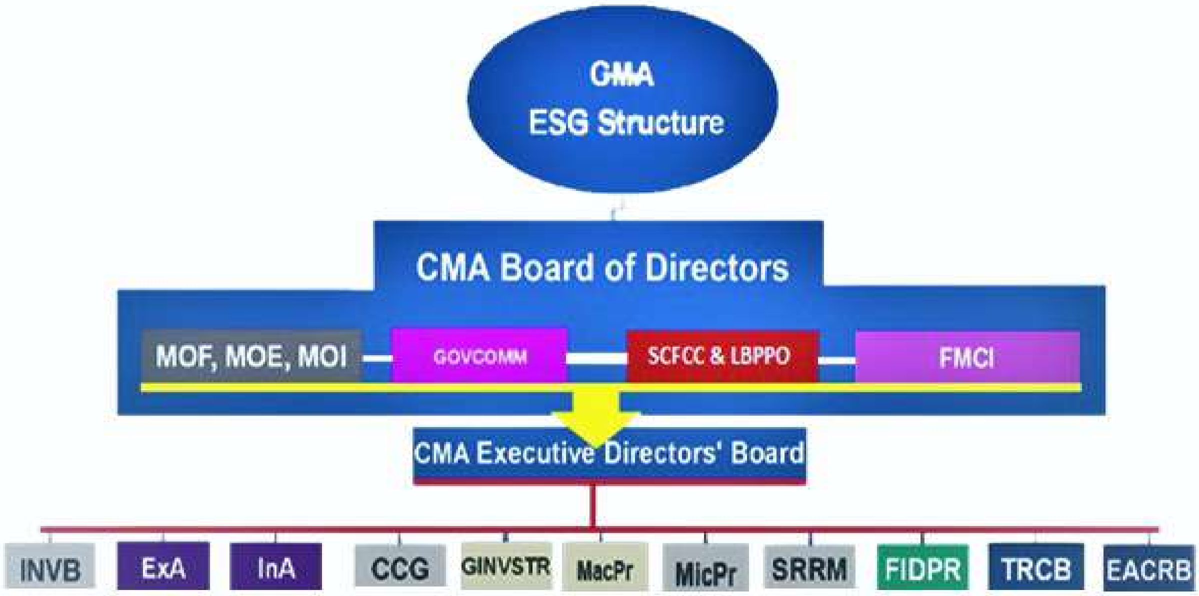
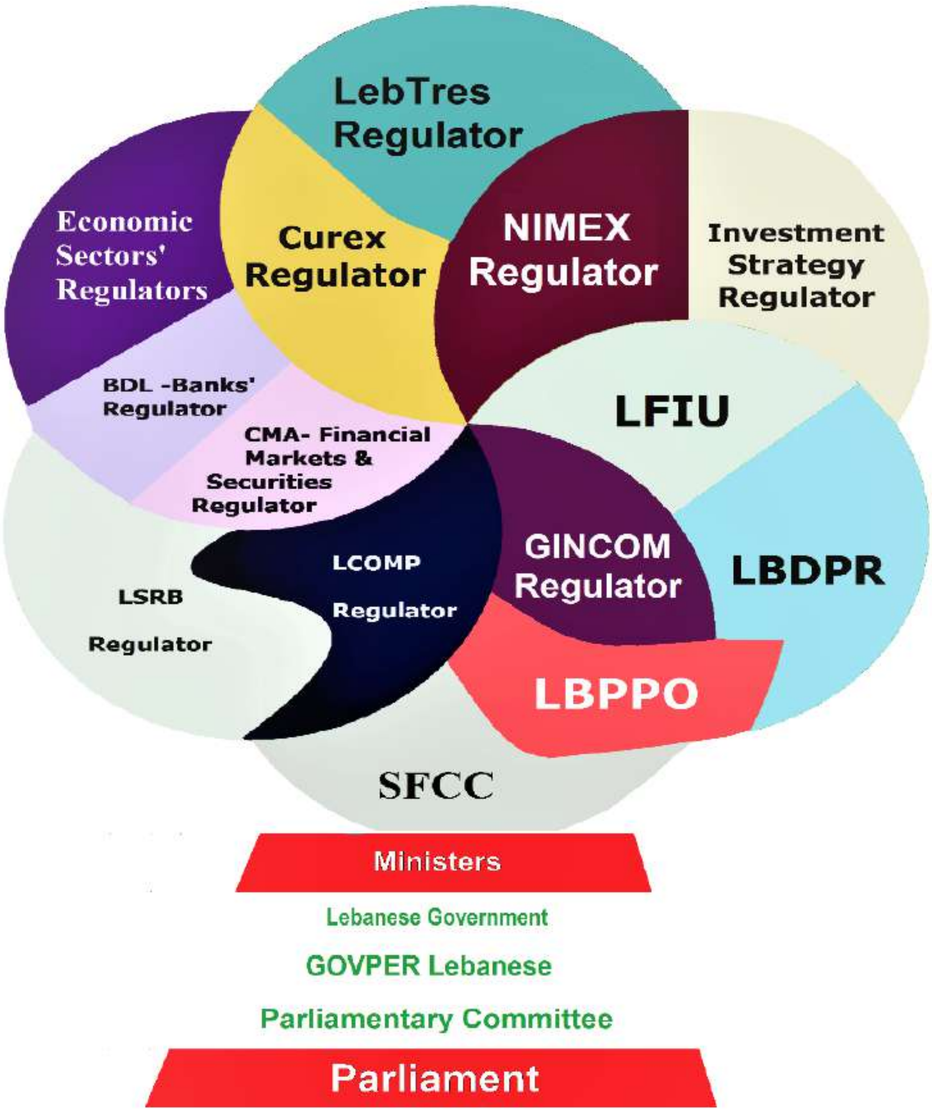


Figure 33 Structural Reforms for BDL & CMA

MOF, MOE, MOI: Directors appointed by MOFIN, MECON, MIND; GOVCOMM: Director appointed by GINCOM to investigate public sector operations and BDL/CMA employees for corruption and abuse of power; SFCC and LBPPO: 1 director appointed by the SFCC for Financial Crimes Inspection and Enforcement and 1 director from the LBPPO to handle financial crimes' investigation; BMCI: Banking Market Competition Information2 directors one appointed by the LBDPR for Information, and one appointed by LCOMP., FMCI: Financial Markets Competition Information 2 directors one appointed by the LBDPR for Information, and one appointed by LCOMP; INVB: investment banking director, ExA: subsidiary regulator for external auditors serving in banks and capital markets; InA: subsidiary regulator for external auditors serving in banks and capital markets; CCG: Compliance and Corporate Governance subsidiary Regulator; GINVSTR: subsidiary regulator handling governmental investment in treasury bills and public companies/businesses in the capital market and banking market; MacPr: macroprudential policy subsidiary regulator; MicPr: Microprudential subsidiary policy regulator; SRRM: Systemic Risk and

Risk Management subsidiary regulator; TRCB: Transactions subsidiary regulator for cross-border operations; EACRB: Economic Activity in Conglomerates subsidiary regulators' board;



Acronyms:

Currex= Currency and Foreign Exchange Regulator
GINCOM= Governmental Investigations and Commissariat
GOVPER= Government Persformance Assessment Parliamentary Committee
LCOMP= Lebanese Competition Regulator
LFIU = Lebanese Financial Investigation Units
LBDPR= Lebanese Data and Privacy Protection Regulator
LBPPO= Lebanese Public Prosecutor's Office for Regulating Financial Crime
LSRB = Lebanese Systemic Risk Board
LebTres= Lebanese Treasury for State Revenue and Expenditures
NIMEX= National Import and Export Regulator
SFCC= Special Financial Court

Figure 34 Regulators by Area of Specialization

Annex 3 ─ Explanatory and Case Notes

List of Explanatory Notes:

Note: These notes are meant to supplement the sections of this research. They include necessary concepts that are technical, specialized, and cross domains/sectors and are used in EU's modern economic law in accordance with international or Baseline Requirements. Additionally, some notes regarding the Lebanese framework are included in this annex since they are related to international, or Baseline standards yet were either not implemented in Lebanon but should have been or were misapplied in Lebanon due to the regulator's own agenda. Each Note is recorded depending on the footnote that referred the reader to this annex's list.

(1) Particularities of Article 127 of the Lebanese CMC

Article 127(1) of the CMC has the following requirements: (a) persons convicted of a crime within a period less than 10 years, (b) offenders who committed regular crimes, theft, breach of fiduciary, fraud, or misdemeanors punishable by fraud punishments, embezzlement of moneys, issuing bouncing checks with bad intent, attempts to undermine the state's fiscal status as per Articles 319 and 320 of the Lebanese Codes, or concealing items obtaining via these offenses, (c) committing infractions punishable by Articles 689 up till Article 700 of the Lebanese Penal Code, (d) attempts to commit infractions mentioned in subsections (a) and (b) of Article 127(1) CMC or being an accomplice to any of these crimes. Prohibitions mentioned in Article 127 CMC apply on persons convicted abroad for crimes infractions that are considered according to the Lebanese Law misdemeanours or crimes that fall under subsections (a), (b), and (c) of Article 127 CMC upon validation of the foreign judgment as per the last paragraph of Article 29 of the Lebanese Penal Code. Meanwhile under Article 127(2) CMC, persons who have been declared bankrupt and have not been reinstated at least years back and if the bankruptcy was declared abroad; then the prohibition will apply if upon verification the foreign judgment checks out as per stipulations of the last paragraph of Article 29 of the Lebanese Penal Code. Additionally, under Article 127(3) CMC if a person is convicted for breaching stipulations of Banking Secrecy Law. Also persons who are head of board of directors or general directors or assistant director or director or assistant manager are prohibited from engaging in private commercial acts or being members in persons companies that result in unlimited liability or partnership. The prohibition also applies for persons in the board of directors of banks from being members in boards of other companies. The following prohibitions also apply on BDL's employees.

(2) Related Party Risk and Disclosure in Lebanon a Case Study of a Crisis in Public and Private International Audit and Accounting Standards

Note: *This note was created to link financial reporting requirements and disclosures with BDL's accountability dilemma under WMCG requirements as a liability for BDL as well as Lebanese Banks' BOD and the upcoming forensic audit.*

As the heart of Lebanon's financial regulation crisis, related party risk showed its face twice. First, when BDL required Lebanese banks to apply IFRS9 (on the Recognition and Measurement of Financial Instruments), and again when the IMF requested that the Lebanese Republic declare its financial loses before resuming negotiations for further assistance with recovery. As a form of risk, related party disclosure issues, need to be properly managed and mitigated for the tenacities of efficiently implementing CG requirements on financial transparency for accountability purposes. In this sense, adhering and complying with CG's requirements on mitigating related party risk requires understanding which sets of standards apply on the entity or operations being governed. Typically, governing related party risk falls under the necessary disclosures that should be made according to international accounting and audit standards that exist in two basic sets of standards: one for the public sector and another for the private one. Hence, determining compliance with related party disclosures' requirements for CG purposes will depend on the set of standards applied based on the sector to which the reporting entity falls under.

The International Standard-Setting Boards Organization works hand in hand with several standard-setting boards that are within the International Federation of Accountants (IFAC). IFAC has four international standard-setting boards which are: the International Auditing and Assurance Standards Board (IAASB), the International Accounting Education Standards Board (IAESB), the International Ethics Standards Board for Accountants (IESBA), and the International Public Sector Accounting Standards Board (IPSASB). Both private sector auditors and accountants must abide with IAASB standards on audit and accounting standards set via its International Accounting Standards Board (IASB) who also sets the International Financial Reporting Standards (IFRS) for accounting standards and the International Sustainability Standards Board (ISSB) who sets the IFRS' Sustainability Disclosure Standards. To this end, the IFRS Accounting Standards define how a company prepares its financial statements compared to the IFRS' Sustainability Disclosure Standards which define how a corporation discloses information on issues related to sustainability factors that might aid or encumber a corporation in generating value. Meanwhile, both public sector auditors and accountants must abide with the IPSASB's requirements which are set in its International Public Sector Accounting Standards (IPSAS). In this line, international accounting standards for public and private sectors used to diverge into two accounting methods(1) on which these standards were based. At first, the cash-basis accounting method used to be an accepted method in international accounting standards that applied to the public sector. This was also the case in the private sector under 1973's International Auditing Standards (IAS) which were previously formulated by the International Accounting Standards Committee (IASC). However, in 2001 IFRS replaced IAS opting for the accrual basis accounting method for private sectors under both charters of accounting the International Financial Reporting Standards (IFRS) and the Generally Accepted Accounting Practices (GAAP). Later, in 2017, IPSAS followed the IFRS shifting to the accrual-basis accounting method which revealed the similarities of disclosures between both public and private sector accounting and auditing standards among them the matter of disclosing related party risks. To this end, the IASB decided to retain the old IAS 24 on related party disclosures(2) within the IFRS requirements in the private sector. Meanwhile, in the public sector, the IPSASB placed related party disclosures under IPSAS 20 which was also based on IAS 24. Naturally, in 2021, both public and private international standards of accounting converged and were made to appear on the same table with their corresponding IFRS principles(3) in the IPSASB's latest meeting in March 2021. However, in order to define related party disclosures as per international requirements in public and private sector accounting for CG compliance purposes; readers are advised to note that Government Business Enterprises (GBEs(4)) which were previously allowed and subject to the

(1) Refer to Annex 1's List of Definitions to view definitions of cash-basis and accrual-basis accounting methods.

(2) IAS 24 underwent several consequential amendments that supplemented its scope such as the application of IFRS 10 on Consolidated Financial Statements (May 2011), IFRS 11 on Joint Arrangements (May 2011), IFRS 12 on Disclosure of Interests in Other Entities (May 2011), IAS 19 Employee Benefits (June 2011), Investment Entities (Amendments to IFRS 10, IFRS 12, and IAS 27 (October 2012), and other annual improvements to IFRSs 2010-2012 Cycle (December 2013). See from: Salim Alibhai, Erwin Bakker, TV Balasubramanian, Kunal Bharadva, Asif Chaudhry, Danie Coetsee, James Dougherty, Chris Johnstone, Patrick Kuria, Christopher Naidoo, J. Ramanarayanan, Darshan Shan, and Minette van der Merwe, Wiley 2020 Interpretation and Application of IFRS Standards, first edition, John Wiley & Sons, New Jersey, United States of America, 2020, pages: 266 – 277; 286 – 290; 309 – 311; and 829 – 843;

(3) See IPSASB Agenda Item A.3, IPSAS-IFRS Alignment Dashboard, March 2021, available via URL accessed on December 23, 2021: https://bit.ly/3rX6hQ2 .

(4) Refer to Annex 1's List of Definitions to view GBE's definition.

private sector's accounting standards i.e., IFRS[1] are currently excluded from IPSAS' scope of application.

Meanwhile, related party disclosures' objective under IPSAS 20 and IAS 24 is to have entities disclose information regarding relationships where corporate control exists which also includes information on transactions between the reporting entity and its related parties for particular situations. The said information is necessary for accountability purposes to enable clearer comprehension of the reporting entity's financial position and performance. Hence, applying either IPSAS 20 or IAS 24 will require reporting entities to disclose related parties via identifying the parties the reporting entity controls or has significant influence in the reporting entity as well as determine the type of information that must be disclosed concerning the parties' transactions with the reporting entity. To this end, related parties according to these standards are parties that either have the ability to: (a) control the other party, or (b) exercise significant influence over the other party in making financial or operation decisions or if the related party entity and other entity are under common control. Hence, related parties under IPSAS 20 and IAS 24 include according to the IPSAS/2018 Handbook[2]:

> ***(a)*** *"…entities that directly or indirectly through one or more intermediaries, control or are controlled by the reporting entity;*
> ***(b)*** *associates that fall under the notion of IPSAS 36 on investments in Associates and Joint ventures[3];*
> ***(c)*** *individuals owning, directly or indirectly, an interest in the reporting entity that gives them a significant influence over the entity, and close members of the family of any such individual;*
> ***(d)*** *key management personnel, and close members of the family of key management personnel; and*
> ***(e)*** *entities in which a substantial ownership interest is held, directly or indirectly, by my person described in (c) or (d), or over which such a person is able to exercise significant influence."*

Meanwhile in Lebanon, the shift from cash-basis to accrual-basis accounting and convergence of disclosures on related-party risks never happened on a legislative level neither in the public sector nor in the private sector despite the private sector's regulator's topical approach to apply IFRS 9. In fact, Lebanon remains stagnant and trapped in its financial turmoil for six reasons. First it applies cash-basis accounting method for its public accounting and allows the usage of this method in some business enterprises according to the MOF's Memo No. 26/1[4]. Second, it has 20 accounting systems for its 75 public institutions which are classified based on their institutional nature i.e., commercial, industrial, or administrative public institutions due to the requirements of public accounting regulations in Lebanon[5].

(1) Compare Points 5 and 6 from the scope of IPSAS -1/2006 on Presentation of Financial Statements, IFAC, 2006, page 32, available via URL accessed on December 17, 2021: https://bit.ly/3gbUp7j with points 5 and 6 from the scope of IPSAS-1/2021 from Handbook of International Public Sector Accounting Procurements, IFAC, International Public Sector Accounting Standards Board, first edition, Volume 1, New York, United States of America, 2021, pages: 659.

(2) IPSAB, How to Evaluate a GBE's Financial Self-sufficiency, Public Sector Accounting Board, March 2021, Canada, page: 3, available via URL accessed on December 23, 2021: https://bit.ly/3HkctIc .

(3)For definitions of investments in Associates and Joint ventures, see: IPSAS-1/2021 from Handbook of International Public Sector Accounting Procurements, IFAC, International Public Sector Accounting Standards Board, first edition, Volume 2, New York, United States of America, 2021, pages: 1591 - 1602.

(4) Decision No. 26/1 of January 28, 2022, on Extending Periods for Paying Taxes and Tax Statements for Year 2021 for Income Tax Adherents Based on Net Profit and for Enterprises excluded from Income Tax for Companies that Do Not Apply Cash-Basis Accounting Methods, available via URL accessed on January 28, 2020: 2022: https://bit.ly/3Hf1IqJ .

(5) See: Decree No. 17058 of August 7, 1964, on the General Structuring and Management of the State's Accounts and the Organization of the Department of Public Accounts, published in the Lebanese Official Gazette, Issue No. 65, on August 7, 1964, pages: 2370 -2374; Decree No. 3148 of November 16, 1965 on Structuring and Managing Accounts in Public Institutions under the State, Municipalities, and All Legal Persons with Public Nature, published in the Lebanese Official Gazette, Issue No. 94, on

Third, it relies on BDL's central role in managing the Lebanese Government's accounts for financial and cash operations which include the ability to open independent current accounts for public utilities, institutions, municipalities, as well as all public law persons[(1)]. In this line, the Lebanese treasury also relies on BDL to manage its current account (known as Account No. 36) which has sub-accounts with various branching accounts in various currencies all of which BDL directly pays from the Lebanese Government's expenses prior to the issuance of orders for payment or expenditure. For example, BDL directly pays from the Lebanese Treasury's Account No. 36, which is within BDL, fuel oil costs. Fourth, it lacks true and efficient application of international audit, accounting, and financial reporting standards in both public and private sectors since each regulator has his own version of these standards and the legislations on accounting remain as is[(2)]. Fifth, it suffers from BDL's special legal persona's trinity wherein BDL acts as the Lebanese banks' regulator, as a commercial public person, and as a banker for the Lebanese Republic. Finally, sixth, it lacks two concepts: (a) area of specialization (separation based on function) in favor of area of specialty (separation based on areas of law) and (b) an internal audit culture in both public and private sector since it relies on external audit for financial reliance and assurance.

Applying these principles to BDL's financial statements will require the Lebanese Republic to classify BDL's transactions into three categories based on the trinity of legal capacities that BDL enjoys due to its special legal persona. The first category includes transactions that fall under international public sector accounting standards (IPSAS) such as when it acts in its capacity as the Lebanese Republic's banker and money handler. Meanwhile the second category includes transactions that Lebanon may choose to subject to international private sector accounting standards (IFRS) such as when it acts as a commercial person with a public persona since that falls under GBE notions. Lastly, the third category includes transactions that also fall under international public sector accounting standards (IPSAS) as the Lebanese banks' regulator when it collects fines, subscriptions, and fees from Lebanese and foreign banks operating in Lebanon. This classification of transactions will reveal how the effect of BDL being a related party in each of these transactions influenced how these operations and transactions were managed, recognized, and strategized for wealth management CG purposes in general and for accountability purposes specifically. However, should this approach be ignored, then any attempted pro-forma audit, forensic audit, or specialized audit will be catching the rye in the wind because each type of transaction has a different dynamic for accounting purposes that are scientific as we shall show below from common practice. However, in order to understand how this classification of transactions affects liabilities of both

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November 25, 1965, pages: 1545 - 1547; Decree No. 3373 of December 11, 1965, on the Procedures and Allotted Periods for Organizing, Releasing, Auditing, and Unifying Financial Statements, published in the Lebanese Official Gazette, Issue 27, on June 25, 1965, pages: 1461 – 1462; Decree No. 4517 of December 13, 1972, on the on the General Framework for Public Institutions, published in the Lebanese Official Gazette, Issue No. 100, on December 14, 1972, pages 3 – 14; and Decree 10388 of June 9, 1997, on the General Structure of the State's, Public Instructions, and Municipalities, published in the Lebanese Official Gazette, Issue 30, on June 19, 1997, pages: 2480 – 2484; and

محمد محمود حاموش، النظام المحاسبي للمؤسسات العامة في لبنان في إطار معايير المحاسبة الدولية للقطاع العام، دراسة منشورة في مجلة صوت الجامعة، الجامعة الإسلامية في لبنان، العدد العاشر ، السنة ٢٠١٦، بيروت لبنان، صفحة: ٨٥ – ١٢٦، متاح عبر رابط جرى دخوله في ٢٢ تشرين الأول، ٢٠٢١: https://bit.ly/3rmhASZ .

(1) The Lebanese Treasury is a department within the Lebanese Ministry of Finance and its Account No. 36 is based on Law No. 49/1987, on Amendments to Some Norms of Public Accounting, issued on November 21, 1987, published in the official Lebanese Gazette, Issue No. 50, on December 10, 1987, page: 970 and Law Executed by a Decree No. 14969/1963, issued on December 30, 1963, published in the Official Lebanese Gazette, Issue No. 104, on December 30, 1963, pages: 5631 - 5668. See: Hassan Diab, Reform of the Lebanese Public Accounting System within the Framework of International Accounting Standards in the Public Sector, study, published in Al Jinan Journal, Volume 14, Article No. 5, Al Jinan University, Beirut, Lebanon, 2021, page: 141 - 174, available via URL accessed December 29, 2021: https://bit.ly/34q83kL .

(2) See: Abed El-Hai Ghader and Elie Bassbous, The obstacles of IPSAS Application in Lebanon (Case study: Ministry of Finance), research study, Multi-Knowledge Electronic Comprehensive Journal for Education and Science Publications (MECSJ), Issue No. 39, 2020, available via URL accessed on December 12, 2021: https://bit.ly/3ATo1jw and Ammar Sayed Ahmad and Hassan Nasserdine, Major Challenges and Barriers to IPSASs Implementation in Lebanon, article published in Sciendo Journal, Walter de Gruyter GmbH, for the Proceedings of the 13th International Conference on Business Excellence 2019, University of Bucharest of Economic Studies, Bucharest, Romania, 2019, pages: 326 - 334, available via URL accessed December 13, 2021: https://bit.ly/3rjaD4V .

regulators and banks; we shall examine what the Lebanese laws state on related party transactions from two perspectives: (1) the LCC in joint stock, banks, and exchange companies' vis a vis their private practice is and (2) the MENA-OECD's Guideline on Related Party Disclosures' Case-study of Lebanon.

First, providing BOD members and management with loans or facilities are viewed and managed by management in coordination with internal audit norms as a related party transaction that has a higher risk because their dealings are usually not conducted at arm's length. However, that does not justify the illogical requirement of prohibiting banks from having transactions with related parties even though the law does not illustrate how these issues should be handled since it does not regulate conflicts of interest nor risk. To this end, banks and regular joint stock companies developed the practice of having management have a framework for approvals, due diligence, and extra controls for managing related party transactions and their risks. The said framework which should be discussed and agreed upon with the internal auditor; was developed in the light of Article 158 of the LCC regarding the nature of these related parties' which should not exceed 5% of the regular joint stock company's capital or 25% of a bank's private money according to Article 152 CMC. However, there's a need to address the type of risk associated with related parties transactions that are not at arm's length or the bank needs to separate if the related party is dealing with the bank as a BOD member or as a regular client via separate accounts as in a client applying for a loan for a personal car vs. when the BOD member is using his capacity to invest in investments wherein the bank is supporting this investment despite it not being part of the bank's normal operations. To this end, auditors and management's policies need to distinguish between the BOD member's capacity as a related party abusing his capacity as BOD and his capacity as a regular person for loans subject to his personal credit value/score. Hence, the common practice in regular Lebanese joint stock companies is that the company lends the BOD chairmen or board members as long as the requirements of Article 158 LCC are applied i.e., so long as all the related party accounts' total balances of these transactions in the end are still credit in nature and as long as company shows the movement that occurred on the accounts. In this line, when an auditor handles a related party transaction, he/she resorts to doing as such in two steps: first they understand the related party's account and the related party transaction. Accordingly, they study the account and transaction in order to determine if the said transaction falls under the regular or usual transactions done by the companies they audit. Then they study the balance of the related party's account to see if the account itself is a corporate account. For example, when a manager desires to exchange dollars, he is acting as a client to the bank and two he is loaning the bank, hence he is acting as a related party. In effect, the auditor here, is not only analyzing the transaction, the type of account, or the significance/materiality of the operation but rather also the relationship between the parties of the transaction with respect to their legal capacities in relation to the respective disclosure obligations. Additionally, through this process, the auditor is aware if this operation/transaction is a one time or a material operation that leads to the company/bank being indebted to the related party or under its leverage. Hence in the case of banks the auditors will look for the presence or lack of discrepancies between both types of transactions i.e., the material and one-time related party transaction that originated from the corporate account and consider them roughly part of one balance sheet. Accordingly, internal auditors are required to identify in each transaction situations when legal capacities differ and separate these legal capacities for disclosure requirement purposes which also reflects on classifying the transactions which in turn reflects on the bank's accounting. Consequently, internal auditors are required to understand the type of legal capacity engaged, required, and utilized in the transaction such that based on this understanding, internal auditors are required to divide these transactions based on materiality or one-time for disclosure requirements between classes of remuneration or related parties disclosures as private parties depositing moneys, operations accounts, or regular customers etc. Hence, auditors' study of accounts and transactions includes inquiring and studying the nature of the relationships, parties, and transactions natures' which means inquiring whether the legal capacity used in the transaction should be classified as shareholder, stakeholder, management, etc. In this sense, this study/examination is to judge what needs to be separated and disclosed. These results are then discussed with management presentation. In this sense, presentation and disclosure is an auditor's assertion something all auditing charters and auditors consider very important considering that not all related party transaction are conducted at arm's length which makes them high risk transactions. Based on these findings, it is safe to state that internal auditors in Lebanese banks are aware of the related party transactions that include financial engineering processes done with BDL, the illegal capital control, and of course the related party transactions pertaining to the foreign currency and treasury bonds under the mandatory placements requirements.

Second, according to a study on related party risks conducted by the MENA-OECD in 2014[(1)]applying these principles in the private sector, Lebanese banks mainly rely on best practices developed by the private sector and non-governmental organizations' stakeholders according to. Additionally, the guideline notes that related party transactions are subjected to shareholders' approvals in addition to the fact that the board's audit committee or its equivalent must review these transactions provided that half of these board committees' are independent members who to some extent mitigate them due to the lack of requirements on specifically involving independent directors' in the process of approving related party transactions. This is the case since related party transactions in Lebanon are initially reviewed by external auditors (Article 158 LCC). Furthermore, the guideline indicates in its table of board oversight of related party risks that the CMA neither requires board level policies covering revision of disclosures of related party transaction nor a role for independent board members to review the said related party transactions despite requiring independent appraisals for material related party transactions. To complete the picture, the guideline further illustrates under its second table on internal and external audit's responsibility and obligation to review related party transactions that the CMA shows no obligation on internal auditors to review related party transactions compared to its requirement that external auditors review related party transactions as they are responsible for this process before these transactions are presented to the acting general manager or board director. In this line, the guide also highlights that in Lebanon both the acting general manager and the BOD's approval are required for transactions with controlling shareholders of financial institutions under the requirements of BDL's circulars. To further supplement this take, the guide shows under its third table on rules for governing the disclosures of related party transactions that the CMA in Lebanon utilizes the LCC as its source for regulations and legal framework when it comes to defining related party transactions between companies in a group as well as self-dealing among BOD members and executives to determine the nature of the related party transaction in question yet designates a different set of rules for regulatory treatment of related party transactions for non-listed companies. We attribute this confusion to the fact that many international organizations are not aware that there are no specific rules for banks' legal obligations as joint stock companies that are different from what is stated in the LCC especially that normally there are rules on banking operations that set banks apart from regular corporate operations' rules under company law unlike in Lebanon. Lastly, under its fourth table on enforcement mechanisms against illegitimate related

(1) OECD, Guide on Related Party Transactions in the Mena Region, for MENA-OECD and the Union of Arab Securities Authorities, published by the Secretary-General of the OECD, 2014, pages: 10, 11, 18, 23, 25, 27, 29, 34, and 38, available via URL accessed on December 23, 2021: https://bit.ly/3KVThCV .

party transactions, the guide shows that the CMA in Lebanon relies on Shareholder suits, derivative suits, as well as direct action by the CMA as the most effective mechanisms for enforcing the Lebanese legal framework regarding related party transactions. It concludes that judicial action remains the main type of enforcement action taken along with fines and restitution as remedies and penalties imposed. From this document, it is easy to understand why penal law judges had to resort to the theory of mental doer regarding financial crimes committed via agents of the BOD in a company when the matter did not relate to negligent or fraudulent bankruptcy since the theory moral agents for corporate crime did not apply in this case given the fact that, legal analogy adaptations are prohibited in the LBS and that the employee in the company was aware of his/her responsibilities but was unable to disobey his/her superior not incapacitated or lacking a legal capacity as typical moral agents' theory requires(1). In this case, i.e., breaches to CG and financial crime through agents in banks and business securities entities, these agents are aware, but they are also employees upheld against standards of soft law such as audit charters in the case of internal auditors. To this end, what makes prosecuting for breaching CG obligations on managing related party transactions is the fact that as long as the transaction has not led to an actual, direct, and personal damage such as bankruptcy; the said breach goes unpunished since even under Article 134 of the Lebanese Code of Obligation only direct and certain future damage is redressable, but neither is potential damage nor risk. Hence, the absence of internal audit culture in Lebanese laws and regulations affects the entire market players and regulators. Internal auditors understand these processes in practice and reality in and out not just from texts. They show the gaps and shed light on loopholes. This is where laws that address areas of specialization such as professional function, scope, ethics, practices, liability matrix of auditors for opinions, judgements, and professionalism is necessary. Without understanding how internal audit differs from accounting and how internal audit is essential to help external audit; then financial transparency and assurance will surely remain a mirage of financial and regulatory compliance. In conclusion, related party risk management and disclosure in Lebanon is not realistically, technically, and efficiently managed because of all the above-mentioned points starting with Lebanon's notions of corporate control, management of conflicts of interest, ending with Lebanon's accounting, and auditing standards.

(3) IMF's 2016-2017 Report on Financial Engineering and BDL's Accountability for Financing Public Debts via Lebanese Banks

One of the biggest examples of the lack of transparency in BDL's operations is the term "***Financial Engineering Processes***" which was never defined in BDL's Financial Engineering's Objectives'(2) official document and was free from any mathematical explanation leaving us to rely on independent financial analysts' reports(3) and research for the mathematical processes that lead up to the IMF's 2016-2017 report(4) for a definition. The IMF defined the said financial engineering processes conducted by BDL in its financial stability report as follows:

(1) First Instance Penal Judge in Jib-Jineen, Decision No. 653/2014, Public Right vs. Ibtisam Nasiredine and Associates, issued on December 16, 2014, Al- Adil Journal of Beirut's Syndicate of Lawyers, Issue No. 1, year 52, 2018, pages: 513 - 518.

(2) BDL's Official Document on Financial Engineering Objectives available online via URL accessed February 29, 2021: https://bit.ly/38FLSG0,

(3) Jamil Chaya, Breaking Down Banque Du Liban's Financial Engineering, a report for Beirut Today, published on August 27, 2019, available online via URL accessed on February 29, 2021: https://bit.ly/3yKASll .

(4) Lebanon: Financial System Stability Assessment, IMF Country Report No 12/21, issued on January 2017, International Monetary Fund Publication Services, Washington, D.C., United States of America, page 11, available online via URL accessed on February 28, 2021: https://bit.ly/3f9d6cE.

"The discount of T-bills and CDs at zero percent is akin to a money-financed capital injection (without any equity stake in return; according to staff estimates, equivalent to 10 percent of GDP), which helped strengthen banks' capital buffers"

From the IMF's definition, it is clear that BDL's injection of more than USD 5 Billion into Lebanese banks' capital, was done out of nothing but as pure profits given to a few banks and not through loans nor against shares in the banks' capital as standard practice requires[1]. A good example of BDL's accounting transparency governance issues would be the role of public debt financing with respect to BDL's financial engineering processes. In its 2016- 2017 report, the IMF stated that the banks' sovereign exposures were high since public debt was equal to 138% of the GDP by the end of 2015 with banks being the key source of public debts' financing. The report carries on stating that as of June 2016, holdings of government debt securities accounted for 28% of assets with deposits in banks and excess reserves in BDL accounting for 40%. Summing up both figures leads to a total exposure to sovereign debt six times more than the Tier 1 Capital which absorbs the increasing share of asset growth as the economy and deposit inflows slowed[2]. This in turn led Fitch Ratings to issue a report on March 16, 2020, titled as the "*Lebanese Banks' Main Solvency Risk is Exposure to the Central Bank*". In its report, Fitch Ratings stated that deposits and certificates of deposit at BDL were 54% of commercial banks' total assets and thereby six times their core capital by the end of 2019. Because of BDL's weakened ability to meet its foreign currency (FC) obligations towards banks due to increasing demands on FC reserves; Fitch anticipated BDL's failure in 2022-2023 when a significant amount of FC certificates of deposits which were bought by banks during the financial engineering operations in 2016 mature. Meanwhile, how this lack of segregation between BDL's operations and capacities is related to a tacit and stealth bail in for banks since it requires a law to do so; lies in the various circulars such as wherein BDL limited cash withdrawals in USD accounts first and even in banning transactions of payments from Lebanon to outside. If anything, this is a masked capital control that breaches Lebanese Laws mainly Article 307 of the LCC, the Lebanese Constitution, and of course the CMC's Article 70 on BDL's obligations to regulate banks according to the law. One thing is certain though; due to the banks' direct exposure to the Eurobond default which represented 6% of the domestic banks' balance sheets and two thirds of their equity by the end of 2019 banks sold a total of 1.1 billion USD of this exposure in January 2020 since they needed FC liquidity amidst their fear of default. Consequently, this was traded less than half of its face value. In short, despite the fact that Lebanese banks were initially 8% above required Tier 1 capital adequacy ratios by virtue of Intermediate Circular No. 436/2016 at 15%, their risk exposure index whilst trading with BDL exceeded their capital's buffer by six times[3] leaving banks' risk exposure way higher than their capital buffer[4], something a regulator with sound governance would have never done.

(1) To illustrate a breakdown of our conclusion we refer the reader to Table 3 under the List of Tables in Annex 2 of this research.

(2) Lebanon: Financial System Stability Assessment, an International Monetary Fund Country Report, report No 17/21 January 2017, Washington D.C. United States of America, pages 9-11, available online via URL accessed on February 25, 2021: https://bit.ly/2YfvOZt .

(3) Zeinab Abdalla, Lebanese Banks' Main Solvency Risk Is Exposure to Central Bank, Fitch Wire, Article published on March 16, 2020, available online via URL accessed on February 19, 2021: https://bit.ly/2OdoRUg.

(4) Maan Albarazi, Between the Lebanese Banks' Association and BDL, an IFRS9 Version for Calculating Capital Adequacy and Risk Exposure, an article published in Annahar Newspaper, online edition, on February 3, 2020, available via URL accessed on February 18, 2021: https://bit.ly/3uehxHi.

(4) Baseline Supervision BCP Principles No. 6 & 7

Unlike Lebanon wherein corporate control is defined as that of shareholder power to direct an entity's business; first world countries included theories of leverage and economic right for the purpose of governing liability for risks in order to achieve profit not just for the purposes of combating: money laundry, financing terrorism or tax evasion. They have even gone further by promulgating separate laws on company directorship and management such as the Cayman Islands. This trend finds roots in studies from European Union countries and the United States of America regarding the relation between corporate control and governance which have in turn influenced countries in the Arab Gulf Council such as the United Arab Emirates and the Kingdom of Saudi Arabia to explore the full potential of economic right owners as individuals for governance matters. It is worthy to note that these advances in first world countries were the result of establishing specialized independent well segregated supervisory entities per market segment that are dedicated to regulating practitioners and their products(1).

(5) Overview of the European Union's Legal Framework for the European Union Financial Supervision System

The European Union's legislators envisioned the banking and financial sector regulations as a part of the European Market's holistic discipline mechanism. These considerations are implemented through a clear hierarchy of rules comprised of a two-tier system. The first tier is within the Financial Supervision System Rules introduced in 2010 to be consisting of rules for the European Systemic Risk Board (ESRB) under Regulation No 1092/2010, three European Supervisory Authorities known as ESAs comprised of the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA). These bodies were introduced by legislation package of January 2011 under Regulation No. 1094/2010 for EIOPA, Regulation No 1996/2010 for the European Central Bank (ECB), Regulation 1093 for European Banks Authority (EBA), Regulation No. 1095/2010 for ESMA and Omnibus Directive No. 2010/78 European Union for financial services legislation. Later in 2011, European Union introduced Omnibus II directive on powers of new authorities particularly insurance sector. In September 2018, the commission under President Juncker's state of the union address published a document titled "Communication on Strengthening the Union Framework for Prudential and Anti-Money Laundering Supervision" which lead to the European Union parliament in March 2019 to agree on core elements to reform European Union supervision of European Union financial markets. This appeared in the form of European Union Regulation No. 2175/2019 signed by European Union parliament and council to review powers of ESAs followed on December 18, 2019, by them signing European Union Directive No. 2177/2019 for Solvency, MiFID II Directive, and forth Anti Money Laundering directive with powers for EIOPA, EBA, and ESMA with the revision of Regulation No. 2176/2019 amended to establish the European Systemic Risk Board(2). Meanwhile, the second tier is the

(1) Law No 10 on The Directors Registration and Licensing Regulations, 2014, supplement No.2 published with Extraordinary Gazette No. 39, on June 4, 2014, available via URL accessed Jan 5, 2021: https://bit.ly/2MdXaJx , Marco Becht, Colin Mayer, Corporate Governance Control in Europe, Revue d'économie Politique, 2002/4 (Vol. 112), p. 471-498. Also available via URL accessed on January 2, 2021: https://bit.ly/3kLDzxO , Dante Mendes Aldrighi, The Mechanisms of Corporate Governance in the United States: An Assessment, a Revisita Brasileira De Economica Publication, Volume 57, No3, Rio De Janeiro, July/September 2003, available via URL accessed on January 2, 2021: https://bit.ly/3pbUKtt , Waleed M. Al-Ahdal, Faozi A. Almaqtari, Dheya A. Zaid, Eissa A. Al-Homaidi, and Najib H. Farhan, Corporate Characteristics and Leverage: Evidence from Gulf Countries, Prince Sultan Review, ahead of print, accepted November 2, 2020, available via link hosted on Emerald Group Publishing accessed Jan 2, 2021: https://bit.ly/2WLpNnd ..

(2) The European System of Financial Supervision, an article published on the official European Union Guidance page EC Europa EU, available via URL accessed on January 5, 2021: https://bit.ly/2SGLR0e .

Single Market Mechanism Rules as set out in European banking regulatory framework, which follows the TFEU rules on single market, and Basel accords for capital adequacy and risk which is harmonized through the single rulebook. This framework applies to all financial institutions in the Single Market. Later in 2012, the Banking Union was established which added the Single Supervisory Mechanism (SSM) in 2014, and the Single Resolution Mechanism (SRM) in 2016(1).

(6) Exceptions to the Single Patrimony in Lebanese Law

Such as (1) the one man limited liability company under Lebanese Commercial Code, (2) Articles 93, 94, and 102 of Maritime Commercial Code regarding maritime catastrophes when a ship sinks wherein only the main ship's lease and operator not ship owner benefit from these articles; (3) Article 860 Code of Lebanese Civil Procedure moneys that can't be confiscated such as tools, supplies, ingredients, and expenses of nourishment and livelihood essentials for the subject and his family; (4) Articles 131 and 138 of Lebanese Real Estate Code regarding segregation of a testator's patrimony from his successor; (5) specialized patrimonies Article 7 on fiduciary contracts of Law 520/1996 . And Article 3 of Law 705/2005 on Securitization , Article 4 of Law 706/2005 on Collective investment schemes where the fund is a communal property, and Article 14 of Law 163/2020 on Private Investment Companies' assets within a custodian's care as specialized patrimony along with Article 28 of the same law on independently managed portfolios as segregated special patrimonies(2).

(7) On Leverage and SPVs in Securitization:

According to point 93 of Article 4 of EU Regulation No. 575/2013, 'leverage' means the relative size of an institution's assets, off- balance sheet obligations and contingent obligations to pay or to deliver or to provide collateral, including obligations from received funding, made commitments, derivatives or repurchase agreements, but excluding obligations which can only be enforced during the liquidation of an institution, compared to that institution's own funds. Hence, a leverage in financial terms is investing with borrowed money as a way to amplify potential gains (at the risk of greater losses). Hence leverages endanger banks by allowing them to exceed their capital allocations in their risk-taking processes.

(8) Specialization and Supervisory Arbitrage in Audit and Compliance in EU's Financial Market in Relation to Lebanon's Banking and Financial Markets' Piecemeal Regulation

Although supervisory arbitrage can be linked to supervisory economic nationalism and supervisory competition; nationally organized systems of supervision can make it easy for governments to restrict institutional independence of the supervisor and exert political influence since the institutional independence relates to the status of the agency as an institution separate from the executive and legislative branches of the government. Accordingly, the lower the institutional independence, the higher the political influence a government has to trump purely supervisory considerations especially if the regulator is part of the ministry of finance or under its supervision like the case of the German BaFin which is part of the German Ministry of Finance(3). As an unregulated system of credit intermediation which can cause systemic,

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(1) Giuseppe Boccuzzi, The European Banking Union Supervision and Resolution, first edition, Palgrave MacMillan Studies in Banking and Financial Institutions Series, Edited by Philip Molyneaux, Palgrave MacMillan, Houndmills, Basingstoke, United Kingdom, 2016, 13 - 41.

(2) See: سامي منصور ومروان كركبي، الأموال والحقوق العينية العقارية الأصلية، الطبعة الثالثة، المنشورات الحقوقية صادر، بيروت، لبنان ٢٠٠٢، صفحة: ٩٣- ١١١ .

(3) Rene Jakubeit, The Wirecard Scandal, and the Role of BaFin: A Case for Unifying Capital Market Supervision in the European Union, a working paper for Luiss School of European Political Economy, Reference No. 5/2021, published on March 22, 2021, pages 1-8, available via URL accessed June 29, 2021: https://bit.ly/3l0IOM7 .

contagion(1), and liquidity risks; shadow banking undermines a financial system with vulnerabilities through its business relationships with commercial banks. Operations wise, shadow banking is comprised of five sectors(2): (a) sectors susceptible to runs (mutual, credit hedge, and real-estate funds), (b) nonbank lenders for short-term funding (finance, leasing, factoring, and consumer-credit companies), (c) market intermediaries for short-term funding or secured funding of client assets (broker dealers), (d) companies that facilitate credit creation (credit insurance companies, financial guarantors, and monoline insurers), and I securitization-based intermediaries. Its banks' heterogeneity in operational activities cause the financial system's systemic risk to rise and fluctuate in a way that aggravates interbank lending between the shadow banks and the commercial banks which in turn deteriorates the financial system's liquidity. To this end, employing a functional approach when regulating financial institutions vis, a vis shadow banking is essential since this approach addresses the economic function of the entities that a policy maker is aiming to govern irrespective of its legal structure, form, or sectoral denomination (bank, investment firm, financial intermediary etc.). From a functional approach it is easy to discern how the Lebanese treasury bonds or repos coined with the rise of securitization under the housing loan facilities of the Lebanese housing loans lead to the liquidity shortage of the pegged US Dollar as a result of shadow banking operations fluctuations with commercial banks manifesting a systemic risk based on arbitrage of regulation under BDL's supervision as a related party risk. If anything, the interbank lending interest rate of Lebanese banks prior to October 17, 2019, was at 25% compared to 5% in Greece when it officially collapsed in 2010(3). Despite audit's close relationship with accounting, they are of very different natures that qualify them as business associates not that of a parent and child. Accounting comprises of the collection, classification, summarization, and communication of financial data that involve measuring and communicating business events and conditions that affect entities as they appear. It is tasked with compressing massive bulks of financial information into manageable and comprehendible amounts. By contrast, audit has nothing to do with any of these processes even though it also considers business events and conditions since it is not tasked with measuring or communicating them. Instead, it is charged with reviewing accounting's measures and communications for propriety. In this sense, audit is analytical not constructive, yet critical, investigative, and concerned with the basis of accounting measurements and assertions. Audit focuses on proof, supporting financial

(1) Refer to the Abbreviations and Definitions List. For Baseline definitions on contagion see: Stefan Avdjiev, Paolo Giudici, and Alessandro Spelta, Measuring Contagion Risk in International Banking, a BIS Working Paper, No. 796/2019, JEL classification: G01, C58, C63, Monetary and Economic Department, via URL accessed March 10, 2021: https://bit.ly/2ZoiWAI and for an actuarial approach, see: Dirk Schoenmaker, Contagion Risk in Banking, a consultative whitepaper for the Ministry of Finance in Netherlands, available via URL accessed March 10, 2021: https://bit.ly/3Ch121o . To understand the value of computing it in financial regulation and supervision see: Jorge A. Chan-Lau, Srobona Mitra, and Li Lian Ong, Identifying Contagion Risk in the International Banking System: An Extreme Value Theory Approach, a research paper for Banque du France, the IFC, and The World Bank Group, available via URL accessed on March 10, 2021: https://bit.ly/3pBt6ZX

(2) Hong Fan and Hongjie Pan, The Effect of Shadow Banking on the Systemic Risk in a Dynamic Complex Interbank Network System, Complexity Journal, Volume 2020, an article published in Hindawi Open Journals Repository in Collaboration with Wiley Publications, page 10, available via URL accessed June 30, 2021: https://bit.ly/371C4oM; Iris H.-Y Chiu, Taking a Functional Approach to Understanding Shadow Banking: a Critical Look at Regulatory Policy, chapter two, pages: 47-78 and Pierre de Gioia Carabellese, Securitization and Structured Finance, from the book: Shadow Banking to Legal Harmonization, chapter four, pages:117 – 153, Research Handbook on Shadow Banking, first edition, Edward Elgar Publishing Inc, Cheltenham, United Kingdom, 2018; Yoshiharu Maeno, Kenji Nishiguchi, Satoshi Morinaga, Hirokazu Matsushima, Impact of Shadow Banks on Financial Contagion, a research paper for NEC Corporation, Kawasaki, Japan, 2014, published by Japan Research Institute and Tokyo's Institute for International Socio-Economic Studies, pages 1 to 11, available via URL accessed June 30, 2021: https://bit.ly/3rGkSPq ; Anna Maria Agresti and Rok Brence, Statistical Work on Shadow Banking: Development of New Datasets and Indicators for Shadow Banking, Research Paper by the European Central Bank, published by Irving Fisher Committee on Central Banks Statistics for Bank for International Settlements, Brussels, Belgium, May 19, 2017, pages 1 to 35, available via URL accessed June 30, 2021: https://bit.ly/3BIIRRx .

(3) Figures according to Trading Economics Report included in EU Commission report by Oskar Andruszkiewicz and Juliette Mathis (ICF), Charu Wilkinson, Michalis Vassiliadis, Peppas Konstantinos, and George Gatopoulos (IOBE), Study on the Financial Sector in Greece During the Economic Adjustment Programmes: 2010 – 2018; Final Report, European Commission Directorate General for Economic and Financial Affairs, June 2020, pages 20-28, available via URL accessed on June 29, 2021: https://bit.ly/3f2rBhh; and Pierre-Olivier Gourinchas, Thomas Philippon, and Dimitri Vayanos, The Analytics of the Greek Crisis, research paper published in the National Bureau of Economic Research (NBER), University of Chicago Press Journals, Volume 31, 2016, pages: 1 – 81, available via URL accessed on June 29, 2021: https://bit.ly/3iVy26W

statements and data as its principal roots are in logic which requires focus on concepts and methods not in accounting which it reviews. To this end, the difference between internal and external audit despite the fact that both provide financial reporting assurance services is the audience they address. External auditors address shareholders and regulators, internal auditors, the management as it is a form of self-review for assurance[(1)]. Internationally, internal audit is viewed as the watch dog charged to act as the cost center responsible for evaluating internal controls' effectiveness in mitigating risks. Hence, it is empowered to engage in governance, risk, and compliance management (GRC) in coordination with legal and compliance making them both holistic functions embedded throughout the organization to manage uncertainty, alleviate risk, and seize opportunities for growth, thus adding value to the entity through integrity and sustainability[(2)].

(9) Audit Irregularities in Law No. 364/1994 and the LCC

Law No. 364/1994 does not regulate what constitutes an audit, its scope of engagement, an audit committee or its functions, an audit policy, and the role of auditors in corporate governance for transparency and financial disclosure requirements. To this end, the said law does not mention the grounds for holding an auditor liable under civil or criminal offenses. However, in its fifteenth Article, it prohibits external auditors from being employed within companies whilst remaining completely silent on regulating internal auditors. Accordingly, only external auditors are syndicated and regulated. Thus, making the said law another example of Lebanese structural laws as it fails to regulate audit operations for both internal and external auditors since it does not specify their respective definitions, rights and obligations towards clients and audit engagements. In effect, Law 364/1994's definition of an external auditor's conflict of interest is indirect and limited. Furthermore, the said law falls short regarding joint audit engagements where big four audit companies conduct audit tasks under the license of a Lebanese external auditor as per Articles 18 and 59 which do not use the term external auditor but mandate that foreign auditors operate through Lebanese authorized partners and only audit reports signed by authorized Lebanese accounts specialists are considered valid. Lastly, the said law does not state which accounting standard or financial reporting standard is to be used by the Lebanese accounting specialists in their audit operations and lacks its own direct executive ordinance detailing all the matters the research mentioned earlier. From the above-mentioned deficiencies, we can understand how internal audit as a concept and culture is inexistent in Lebanese laws as a specifically regulated issue. External and internal auditors are equally important whereas the first one opines on the financials providing a qualified opinion, unqualified opinion, disclaimer opinion, or adverse opinion[(3)]; the second identifies gaps, issues, and problems to recommend solutions to management to address them. To this end, specialized audit laws must be able to identify the different frameworks and objectives that apply to what internal and external auditors do despite the fact that they build on each other's work. However, when the internal auditor who works closely with an entity's management is overlooked to rely heavily on the external auditor; the said imbalance of reliance becomes an irregularity that threatens the performance of the external auditor since he/she relies on the internal auditor's tests and data to perform its tasks. To compensate for this blatant default, the Lebanese legal framework relies on articles pertaining to external auditors within the LCC for

(1) Vasant Raval, Corporate Governance: A Pragmatic Guide for Auditors, Directors, Investors, and Accountants, an Internal Audit and It Audit Series Book, First Edition, 2020, a CRC Press publication for Taylor and Francis Group, Florida, United States of America, page 105.

(2) Urton Anderson, Michael Head, Sridhar Ramamoorti, Cris Riddle, Mark Salamasick, Paul Sobel, Internal Auditing: Assurance and Advisory Services, fourth edition, 2017, an Internal Audit Foundation publication sponsored by the Institute of Internal Auditors Chicago Chapter and The Institute of Internal Auditors Dallas Chapter, California, United States of America, pages: 1-8 and 1-9.

(3) Refer to Annex 1 for the definition of each type of external audit opinion.

joint stock companies and the CMC for banks when it refers to BDL and BCCL's basic and intermediate circulars for fulfilling Baseline capital adequacy requirements with respect to internal audit in its relation to corporate governance and IFRS9. Recently, the CMA's regulation, Series No. 3000 included articles 3210, 3211 and 3212 which address tasks and responsibilities of internal auditors within financial institutions conducting securities business in the Lebanese capital market. To this end, this paragraph shall only highlight Lebanon's legal framework for the audit function since it is very distinct from the Baseline requirements and since BDL's version of Baseline corporate governance framework is its own personal version [(1)]. The absence of the concept of internal audit from the Lebanese legal framework is attributed to the absence of the concept of corporate governance from the LCC in its articles on company law. In this line internal audit's absence can be detected starting from Articles 172 – 178 of the LCC when these articles utilize the term "authorized commissioner" which refers to external auditors. The same term is utilized and employed in the texts of the Lebanese CMC for articles pertaining to external auditors from Articles 186-191 with one difference " *bank's* authorized commissioner". Later, in September 25, 1971, Executive Ordinance No. 1983 was passed as implementing tool for CMC articles on external auditors under the title: "Regulation for the Profession of Banking Authorized Commissioners". The said absence extends within BDL and BCCL's basic and intermediate circulars including memos with the exception of BDL Circulars No. 77, 110, and 118 and BCCL Circulars No. 143, 271, and 512 pertaining to internal audit unit structure and tasks as well as the audit committee for topical abidance with Basel's corporate governance framework guidelines. This subparagraph treats the absence of internal audit vis a vis the emphasis on external auditors in the Lebanese legal framework respectively herein. Articles 172 up till Article 178 of the Lebanese Code of Commerce mention authorized commissioners as individuals appointed by the shareholders' general assembly in a joint stock company, enumerating their tasks, methods of reporting and prohibitions of having any direct or indirect interests with groups that can influence the prices of circulated financial instruments issued by the joint stock company as well as a general prohibition on them to have interests beyond their engagement agreements with the company including advisory contracts with the company or a shareholder who is a legal entity who owns ten percent or more of the company's capital. Meanwhile, Articles 172 and 173 of the LCC mandate that authorized commissioners shall be appointed for a year that can be renewed provided they don't exceed a continuous period of five years. Contrary to these two articles, Article 186 of the Lebanese CMC stipulates that banks' external auditors are appointed by the general assembly for three years that end with the convocation of the general assembly examining the accounts of the third year such that if an external auditor is appointed to replace a prior external auditor; the replacement shall function till the end of the remaining term of its predecessor. However, the said article is silent about prohibitions of renewals beyond that. Notwithstanding due consideration for the Lebanese Banking Secrecy law, the said article also exempts banks from the requirement of appointing an additional bank's authorized commissioner under its seventh paragraph. However, a shareholder or group of shareholders owning ten percent of the bank's or financial institution's capital are entitled to request the competent court to appoint an expert to investigate certain matters. Should the said court, grant the shareholders' request, it shall specify the expert's tasks, authorizations, and remuneration provided that he/she presents their expert report to the summoning shareholders and BOD as well as to the first shareholders' general assembly meeting. To this end, Article 187 specifies the banks' authorized commissioner's annual reporting tasks besides those specified in the LCC to include special detailed reports for facilities or loans granted by the bank directly or indirectly to the BOD and

(1) Baseline audit was not included in the section that referred to this explanatory note since Lebanon's audit requirements do not apply them. However, we have included them in explanatory note No 7. Accordingly, Statutory Audit requirements in EU which are based on Baseline and IAS are also included under explanatory note No 17

management. This is something that should be repealed as it poses a conflict of interest for the said management especially in the light that banks already deal with moneys they do not own. Later, Article 188 mandates that the said banks' authorized commissioners send simultaneously and directly to the Central Bank's Governor and the BCCL copies of all reports and information requested by these authorities provided that if these reports contain names of clients, the said names shall be replaced with numbers including the copy sent to the Governor. The following obligations extend to foreign banks as per Article 189 and the said banks' authorized commissioners of foreign banks are required to maintain banking secrecy just as the persons obliged to do so under the Lebanese Banking Secrecy law as per Article 190 of the CMC.

Under Article 1 of Executive Ordinance No. 1983, the original authorized bank's commissioner is the one appointed by the bank whereas the additional commissioner is the one appointed by the competent court. The said appointed banks' authorized commissioners according to Article 2 of the ordinance shall be sworn qualified accounting experts who have been working in this capacity within the competent court and are sworn at the competent court via their legal entity's designated supervisor. Additionally, they should be practicing accounting or auding for a minimum period of ten years. However, the said years of experience requirement may be shortened to three years should the candidate be a university graduate in commerce or accounting or an acceptable vocational degree from BDL. In this line, it is worth noting that this particular article poses a threat for the auditors' qualification as fit and proper specialized experts handling accounts of companies that can be a source of systemic risk. Additionally, the said article stipulates that candidates must not fall under any of the cases specified in Article 127 of the CMC. Furthermore, Article 3 of the ordinance allows the appointment of legal persons as banks' authorized commissioners provided that they are represented by natural persons who meet the requirements specified in Articles 1 and 2 mentioned above and that the said natural person shoulders along with his/her accomplices liability for crimes committed which are punishable by imprisonment as prescribed by competent courts. Moreover, the said natural person and its legal entity shall be liable jointly and in solidum for all duties and liabilities the natural person is charged with. Meanwhile, Article 6 specifies grounds for disqualifying a candidate for a banks' authorized commissioner's position which are: (a) relatives of the members of the concerned bank's BOD up till third degree including the bank's general director or assistant general director, (b) persons who are in debt to the bank or any company or subsidiary of the bank whether directly or indirectly; (c) former bank employees or any of its subsidiaries or employees to persons mentioned in (a) whose employment relationship ended less than two years prior to the candidacy. The said prohibitions also apply to the representatives of the bank's authorized commissioners should the commissioner have representatives or assistants. To this end, Article 7 mandates that any person appointed as an original bank's authorized commissioner or additional bank's authorized commissioner deposit a declaration and upon his/her personal liability certifying that they don't fall under the prohibitions stipulated in Article 6 under the sanction of being subject to the administrative punishments specified in Article 18 of this ordinance. We find this article highly controversial since administrative sanctions do not deter breach since the actions mentioned in the said article constitute fraud and foreshadow organized financial crime from corruption to embezzlement to money laundry by virtue of exercising political and bureaucratic influence to corrupt decision makers and instill practices that undermine corporate governance principles[1]. Furthermore, the article stipulates that further to

(1) Shima D. Keene, Organized Economic Crime, Shirley Quo, Unfair Competition and Crime, Richard Parlour, Practicalities of Financial Crime Deterrence, Catherine Pedamon, Theory of Fraud in French Law: Fraus Omnia Corrumpit - Old Law, New Opportunities, and Adrian Walters, Disqualification of Those Engaged in the Management of Companies and Financial Institutions, from the book: International Financial Crime, first edition, Edward Elgar Publishing, Cheltenham, United Kingdom, 2015, pages in respective order: 65-74, 125-143, 300-312, 338-355, and 714-725.

the submission of this declaration, the head of the BOD shall forward the said declaration to the BCCL. In this line, appointed banks' authorized commissioners perform their duties and exercise their authorities based on Article 172 and 173 of the LCC , Article 186 of the CMC , and the specific regulations issued by BDL or the BCCL addressing banks' authorized commissioners. Accordingly, banks' authorized commissioners under Article 9 of the ordinance are prohibited from refraining or halting the performance of their tasks as designated commissioners for financial reasons . Additionally, they are prohibited from serving as BOD members in banks they audit or in subsidiary or affiliate companies for these banks prior to the lapse of two years from the day he/she ceases working as the banks' authorized commissioner. To this end, a bank's authorized commissioner is prohibited from performing any tasks aside from his/her mandate of auditing accounts within the bank such that he/she may not be remunerated amounts beyond those specified by the bank's shareholders' general assembly's decision. Additionally, Article 10 of the ordinance charges bank's authorized commissioners with the obligation of verifying a bank's compliance with applicable laws and regulations mainly the LCC, the CMC, as well as BDL and BCCL's regulations and instructions. To this end, banks' authorized commissioners are required to verify and confirm that the bank's records are valid and real as per regulations and instructions provided by BDL and the BCCL. Moreover, they are charged with formulating reports specified in Articles 158 and 175 of the LCC as well as those specified in Articles 152 and 186 of the CMC and providing copies of these reports to BDL's Governor and the BCCL. Moreover, Article 11 of the ordinance specifies that the bank's authorized commissioner's report shall verify under the sanction of them being held liable that Article 158 of the LCC's requirements were upheld concerning contracts/dealings between the bank and one of its BOD members or between the bank and another entity owned by a member of the BOD as well as entities wherein a member of the BOD is a partner that is jointly liable in or is a member of directors of the said entity. It is worth noting that Article 11 opens doors for conflict of interests and abuse of powers afforded by the position held in the bank and we highly recommend it is repealed and replaced with an article that bans dealings wherein members of the BOD are involved since such transactions endanger a bank's management's integrity and ethical practices by exposing the bank to unnecessary related party risks. Furthermore, despite that Article 12 specifies that the report must be formulated as per requirements of Article 175 of the LCC as in it includes a general overview of the bank's accounts of the year audited, a statement of distortions or irregularities pertaining to breaches to the LCC or CMC or BDL and BCCL's regulations; the commissioners must warrant that they have verified on their personal liability the validity of the numbers and the appropriateness of the measures taken for the balance sheet as per the documentation provided. Finally, Article 16 of the ordinance does not charge them with investigating or detecting fraud but rather making recommendations to rectify breaches and notifying the bank's management to make the necessary remedial changes. If anything, this article clearly falls short of regulating situations wherein management overrides internal audit and internal control. In this sense, it forces auditors to create paper trail necessary to lift liability from them by documenting that they brought the breach to the attention of the management with remedial measures, but the management chose to ignore their recommendations. In this sense, what this article needs is a clear obligation for auditors to refer the matter to the banking regulator requesting immediate investigation since the management chose to override the auditor's remedial recommendations.

(10) Internal Audit according to International and Baseline Standards:

According to the Institute of Internal Auditors for international standards, internal audit is defined as follows:

" *internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes*".

From the said definition, internal audit is comprised of two services with each service serving an objective: an assurance service that provides an objective examination of evidence for the purpose of: (a) providing an independent evaluation of risk management, control, or governance processes for an organization, a bank or financial institution in the case of wealth management services; and (b) providing a level of confidence that objectives are achieved within an acceptable level of risk.; and a consulting or advisory service that is related to a client's activities depending on the nature or scope agreed upon with the client for the purpose of adding value and improving the client's operations with the client being a bank or financial institution in the case of wealth management services. Conversely, in the public sector, internal audit's objective is to determine that those entrusted with handling public resources are establishing and upholding effective controls necessary to: (a) achieve a public institution's goals and objectives in the most efficient and economical manner, (b) uphold respectively applicable laws and regulations, (c) protect public resources, and (d) evaluate accuracy and integrity of financial information. And whereas, external audit focuses on determining whether financial statements conform to generally accepted accounting principles; internal audit focuses on revealing internal control deficiencies as well as evidence of fraud, waste, and abuse[(1)]. Because internal audit utilizes veritable instruments for effective risk management implementation; its main objective goes beyond assessing by providing recommendations when and where necessary when it serves to secure adherence with laws and regulations for current processes, procedures, and policies all of which are compiled in the audit report which is presented to the board of directors or audit committee, as well as the CEO, and other stakeholders related to the audit assignment[(2)]. Due to the fact that the Lebanese laws do not define the audit committee nor its functions, we shall refer to the International Standards of Internal Audit for the said definition. Accordingly, an audit committee[(3)] is one of the board committees charged with appraising, choosing, and employing internal and external auditors; reviewing financial statements and ensuring that they are drawn up in accordance with all applicable accounting rules and regulations; receiving and examining allegations of improprieties related to the preparation of financial statements and preparing internal and external auditors' budget. Due to its important and complex responsibilities, audit committee members should be independent and external to the organization as in they are not employed by the organization. Additionally the committee must be comprised of at least one financial expert who through experience, training, or both, is well versed in IFRS requirements and financial statements; capable of assessing IFRS' general application with respect to accounting for estimates, accruals, and reserves; is knowledgeable in preparing, auditing, analyzing, or evaluating financial statements with the complexity similar to the bank's financial statements; understands internal controls over financial reporting; and knowledgeable in audit committee roles. Meanwhile, the chief audit executive must report directly to the audit committee and discuss matters regarding compliance, financial, operational, strategic and further issues under

(1) Steven Collings, Interpretation and Application of International Standards on Auditing, first edition, John Wiley Publication Ltd, Sussex, United Kingdom, 2011 pages 49 - 62.

(2) Patrick Onwura Nzechukwu, Internal Audit Practice from A to Z, Internal Audit and IT Audit Series, Florida, United States of America, 1st Edition, a Auerbach Book by CRC Press for Taylor and Francis Group, 2017, pages: 4-5 and 9-10.

(3) Hernan Murdock, Auditor Essentials: 100 Concepts, Tools, and Techniques for Success, Internal Audit and IT Audit Series, Florida, United States of America, 1st Edition, an Auerbach Book by CRC Press part of the Taylor and Francis Group, 2019, pages 47- 48.

his scope of duties. The audit committee should be given internal audit reports, primarily important findings reports which are regularly presented on a quarterly basis. The audit committee also receives reports on requirements for investigations and status findings reported in previous audits whether they were remediated as anticipated or remain outstanding. To this end, Standard 1300 requires that the internal audit function puts in place a quality assurance and improvement program comprised of an internal and external evaluation mechanism. The audit committee should choose and authorize the external reviewer for this program, receive a report recapping the findings of such evaluation and enforce the remediation of defects observed.

Because controls are actions taken by a bank's board, management, employees, and other personnel to mitigate the possibility and impact of risks; they are key elements in typical internal audit reviews which usually involve the identification and evaluation of such controls and their effectiveness. However, due to their dynamic nature especially in banking business, they usually require regular review for decision making and actions to be taken. Controls are mainly of two categories: (a) preventive and detective controls, and (b) compensating controls. Usually, the first category is structured vis a vis i.e., preventive control vs. detective controls where preventive controls prevent errors, omissions, and other unwanted outcomes from happening before they happen(1). Meanwhile detective controls identify errors when they occur. The concept of segregation of duties involves a segregation of incompatible duties such as excluding approval of transactions from related parties. Another aspect of the said control in this example is when approvals have limits and authorizations involve assignment of restricted approval thresholds to assigned individuals based on role and title. Meanwhile, compensating controls are set up when requirements cannot be met explicitly as stated or expected. They are controls that serve as alternative controls such as processes that should have a segregation of duties between authorization, custody, and record keeping however, due to difficulties or impractical implementation, they are used to cover for the lack of segregation. Under internal audit, these controls are remedied by recommendation of hiring additional staff or re-engineering the process so that work assignments are divided differently. Another option that internal audit would recommend is supervisory review where another individual reviews the work of the individual responsible for the unsegregated tasks to verify they are done appropriately. In effect, preventive controls are preferred in internal audit compared to detective or compensating controls for matters of efficiency.

As part of Basel III's consolidated framework(2), the principle of Effective Supervision is included from page1520 up till page 1626. Under the 26th principle of Effective Supervision it is stipulated that regarding internal audit and control the supervisor shall assess whether banks have suitable internal control frameworks to found and sustain an adequately controlled operations environment necessary for conducting banking business whilst taking into account the banks' risk profiles. To this end, the said framework shall contain clear stipulations for relegating authority and duty; segregation of functions such as committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; protecting the bank's assets; and adequate independent internal audit and compliance functions for the purpose of testing compliance with these controls as well as pertinent laws and regulations. In evaluating independence, supervisors shall duly regard the control systems intended to avoid conflicts of interest in the performance measurement of staffs' functions

(1) Hernan Murdock, Auditor Essentials: 100 Concepts, Tools, and Techniques for Success, Internal Audit and IT Audit Series, Florida, United States of America, 1st Edition, 2019, an Auerbach Book by CRC Press part of the Taylor and Francis Group pages: 125 -133, 145-150, 183 – 185.

(2) Basel Committee on Banking Supervision, The Basel Framework (consolidated version), Bank of International Settlements, January 22, 2021, Basel, Switzerland, pages: 1520-1626, available via URL accessed July 1, 2021: https://bit.ly/38ECaUj .

regarding compliance, control, and internal audit. To this end, the BCBS issued a guideline comprised of twenty principles to govern the internal audit function which we shall summarize herein.

According to the guideline issued on July 2012[1], an effective internal audit function affords independent assurance to the board of directors and senior management on the quality and efficacy of a bank's internal control, risk management, governance structures and procedures, thus serving the board and senior management in safeguarding their organisation and its standing. To this end, a bank's internal audit function ought to be independent of the audited activities, which requires that its functions must have sufficient standing and authority within the bank, to enable it to carry out its assignments with objectivity. That being said, internal audit's professional competence shall include the knowledge and individual experience of each auditor and that of all the internal auditors collectively which are essential for safeguarding a bank's internal audit function's effectiveness. The internal auditors shall act with integrity and each bank must have an internal audit charter that stipulates accurately the internal audit's purpose, standing, and authorities within the bank such that it promotes the internal audit's function effectiveness. Meanwhile, each activity including those outsourced and each entity of the bank shall be under and within the scope of the internal audit function. Accordingly, an internal audit's function and activities' scope shall secure commensurate coverage for regulatory issues within the audit plan. In this line, each bank shall have a constant internal audit function structured to enable a consistent approach for internal audit across all the subsidiary banks within a banking group, the board of directors of each bank within the banking group or the holding companies' structures. Meanwhile, the said consistent approach within the permanent internal audit function shall ensure that either: (a) the bank has its own internal audit function that is accountable to the bank's board and shall report to the banking group or holding company's head of internal audit; or (b) the banking group or holding company's internal audit function conducts internal audit activities with commensurate scope at the bank in order to enable the board to uphold its fiduciary and legal duties. Ultimately, the bank's board of directors shall be liable for securing that the bank's senior management founds and maintains a commensurate, effective, and efficient internal control system with the board supporting the internal audit function as it discharges its charges effectively. Furthermore, the bank's audit committee or its equivalent shall oversee the bank's audit commission whereas the head of the internal audit department shall be in charge of safeguarding that the audit department complies with sound internal audit standards along with a relevant code of ethics. Consequently, the internal audit function shall be held accountable to the board or its audit committee for all matters related to performing its mandate as stipulated in its internal audit charter. With that being said, the internal audit function shall independently assess the effectiveness and efficiency of the internal control, risk management, governance processes and systems formulated by the bank's business and supportive functions; and provide assurance for these systems and processes. Nevertheless, the board of directors shall ultimately remain liable for the internal audit's function even in the case where the internal audit function is outsourced. Accordingly, supervisors shall have regular communications with the bank's internal auditors to discuss risks identified by the bank's auditors and its regulator, to comprehend risk mitigation steps utilized by the bank, to fathom the flaws determined, and monitor the bank's measures when dealing with these deficiencies. Additionally, the bank's supervisors shall regularly evaluate whether the internal audit function has commensurate standing and powers within the bank and that it conducts itself as per sound principles. Conversely, the supervisors shall formally notify via reports all identified deficiencies/flaws

(1) Basel Committee on Banking Supervision, The Internal Audit Function in Banks, a guideline paper, Bank of International Settlements, July 2012, Basel, Switzerland, pages 4 - 29, available via URL accessed on July 1, 2021: https://bit.ly/3isRsRG .

within the internal audit function to the board of directors and require timely corrective measures. In this line, the banking authority shall take into consideration the impact of its assessment of the said internal audit function when evaluating a bank's risk profile and its own supervisory work. Lastly, the banks' supervisory authority shall be ready to take formal and informal supervisory measures that require banks' boards and senior management to rectify and correct any identified weaknesses pertaining to the internal audit functions within banks they supervise within a specific timeframe and provide the supervisor with periodically written development reports.

(11) The Economic Undertaking: From Market Discipline for Competition Regulation to GRC to a Shift under Basel III's Consolidated Holistic Corporate Governance under ESG:

Birth of the Economic Undertaking

The notion of economic undertaking first appeared in the EU Commission's decision 64/555 EEC in Grundig-Consten[(1)] then again in 1991's Klaus Höfner and Fritz Elser v Macrotron GmbH before the EU law's supremacy was fully established. Later in 1999, the European Court of Justice (CJEU) established the supremacy of EU law and the notion of public law order for EU competition law matters in Eco Swiss China Time Ltd v Benetton International as a judicature principle necessary to achieve compatible, clear, and fairly consistent regulatory framework for EU Competition Law. Accordingly, the CJEU uses the concept of economic undertaking when it defines competition as a relationship between any number of undertakings that offer goods or services of the same type simultaneously to a discernible set of clients in favorable conditions which makes it essential for the Single Market[(2)]. In the process, it defines an undertaking as any entity engaged in an economic activity comprised of offering goods or services in a given market irrespective of its legal status, form, the way it is financed, its intention to make or not make profit and without exclusion of state-owned enterprises[(3)]. Hence, an economic undertaking differs from legal entities since it may be comprised of several legal entities of different forms that make up an economic unit which is comprised of a unitary organization of personal, tangible, and intangible elements for the purpose of achieving a specific economic aim on the long-term basis which can contribute to a competition infringement[(4)]. To this end, the notion of economic undertaking answers the question of what an economic activity is not who; like the typical legal entity [(5)]. Thus, because of this functional approach, an entity's activities are divided into two categories for the purposes of applying EU competition laws: (1) economic activities that fall under EU

(1) EEC 64/555: Commission Decision, September 23, 1964, relating to a proceeding under Article 85 of the Treaty (IV-A/00004-03344 'Grundig-Consten'), official text in French or German published in the Official European Journal, Issue No 161, on 20/10/1954, pages 2545-2553, available online at Eur-Lex Europa via URL accessed on May 5, 2021: https://bit.ly/3xunVfm. Klaus Höfner and Fritz Elser v Macrotron GmbH, Case No C-41/90, Sixth Chamber, dated on April 23, 1991, referenced for preliminary ruling: Oberlandesgericht München - Germany., European Court Reports 1991-I-01979, ECLI:EU:C:1991:161, available via Eur-Lex-Europa, via URL accessed on May 7, 2021: https://bit.ly/3AsNDTC, Case C-126/97 reference for a preliminary ruling: Hoge Raad -Netherlands, European Court Reports, 1999 I-03055, ECLI: EU:C: 1999:269, available online at Eur-Lex-Europa via URL accessed May 5, 2021: https://bit.ly/3xcR9zr. In 1958, the Treaty of Rome established the common market which was followed by the Single European Act in 1986 which created the European Economic Community (EEC) to be an internal single market in the European Union. See Mario Monti, Competition and Solidarity in the European Construct, Chapter 4 in The History of the European Union Constructing Utopia, edited by Giuliano Amato, Enzo Moavero-Milanesi, Gianfranco Pasquino, Lucrezia Reichlin, first edition, 2019, Hart Publishing, Oxford, United Kingdom, pages: 89-112.

(2) Lorenz Moritz, An Introduction to EU Competition Law, second edition, 2013, Cambridge University Press, New York, United States of America, pages 12-14.

(3) Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe, C-74/16, CJEU Grand Chamber, dated on June 27, 2017, preliminary ruling, ECLI: EU: C:2017:496, available at Eur-Lex-Europa via URL accessed on May 9, 2021: https://bit.ly/3dJpb6K .

(4) HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH and Co. KG and Others v Commission of the European Communities, Court of First Instance, Fourth Chamber, Case /T-9/99, dated on March 20, 2002, Vol II- 1498, available online at Eur-Lex-Europa, via URL accessed May 9, 2021: https://bit.ly/3jJqeYi .

(5) Okeoghene Odudu, The Boundaries of EC Competition Law: The Scope of Article 81, first edition 2006, Oxford University Press, Oxford Studies in European Law, New York, United States of America, pages 160-161.

Competition Law and (2) Non-economic activities outside EU Competition Law. The importance of this notion lies in its applications for the purposes of overriding classical corporate control principles vested in ownership or votes as well as piercing the corporate veil for establishing both criminal and civil liability for breaching EU Laws generally and competition laws specifically; something we've seen only in the application of extending arbitration's effect to third parties/non-signatories under the theory of group of companies(1).

The Single European Market appeared in 2009 when The European Union amended the Treaty of Maastricht and enforced the Lisbon Treaty from which the consolidated Treaty of the Functioning of the European Union (TFEU) emerged(2). Later, the consolidated TFEU became the source of EU Competition Law (3) which was developed to control the Single European Market in a way that advances the union's interests over individual member states' interests thereby securing the union's economic and financial stability(4). Consequently, the TFEU adopted the notion of "economic undertaking" to apply EU Law in a harmonious and effective manner under three principles(5): (1) EU Law's supremacy over national member state laws, (2) EU Law's direct effect in member state territories, and (3) EU Law's full effectiveness including both countries with and without constitutional courts (like the United Kingdom).

Background: Economic Failures as a for Considering Competition in Economic Reforms

Enron had failed to: (a) properly account for and disclose special purpose entities (SPEs) investments including its contingent liability for their debt and dealings, (b) correctly recognize revenues that increased its reported net income, (c) restate its merchant investments using fair-value accounting based on undependable data thus overstating both its merchant investments' assets and net income, (d) correctly account for its own stock which it issued for the SPEs and was held by them; and inadequately disclosed and accounted for related-party transactions, conflicts of interests, as well as their costs to stakeholders. Additionally, Enron had violated six accounting rules resulting in problems which are: (1) not consolidating SPEs wherein it had the minimum three percent in, (2) not following the FASB's rule of clearly reporting in its statements' footnotes the amount of financial contingencies for which it was liable for since it was guaranteeing the SPEs debt something that would've warned the corporation about its liability for the huge debt, (3) not consolidating the SPEs assets and liabilities it effectively controlled, (4) improperly recording net profits in its book for SPEs it controlled through its chief financial officer, (5) not abstaining from funding some SPEs with its own stock or in the money options on that stock, taking notes receivable in exchange, and (6) not disclosing that its put options written by the SPEs were secured by the SPEs holding of unpaid-for Enron stock and loans guaranteed by Enron. Thus, when the SPEs failed to back its bank loans, Enron as guarantor was liable to pay for those. All these misdeeds allowed Enron to report profits on sales whilst increasing their assets book value without their auditor being

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(1) Because the corporate veil limits liability to the form and patrimony of a given legal persona's legal form. See Stavros Brekoulakis, Third Parties in International Commercial Arbitration, first edition, 2010, Oxford University Press, Oxford, United Kingdom, pages 84- 97.

(2) Jean-Claude Piris, The Lisbon Treaty: A Legal and Political Analysis, with a Forward by Angela Merkel, a Cambridge Studies in European Law and Policy Series, first edition, Cambridge University Press, Edinburgh, United Kingdom, 2010, page 307 - 309.

(3) SEA signed 1986, enforced 1987, Lisbon, signed 2007, enforced 2009, Maastricht, signed 1992, enforced 1993. See further official chronological EU treaty order from Europa.eu via link accessed on June 15, 2021: https://bit.ly/3uamj9Y See also: Marise Cremona, The Treaties that Created Europe, from The History of the European Union, Edited by Giuliano Amato, Enzo Moavero-Milanesi, Gianfranco Pasquino, Lucrezia Reichlin, Hart Publishing Bloomsbury Publishing Plc, Oxford, United Kingdom, 1st Edition, 2019, pages 133-135.

(4) Yuri Borgmann-Prebil and Malcolm Ross, Provisions on Democratic Principles, from The Treaty on European Union (TEU): A Commentary, Hermann-Josef Blanke and Stelio Mangiameli, Berlin, Germany, Springer-Verlag, 1st Edition, 2013, pages 390- 467.and also Machael Kaeding, Towards an Effective European Single Market: Implementing Various Forms of European Policy Instruments Across Member States, Heidelberg, Germany, 1st Edition, Springer VS, 2013, pages 17-25.

(5) Josephine Steiner, Lorna Woods, and Christian Twigg-Flesner, EU Law, New York, United States of America, 14th Edition, Oxford University Press, 2020, pages 69-89 and also Xavier Vives, Competition and Stability in Banking: The Role of Regulation and Competition Policy, 1st Edition, 2016, Princeton University Press, New Jersey, United States of America, pages 106-139.

able to catch or stop them. Enron's failures is what pushed European regulators to coin informed consent with the principle of comparability as established in standardized financial reports' requirements as we have seen in IAS, IFRS9, and European regulations and directives on accounting standards(1).

To this end, the EU passed Regulation 1606/2002 adopting IFRS standards as a means to secure the European internal market's effectiveness and fair competition in capital markets. However, in 2008 the worldwide economic crisis uncovered banks' failures as a systemic risk and clear cause for economic crises. In response to this revelation, the European Parliament reformed the economic and monetary union(2) by regulating banking and financial securities markets together with competition in the single market in a holistic legal framework for stability and sustainability purposes. Accordingly, the EU's first response to the crisis was to amend Regulation 1606/2002 via EU Regulation 297/2008 in a clear adoption of IFRS' new standards in the wake of Enron's abuse of SPVs and International Accounting Standards(3).

In effect, in 2012, the EU responded again to the Lehman Brothers' "Too Little, Too Late" failure to report losses(4) in a timely manner by amending EU Regulation 297/2008 via EU COD (Parliament and Council) Regulation No 648/2012 addressing late loss reporting, and finally by EU Regulation No. 2395/2017 introducing IFRS9 standards for financial instruments as a response to the "Too Big to Fail" Merrill Lynch's failure addressing systemically important financial institutions (to set them apart from systemically important banks). Under point two of Regulation 1606/2002's preamble, the EU stated its aim to improve its internal market's function by requiring that public traded companies apply a single set of high-quality international accounting standards that are truly global when preparing their consolidated financial statements. Meanwhile, point four iterated the regulation's aim to achieve an efficient and cost-effective functioning capital market that protects investors and maintains confidence in the financial market. By doing so, the regulation gave community companies an equal opportunity to compete across EU and the global capital market for available financial resources. Meanwhile, points eight and fifteen of the regulation focused on the useful financial information consolidated in financial statements as the foundation of informed financial consent for users to determine an undertaking's financial position in a fair view that avoids competitive disadvantages through misstatements of revenues and losses. Consequently, point one in EU Regulation No. 297/2008's preamble, held that it aims to ensure a high degree of transparency and comparability of financial statements which clearly affirms the EU's adaptation of IFRS' treatment of SPVs, and off-balance sheet items for the purposes of corporate governance mainly issues of credit risk for capital adequacy calculations, corporate control, liability, disclosures, and financial reporting .The new IFRS rules introduced by the EU COD(5) targeted Variable Interest Entities i.e., SPVs and off-balance items. Under the

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(1) George Benston, Michael Bromwich, Robert E. Litan, and Alfred Wagenhofer, Following the Money: The Enron Failure and the State of Corporate Disclosure, first edition, AEI-Brookings Joint Center for Regulatory Studies, Washington D.C., United States of America, 2003, pages 23-28. Also, Mark Williams, Uncontrolled Risk: The Lessons of Lehman Brothers and How Systemic Risk Can Still Bring Down the World Financial System, Chicago, United States of America, 1st Edition, 2010, McGraw Hill Companies publication, pages: 165 – 185.

(2) Ingolf Pernice, Financial Crisis, National Parliaments, and the Reform of the Economic Monetary Union, Chapter 7 from the book: National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation, Oxford Studies in European Law Series, first edition, Oxford University Press, Oxford, United Kingdom, 2017, pages: 115-141.

(3)See George Benston, Michael Bromwich, Robert E. Litan, and Alfred Wagenhofer, Following the Money: The Enron Failure and the State of Corporate Disclosure, first edition, AEI-Brookings Joint Center for Regulatory Studies, Washington D.C., United States of America, 2003, pages 23-28.

(4) Mark Williams, Uncontrolled Risk: The Lessons of Lehman Brothers and How Systemic Risk Can Still Bring Down the World Financial System, Chicago, United States of America, 1st Edition, 2010, McGraw Hill Companies publication, pages: 165 - 185.

(5) Regulation No 648/2012 EU Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, Official European Union Gazette, July 27, 2012, Issue L201/01, available via URL accessed on May 27, 2021: https://bit.ly/3yo9t8O . Regulation 2395/2017 by EU Parliament and Council amended the

consolidated TFEU of 2012, the concept of economic undertaking became the covalent bond between IFRS control metrics for Varied Interest Entities (VIEs) necessary for combating asymmetric financial information and market friction in banking and financial regulations for stability under Baseline principles and effective EU single market competition regulation. For the foregoing reasons, EU Regulation No. 648/2012, charged the European commission with: (a) oversight of the implementation of IFRS standards under the said regulation to ensure that financial statements are consolidated to reflect a fair view of undertakings' financial positions; and (b) coordination with the EU's Single Market regulators for banking and financial markets' for the purposes of harmonizing and implementing EU's competition regulations(Articles 101 to 109)[(1)].

Consequently, the EU decided to adopt the Single Rulebook, to harmonize the implementation of EU banking and financial markets regulations with International Accounting Standards (IAS), International Standards of Audit (ISA), International Financial Reporting Standards (IFRS) and International Banking Standards[(2)] (Basel III within certain limits) and utilize the notion of economic undertaking in its Single Rulebook[(3)] for the harmonization process to coin regulation of banking and financial securities' business with competition regulation given the gaps between IFRS9 and Basel III. Prior to 2018, IFRS relied on IAS39 standard which applied incurred losses model in calculating losses related to credit risk. This changed after the failure of Lehman brothers when it was established that they contributed to the world crisis due to their failure to declare their losses in a timely manner. The said revelation triggered IFRS and GAAP bodies in UK and USA to explore a new model for credit risk losses. However, due to the difference between IFRS being standards that are subject to interpretation and GAAP being a set of rules; the parties never converged. In effect, IFRS developed IFRS9 for financial instruments which adopted the Expected Credit Loss model which classifies financial assets based on credit performance and credit risk into three categories (1) financial assets that haven't shown a significant increase in credit loss risk, (2) financial assets that have shown a significant increase in credit risk, and (3) financial assets that have been impaired by the credit loss. For the first category, IFRS9 puts a 12 months period to show this expected credit loss as for the 2nd and 3rd category it applies a lifetime expected credit loss shown on financial reports. Basel III relies on credit loss to calculate credit risk in capital adequacy requirement calculations in its tier 1 and adopts a 12 months period for incurred losses that have evidence/happened/incurred not expected losses. In response to this gap, the Bank of International Settlements issued an executive summary titled: "IFRS9 and Expected Loss Provisioning" on December 13, 2017 wherein the Basel Committee on Banking Supervision (BCBS) decided to explain its October 2016 decision to retain for an interim period its current regulatory treatment of provisions applied under the standardized approach and internal ratings-based approach; adding that it will consider the longer-term regulatory capital treatment of provisions further, including undertaking analysis based on quantitative impact assessments. In its executive summary's concluding paragraph, the BCBS declared that it has set out optional transitional arrangement for the impact of ECL accounting on regulatory capital as well as the

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prior regulation on December 12, 2017, regarding transnational arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures dominated in the domestic currency of any member state, published in the Official European Union Gazette, December 27, 2017, Issue L345/27, available via URL accessed on May 27, 2021: https://bit.ly/3ArIaMP .

(1) Article 17 of the Treaty of the European Union (TEU bulk consolidated documents available via URL accessed June 1, 2021: https://bit.ly/3jJLo8CT), Articles 234, 244 to 250, 290 and 291 of the TFEU, and the Treaty Establishing a Single Council and a Single Commission of the EU Communities, confer these powers to the EU Commission, which is comprised of a college of 27 commissioners, 55 general directorates four of which concern this paragraph (1) Competition, (2) Financial Stability, Financial Services Capital Markets (FISMA), (3) Economic and Financial Affairs (ECFIN), and (4) Internal Audit Service (IAS). Refer to Figures 20 to 25. Review consolidated TFEU's official text published in Official Journal of European Union, C326/47 on 26/10/2012, available via URL accessed June 2, 2021: https://bit.ly/3jIFx36

(2) See Figures No. 26 and 27 under the list of figures of Annex 2.

(3) Refer to Figure 26 EU Single Rulebook and Basel III vs EU Regulations in Annex 2 of this research.

corresponding Pillar 3 disclosure requirements for individual jurisdictions who may choose to implement the IFRS9 transition arrangements. This gap was the reason why EU decided to intervene with its Single Rulebook to keep financial reports transparent and reflective of undertakings' financial positions and to avoid straining banks with tight capital requirements that can reflect on the banks' offer of loans which impair investment financing(1). Then it decided to apply a holistic governance for its Single Market that covers domestic and cross-border operations whilst distinguishing between three consolidations: (a) financial reporting consolidation, (b) capital adequacy consolidation requirements under Basel III's first pillar for banks whilst differentiating these calculations for financial securities investment firms, and (c) banking and financial supervision consolidation requirements for regulators and market players under Basel III's second pillar. In its utilization of the economic undertaking as a basis for its holistic consolidated financial system of supervision of banks and financial markets with competition regulation; the EU laid down through its Single Rulebook (SR) a complex framework consisting of several elements. First, the SR is comprised of banking regulations within EU Regulation No. 575/2013 as implemented by EU Directive No. 36/2013 for capital requirements (CRR and CRD), EU Directive No. 59/2014 for recovery and resolution, EU Directive No.17/2014 for consolidated credit agreements for consumers, EU Directive No. 49/2014 for deposit guarantees, and EU Directive No. 2366/2015 for Payment Services. The second element of the SR is financial markets' regulations which is comprised of EU Regulation No. 600/2014 regarding markets in financial instruments and its implementing Directive No. 65/2014 (the recast) together known as MIFIR and MIFID II. Meanwhile, the third element is Investment Firms EU Regulation No. 2033/2019 and its implementing EU Directive No. 2034/2019 together known as IFR and IFD. As for the fourth element comprising the SR, it is EU Regulation No. 847/2015 (AMLCFT) and its implementing EU Directive No. 849/2015 (AMLA). Lastly, EU Regulation No. 2402/2017 on Securitization is the SR's fifth element. According to this framework, when read with EU Regulation No. 1606/2002, and EU Regulation No. 1093/2010, the EU treats capital calculation related to the credit (risk and exposure), and loss calculations for EU market sustainability reasons under the notion of economic undertaking when treating SPVs and SSPEs (Security Special Purpose Entities) under three major principles of reporting requirements as they appear on the EBA's website of the interactive Single Rulebook. First it classifies reporting requirements by credit institutions and investments firms into two types: (a) prudential reporting requirements which are related to capital adequacy requirements and credit risk; thereby subject to Regulation No. 575/2013 and its implementing Directive no 36/2013; and (b) financial reporting requirements subject to the EU Commission's Delegated Regulation No 1126/2008 due to the technical nature of these reports which utilize principles of consolidated financial reporting under International Accounting Standards (IAS), International Financial Reporting Standards (IFRS), International Financial Reporting Interpretations Committee (IFRIC), and Standing Interpretations Committee (SIC) as per its 2021 amendments. The said regulation adopted all 44 IAS, all 16 IFRS, but only 7, 10, 15, 25, 27, 29, 31, and 32 of the SIC(2). Second, it differentiates between its treatment for institutions/entities that fall under the IFRS standards as per Article 4 of EU Regulation No 1606/2002 from those that don't whilst segregating between financial information disclosed and calculations for capital adequacy requirements that apply for banks/credit institutions that take deposits under the CRR and CRD. Third, it enforces a

(1) See: The BIS Executive Summary, follow the URL accessed on June 7, 2021: https://bit.ly/2UTXWj2 . Tiziano Bellini, IFRS9 and CECL Credit Risk Modelling and Validation: A Practical Guide with Examples Worked in R and SAS, first edition, Academic Press imprint of Elsevier, San Diego, United States of America, 2019 and Pasqualina Porretta, Aldo Letizia, and Fabrizio Santoboni, Credit Risk Management in Bank: Impacts of IFRS9 and Basel 3, research paper published in Risk Governance and Control: Financial Markets and Institutions Journal, Virtus Interpress, Gagarina, Ukraine, Volume 10, Issue No 2, 2020, pages 29-44, available via URL accessed June 12, 2021: https://bit.ly/3igbhub.

(2) The research shall explore this type of reporting under paragraph one of section two of this chapter due to its relation to audit and IFRS principles under Commission Delegated Regulation No. 1126/2008.

coordinated supervision mechanism under CRR and CRD between central and local supervisors on three levels: (a) structural: parent vs subsidiary undertakings for licensing and topping up authorizations, (b) operational: type of business as credit institution vs. investment firms by classes for calculation of risk exposures, liabilities, and systemic risk/impact, and (c) geographical for assurance of compliance with EU transparency requirements with respect to (i) undertakings headquarted/set up in EU and operating in EU, (ii) undertakings with investment firms or investment firms with subsidiaries/holdings outside EU, and (iii) undertakings that are foreign but sell financial instruments/services inside EU for AMLCFT requirements and market stability as well as competition regulation purposes(1). Realizing that EU's economic sustainability depends on transparency and comparability necessary for informed economic decisions for all market players; It started having questions related to VIEs and SPVs directly answered from ESA bodies such as the EBA. For instance, in a question addressed to the EBA whose answer was published on October 2019, as to whether SPVs used for Asset Backed Securities (ABS) transactions are financial institutions according to Article 4 of the CRR and if that mandates that the SPVs are reported as the 10 largest exposures consolidated on a basis to unregulated financial entities as per Article 394(2) of the CRR; the EBA responded(2):

> *" If, according to the competent authority, the SPV is considered to fall under the definition of a Securitization Special Purpose Vehicle (SSPE) then it should not be considered a financial sector entity. SSPEs do not acquire participations per se and may not be regarded as carrying out any of the activities listed under Annex I to the CRDIV, having regard to the definition of SSPE in point (66) of Article 4(1) CRR, which specifies that the corporate purpose of a SSPE is limited to the achievement of the securitization purpose (i.e., "to isolate the obligations of the SSPE from those of the originator") and so they are in principle not allowed to carry out any other financial activities. See also "EBA Opinion on other financial intermediaries (OFIs) and regulatory perimeter issues. As a result, exposures to SSPEs (or SPVs that qualify as SSPEs) should not be counted towards the report of the 10 largest exposures as specified in Article 394(2) CRR. In any case it should be considered that according to Article 390(7) CRR "in order to determine the overall exposure to a client or a Group of connected clients, in respect of clients to which the institution has exposures through transactions referred to in points (m) and (o) of article 112 or through other transactions where there is an exposure to underlying assets, an institution shall assess its underlying exposures taking into account the economic substance of the structure of the transaction and the risks inherent in the structure of the transaction itself, in order to determine whether it constitutes an additional exposure".*

Meanwhile, according to EU regulation, a securitization is deemed an STS if it meets requirements set in Articles 18-27 in EU Regulation No. 2402/2017 within pages: 18-25 of the regulation and for synthetic and traditional securitization requirements specified in pages 1-3. The regulation further defines in point 5 Article 2 a sponsor as a credit institution as defined by Article 4(1) of Regulation No. 575/2013 or an investment firm as per Article 4(1) of EU Directive No. 65/2014 as the one who: (a) establishes and manages an asset-backed

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(1) EU Regulation No 575/2013 Articles 92 - 100, 244 - 253, 338, 430 - 448, 452 - 461; EU Directive 36/2013: Article 28, EU Directive 39/2004 as amended and extended in 2011: Annexes A and B, EU Regulation 1606/2002: Articles 4 and 6, EU Directive 1093/2010: Article 15, and Commission Delegated Regulation No 1126/2008 as amended in 2021. URLs to regulations and directives available via these links in their respective mention order as accessed on June 21, 2021: https://bit.ly/3zGA7L5, https://bit.ly/3eOuF0y, https://bit.ly/3eQbwLB, https://bit.ly/3x2EVIN, https://bit.ly/3eMHZmb, and https://bit.ly/36UTMdJ.

(2) EBA Q & A interactive website, Question Ref # 2014_1530 regarding Regulation NO 575/2013 CRR on Supervisory Reporting - Large Exposures, available e via URL accessed June 21, 2021: https://bit.ly/3i5fuCl.

commercial paper programme or other securitization that purchases exposures from third-party entities, or (b) establishes an asset-backed commercial paper programme or other securitizations that purchases exposures form third-party entities and delegates the day-to-day active portfolio management involved in that securitization to an entity authorized to perform such activity in accordance with EU Directives No. 65/2009, 61/2011, and 65/2014.

Hence, advanced legal systems such as the EU that are governance, risk, and compliance (GRC) oriented apply effective wealth management CG systems known today as the Environmental Social Governance (ESG) systems/approaches . Hence, they belong to the holistic compliance camp that practices risk-based compliance. The reason for this divide between both camps lies in the fact that the latter recognized and addressed the existing gap between compliance's textual requirements and the practical requirements of business model adapted applications for proportionality and flexibility purposes required in financial operations. The said gap was instilled when professional international audit, accounting, and reporting standards decided to position internal audit and compliance professionals as defenders among the three corporate defense lines(1) and in parallel to senior management and the board of directors. Accordingly, as controllers and gate keepers, internal audit and compliance professionals were required to report to both the senior management and the board of directors with an emphasis on their independence, objectivity, and professional skepticism to avoid alienation and collusion of management against the gatekeepers. Despite having authority to exercise control over functions of management, and internal audit; compliance does not: participate in decision making, or have executive powers, or even control management even though they are required to act as control on management and report instances of control override(2).

(12) EU's Specialized Legal Framework for Audit, an Overview

As a specialized legal framework, the EU's audit framework targets the audit function required for CG purposes in European undertakings and other entities within the European Single Market by industry and function with respect to their impact on the European market's systemic risk when it mandates that the CEAOB coordinates with the ESRB and focuses particularly on public interest entities (PIEs) as targeted economic undertakings due to their size in the European market. Additionally, it possesses a holistic and technical approach due to its implementations which specifically address auditors' qualifications and practice authorizations, audit entities' CG and formation on both structural (firms, groups, networks) and operational levels, risk oriented approach for controlling auditors' functions concerning audit and non-audit services; audit performance assessment for both auditees and individual auditors or audit firms; as well as ethical practices necessary to mitigate conflicts of interest and undue influence. Overall, it stands out through its application of international accounting, audit, and financial reporting standards. To this end, the EU's specialized legal audit framework ensures the credibility of statutory audits(3) and the uniform operation of auditors and audit firms in a free open market allowing them to offer competitive high quality audit services. It designates external auditors with the title of statutory auditors who are duly authorized and required by EU laws to perform a legal review of financial information and opine on or assess the said information via audit reports, inform competent authorities of

(1) Refer to Figure 30 in the List of Figures Under Annex 2.

(2) Vasant Raval , Corporate Governance: A Pragmatic Guide for Auditors, Directors, Investors, and Accountants, an Internal Audit, and IT Audit Series Book, first edition, a CRC Press publication for Taylor and Francis Group, Florida, United States of America, 2020.

(3) Since we are operating on a vice vs means approach in our comparative approach for both Lebanon's and EU's legal regimes' requirements on internal audit in this subparagraph, we refer the reader to Explanatory Note No. 14 in the Explanatory Notes list under Annex 3, to see how the EU applies IAS and Baseline requirements for its statutory audit.

deficiencies, financial information, and irregularities, as well as detect financial crime, fraud, abuse, wastage, and other irregularities. It also relies on undertakings' audit committees' vast powers and financial competencies to supervise the audit function in economic undertakings to utilize valuable financial information assessed and reported by both statutory and internal auditors for the purposes of safeguarding the EU's financial market's sustainability. Accordingly, it includes internal audit functions under CG requirements supervised by the audit committee as per European and national company laws as well as European credit and financial institutions regulations. To this end, it relies on the IAS and IESB to separate internal audit functions(1) from external audit functions and allocate auditors' liabilities as tort or negligence(2). Furthermore, it regulates the functions and performance of statutory auditors including their firms' corporate governance by addressing their structure, management, control, ethical practices, and the legal framework they are established under or are governed by depending on their nationality and market access for providing services. It also affords whistle-blowers mechanisms to report irregularities and breaches via requiring competent national authorities to establish appropriate protection mechanisms for auditors to shield them from retaliation as well as adequate incentives to report violations. This explains why it is comprised of EU Regulation No. 537/2014 and its implementing EU Directive No. 56/2014 regarding statutory audit which amended EU Directive No. 43/200, as well as Directives No. 109/2004 on Transparency, No. 138/2009 on Solvency, No. 34/2013 on Consolidated Accounts, and No. 1132/2017 on Company Law which must be applied with EU Regulation 575/2013 and its implementing EU Directive No. 36/2013 regarding credit and financial regulation requirements for internal audit due to it being part of EU's effective holistic consolidated corporate governance requirements under the Single Market Supervision Mechanism. Lastly, it sets out criteria for qualifying national competent authorities mainly on issues of independence, qualification of fraud investigations and irregularity inspectors, delegation of authorities, coordination on union and international levels, transparency, exchange of information, and inspections on union and national levels.

In view of the above overview, the EU's specialized legal framework for audit's requirements concerning investment firms, PIEs, and credit institutions' internal audit requirements comes with intricacies mainly found under the European Commission's delegated acts under specific articles within a number of regulations. For instance, under paragraph thirty-one of Regulation 537/2014's preamble, a case-by-case approach is applied regarding the alignment of procedures adopted by the European Commission's delegated acts as per the requirements of Articles 290 and 291 of the TFEU. The purpose of this approach towards the European Commission's delegated acts is keeping abreast with the developments in auditing and the audit profession mainly regarding the adoption of international auditing standards in the area of audit practice. To this end, the European Commission is charged with appropriately consulting during its preparatory work including conducting expert level consultations and ensuring the simultaneous, timely and appropriate transmission of relevant documents during the preparation and drawing up of the delegated acts to both the European Parliament and Council. Thus, the European Commission passes delegated regulations by virtue of Article 9(3) of Regulation No. 537/2014(3) which authorizes it to legislate within the parameters set out in Article 39 on issues specified under Article 48a concerning establishing

(1) The International Federation of Accountants, The International Code of Ethics for Professional Accountants: Including International Independence Standards, 2020, New York, United States of America, pages 181 - 184, available via URL accessed on July 25, 2021: https://bit.ly/3mXxWQ1.

(2) Such as independence, objectivity, professional skepticism, transparency, relationship, and remuneration . See Further: Philomena Leung, Paul Coran, Barry Cooper, and Peter Richardson, Modern Auditing and Assurance Services, sixth edition, John Wiley & Sons Australia Ltd, Melbourne, Australia, 2014, pages 320-368.

(3) EU Regulation No. 537/2014 of EU Parliament and Council on Specific Requirements Regarding Statutory Audit of Public-Interest Entities and Repealing Commission Decision EC No. 909/2005, as last amended on June 16,2014, available via URL accessed on August 2, 2021: https://bit.ly/3DHrP8x .

international auditing standards in the area of audit practice, independence, and internal quality controls for statutory auditors and audit firms for the purposes of applying international audit standards within the EU. To this end, Article 26(3) stipulates that the European Commission shall be allowed to issue delegated acts for the purpose of adopting international accounting standards only if they: (a) have been developed with proper due process, public oversight, transparency and are generally accepted internationally, (b) contribute to a high level of credibility and quality to the annual or consolidated financial statements in conformity with the principles of Article 4(3) of Directive 34/2013, (c) are conducive to the EU's public good, and (d) do not amend any of the requirements of Directive 43/2006 or supplement any of its requirements apart from those set out in Articles 27 on monitoring market quality and competition and 28 on transparency of competent authorities of Regulation No. 537/2014. To this end, on November 3, 2008, the EU's Commission passed Regulation No. 1126/2008 which was titled: "Adopting Certain International Accounting Standards in Accordance with Regulation 1606/2002 of the EU Parliament and Council". The said regulation has been amended several times including recently on January 14, 2021, to decisively adapt International Accounting, Auditing, and Reporting Standards as specified in its seventh point under the provision titled "Definitions". Meanwhile, under Article 30 of Regulation No. 537/2014 the Committee of European Auditing Oversight Bodies (CEAOB) supervises the implementation of the EU's legal framework for audit through three categories of representatives:

(a) member representatives such as representatives of the national audit oversight bodies of the EU (NAS) and the European Securities Markets Authority (ESMA);
(b) participating representatives such as the European Economic Area (EEA) representatives of national audit authorities; and
(c) observer representatives such as the European Banking Authority (EBA), and the European Insurance and Occupational Pensions Authority (EIOPA).

Meanwhile Article 456 of Regulation No. 575/2013 specifies that the commission shall be empowered to adopt delegated acts in accordance with Article 462 and in the light of financial markets developments concerning: (a) clarifications of definitions pertaining to the following articles of Regulation No. 575/2013's general definitions, definitions specific to capital requirements for credit risk, internal rating systems, risk-weighted exposure amounts for exposures to corporates, institutions and central governments and central banks, credit risk mitigation definitions, simple, transparent, and standardized securitization definitions, determination of exposure value for counterparty credit risk definitions, own fund and exposure to central counterparty definitions, credit valuation adjustment definitions, liquidity coverage requirement definitions for the purposes of the regulations' uniform application[(1)]; (b) amendment of list of exposure classes under articles 112 and 147; (c) the amounts specified in articles 123(c) regarding retail exposures and 147 on methodology for assigning exposure classes; (d) the off balance sheet items' list and classification as specified in Annexes I and II; I adjustment of investment firms categories under articles 95(1) and 96(1)[(2)]; (f) clarification of Article 97's requirements for the regulation's uniform application; (g) amendments regarding own fund requirements for exposures to a central counterparty as specified in Articles 301 to 311 of Regulation No. 575/2013 as well as Articles 50(a) and 50(d) of Regulation No.

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(1) Articles 4,5, 142, 153, 192, 242, 272, 300, 381, 411, 112, 147, 123, 95(1) Own funds requirements for investment firms with limited authorisation to provide investment services of EU Regulation No. 575/2013 of European Parliament and Council.

(2) 95(1)Own funds requirements for investment firms with limited authorisation to provide investment services, 96(1) Own funds requirements for investment firms which hold initial capital as laid down in Article 28(2) of EU Directive No. 36/2013 on Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions Amending EC Directive No. 87/2002 and Repealing EC Directives No. 48/2006 and 49/2006, published on June 26,2013, as last amended, corrected, and consolidated on June 28, 2021, available via URL accessed on August 2, 2021: https://bit.ly/3yD6toY .

648/2012[1] in the light of amendments of international standards on exposures to a central counterparty; (h) clarification of exemptions' conditions specified under Article 400; and (i) amendments regarding capital measure and total leverage exposure ratio measures specified under Article 429(2) to correct any shortcomings discovered from reports referred to under Article 430(1) before the leverage ratio is published by institutions specified in Article 451(1)(a).

(13) The concept of VIEs for Consolidated Financial Reports:

Due to the fact that the IFRS'[2] concepts in VIEs for financial consolidation requirements under the EU's delegated Commission's Regulation No 1126/2008 are set in a total of 1213 pages and the fact that the IFRS standards are not available for non-paying subscribing professionals, we shall be utilizing the Chartered Public Accountant's (CPA) summary of IFRS steps to identify VIEs for matters of consolidation[3]. According to the CPA, a variable interest entity is a corporation, partnership, trust, limited liability company, or other legal structure employed for business purposes such that it either doesn't have equity investors with voting rights or doesn't have adequate financial resources to support its operations. Accordingly, an entity must consolidate a VIE when the primary beneficiary is the entity that can direct the VIE's operations that most substantially impact the entity's economic functions and (1) realizes the VIE's losses or (2) obtains the VIE's expected residual profits. To this, the following criteria must be utilized in order for a company to identify a VIE in a business entity:

(a) The company and the business entity fall under any of the four situations with respect to the business entity: (i) the company or related party substantially contributed to the business entity's design, (ii) substantially all of the business entity's activities by design, include or are conducted on behalf of the company, (iii) the company furnishes more than half the total of the equity, subordinated debt, and other forms of financial aid, and (iv) the entity's primary operations are securitizations or other forms of asset-backed financing arrangements or single-lessee leasing transactions (in cases that they lack legal persona).

(b) The business entity is a legal structure which comprises of corporations, partnerships, limited liability companies, trusts, and majority-owned subsidiaries;

(c) The business entity fails to meet the exclusion criteria. The following types are normally not consolidated as VIEs: (i) non-profit organizations, (ii) employee benefit plans, (iii) registered investment companies, (iv) separate accounts of life insurance companies, and (v) governmental organizations and financing entities established by governments.

(d) The interest is more than substantial. In this sense, an entity with an insignificant variable interest is unlikely to be under the primary beneficiary notion where the phrase insignificant is within the context of whether the variable interest is large enough for the company to even slightly be considered the main beneficiary that would consolidate the VIE.

(e) The company has an explicit or implicit variable interest in the entity. Accordingly, a variable interest exists when the company must: (a) take in a part of the business entity's losses, or (b) collect a part of the business entity's anticipated enduring profits.

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(1) Calculation of KCCP (hypothetical capital) and Calculation of specific items to be reported by the CCP (according to Article 2 of Regulation No. 648 of 2012 CCP means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer; EU Regulation No. 648/2012 by European Parliament and Council on OTC Derivatives, Central Counterparties and Trade Repositories, published on July 4, 2012 as amended, corrected, and consolidated last June 28, 2021, available via URL accessed August 2, 2021: https://bit.ly/3mY7w0w .

(2) The standards' texts per se are not available for the public since they are not subscribers. We gained access via a CPA book and the standards transposed in the EU's Regulation No 1126/2008.

(3) Timothy Geary, Angeline Brown, Teresa Anderson, Patrice Johnson, Tom Cox, Steve Levin, John Pillatsch, Pete Console, Katie Tran, Stephen Bergens, James McKimson, Anson Miyashiro, Michelle McCubbins, Brian Cave, Tim Munson, Linda Finestone, Eric Brunner, Chris Cocozza, Robert DeFilippis, Jennifer Deutsch, Mike Farrell, Dennis Green, John Grayson, Liliana Hickman-Riggs, Donald Kaniecki, John Kushner, Cindy Lawrence, Seth Levine, Edward McTague, Michael Meriwether, CPA Exam Review, Financial, United States of America, 1st Edition, 2014, Becker Professional Education, F-10 → F-19.

Once a company determines that it has a variable interest in a business, it must decide whether the business entity is a variable interest through the following criteria:

(a) It has insufficient level of equity investment at risk because it is unable to operate on its own without additional subordinated financial support in the form of variable interests. In this sense, an entity is not a VIE because it has sufficient equity investment at risk when: (i) it can finance its own activities, (ii) its equity investment at risk is at least as much as the equity investment of the other non-VIE entities that hold similar assets of similar quality, (iii) it determines other facts and circumstances that indicate that the equity investment risk is sufficient, and (iv) the fair value of the equity investment at risk us greater than expected losses.

(b) It is incapable of making decisions or conduct direct activities. In this sense, an entity is a VIE if its holders of total equity investment at risk as a group, do not have the power to direct the activities of the entity that most significantly impact the entity's economic performance".

(c) It has no obligation to absorb the entity's expected losses. Accordingly, an entity is a VIE if the holders of the total equity investment at risk have no obligation to absorb the entity's expected losses.

(d) It has no right to receive expected residual returns. Consequently, an entity is a VIE if the holders of the total equity investment at risk have no right to receive the entity's expected residual returns.

(e) It has disproportional voting rights. Thus, an entity is a VIE if some of the equity investors have disproportionate voting rights compared to their economic interests. In effect, an entity is automatically considered a VIE when all of these conditions are met: (i) substantially all of the activities of the entity are conducted on behalf of an equity investor or substantially all of the activities are involving an equity investor; (ii) the voting rights of that equity investor as small with respect to the focus of the entity on that investor, and (iii) the voting rights of one or more of the equity investors including that equity investor are out of line with the investor's obligations to absorb expected losses, the investor's right to receive expected residual returns, or both. Hence, when a company establishes that it has a variable interest in a business entity that is a variable entity VIE, the primary beneficiary must be determined, and the primary beneficiary must consolidate the VIE. In this respect, a company is a primary beneficiary if it has the power to direct the activities of a VIE that most significantly impacts the entity's economic performance and the company: (i) absorbs the VIE's expected losses, and (ii) receives the expected VIE's residual returns. In this line, if one party receives the expected residual returns and another party absorbs the expected losses, the party that absorbed the expected losses consolidates. However, it is possible for an entity to be a VIE without having a primary beneficiary only in this case, nobody consolidates. From this conclusion it is clear that an economic right owner and an economic beneficiary may differ when we apply VIE related control metrics for financial consolidation principles.

(14) EU's Statutory Audit Regulations and Reforms:

Under paragraph five of Directive 56/2014's preamble statutory auditors and their firms are responsible for delivering financial information on company management[1],whilst

(1) This conforms with International Audit Standard No. 1210.A2-2 when it states that "Management has a responsibility to establish and maintain an effective control system at a reasonable cost. To the degree that fraud may be present in activities covered in the normal course of work as defined above, internal auditors have a responsibility to exercise due professional care as specifically defined in Standard 1220 with respect to fraud detection. Internal auditors should have sufficient knowledge of fraud to identify the indicators that fraud may have been committed, be alert to opportunities that could allow fraud, evaluate the need for additional investigation, and notify the appropriate authorities". See Further Richard Cascarino, Internal Auditing: An Integrated Approach, 3rd Edition, 2015, Juta and Company Limited Publishing, Cape Town, South Africa, page 341.

requiring they be knowledgeable on member states' varying company, fiscal, and social laws. Article 2 of Regulation No. 537/2014 sets its scope of application to statutory auditors and their firms as well as public interest entities (PIEs). Meanwhile Article 4 of Regulation No. 537/2014 prohibits statutory auditors from obtaining contingent fees when they audit PIEs since these fees are calculated on a predetermined basis related to the outcome or result of the transaction or the result of the work conducted. However, an auditor's fee shall not be considered contingent if a court or competent authority establishes the said fees. The said article also places a limit on how much fees an audit firm can obtain over a period of three or more consecutive financial years for non-audit services other than those specifically prohibited in Article 5 of the regulation. The said fees are limited to no more than 70% of the average fees paid in the last three consecutive financial years for the statutory audits of the audited entity and where applicable of its parent undertaking, of its controlled undertakings and of the consolidated financial statements of that group of undertakings. It also requires that an audit firm discloses its total received fees from a PIE in each of its last three consecutive financial years that are more than 15% of the total fees received by the statutory auditor or audit firm and where applicable by the group auditor performing statutory audit in each of those financial years. Additionally, it mandates that the group auditor discusses with the audit committee threats to their independence and safeguards that need to be applied to mitigate these threats after disclosing its fees for each of the financial years concerned. To this end, the article requires audit committees to further decide on the basis of objective grounds whether the audit firm or group auditor may continue to carry out statutory audit for an additional period provided that it does not exceed two years.

Prohibitions on providing certain non-audit services by auditors or audit firms conducting statutory audit are regulated under Article 5 of Regulation No. 537/2014 in paragraphs: one for the prohibition period and two for types of prohibited non-audit services. To this end, paragraph one, prohibits audit firms or auditors performing statutory audits for PIEs or any member of the network of the statutory auditor or audit firm from directly or indirectly providing to the audited entity, to its parent undertaking or its controlled undertakings within the EU any of the prohibited non-audit services specified in paragraph two of Article 5 during: (a) the period between the beginning of the audit period and the issuance of the audit report; and (b) the financial year immediately preceding the period mentioned in (a) with respect to services regarding formulating and applying internal control or risk management measures concerning the formulation and/or control of financial information or formulating and applying financial information technology systems. Meanwhile, paragraph two of Article 5 prohibits audit firms or statutory auditors performing statutory audit for PIEs from providing tax services pertaining to the preparation of tax forms, payroll tax, custom duties, identification of public subsidies and tax incentives unless required by law; calculation of direct and indirect tax, or tax advice. Also, auditors or audit firms are prohibited from providing services that include being involved in management or decision making of entities they audit. Accordingly, bookkeeping and preparing accounting records, financial statements, and payroll services are also prohibited. The article further prohibits audit firms from designing and implementing internal control or risk management procedures pertaining to the preparation and/or control of financial information or designing and implementing financial information technology systems. Moreover, the article also prohibits valuation services including those done in connection with actuarial services or litigation support services. The list goes on, with the article specifically prohibiting legal services with respect to the provision of general counsel, negotiating on behalf of the audited entity, and acting in an advocacy role in the resolution of litigation. Likewise, services regarding the internal audit function of the audited entity, its financing, capital structure, allocation, and investment strategy are all prohibited. The same prohibition also applies to assurance services such as issuance of comfort letters in connection with prospectuses issued by the auditee, and services promoting, dealing in, or underwriting in shares within the audited entity are also not allowed. Lastly, audit firms are prohibited from providing audited entities with human resources services concerning management in a position to utilize significant influence over participation of accounting records or financial statements that are subject to the statutory audit where the said services involve seeking out candidates for such positions or undertaking reference checks for candidates for such positions and structuring the organization's design or cost control. However, the said article allows member states to derogate with respect to tax services pertaining to preparation of tax forms, identification of public subsidies and tax incentives, as well as provision of tax advice' and valuation services performed in connection with actuarial or litigation support services if the said services satisfy three conditions: (a) have no direct effect or have immaterial effect separately or in the aggregate on the audited financial statements; (b) the estimation of the said effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee referred to in Article 11 of this regulation, and (c) the principles of independence laid down in Directive No. 43/2006 are complied with by the statutory auditor or audit firm.

Under the regulation's seventh article, during an ongoing statutory audit, statutory auditors and audit firms are required to inform the audited entity of its suspicions that irregularities may occur or may have occurred including fraud pertaining to financial statements of the audited entity. In this line, the statutory auditor or audit firm are required under this article to request the audited entity to investigate the matter and take all necessary measures to deal with the irregularities in order to prevent their recurrence in the future. Should the audited entity refrain from investigating the matter, the statutory auditor or audit firm are required to inform the member states' designated authorities responsible for investigating such irregularities. To this end, disclosures made in good faith to those authorities by statutory auditors or audit firms, concerning these irregularities do not constitute a breach of any contractual or legal restriction on disclosure of information.

Meanwhile under Article 13 of Regulation No. 537/2014, the statutory auditor is required to publish an annual transparency report at least four months after the end of each financial year on its website. Such transparency reports shall remain on the said website for at least five years from the day of their publication. The said reports may be updated provided that the firm indicates that the said version is an updated version. A statutory audit firm's annual transparency reports shall provide a description of the legal structure and ownership of the audit firm, where the statutory auditor/audit firm are members of a network, a description of the network and the legal and structural arrangements in the network, the name of each statutory auditor acting as a solo practitioner or if the audit firm that is a member of the network is qualified as a statutory auditor, its registered office, central administration or principal place of business, its total turnover achieved by the statutory auditors as solo practitioners and the audit firms that are members of the network resulting from the statutory audit of annual and consolidated statements. The transparency report shall also include a description of the audit firm's governance structure, and a description of internal quality control system of the statutory auditor or the audit firm by its administrative or managerial body. Furthermore, the transparency report shall include an indication of when the last quality assurance review required by Article 26 was carried out, a list of PIEs which it statutorily audited during the preceding financial year; a statement on the statutory auditor or audit firm's independence practices which must confirm that an internal review of independence compliance has been conducted, and a statement on its policy for continuing the education of statutory auditors as per Article 13 of Directive 43/2006(1).

Furthermore, Article 14 of Regulation No. 537/2014 mandates that statutory auditors and audit firms provide their competent regulatory authorities on annual basis with a list of audited PIEs by revenue generated from them divided into three categories: (a) revenues from statutory audit and (b) revenues from non-audit services other than those prohibited under Article 5(1) which are required by EU and national legislation, and (c) revenues from non-audit services other than those referred to in Article 5(1) which are not required by EU or national legislation. Should a statutory auditor or audit firm be replaced, Article 18 mandates that the former statutory auditor or audit firm comply with the requirements of Article 23(3) of Directive No. 43/2006 and furnish as per Article 15 of the said directive the incoming statutory auditor or audit firm with the access to the additional reports specified in Article 11 of Regulation No. 537/2014 with respect to previous years as well as any information transmitted to competent authorities pursuant to Articles 12 and 13. To this end, the former statutory auditor must be able to demonstrate to the competent authority that such information has been handed to the incoming statutory auditor or audit firm.

Meanwhile, the audit firm structure and management are set out in Directive 43/2006 when it was last amended in 2014. For instance, according to Article 3(4)(b) the majority of voting rights in these firms should be with firms approved by member states or natural persons who have good repute as per Article 4, as well as the educational qualifications specified in Article 6 and the requirements of Article 12 on combinations of practical training and theoretical instruction. To this end, Article 3(4)(c) states that the 75% percent majority required for members of the administrative or management body of the audit entity must be audit firms approved in member states or natural persons who have good repute as per Article 4, the educational qualifications specified in Article 6 and the requirements of Article 12 on combinations of practical training and theoretical instruction; provided that one member at least satisfies the previously mentioned requirements if the members of the firm are not more than two. Meanwhile, Article 3a(1) allows an audit firm approved in a member state to conduct statutory audits in another member state if its key audit partner is a natural person who satisfies conditions of articles 4, 6, and 12. To this end, Article 3a(2) requires audit firms that carry out statutory audits in member states other than their home member states to register with the competent authorities of host member states as per Articles 15 and 17. Furthermore, under Article 15 member states are required to have a public register as per articles 16 and 17 for auditors and audit firms to enter and register such that each statutory auditor and audit firm are identified by an individual number in the public register that shall contain the names and addresses of respectively responsible competent authorities for approving these persons. In this line, Article 16 allows registration of third country auditors if they satisfy equivalence requirements set by their member states in coordination with the EU's commission for the purposes of ensuring the statutory audit's qualify as per Article 46 and that their registration clearly states that they are registered as third country auditors not as statutory auditors. The same conditions apply for audit firms from third countries under Article 17. Meanwhile, Article 22 mandates that independence is required at least during both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out. To this end, independence shall be exacted and ensured by member states as in the statutory auditors are not affected by existing or potential conflicts of interests or business interests or

(1) EC Directive No. 43/2006 of EU Parliament and Council on Statutory Audits of Annual Accounts and Consolidated Accounts, Amending Council Directives EEC No. 660/1978 and No. 349/1983 and Repealing Council EC Directive No. 253/1984, published on May 17, 2006, as last amended on June 16,2014, available via URL accessed on August 2, 2021: https://bit.ly/2WURLww .

other direct or indirect relationships involving the statutory auditors or audit firms carrying out the statutory audit and where appropriate its network, managers, auditors, employees or any other natural persons whose services are placed at the disposal or under the control of the statutory auditor or audit firm or any person directly or indirectly lined to the statutory auditor or the audit firm by control. To this end statutory auditors and audit firms shall not conduct statutory audits if there is any threat of self-review, self-interest, advocacy, familiarity or intimidation created by financial, personal, business, employment or other relationships between: (a) statutory auditor, the firm, its network and any natural person in a position to influence the outcome of the statutory audit, and (b) the audited entity.

Meanwhile paragraph two of Article 22 mandates that member states shall secure that statutory auditors, audit firms, their key audit partners, their employees, and any other natural persons whose services are placed at the disposal or under the control of such statutory auditor or audit firm and who is directly involved in statutory audit activities as well as person closely associated with them within the meaning of Article 1(2) of Commission Directive No. 72/2004 (1) do not hold or have a material and direct beneficial interest in, or engage in any transaction in an any financial instrument issued, guaranteed, or otherwise supported by, any audited entity within their area of statutory activities other than the interests owned indirectly through diversified collective investment schemes including managed funds such as pension funds or life insurance. To this end, paragraph three of Article 22 charges member states with securing that statutory auditor document any threat to their independence as well as the safeguards applied to mitigate such threats. Furthermore, paragraph four follows by charging member states with ensuring that the persons or firms referred to in paragraph two do not participate in or otherwise influence the outcome of the statutory audit of any particular audited entity if they (a) own financial instruments of the audited entity other than interests owned indirectly through diversified collective investment schemes; (b)own financial instruments of an entity related to an audited entity, ownership of which may cause, or may be generally perceived as causing, a conflict of interest, other than interests owned indirectly through diversified collective investment schemes; and (c) have had an employment, or business or other relationship with that audited entity within the specified audit period that may cause, or may be generally perceived as causing, a conflict of interest. Paragraph five adds that persons above shall not solicit or accept pecuniary and non-pecuniary gifts or favors from the audited entity or any entity related to an audited entity unless an objective, reasonable, and informed third party would consider the value thereof as trivial or inconsequential. Additionally paragraph 6 specifies that if during the period covered by the financial statements, an audited entity is acquired by, merges with, or acquires another entity, the statutory auditor or the audit firm shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided to that entity, whilst taking into account available safeguards, could compromise the auditor's independence and ability to continue with the statutory audit after the effective date of the merger or acquisition. Meanwhile Article 22 specifies that member states shall secure that a statutory auditor or key audit partner carrying out statutory audit on behalf of an audit firm does not, before a period of at least one year or two years in the case of PIEs' have elapsed since he/she ceased to act as statutory auditor or key audit partner in connection with the audit engagement: (a) assume a key managerial position in the audited entity, (b) become a member of the audit committee of the audited entity or if such committee does not exist a member of the body performing equivalent functions to that of an audit committee; and (c) become a non-executive member of the administrative body or a member of the supervisory body of the audited entity.

(1) Regarding inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions, and the notification of suspicious transactions.

The same rules apply to employees and other partners aside from key audit partners of a statutory auditor or an audit firm carrying out statutory audit as well as natural persons whose services are placed at the disposal or under the control of such statutory auditor or audit firm for the same prohibition period since he or she was directly involved in the statutory audit engagement. In effect, Article 24 specifies that member states shall ensure that the owners or shareholders of an audit firm as well as members of its administrative, management and supervisory bodies or any affiliated firms do not intervene in the execution of the audit in any way that jeopardizes the statutory auditor's independence or objective as he carries out statutory audit on behalf of the audit firm. Meanwhile, Article 27 specifies liabilities for the audit work when it mandates under paragraph 1(a) that the group auditor shall be fully responsible for the audit report specified in article 28 of this directive and Article 10 of Regulation No. 537/2014 as well as the additional report specified in Article 11 of the said regulation. To this end, the said additional reports shall be in writing and shall explain the results of the statutory audit carried out such that it contains at least a declaration of independence as specified in Article 26(2)(a), identify each key audit partner involved in the audit if the statutory audit is an audit firm, indicate if the statutory auditor had relied on the work of external experts and provide confirmation on their independence, the nature, frequency, and extent of communication with the audit committee including meetings with the said committee or equivalent supervisory body in the audited entity; describe the methodology used including which categories of the balance sheet have been directly verified and under which systems as well as compliance testing with an explanation of any substantial variation weighting systems, disclose the quantitative level of materiality for particular classes of transactions, account balances or disclosures, report and explain judgements regarding events or conditions identified including those that might cast doubt on the entity's ability to continue as a going concern, report on any significant deficiencies in the audited entity or consolidated financial statements or the parent undertaking's internal financial control or accounting systems, report any audits conducted by auditors from third countries, and difficulties faced during audit.

Additionally, the same article states that the group auditor shall be responsible for evaluating the audit work performed by third country auditors or statutory auditors or third country audit entities or firms for the purpose of the group audit, documenting their nature, timing and scope as well as the extent of these auditors' work. Furthermore, the group auditor's responsibility shall include reviewing relevant parts of these auditors' audit documentation. Additionally, the group auditor shall request an agreement with third country auditors, statutory auditors, and third country audit entities or firms concerning the transfer of relevant documentation during the audit of consolidated financial statements as a condition of his reliance on their work such that he shall take appropriate measures and inform the relevant competent authority. The said measures shall include carrying out additional statutory audit work either directly or by outsourcing such tasks in the relevant subsidiary. To this end the group auditor shall be liable for providing and retaining relevant documentation when requested by the competent authority regarding the audit work performed by third country auditors, statutory auditors or respective third country audit entities and firms for the purpose of the group audit including any working papers relevant to the group audit. However, if there are no arrangements concerning furnishing documentation from third country auditors, the group auditor shall be responsible for ensuring proper delivery of additional documentation of the audit work performed including relevant group audit working papers and retaining copies of such documentation or alternatively agree with third country auditors or audit entities to be granted unrestricted access to such documentation upon request. Additionally, Article 28 specifies on audit reporting that the statutory auditor or audit firms shall present their statutory audit results in audit reports prepared as per audit standards adopted by the EU member state concerned and shall be in writing and include: (a) an identification of the entity whose annual or consolidated financial statements are subject of the statutory audit such that it specifies the annual or consolidated financial statements and their date as well as periods they cover; an identification of the financial reporting framework that has been applied in their preparation; (b) a description of the scope of the statutory audit which should at least identify the auditing standards the statutory audit was conducted, (c) an audit opinion that shall either be unqualified or qualified or an adverse opinion which shall state clearly the opinion of the statutory auditor or the audit firm regarding: (i) whether the annual financial statements give a true and fair view in accordance with relevant financial reporting framework; and (ii) whether the annual financial statements comply with the statutory requirements. Should the statutory auditor or audit firm's audit report be unable to express an audit opinion, the audit report shall include a disclaimer of opinion. The report shall also refer to any matter to which the statutory auditor or the audit firm draw attention to via emphasis without qualifying the audit opinion and include an opinion and statement both of which shall be based on the scope of audit work. The report shall also provide a statement on any material uncertainty regarding events or conditions that may cast significant doubt about the entity's ability to continue as a going concern. Moreover, the report must identify the place of establishment of the statutory auditor or the audit firm conducting the statutory audit.

Should the report be a joint report, the auditors or audit firms shall agree on the results of the statutory audit and submit a joint report and opinion. However, in case of disagreement, each statutory auditor or audit firm shall submit their opinion in a separate paragraph of the audit report and state the reason of their disagreement. The audit report shall be signed and dated by the statutory auditor and at least the signature of one statutory auditor if the statutory audit is conducted via an audit firm. If several statutory auditors or statutory audit firms are conducting the audit, then at least one statutory auditor must sign on behalf of each engaged statutory audit firm. Should there be any significant personal threat to the signatory, such signatures need not be disclosed to the public if the disclosure could lead to an imminent and significant threat to the personal security of the person who signed. However relevant competent authorities shall be furnished with the name of the persons involved. Under Article 30a, member states shall have sanctioning powers and measures that detect, correct, and prevent inadequate execution of statutory audits. The states shall provide effective, proportionate, and dissuasive sanctions regarding statutory audit irregularities to secure that statutory audits conform with the provisions of Regulation 537/2014 and Directive 59/2014. The sanctions shall include a notice requiring natural or legal persons responsible for the breach to cease the conduct and abstain from any repetition of that conduct, a public statement that indicates the person responsible and the nature of the breach published on the website of the competent authorities, a temporary prohibition up to three years banning the statutory auditor, the audit firm, or the key audit partner from carrying out statutory audit and or signing audit reports, a declaration that the audit report does not meet the requirements set in Article 28 of this directive or Article 10 of Regulation No. 537/2014, a temporary prohibition banning a member of an audit firm or member of an administrative or management body of a PIE from exercising functions in audit firms or PIEs, and an imposition of administrative pecuniary sanctions on natural and legal persons. These sanctions may be imposed directly, in collaboration with other authorities, and by application to the competent judicial authorities. To this end Article 30b states that when laying down sanctions, member states shall consider for the purpose of effective application of sanctions the following: (a) the gravity and duration of the breach, (b) the degree of responsibility of the responsible person, (c) the financial strength of the responsible person, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person, (d) the amounts of profits gained or losses avoided by the responsible person, in so far as they can be determined, I the level of cooperation of the responsible person with the competent authority, and (f) the previous breaches by the responsible legal or natural person. However Article 30c specifies in its second paragraph that competent authorities may anonymize sanctions it publishes in conformity with national laws where: (a) the sanction is imposed on a natural person and the publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication, (b) the publication would jeopardize stability of financial markets or an ongoing criminal investigation, (c) the publication would cause disproportionate damage to the institutions involved. However, the said publications shall remain on competent authorities' official websites for a minimum period of five years after all rights of appeal have been exhausted or have expired. Meanwhile Article 30f specifies that competent authorities shall provide the CEAOB annually with aggregated information regarding all administrative measures and all sanctions imposed in accordance with this directive such that the CEAOB shall publish that information in its annual report. Additionally, competent authorities shall immediately communicate all temporary prohibitions to the CEAOB.

(15) GDPR Basics:

GDPR defines personal information as any information that relates to an individual who can be identified or is identifiable such as customer number, an address, telephone, credit card number, photographs, IP addresses, and cookies. However, that does not mean that GDPR treats data as classified as personal information unless it relates to an individual. Hence, if the information relates to a person who can be identified, undertakings must take into account the content of the information and the reasons why the said information is being processed in the first place. Additionally, organizations are required to conduct evaluations on the possible impacts of processing such information on the individuals concerned. In this sense, the name Peter Welling is not a personal data as it is common and cannot on its own identify a certain Peter Welling but when the name is combined with an address or a telephone number then it enables the identification of a specific Peter Welling. Another category of protected data is the special category data that covers details which reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union memberships, genetic and biometric data, individual health, and sexual orientation or activity. Another area of protection involves the data subject and by data subject the regulation means the person to whom the data relates since these requirements only apply to living individuals despite the fact that duty of confidence extends till after the subject's death(1). On April 5 of 2016, the EU repealed EC Directive No. 46/1995 on data protection and free movement of that data(2) via EU Regulation No. 679/2016(3)

(1) Mor Bakhoum, Beatriz Conde Gallego, Mark-Oliver Mackenrodt, Gintarė Surblytė-Namavičienė, Personal Data in Competition, Consumer Protection and Intellectual Property Law Towards a Holistic Approach? an MPI Studies publication on Intellectual Property and Competition Law, Volume 28, first edition, Springer-Verlag GmbH Germany, Berlin, Germany, 2019, pages: 123-146 and 304- 326. For country specific applications mainly Germany, Sweden, UK, and France, see: Bart Custers, Alan Sears, Francien Dechsne, Ilina Georgieva, Tommaso Tani, Simon van der Hof, EU Personal Data Protection in Policy and Practice, an Information Technology and Law Series: IT&Law 29, an Asser Press publication, 1st Edition 2019, Springer-Verlag GmbH, part of Springer Nature, Hague, Germany, pages: 49-72, 73-89, 91-113, and 137 - 151.

(2) EC Directive No. 46/1995 of the EU Parliament and Council of October 24 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, available via URL accessed on August 12, 2021: https://bit.ly/2VgHnP7 which was repealed by EU Regulation No 679/2016 of the EU Parliament and Council on April 27, 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data and Repealing EC Directive No. 46/1995 https://bit.ly/2Ys1Lhs .

(3) EU Directive No. 680/2016 of the EU Parliament and Council of April 27, 2016, on The Protection Of Natural Persons With Regard To The Processing Of Personal Data By Competent Authorities For The Purposes Of The Prevention, Investigation, Detection Or Prosecution Of Criminal Offences Or The Execution Of Criminal Penalties, And On The Free Movement Of Such Data, And Repealing Council Framework Decision No. 977/2008 JHA, available via URL accessed on August 17, 2021:

and its implementing directive, EU Directive No. 680/2016 making it EU's comprehensive set of laws on General Data Protection (GDPR). The said regulation aims to protect data privacy and ownership through enforcing high fines[(1)] for non-compliance with GDPR whilst regulating big data usage by undertakings, bolstering the right to information through features of consumer protection law and control rights in personal data, whilst applying new definitions on how its citizens' and residents' data is interpreted, processed, and handled by organizations irrespective of where they are based or even the type of data involved. Accordingly, GDPR compliance is about understanding GDPR's requirements enough to embed them in the way organizations process personal information and formulate their data protection protocols. As of May 25, 2018, all organizations and undertakings are required to be GDPR compliant. The European Data Protection Board (EDPB) which has a legal personality oversees GDPR compliance under Article 19 of the Data Protection Directive and it advises the European Commission on measures affecting individuals regarding personal data processing and privacy to promote uniform application of the directive[(2)]. The EDPB is comprised of heads of supervisory authorities of each member state and the European Data Protection Supervisors (EDPS) or their representatives. All EDPS enjoy voting rights except in cases related to dispute resolution where they may only vote on decisions concerning principles and rules applicable to EU institutions which correspond in substance with those of the GDPR. The EU commission has the right to participate in the EDPB's activities and meetings but does not have voting rights[(3)]. Through its EDPS' the EU enforces fines for GDPR non-compliance through lead, and local data protection authorities (EDPS') under its one-stop shop mechanism for compliance and enforcement[(4)]. The first principle, mandates that all subjects have the right to be informed about personal data processing and its purposes which makes their right to giving an explicit informed consent an obligation on undertakings under Articles 7,10, 11, and 12. In this sense, if consent is provided, undertakings must include in their processes an opt in and an opt out option that would allow data subjects to withdraw their permissions in the future which requires organizations to have proof that consent was given. Meanwhile under the second principle, undertakings must have a legitimate purpose to collect data which entails efforts to minimize amounts of personal data acquired to perform business functions. This is to ensure that data subjects understand why their personal information is being requested or provided along with a reasonable expectation regarding the organization's aim from processing the data. For example, a game application should not require health care information. To this end, data processing must be reasoned within one of six different reasons specified in Article 6 of GDPR which are: (a) consent, (b) contractual requirements, (c) legal obligations, (d) vital interests, (e) public tasks, and (f) legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. Meanwhile the third principle, requires organizations to use minimum data to meet their needs since data needs to be adequate, relevant, and limited. Additionally, under this principle, data subjects are treated as individuals which means if some of the data collected is only needed from a small group of individuals then organizations cannot collect data from all data subjects. Furthermore, the fourth principle is about ensuring the quality of the data being collected whilst giving the data subject the right to have inaccurate data corrected leaving organizations liable

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(1) It enforces Fines for data controllers and processors could reach up to $25 million or 4% of an entity's global annual income or whichever is larger for non-compliance to protect the right to privacy, a fundamental economic right under the notion of informed consent according to Articles 7 and 8 of the European Charter of Fundamental Human Rights.

(2) Refer to figures 25 and 26 in Annex I to see how both bodies interact.

(3) FRA European Union Agency for Fundamental Rights, European Court of Human Rights, Council of Europe, and European Data Protection Supervisor, Handbook on European Data Protection Law, first edition, Publication Office of the European Union, Luxembourg, Switzerland, 2018, pages 174- 183 and 199 to 202.

(4) See Case Note No. 3 in the List of Case Notes list of Annex 2.

for ensuring data accuracy to begin with which includes the obligation to update information on a regular basis for appropriate reasons as well. For this reason, clarity is required under this principle when it requires organizations that hold opinions of data subjects to show whether these opinions can likely influence or can be considered accurate or not. In this line, the fifth principle mandates that organizations only keep data for the duration defined within the original requirements or the actual period wherein the data is needed. However, there are exceptions to this rule which are: (a) when an organization is archiving for public interest purposes, and (b) when the organization is keeping data for scientific or historical research or statistical purposes. In this sense, undertakings that wish to be compliant with GDPR must keep their data up to date and accurate, protect their data's confidentiality and integrity, and embed data protection in their infrastructural design by default to establish a proactive approach for protecting consumer information. Meanwhile, the six principle is commonly known as the security principle since it focuses on data being processed in a secure manner such that its requirements go beyond cybersecurity requirements since it also includes physical and organizational security. In this sense, GDPR mandates that data is only accessed and managed by staff with appropriate authorization such that should data be accidentally modified, lost or destroyed; the organization must have means to recover the data and remove any potential threats or issues to data subjects. Finally, the seventh principle requires that staff processing personal data be responsible for their activities regarding personal data and that they adhere to GDPR principles in a manner that allows them to execute measures and maintain records which are necessary to demonstrate GDPR compliance. Under EU Regulation No. 679/2016 GDPR compliance applies in two scenarios: (a) offering of goods and services including services over the internet and (b) monitoring behavior such as when organizations use cookies to track IP addresses of people who visit their websites from EU countries. Accordingly, EU residents and citizens' data for GDPR compliance purposes also covers how data is stored and used in the future. However, there are two essential exceptions to GDPR compliance requirements. The **first** one is that GDPR shall not apply to personal or household activities since GDPR only applies to professional or commercial activities. The **second** exception applies to organizations with fewer than 250 employees despite the fact that they are not totally free from GDPR requirements regarding data protection and EU citizens' security. In this sense, these small organizations are only exempted from record keeping requirements that are specified in GDPR. To this end, GDPR compliance requires organizations to respect the rights of EU citizens and residents as data subjects especially those specified under the GDPR which are: the right to access information, right to be forgotten or erasure, right to data portability, right of rectification, right to object, right to restrict processing, right to complain, right to be represented and right not to be subject to a decision based solely on automated processing or profiling[(1)]. GDPR is governed under seven principles that constitute the heart of GDPR compliance: (1) lawfulness, fairness, and transparency, (2) purpose limitations, (3)data minimization, (4) accuracy, (5) storage limitation, (6) integrity and confidentiality, and (7) accountability. GDPR compliance means applying all these principles. GDPR compliance enforcement powers[(2)] are more stringent than its predecessor directive. A good example would be Article 22's that protect data subjects against automated decision-making and profiling since the first process happens without human involvement and the second process is an automatic data processing operation for the purpose of making an evaluation about certain aspects of an individual. For this reason, Article 22 allows automated decision-making including profiling only in the following situations: (a) when it is required for entering or performing contracts, (b) where EU or member states have legislations that authorize such operation for controllers,

(1) Refer to Table 6 in the List of Tables under Annex I to view GDPR Articles Case Law by Issues as per the official EDPB handbook on EU's GDPR Enforcement.

(2) Review Figure 26 and 27 along with Tables 7 on GDPR Fines along with Table 8 on GDPR Requirements Checklist in the List of Tables in Annex 2.

and (c) where there is explicit consent from individuals for their personal data to be processed this way. However, the article mandates that individuals must be given information about the processing such that they may easily request human intervention or challenge a decision. Meanwhile organizations who are allowed to utilize this process must carry out regular checks to ensure that their systems operate as intended under the GDPR. Meanwhile Articles 7, 30, 33, 34, 35, and 37 specify increased governance for data when they specify that undertakings processing or storing EU citizens' personal data may need a data protection officer who meets the GDPR's specifics for such role. In this respect, data processors as well as controllers who are based outside EU must have a representative in an EU member state where data subjects reside such that the undertakings may be able to meet GDPR's stringent breach detection and notification requirements which mandate a response within 72 hours of becoming aware of such breach. Hence, undertakings' data protection obligations under GDPR compliance requirements cover both customer and employee data which mandate that undertakings weigh employees' rights to data protection vis a vis their own security needs. Furthermore, for GDPR compliance purposes, data protection officers are necessary in three situations: the processing is via a public authority or body, the organization's main activities need frequent and large-scale monitoring of individual people, and when large-scale processing of special categories data or data related to criminal records is the core activity of the organization. For this reason, DPO's must be experts in data protection and privacy and must report to the highest management level. However, the GDPR allows organizations to appoint external or third party DPO's. Meanwhile, data controllers or DCO's are responsible for GDPR compliance since they are individuals who have control over personal data processing. Undertakings may have more than one data controller among others that can be joint controllers if they jointly decide the purposes and means of personal data processing. However, even if both persons process the same data but for different purposes then they are not considered joint controllers. Because of their role in compliance, data controllers are charged with demonstrating their compliance with the regulation's requirements since they are accountable vis a vis local supervisory authorities in member states such as the Information Commissioner's Office in the UK (prior to Brexit) in case of data breach. Meanwhile, the data processor is the person responsible for processing personal information under the instruction of the DPO. The said person's role also includes data disclosure, or availability. To this end, some organizations, allow the same person to be both data controller for some data and data processor for others.

(16) AMLD EU Intra-Agency-Level AMLCFT RBA Compliance Supervision Governance:

In order to understand, EU's holistic RBA for AMLCFT compliance supervision governance, we must explore how the AMLD's cooperation mechanism for information exchange operates. This requires a hands-on agencies and bodies that apply the RBA supervisory mechanism and by that we mean the following agencies: EUROJUST, OLAF, EPPO as well as the EUROPOL's EFECC and FIU since they coordinate with the European Commission, member states' competent authorities, ESAs 'Joint Committee, and the EBA. The AMLD is truly holistic because the EU Commission as an executive arm presents its internal market AMLCFT compliance risks' report to the European parliament's Joint Parliamentary Scrutiny Group JPSG committee and the European Council's Standing Committee on Operational Cooperation on Internal Security (COSI) which is under the Justice and Home Affairs (JHA) committee which oversees the EUROPOL's executive director who in turn oversees the European Financial and Economic Crime Center (EFECC) who then also oversees the twenty eight Financial Intelligence Units (FIUs)(1). To this end, EUROJUST which was established as a Union Body with legal personality under Council Decision No.187/2002/JHA and is currently governed by EU Regulation No. 1727/2018(2); is comprised of the twenty-eight national member states' EUROJUST members. Each EUROJUST member acts as prosecutor, investigative judge or police officer while working and cooperating closely with member states' judicial authorities on investigating and prosecuting serious forms of cross-border crime. Based in the Hague, Netherlands; EUROJUST undertakes on a daily basis maintaining contact and exchanging information with investigating judges and prosecutors who are responsible for conducting complex criminal matters which include AMLCFT crimes. Meanwhile, OLAF the European Anti-Fraud Office is a European Commission service established under Article 280 of the former EC Treaty in 1999 and the EU Commission's EC Decision No. 352/1999 with special independence to conduct internal and external administrative investigations against fraud, corruption and any other illegal activities that are detrimental to the EU's financial interests. Its staff member are from all twenty-eight member states who are specialized in combating and preventing irregularities that affect the EU's interests and other related matters. Hailing from different authority backgrounds such as customs, police, judicial, and other areas of expertise including information technology and data protection matters; OLAF is supervised by a director general appointed by the EU Commission who neither seeks nor receives instructions from the EU Commission nor any government or any other institution or body according to Articles 3, 5, and 17 of the OLAF EU Regulation No. 883/2013(3). Next is EPPO the European Public Prosecutor's Office established under Article 3 of the European Council regulation, EU Regulation No. 1939/2017(4) as a European Union body that has a legal personality and cooperates with EUROJUST whilst relying on its support. EPPO is tasked under Article 4 of the regulation with investigating, prosecuting, and bringing to judgment perpetrators and accomplices of criminal offences that affect the EU's financial interests as defined under EU Directive No. 1371 of 2017(5) and acts as prosecutor in member states' competent courts until the case is adjudicated. To this end the EPPO is accountable to the European Parliament, Council, and Commission for its general activities which are subject to annual reports under Article 7 that are presented via the Chief EPPO to the European Parliament and Council as well as national parliaments of member states upon their request. EPPO also prepares action plans to follow up conclusions on internal audits or external audit reports, evaluations, and investigations including those of the EDPS and OLAF reporting them to the college twice a year. Furthermore, the EUROPOL which was established under EU Regulation No. 794/2016(6) relies on its European Economic and Financial Crime Center (EEFCC) specialized unit for combating and preventing financial and economic crimes especially AMLCFT which provides room for cooperation with the EDPS for sectoral and agency related information exchange purposes regarding both undertakings and persons in the

(1) Refer to figures 24 and 25 of the Figures and Tables list in Annex 2.

(2) Eurojust Regulation, European Parliament, and Council Regulation No. 1727/2018, on the European Union Agency for Criminal Justice and Cooperation (EUROJUST), and Replacing and Repealing Council Decision NO. 187/2002/JHA, on November 14, 2018, as last amended on December 21, 2018, available via URL accessed on August 17, 2021: https://bit.ly/3E8yFEg .

(3) Ángeles Gutiérrez Zarza, Exchange of Information and Data Protection in Cross-Border Criminal Proceedings in Europe, first edition, Springer-Verlag, Hague, Netherlands, 2015, pages 57-64 and 99-103. OLAF Regulation, EU Parliament and Council Regulation No. 883/2013 of September 11, 2013, Concerning Investigations Conducted By The European Anti-Fraud Office (OLAF) And Repealing Regulation (EC) No 1073/1999 Of The European Parliament And Of The Council And Council Regulation (Euratom) No 1074/1999), available online via URL accessed on August 17, 2021: https://bit.ly/38WUyrN .

(4) EPPO Regulation, European Council Regulation No. 1939/2017, on Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office (the EPPO), October 12, 2017, as last amended on January 10, 2021, available via URL accessed on August 17, 2021: https://bit.ly/3A41MWT .

(5) PIF Directive, European Parliament and Council Directive No. 1371/2017, July 5, 2017, on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law, available via URL accessed on August 17, 2021: https://bit.ly/3hqEhzY .

(6) EU Parliament and Council Regulation No. 794/2016 on the European Union Agency for Law Enforcement Cooperation (EUROPOL) and Replacing and Repealing Council Decisions No. 371/2009/JHA, 934/2009/JHA, 936/2009/JHA, and 968/2009/JHA, of May 11, 2016, available via URL accessed on August 17, 2021: https://bit.ly/3A5VNAP .

EU. Lastly, the AMLD officially regulates FIUs' functions for exchanging information as well as combating and preventing money laundry under its third section via Articles 49 to 57 when it specifies that FIUs must communicate and exchange information via the FIU.net's secure network whilst mentioning them in every level of cooperation for combating AMLCFT. For instance, Article 49 specifies regarding national level cooperation that member states shall ensure that policy makers, the FIUs, supervisors, and other competent authorities involved in AMLCFT as well as tax authorities and law enforcement authorities have effective mechanisms to enable domestic cooperation and coordination concerning the development and implementation of AMLCFT policies and activities when acting within the scope of this directive. Meanwhile, Article 51 mandates that FIUs and the European Commission cooperate such that the latter may aid and facilitate coordination between the twenty-eight FIUs within the Union who have signed through the Europol strategic and operational agreements with various countries and union level agencies including several law enforcement agencies in USA. The FIUs have various powers from tracing to freezing to halting transactions. They also have policies that govern the way data is exchanged by kind, mechanism, access, and have limitation on how the said data is used. To this end, Article 51 specifies that the commission may regularly convene meetings of EU FIUs' platform to facilitate cooperation of exchange of views and advice relevant to reporting and coordination-related issues such as identification of suspicious transactions that have a cross-border dimension, standardization of reporting formats, criminal activity trends, and factors relevant to assessing AMLCF risks on national and supranational levels. Meanwhile Article 52 mandates that member states ensure that FIUs cooperate with each other to the greatest extent possible irrespective of their organizational status(1) such that they ensure the FIUs' exchange is spontaneous or upon request regarding AMLCFT and the natural or legal person involved irrespective of the type of associated predicate offences even if the said predicate offence was not identified at the time of exchange. This subparagraph concludes chapter one of part two and paves the way for chapter two which explores financial markets' governance a vice and means in micro implementation.

(17) Related Reports

EBA, Final Draft Regulatory Technical Standards on Prudent Valuation under Article 105(14) of EU Regulation No. 575/2013 (Capital Requirements Regulation - CRR) of January 23, 2015, EBA, Final Draft Regulatory Technical Standards on Prudent Valuation under Article 105(14) of EU Regulation No. 575/2013 (Capital Requirements - CRR) as of April 22, 2020, EBA, Final Draft Regulatory Technical Standards on Benchmarking Portfolio Assessment Standards and Assessment Sharing Procedures under Article 78 of EU Directive 36/2013 (Capital Requirements' Directive - CRD IV) as of March 2, 2015, EBA, Final Draft Regulatory Technical Standards on Specifications of the Assessment Methodology for Competent Authorities Regarding Compliance of an Institution with the Requirements to use the IRB Approach in Accordance with Articles 144(2), 173(3), and 180(3)(b) of EU Regulation No. 575/2013 as of July 21, 2016; EBA, Final Draft Regulatory Technical Standards on Colleges of Supervisors for Investment Firm Groups Under Article 48(8) of EU Directive 2034 (Investment Firms Directive) as of July 5, 2021, EBA, Final Regulatory Technical Standards Draft on Information Exchange between Competent Authorities of Home and Host Member States under Article 13(7) of EU Directive No 2034/2019(Investment Firms Directive) as of July 5, 2021, all standards available via respective URLs accessed on August 22, 2021:https://bit.ly/3hJoHzh,

EBA, Final Draft Regulatory Technical Standards On Prudent Valuation Under Article 105(14) Of EU Regulation No. 575/2013 (Capital Requirements Regulation – CRR) Of January 23, 2015, EBA, Final Draft Regulatory Technical Standards On Prudent Valuation Under Article 105(14) Of EU Regulation No. 575/2013 (Capital Requirements – CRR) As Of April 22, 2020, EBA, Final Draft Regulatory Technical Standards On Benchmarking Portfolio Assessment Standards And Assessment Sharing Procedures Under Article 78 Of EU

(1) See Figure 37 in the List of Figures of Annex 2 and refer to Tables 9 and 10 in the List of Tables list in Annex 2. Since not all FIUs have the same nature or authorizations within member states. See more: Foivi Mouzakiti, Cooperation Between Financial Intelligence Units in the European Union, Chapter 3, of the book Assets, Crimes, and the State, edited by Katie Benson, Colin King, and Clive Walker, first edition, Routledge Taylor and Francis Group, a CRC Press Publication, London, United Kingdom, 2019, pages 109-123.

Directive 36/2013 (Capital Requirements' Directive – CRD IV) As Of March 2, 2015, EBA, Final Draft Regulatory Technical Standards On Specifications Of The Assessment Methodology For Competent Authorities Regarding Compliance Of An Institution With The Requirements To Use The IRB Approach In Accordance With Articles 144(2), 173(3), And 180(3)(B) Of EU Regulation No. 575/2013 As Of July 21, 2016; EBA, Final Draft Regulatory Technical Standards On Colleges Of Supervisors For Investment Firm Groups Under Article 48(8) Of EU Directive 2034 (Investment Firms Directive) As Of July 5, 2021, EBA, Final Regulatory Technical Standards Draft On Information Exchange Between Competent Authorities Of Home And Host Member States Under Article 13(7) Of EU Directive No 2034/2019(Investment Firms Directive) As Of July 5, 2021, All Standards Available Via Respective URLs Accessed On August 22, 2021: https://Bit.Ly/3hjohzh , https://Bit.Ly/3znmrpf, https://Bit.Ly/3eaet9s , https://Bit.Ly/3lxob3k , https://Bit.Ly/3etuzx3 , https://Bit.Ly/2vuiknp; Report From The Commission To The European Parliament And The Council On The Interconnection Of National Centralized Automated Mechanisms (Central Registries Or Central Electronic Data Retrieval Systems) Of The Member States On Bank Accounts https://Bit.Ly/2XG3uiX ; European Commission Brussels, 24.7.2019 Com(2019) 373 Final Report From The Commission To The European Parliament And The Council On The Assessment Of Recent Alleged Money Laundering Cases Involving EU Credit Institutions https://Bit.Ly/2xvsoi0/; Report From The Commission To The European Parliament And The Council On The Assessment Of The Risk Of Money Laundering And Terrorist Financing Affecting The Internal Market And Relating To Cross-Border Activities {SWD(2019) 650 Final https://Bit.Ly/3tum5px; Communication From The Commission To The European Parliament And The Council Towards Better Implementation Of The Eu's Anti-Money Laundering And Countering The Financing Of Terrorism Framework https://Bit.Ly/3kl3wfe; Communication From The Commission To The European Parliament And The Council Towards Better Implementation Of The Eu's Anti-Money Laundering And Countering The Financing Of Terrorism Framework https://Bit.Ly/2Xv2SMK; and Commission Staff Working Document Impact Assessment Accompanying The Anti-Money Laundering Package: Proposal For A Regulation Of The European Parliament And Of The Council On The Prevention Of The Use Of The Financial System For The Purposes Of Money Laundering Or Terrorist Financing https://Bit.Ly/3Apqdhw .

List of Case Studies and Case Notes:

Note: The notes under this section are two types wherein the first are case studies meanwhile the second type explain necessary concepts that were established in comparative caselaw. Both case study notes and case notes include both analytical and technical application of legal concepts within the modern economic European law along with a commentary on their results. Each Note is recorded depending on the footnote that referred the reader to this annex's list.

(1) Case Study: How BDL Rolled Out the Lebanese Financial Crisis under Basel II & III

BDL's supervisory crisis began back in 1999 with a lack of clarity much needed for transposing Baseline standards when it initially failed to launch a valid banking dialogue prior to implementing Baseline standards. BDL's failure was its lack of foundation for determining capital adequacy as it never classified Lebanese banks by systemic importance based on risk profile, size, and complexity of operations(1). As a result, BDL's Baseline transposing circulars' were issued according to different milestones and stages that definitely reflected on the banks' roles in the current financial turmoil since its circulars only provided for capital adequacies sans market discipline and disclosures as well as internal rating systems. This is not surprising given the fact Lebanon lacks a systemic risk board, a centralized financial data managing regulator, and a competition regulator amidst legalized monopoly. These weaknesses led to BDL neither identifying and addressing systemic risk nor properly gauging and managing banks' risk-taking models. Also, because BDL never identified the Lebanese banking market's needs with matching regulatory tools on entity (unit or committee) and market (local and crossborder) levels; BDL opted to rely on the standardized approach for weighing risks against Baseline capital adequacy as a one size fits all approach. Consequently, BDL's circulars were flawed by their lack of micro and macro prudential policies that are necessary for shaping banking regulations. Naturally, this voided BDL's circulars as regulations on banking

(1) This was covered in our first research on Baseline Capital Adequacy Risk Management in 2006 as we discussed this issue in a thesis submitted for obtaining postgraduate study in Private Law from Beirut Arab University under the title " The Dilemma of Implementing Basel II for Managing Risks in the Lebanese Banking Sector".

operations of realistic goals and any capability to efficiently enforce regulatory and financial compliance, permeate market discipline, or eventually assess banks' performance vis a vis wealth management corporate governance. Sadly, BDL formulated regulations that ranged between recommendations or guidelines based on a foreign exchange trade centered around pegging the Lebanese Lira to sell financial reputation preservation at the expense of regulatory efficiency and financial stability. This is supported by the fact that on the onset of the Lebanese banks' liquidity crisis amidst the shortage in United States Dollar; there were four official dollar exchange rates with each rate used to value payments and assets depending on who the recipient was. Hence, the current Lebanese Pound to United States Dollar exchange rate crisis reflected on the banks' roles exacerbating the crisis as they were selling the foreign currencies to BDL which is a related party transaction something that undermined their reputation and ethical practice which caused the Lebanese community's distrust in the banking sector[1]. Meanwhile, the Lebanese MOF's Decision No. 893/1 dated on 31/12/2020 recognized the black market's prices for the exchange rate which created multiple exchange rates for Lebanese Pounds against United States Dollars in terms of recording purchases, funding operations for regular commercial entities whilst recording the said foreign currency-based transactions in their books under BDL's official exchange rate of 1507 and exempting banks and financial intermediation from its scope of application. The dangerous part was the fact that the Lebanese Ministry of Finance (MOF) recognized black-market prices under the term "actual value" which allowed banks' assets and liabilities to be valued according to exchange rates that varied based on the concerned payments' recipient[2]. For example, Article 2 of MOF's Decision No. 831/1 of December 21, 2020 uses the term actual value for fixed assets in foreign currency that should be registered in Lebanese pounds according to their actual value on the date of acquisition. Meanwhile Article 3 states that institutions should keep an additional account for foreign currencies purchased that shows value of what was utilized from these currencies in commercial transactions with suppliers or what was used in other transactions. Meanwhile Article 5 of the said decision mandates that the actual value of foreign currencies shall be utilized as base value for all transfers between cash accounts for such currencies according to their actual value on the date of transaction. However, Article 6 maintains that all foreign accounts for Articles 4 and 5 must be closed or reconciled according to their equivalence in Lebanese pounds according to the official exchange rates (1507 or 1515) such that the differences between the transactions shall be migrated to the resulting total for operations that were fully completed. Meanwhile transactions that were not fully completed, their differences between currencies shall be displayed in the budget as differences between asset expenses or liability expenses. This created a discrepancy on how contracts were managed, how payments were made and settled; thus, allowing banks to exercise arbitrary masked capital control on the value of exchange rates for foreign currencies which provides a false reliance in Lebanese banks' financial reports by claiming to apply IFRS9[3]. These arbitrary practices by banks as wealth managers were under the auspices of BDL and MOF's supervisory arbitrage. To further illustrate, we refer to Basic Circulars: No. 150 of April 9, 2020, 151 of April 21, 2020, 154 of August 27, 2020, and Intermediate Circular No. 581 of March 24, 2021, of BDL which set

(1) To further explore this issue, see: Quang Linh Huynh, Insight into the Links among External Business Environments, Corporate Governance, and Organizational Performance, Asian Journal of Finance and Accounting, Issue 10, 2018, P 115-130, available via URL accessed on February 29, 2021: https://bit.ly/2Z2GDLB.

(2) Lebanese Ministry of Finance Decision No 893/1 dated on 21/12/2020, available via URL accessed on February 24, 2021: https://bit.ly/2WKNj3H .

(3) Given that many times the various transactions appeared on one balance sheet which made it impossible to reconcile the differences between assets and liabilities without utilizing adjusted balance sheets which is a clear breach of IAS and contravenes with IFRS9.

limits on withdrawals from bank accounts opened in US Dollars or other foreign currencies such as Euros. Holders of such accounts were forced to accept bank checks or pay out in Lebanese pounds according to exchange rates that banks saw fit i.e., 1507 Lebanese pounds when the dollar was at 8000 LBP in the market. Accordingly, this is a tacit haircut on the value of the deposits upon settlement or withdrawal of the said amounts. The said circulars also prohibited money transfers from these accounts abroad for small depositors which is an illegal tacit capital control whilst allowing big depositors to wire money abroad which is again a BDL sanctioned banking operations arbitrage practiced by Lebanese banks. BDL tried to rectify this discrepancy by encouraging banks to induce these depositors to return part of the amounts wired in Basic Circular No. 154 dated on August 27, 2020. However, the said obligation imposed by BDL binds banks only under the threat of BDL's sanctions not the depositors since BDL's circulars on this matter are illegal under the Lebanese constitution which mandates that property is within the protection of the Law and expropriation requires a law and fair compensation given that depositors own the moneys they deposit in their accounts which banks are controlling arbitrarily. Hence, banks and financial intermediaries enjoy the benefits of actual or black-market exchange rates but are not required to go through the onerous task of holding two sets of books one for operations in foreign currencies and ones for accounting and financial reporting requirements which are subject to BDL's official exchange price. Under this decision, banks and financial intermediaries are required to render their services for fees paid according to BDL's official exchange rates. Clearly, BDL in this sense, puts article 149 of the CMC on the shelf when it fails to have the BCCL, or its governors' committee investigate the said double gearing of currency exchange rates and manipulation of accounting records[(1)]. In fact, this issue makes it natural to ask how are these banking practices different from utilizing adjusted accounting/financial standards? For instance, under the directions of BDL, banks exercised illegal capital control by limiting withdrawals from bank accounts as well as forcing depositors to accept payments in Lebanese pounds despite them being owners of Euros or USD accounts. The said BDL and banks actions breached Article 307 of LCC which considers opening a bank account an agreement wherein a depositor's ownership of deposited funds is transferred to the bank to be utilized in its banking operations provided that it returns the moneys upon a depositor's request depending on the type of account. This happened because under Article 307 of the Lebanese Commercial Code (LCC) only regulates deposit account obligations not investment banking accounts or currency trading accounts by requiring that banks: (1) observe a depositor's or investor's consent through continuous disclosures; (2) utilize the moneys in the said accounts by wealth managers in accordance with applicable laws and authorizations specified in the contracts by the investor or depositor; and (3) return the amounts deposited in the accounts to the depositor or investor upon termination of service or expiration of contract[(2)]. Meanwhile, the Lebanese Constitution clearly states in its preamble (amendment 21/09/1990) and fifteenth Article that ownership and private property is under its protection[(3)]. Also, under BDL's circulars, banks also obtained depositors' consent on low exchange rates that did not reflect current market prices in exchange for release of their deposited funds another arbitrary practice promulgated by the regulator that contravenes the Lebanese Constitution that specifies that the Lebanese regime is a liberal capitalist economy.

(1) MOF Decision 893/1 available via URL accessed February 29, 2021: https://bit.ly/3aQv6ET .

(2) مصطفى كمال طه، العقود التجارية وعمليات البنوك (البيع التجاري، الرهن التجاري، الوكالة بالعمولة، السمسرة، النقل، الحسابات المصرفية، الودائع المصرفية، العمليات على الصكوك (المتداولة) "دراسة مقارنة"، الطبعة الأولى، منشورات الحلبي الحقوقية، بيروت ، لبنان، ٢٠٠٦، صفحة: ١٤٩ - ١٥٤.

(3) زهير شكر، الوسيط في القانون الدستوري اللبناني نشأة ومسار النظام السياسي والدستوري المؤسسات الدستورية، الطبعة الأولى، دار بلال للطباعة والنشر، بيروت، لبنان،٢٠٠١، صفحة:٨٨٠- ٨٨١.

Many banking clients were even required to accept payment in forms of bank deposited checks which is not considered a payment or fulfilment of a Lebanese bank's obligation as fiduciary to return a deposit to its rightful owner according to the LCC. Additionally, banks were allowed to circumvent the minimum capital buffer by investing in treasury bills as per the limits set in the said circular by relying on Basic Circulars No. 84 and 86 regarding mandatory placements and reserves thus allowing banks to circumvent Baseline capital buffers for risk taking purposes. Realizing that this measure exposed BDL as the financer of governmental sovereign debt manager, BDL exempted banks from the minimum required investment mandatory placement par by issuing Basic Circular No. 150 on April 9, 2020, to cover up for the government's sovereign debt default in hope of not being held responsible for the banks' insolvency upon the government declaring its default of payment for its sovereign debts amidst talks on haircut on sovereign debt payback. In Effect, BDL required banks to raise capital to absorb the gap between default and dollar shortage but that did not halt the meltdown since banks had no moneys left forcing them to sell their branches abroad such as Bank Audi who sold its Egyptian, Iraqi, Jordanian, and Syrian branches(1). In the meantime, banks are unable to return depositors/investors' moneys as they lack the liquidity, and foreign currency. Thus, these limitations reflect on Lebanese regulators' abilities to govern wealth management service providers on an operational and functional level. Meanwhile, BDL's subsidiary supervisory bodies opted to implement compliance via their field inspections which were limited to samples extracted on a given unannounced field visit. Accordingly, BDL neither established a clear task-based operations' organizational chart for its supervisory functions nor functional reporting lines for its bodies in order to enhance supervisory performance and coordination. This led to BDL's circulars neither utilizing operational assessments nor performance measurement standards or even scorecards for banks' compliance with BDL's CG requirements. Furthermore, BDL's circulars neither coined their requirements with specific timetables set in them nor published disciplinary actions upon field inspections especially in terms of naming banks that were subjected to deterring sanctions or fines. In this respect, many exemptions from applying CG requirements were allowed since they fall under the governor's vast discretionary powers which do not require setting exemptions' criteria or disclosing the premises of the exemption even if they relate to BOD members' classifications as voting, non-voting, executive, non-executive members. Naturally, there were cases in the wealth management sector wherein companies benefited from such exceptions as well as exchange firms of the first category exchange firms which are joint stock companies handling shipments of gold and cash who were involved in illicit currency speculation and money laundry. Also, there were wealth management companies who were allowed to have their legal department act as compliance and internal audit since the CMA's regulations do not specifically regulate consulting wealth management services. In this line, Lebanese banks within banking groups were allowed to have shared/group internal audit or compliance committees as well as shared/group corporate governance units. We do not agree with BDL's exceptions since both parent and subsidiary are independent legal entities under Lebanese laws with separate balance sheets, management, patrimony, and capacities. Cost and benefit necessities are not enough to justify jeopardizing the Lebanese financial system for the sake of maintaining banks' profits. We support our take

(1) Tony Akleh, Lebanese Banks Seek Deadline Extension to Ultimatum to Increase Capital by 20, an article published on January 23, 2021 for Arabian Business, accessed on February 22, 2021 via URL: https://bit.ly/3jHGOHq .

with the fact that the LPC does not clearly criminalize illegal speculation trading on Lebanese and foreign currencies[1].

In fact, according to a study conducted in 2006 on 70 Lebanese banks, only 66% of these banking professionals sort of understand CG requirements. Meanwhile 21.21% consider themselves cognizant with these requirements and mechanics. The shocking fact regarding this said category is that these banking professionals relied on the abidance of 90% of their clients' legal entities with CG requirements. In other words, 66% of the banking sector's employees do not comprehend what customer due diligence is since they consider themselves compliant with banking CG requirements if their clients are CG compliant in their respective legal entities or companies! Meanwhile 36% from these banking professionals stated that they do not comprehend their banks' CG requirements and policies. Additionally, 82% believe that the BOD should consecrate its efforts to advancing the bank's business and protecting shareholders. In other words, they limit CG's requirements and implementation to the BOD alone. Furthermore, 55% of the banking professionals surveyed believe that a lawyer should be a member of the BOD to guarantee regulatory compliance aside from 27% who believe that there should be bankers or banking professionals as members of the board. Hence, a vast majority of the banking professionals are not aware that a lawyer is prohibited from being among the members of a bank's BOD in his capacity as a lawyer since such post contravenes with the obligation of independence for lawyers. In this sense, these professionals fail to distinguish between legal compliance and regulatory compliance in banks on one hand and the fact that their board members should be banking professionals for CG purposes on the other hand. This coincides with the fact that they are unaware that the BOD must comprise of a compliance committee as a prerequisite for a compliant CG framework that is charged with overseeing legal, financial, and regulatory compliance in a bank. Additionally, only 12.12% of banking professionals surveyed were aware or believed that their legal entity clients must have an internal audit department within their entities compared to 15% of these professionals who believed that having an internal audit department is not a necessity[2]. Similarly, according to a study conducted in 2016, researchers highlighted the fact that internal audit requirements under the corporate governance framework still requires mechanisms for implementation since it relies solely on BDL circulars that do not highlight key issues in the audit sampling itself. They also pointed out to the fact that these departments highly depend on a booklet of best practices recommended by the LTA which were derived from the OECD principles formulated for regular joint stock companies which were not formulated to target specialized requirements of banks' corporate or investment banking operations. In this line, it is worth noting that the said booklet relies on five bodies to implement CG requirements which are the: BOD, executive board, department of operations, as well as internal audit and external audit. However, the dangers of adopting this framework lie in the fact that it eliminates two critical departments and functions which are legal and compliance as well as risk management. Accordingly, the concept of having a department of operations conceptually consolidates all internal operations, something that would be cost effective and beneficial for regular joint stock companies since they have a clear and limited set of stakeholders. This is not the case for banks since their set of stakeholders is vast and complicated knowing that the same can be said about their complex

(1) سامر عبد الله، المضاربة على النقد في القانون اللبناني والمقارن، رسالة معدة لنيل شهادة دبلوم في قانون الأعمال، كلية الحقوق والعلوم السياسية والإدارية، الفرع الأول، الجامعة اللبنانية، بيروت، لبنان، ٢٠٠٠، صفحة ١٩ – ٢٠.

(2) Rim Loutfi, Corporate Governance in Lebanon: Application on Commercial Credit Banking, Research for degree of Master of Business Administration, Suliman Olayan School of Business, American University of Beirut, 2006, Beirut, Lebanon, P. 40.

and intertwined operations which renders this booklet's framework incompetent for implementing Baseline banking CG principles. Similarly, according to a study conducted on banks' compliance requirements as per BDL's requirements for a department of compliance which is limited to anti-money laundering and countering financing terrorism in 2016(1); the LBS is a stumbling block since it creates a need for achieving a difficult balance between the obligation of banking secrecy and being compliant with anti-money laundering due diligence requirements since FATF's 2009 AMLCFT evaluation of Lebanon and its legal framework. The study concluded that money laundering operations via banks have decreased but the researchers were not able to verify as to whether the banking secrecy laws were no longer hindering the efficiency of the Lebanese Anti-Money Laundering law. In fact, they found that banking professionals spend a great deal of effort to meet CG's requirements since they need to balance the LBS with anti-money laundering law as well as their requirements for disclosure and cooperation as per laws on exchanging information for tax purposes(2) and audit planning.

With that being said, it's no surprise that the Lebanese legal framework for banks has been classified among the systems that did not pass the European Union's evaluation regarding the suitability of its legal and judicial framework with the requirements of what the European Union considers the list of countries with competent legal and judicial systems. In fact, in 2019, Lebanon scored 28/100 for compliance and 14/100 in governance. Eventually, these scores led to the classification of the Lebanese banking sector as a high-risk sector due to the high levels of corruption pertaining to the requirements of disclosure and transparency which put Lebanon in 2022 at the 124th position out of 180 countries that are combating corruption(3). These numbers clearly show the reasons behind the lack of confidence in the Lebanese banking sector making one wonder why is it that with all the information that banks provide in their reports to the Lebanese Central Bank Baseline CG compliance remains an issue. If anything, the banking sector's bad reputation lies within their incompliance with the basic tenets of CG and the regulator's incompetence in abiding with international financial accounting, auditing, and reporting standards in both the public and private sectors before transposing international and Baseline CG standards.

(2) Practical Case Study of Lebanese Compliance and Audit Concerns(4):

Recently in a financial institution, a CEO had given its CFO a proxy to conduct business transactions involving purchase of foreign currencies from the Lebanese market via a licensed exchange financial firm. Along the way, the owner of the financial institution passes away. Now the internal auditor and compliance had no reason to suspect this event as the persons

(1) Abdul-Nasser El-Kassar and Walid Elgammal, Effect of Internal Audit Function on Corporate Governance Quality: Evidence from Lebanon, International Journal of Corporate Governance, Volume 5, Issue Number 1, 2016, Inderscience Enterprises Limited, P. 103.

(2) Carole Serhan, Sandy Mikhael, and Silvana El Warrak, Anti- Money Laundering Rules and the Future of Banking Secrecy Laws: Evidence from Lebanon, International Finance and Banking Journal, Issue No 2374-2089, Volume 3, 2016, Macrothink Institute Publication, P 148, available via URL accessed on February 14, 2021: https://bit.ly/3zQn8Ha .

(3) Basel AML Index 2019: A Country Ranking and Review of Money Laundering and Terrorist Financing Risks Around the World, Basel Institute of Governance, Steinenring, Basel, Switzerland, 2019, available via URL accessed February 14, 2021, https://bit.ly/3jKO8Ch and Mutual Evaluation Report 9th Follow-Up Report for the Lebanese Republic: Anti-Money Laundering and Combating the Financing of Terrorism, April 2017 by MENAFATAF, Manama, Kingdom of Bahrain, available via URL accessed February 15, 2021: https://bit.ly/2Vh2aSE and a KnowYourCountry report on Lebanon's Risk and Compliance in Corporate Governance in 2018 available via URL accessed February 15, 2021: https://bit.ly/325VGFZ . This year, Lebanon fell back one rank from 2020 according to the Transparency International (The Global Coalition Against Corruption), Corruption Perception Index, 2021, a report issued on January 24, 2022, Transparency International Secretariat, Berlin, Germany, 2022, page 3, available via URL accessed on January 27, 2022: https://bit.ly/3H4w4vP .

(4) See more from: Ngozi Vivian Okoye, Impact of Behavioral Risks in Corporate Governance from the book: Behavioral Risks in Corporate Governance: Regulatory Intervention as a Risk Management Mechanism, first edition, a Routledge publication by Taylor and Francis Group, New York, United States of America, 2015, pages: 91 – 134.

who were part of the transaction were both alive (CEO and CFO) with a valid proxy (face value). To the internal auditor, his controls required that receivables are signed by the parties of the transaction who have the capacity to do so since this is related to acknowledging revenue which averts financial risk. Meanwhile, the compliance officer upon finding out about the death of the financial institution's owner, questioned the proxy's invalidity since the principal had died and they had no way of determining if the said firm was subject to succession or wind up which would make the firm's debts due. At some point of the transaction, the CFO of the financial institution failed to sign a receivable. Hence, the internal auditor emailed requesting that this discrepancy be resolved meanwhile the compliance, did not see the unsigned receivable as an issue since the client was a recurring one with a history of transactions with the exchange firm and there were other supporting documents that support the client's acknowledgement of the transaction concerned. A month later, the CFO defaults on paying a 200 USD invoice and the internal auditor, discovers that the firm is part of a group that had been declared bankrupt in UAE. The internal auditor whose main focus is financial risk, designates the outstanding amount as insignificant, and decides to write it off since pursuing the claim for the outstanding amount would cost more than its benefit. The compliance disagrees with the internal auditor worrying that this could expose the exchange firm to the risk of loss. Meanwhile, a visit from the BCCL prior to the default and bankruptcy, left the BCCL baffled as to how the exchange firm did not have an expected credit loss (ECL) model for its exchange receivables. The exchange firm explained that according to its business model, its receivables are paid within three days and each receivable has proof that is payable within that period which makes them stand out from banks that require ECLs. The BCCL officer insisted on the ECL since BDL's circular requires all banks and financial institutions to abide with IFRS9 requirements especially regarding having an ECL. The exchange firm further explained to the BCCL that BDL mandated the application of IFRS9 but did not provide mechanisms for applying IFRS9 since IFRS9 specifies that ECL models are for guidance and should be adopted in accordance with the operating business model that distinguishes exchange firms from banks. At that point, the BCCL realized it had been applying the ECL requirement as a one size fit all requirement. From this example, we can see how both professionals have their own controls and approaches to how they look at risk, operations, and processes for the same transaction within the same entity even for cross-border ones. We can also see how even the regulator and its inspectors are not equipped to apply international standards as they do not understand the technical intricacies of their application. Additionally, we can see how the lack of understanding of international standards affects implementation of controls and compliance in the long run. For instance, according to a study conducted on Lebanese banks in 2020, only 84.4% of the external auditors surveyed believe that internal auditors should assess the design and methodology of ECL models used by banks[1] when in fact the said internal auditors are the ones calculating the ECLs in banks compared to 60% of internal auditors preparing the financials of SMEs (which is management's responsibility) that are clients for these banks. If anything, this shows that external auditors are relying on internal auditors' assessments of the banks' ECLs (68% of which are advanced models compared to 58% being internally developed models) which are also prepared by the same internal auditors when they should be prepared by banks' chief financial officers (CFOs). Such controversary voids control of the compliance and audit functions in Lebanese banks. After all, how can they be objective about reviewing and assessing something they prepared?

(1) Oussama Chedid and Jamil Chaya, The Role of Internal Auditors to Implement IFRS9: Case of Lebanese Banks, research paper published in the Journal of Economics and International Finance, Vol. 12, Issue No.2, January-March 2020, pages: 6 -19, available via URL accessed on August 3, 2021: https://bit.ly/3DK8of6 .

(3) Case Study: Commentary on Audit and Risk Management Committees in Lebanese Alpha Banks' Case Study

Keeping in mind BDL's governor's discretionary powers by virtue of Articles 26, 70, and 174 of the CMC; BDL's circulars on requirements concerning internal audit, risk management, and compliance were necessary regulations to fill in the LCC and CMC's operational legislation gaps in banks. The same applies on joint stock companies in the LCC and banks in the CMC which focus on external audit for financial reliance and assurance. Accordingly, the case study we conducted on the eight alpha Lebanese banks we've selected studies their compliance with Basic Circulars No. 106/2006, 118/2008, and 128/2013 as well as intermediary Circular No. 253/2011 regarding internal control functions levied on both audit, risk, and compliance committees vis a vis audit, risk, and compliance units. Based on the data we compiled(1), these alpha Lebanese banks implemented BDL's abovementioned circulars based on their business models and organizational structures. As a result, their compliance with these circulars varied greatly based on their different levels of operations' complexity, types of business models, types of BOD committees and members' classes especially for those banks with politically exposed persons (PEP) on their BODs, as well as their organizational structures as groups vs. regular Lebanese joint stock companies (SALs).

Before we comment on our findings, we shall first explain our findings. **First**, Bank Audi SAL has group-based Audit and Risk Management (RM) board committees compared to its unit-based audit and RM units. Both committees' chairs are independent with both their BOD members' identities and classes (non-executive or independent) disclosed. However, their RM committee, is only comprised of a chair and a non-executive member compared to their RM unit which is inexistent. **Second**, Bank Beirut SAL, has both its audit and RM committees on an entity level with both chairs independent compared to their audit unit which is on entity level and their RM unit which is on a group level. However, Bank Beirut SAL has only a chair and one member in its RM committee. All BOD members' identities and classes in both audit and RM committees have been disclosed in Bank Beirut SAL. **Third**, Bankmed has both its audit and RM committees and units on a group level. However, neither the audit nor RM committees' BOD members identities or classes have been disclosed. Similarly, the RM unit in Bankmed has not been disclosed compared to the audit unit's manager whose identity has been disclosed. It is worth noting that GroupMed SAL Holding is a BOD member in Bankmed along with ex-minister of interior Mrs Raya El-Hassan-Haffar who is Bankmed's Chairman and GM, and ex-prime minister Rafik El-Hariri's widow Mrs Nazek El-Hariri who is a BOD member in Bankmed. **Fourth**, Blom Bank SAL, has both its audit and RM committees' identities and classes disclosed with the audit committee on an entity level compared to its unit which is on a group level whose manager's identity is disclosed. Meanwhile, Blom Bank SAL's RM committee, is on a group level with four BOD members whose identities and types have been disclosed yet lacks a chair and oversees an RM unit which is on a group level with its manager' identity disclosed. **Fifth**, Byblos Bank SAL, has both its audit and RM committees on entity levels with both the identities of the BOD members disclosed but not their classes. Meanwhile, the audit unit of this bank is on group level with its manager's identity disclosed which is also the case for its RM unit's manager's identity which is also disclosed as a group RM manager. Despite having both its audit and RM committees compliant with BDL's circulars on members' count and composition, their BOD members' classes are not disclosed. **Sixth**, Credit Libanaise Bank, has both its audit and RM committees on group level yet does not disclose neither the identities of the BOD members of these committees nor their classes compared to the identities of both its audit and RM units which

(1) The data we are analyzing and commenting on is compiled in Table 8 under the List of Tables of Annex 2.

are on group level. It is worth noting that ex-parliamentary member Marwan Hemadeh is a BOD member in Credit Libanais' Bank's BOD. **Seventh**, Fransabank SAL, has both its audit and RM committees on entity level compared to its audit unit which is on international and branch level whose managers' identities are disclosed. Meanwhile, the RM unit is on entity level as well with its manager's identity disclosed. However, Fransabank SAL's audit committee lacks a chair compared to its RM committee which is lacking a member and its chair is a non-executive. **Eighth**, IBL (Intercontinental Bank of Lebanon), has both its audit and RM committees on entity level with both the identities and classes of these committees disclosed. However, both committees lack a member. Meanwhile the audit unit in this bank is on an entity level with its manager's identity disclosed compared to the RM unit whose manager's identity is disclosed but it is not known whether it is a group or entity level unit. It is worth noting that MM. Bicom SAL Holding is a non-executive BOD member in IBL Bank's board and is represented by Mazen El Bizri IBL. Additionally, the bank has two PEPs ex-parliamentary member and minister Mohammad Abdel Hamid Baydoun and Arab Gulf Prince Sager Sultan Al-Sudary.

From the above dissections of these Lebanese Alpha banks' internal control functions of audit and RM, one can easily see how they are incompliant with BDL's circulars whether in terms of disclosing their organizational structure as required under Basic Circular No. 106/2006 and the requirements of Basic Circulars No. 106/2006, 118/2008 and No. 128/2013 as well as Intermediate Circular 253/2011. Additionally, if we weigh in the fact that it is possible that these banks were allowed to benefit from exceptions they applied for within BDL's governor's discretionary powers and consider the fact that BDL never published a circular that specifies the criteria for benefiting from such exceptions as well as the fact that these exceptions are never published once provided; we will resolve that being compliant with BDL's CG's requirements are a matter of BDL's discretionary power. This might help explain why these banks have managed to be considered CG compliant and of course regulatory compliant with BDL's circulars on audit, RM, compliance, and internal control. Additionally, this only shows how the soft law natured CG practice in Lebanon along with the one-tier management models, the lack of clear definition of economic conglomerates for banking groups in Lebanon, with the lack of internal audit culture affects the structural compliance with CG and eventually the operational requirements for CG.

To conclude our case study and commentary, we resolve to augment our findings regarding the importance of internal control for controlling bad credit and excessive risk taking that leads to credit bubbles initially and eventually to financial failure with remarks from a comparative banking study from Indonesia. In 2018, an Indonesian research group conducted a study on 15 banks operating in the Indonesian stock market over a period of three years to study the effects of the size of a bank with respect to the size of the audit committee and unit in terms of efficiency and combating excessive credit risk or bad credit(1). They found that the size of internal audit function depends on factors that impact a bank such as its company size, ownership distribution including foreign ownership, audit committee size as well as its RM committee size. In their view, they found that financial statements reveal the cause of financial financing risk in banks which is weak supervision from internal audit on how loans are financed. To this end, having an adequate number of internal audits enables both stakeholders

(1) Erlina Nila Luvita and Siti Noor Khikmah, The Role of Firm Size Ownership Structure and Good Corporate Governance Against Size of Internal Audit (Empirical Study of Banking Companies Listed in the Indonesian Stock Exchange (BEI) from 2016 - 2018), research paper for FeBenefecium, Prosiding Second Business and Economics Conference in Utilizing Modern Technology, Strategi Menghadapi Revolusi Industri 4.0, Kolaborasi Peran Akademisi Pelaku Bisnis Dan Pemerintaah, FeBenefecium, Prosiding 2nd Business and Economic Conference in Utilizing of Modern Technology, May 7, 2020, pages: 171 - 186, available in Bahasa Indonesia and translated by Google PDF Translate, via URL accessed on December 17, 2021: https://bit.ly/3sjs0Sp.

and supervisors to monitor management's decisions, internal control procedures, as well as advise them on RM regarding prevention of fictitious credit from happening. In this sense, having a bank spread its ownership has positive effect on internal audit as a body size wise, but rather a negative effect on the size of the internal audit as a function (scope of audit). However, in our opinion after asking around seasoned auditors, it is not the size of the audit committee or unit that matter but rather the efficiency indicators' that do in terms of qualifying how well the audit function is able to be the watchdog expected of it. This goes to say that IAS, ISA, and IFRS standards have provided criteria to qualify the internal audit performance. Moreover, both legal thinkers and policy makers need to take into consideration that BDL does not even have circulars that regulate how banks must set up and manage the protocols to manage conflicts of interests or ways to evaluate internal control functions in banks. Additionally, BDL's circulars do not provide on the minimum requirements or criteria which banks must abide with when they provide loans and facilities to BOD members since these transactions are considered high risk related party transactions. To this end, we hope that the reforms we have suggested in part two which bring forth specialized regulators will take into consideration putting in place specialized performance assessments and criteria to qualify internal audit committees' and units' functions for better financial transparency, disclosure, and assurance.

(4) Case Study: Compliance Function in Lebanese Alpha Banks a Matter of Preference

Banks' corporate governance approaches, structure, policies, and developments appear mostly through annual reports published on their websites. Lebanese Banks publish these reports in abidance with BDL's circulars on adoption of Baseline Corporate Governance. By reviewing each of the alpha Lebanese banks' websites, charters, and annual reports, we notice that their last published annual reports are either those of 2018 or 2019 only. To this end, we have selected the annual reports of the seven alpha Lebanese banks that were considered alpha banks in 2020 to reflect on the compliance function adopted by each bank and determine how each bank manages the textual gaps and the practical requirements of international standards for compliance function under corporate governance's requirements especially those of Basel. For this reason, we have formulated a table analyzing each bank's approach regarding abiding with BDL's basic circulars on compliance, BOD committees whether they have a BOD compliance committee or are exercising a limited compliance function, who the compliance unit reports to from the BOD Committees, and if the compliance function is risk based or holistic. According to Table 9[(1)], only Bank Audi, Bank Beirut, Bankmed, and BLOM Bank have standalone compliance units. SGBL Bank has a standalone AMLCFT unit only. Meanwhile Bank Byblos and Fransabank have group compliance units. However only Bank Audi, BLOMBANK, and Byblos Bank have risk-based compliance compared to only IBL Bank having a holistic risk-based compliance. In this line, only BLOMBANK has a segmented specialized standalone compliance unit that is subdivided by departments that reflect international requirements for AML Risk, FATCA Risk, CRS risk, and Legal Risk. On the reporting level, the banks differ greatly. For instance, only BankBeirut, Bank Audi, and BankMed have BOD compliance or BOD compliance and AMLCFT committees to whom their standalone compliance units report to. Meanwhile Credit Libanais, Fransabank, IBL Bank, and SGBL Bank only have an AMLCFT BOD committee to whom their compliance units report to. These differ from the previous banks that have compliance and AMLCFT BOD committees with the fact that legal compliance for the latter falls under the legal affairs department in senior management which will have each of its legal risks depending on the operations they are related to reported to the board either within internal audit committee or

Refer to Table 9 in the List of Tables Under Annex 2. (1)

risk committee for setting the tone at the top. Despite IBL Bank's compliance function being risk based and its risk officers embedded throughout the bank's management; its deficiency is that the senior management has no standalone compliance unit that focuses solely on risk of non-compliance something which risks the bank's senior management overworking the risk officers who are generalists when they deal with departments they aren't responsible for yet are concentrated and invested in risks that are multifarious but not necessarily adequately focused on non-compliance risk. Coordination and dissemination of risk information do not exempt a bank who wishes to be CG compliant according to international standards from being specialized and focused on non-compliance risk. Going back to Byblos Bank and Fransabank who have group compliance units that are under senior management; these two banks do not have according to their annual reports or their websites' organization structure for corporate governance standalone subsidiary compliance units that report to the group compliance of senior management. The danger of this compliance model is that under BDL's Basic Circular No. 128/2013, senior management is the one reporting to the BOD and if we look at these two banks, we will notice that the BOD committees they report to are only AMLCFT which means they do not cover legal compliance because legal compliance does not only cover anti money laundry or countering financing terrorism. Compliance in banks should be able to adhere with issues like competition, market discipline, data privacy, lawsuits, conflicts of interest, financial fraud, corruption, nepotism, and infringement of trademarks. In conclusion, BDL's structural regulations and compliance operational deficiencies on the reporting level between upper and lower management in alpha Lebanese banks lead to compliance and CG being applied arbitrarily as well as not according to international standards for efficiency, transparency, and market discipline. A clear affirmation of our assertion is the fact that despite BDL's circulars mandate that banks publish on their websites organizational structural charts for management and the bank's affiliates or subsidiaries as well as its charters; only BLOMBank has abided by this requirement. If these banks are not capable of being compliant with BDL's textual requirements that are structural, how can we expect them to appropriately adapt and apply practical international requirements? In this line, the majority of the remaining alpha banks we have examined only published summaries of their corporate governance policies along with their bank's affiliates or subsidiaries since they relied for their compliance with BDL's circulars on disclosures on their annual reports to reveal their BOD committees and many times without indicating who reports to who from senior management departments to BOD committees. If anything, this asserts the lack of performance assessment and corporate governance compliance assessment from BDL. Without corporate governance's organizational charts concerning mapping out the bodies of the BOD vs those of senior management and without upper and lower management's charters; website users, regulators abroad, investors, and consumers cannot understand how these Lebanese banks operate from inside. In effect, that makes them and their operations opaque, something that is the total opposite of corporate governance's requirements.

(1) Case Note: Utilization of Economic Undertaking to Tackle Banking Competition in EU Case:

As a fine example of the application of the economic undertaking for the purposes of achieving the balance and harmonization of EU law mentioned earlier; in 2019, the EU Commission fined five giant banks the amount of €1.07 billion for participating in foreign exchange spot trading cartel in the "Three-Way-Banana-Split" case which involved breaching Article 101 of the consolidated TFEU[1] whilst trading in eleven currencies across the markets of multiple member states. In a press release announcing the EU Commission's decision to fine the banks involved, commissioner Margrethe Vestager stated[2] that the Commission will not tolerate collusive behavior in any sector of the financial markets especially that these banks undermined the integrity of the sector at the expense of the EU economy and consumers. Meanwhile in point fourteen of the commission's decision, the commission stated that instead of competing autonomously on those parameters (*the sensitive information exchanged in multilateral chatrooms in the Bloomberg Terminal*), the participating traders' market decisions were informed by their competitors' positions, intentions and constraints[3]. Albeit the fine being huge with UBS standing to pay an amount of € 285 Million, it was given full immunity as a leniency measure without having to pay anything for exposing two cartels (*Three Way Banana Split and Essex Express*).

(2) Case Note: The Exemption of Extra-Terrestrial Laws in the Case of Bank Melli Iran:

In the case of Bank Melli Iran, the bank had contracted with a German telecom company Telekom Deutschland GmbH to provide on-going services for its operations. After the USA joined the Joint Comprehensive Plan of Action (JCPA) as a means to pressure Iran to give up its nuclear program, upon EU reaching an understanding regarding its complaint against the illegality of USA's sanction in the World Trade Organization; EU was allowed to resume business with Iran and dropped its complaint against the USA. But in 2018 when President Trump withdrew from the JCPA, both primary and secondary sanctions were reactivated. In the words of the CJEU's advocate general, the EU's block exemption aims to sterilize the invasive extraterritorial consequences of US restrictions. In this case, the German telecom who stood to lose 50% of its income which came from USA based operations; was considered to have violated the EU blocking regulation when it served notices of termination of service to the Iranian bank for the mere reason of complying with USA sanctions since it did not apply for permission to take a legitimate business decision regarding termination of its service contract with the Iranian bank. According to the advocate general, the serious reason for terminating the contract with the Iranian bank as specified in the German laws should be one that is not about abiding with USA sanctions because that would undermine the EU's blocking statute which is intended to protect economic operators from exorbitant USA laws which would otherwise allow the German company's decision to give foreign legislation effects other than those provided in the objectives of EU Law. Accordingly, the block regulation's effectiveness lies in applying it irrespective of the case where there was a direct or indirect communication or judgment from the third country to cease dealing with the Iranian bank since limiting the regulation's application to direct or indirect communication from the third country limits the effects of the regulation through a narrow interpretation which is not the case in the wordings of the regulation itself. The regulation under Article 5 lays down rules of economic policies that aren't aimed at protecting third country companies targeted by USA sanction but as Article 1 of the regulation states; to counter the effects of these targeted laws by protecting EU companies and indirectly the national sovereignties of the member states against legislation contrary to international law. If anything, this case shows the role of the European Charter of Fundamental Rights in the interpretation and application of competition laws without

(1) The parties involved were UBS AG, Royal Bank of Scotland Group Plc and NatWest Markets Plc (collectively as RBS), Barclays Plc with Barclays Services Limited as well as Barclays Bank Plc (Collectively Barclays), Citibank N.A. with Citigroup Inc (Collectively Citigroup), and J.P. Morgan Europe Limited with J.P. Morgan Limited as well as JPMorgan Chase Bank, N.A., and JPMorgan Chase & Co.(Collectively as JPM).

(2) European Union Commission Press Release of May 16, 2019, titled as Antitrust: Commission fines Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 Billion For Participating In Foreign Exchange Spot Trading Cartel, available from EC.Europa.eu, via URL accessed on June 9, 2021: https://bit.ly/3xJpl6b.

(3) See Summary of EU Commission's Decision Relating to a Proceeding Under Article 101 of TFEU and Article 53 of EEA Agreement, Case AT.40135-Forex-Three Way Banana Split, published in the Official Journal of the European Union under C 226/5, July 9, 2020, available via URL accessed on June 9, 2021: https://bit.ly/3B7ml5u.

indicating hierarchy since both are primary EU laws based on EU treaties (Lisbon Treaty for the first and TFEU for the second regarding block exemption and competition). However, this role is limited to exceptional circumstances that preserve legal certainty, foreseeability and practical enforceability of competition law. In this sense, Article 7 of the TFEU explicitly requires the EU to ensure consistency between policies and its activities. Verily, EU case law shows that despite fundamental rights constituting a limitation on the restriction of internal market freedom, the said restriction is justified by reasons overriding requirements of public interests a term used by the CJEU to interpret general principles of EU law particularly fundamental rights guaranteed by the EU Charter. Conversely, the CJEU recognized internal market freedoms as a justification for restrictions on fundamental rights where there is an overlap between the scope of protection of fundamental rights and fundamental freedoms such as freedom to conduct business. In this sense, Article 2 of TEU states that the Union was founded on values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. It follows, that EU values are necessary for the interpretation of EU treaties as sources of EU primary law as a whole. For this reason, promoting EU values through CJEU interpretations heavily relies on Article 3 of TEU which requires that union goals are to be used for the Treaties' interpretation just as EU values. To this end, the individual interest and freedom of the German company to terminate business with the Iranian bank for the sole purpose of complying with USA sanctions as a fundamental freedom protected by German national laws is a value that needs to be balanced with the goals of the EU Blocking Regulation which is to protect the public interest of EU operators and EU's internal markets. Accordingly, the advocate general saw that if the German Telecom were to use German law to terminate its relationship with the Iranian company, then it needs to prove that its serious reason for termination as per German law requirements is other than the mere compliance with USA sanctions since that would be a breach of EU law[(1)]. In this line, Austria was the first member state to react to USA's excessive sanctions via its foreign minister's statement in the wake of Bawag's proceedings (2007-2018) regarding Bawag Bank's attempt to close down the accounts of 100 Cuban nationals. Minister Ursula Plassnik stated that USA law was not applicable in Austria as they are not the 51st state of the USA and neither the EU nor the UN have implemented a general economic or contact embargo against Iran or Cuba. Later, the USA authorities granted Bawag an exception to the Cuba sanctions regime, which resolved this dilemma[(2)].

(3) Case Note: GDPR Compliance Supervision, the Case of Facebook:

In a recent CJEU judgement in Facebook's case vs. Irish and Belgian regulators, the court stated the following[(3)]:

> " *In the light of all the foregoing, the answer to the first question referred is that Article 55(1), Articles 56 to 58 and Articles 60 to 66 of Regulation 2016/679, read together with Articles 7, 8 and 47 of the Charter, must be*

(1) Anca Daniela Chiriţă, Legal Interpretation and Practice Versus Legal Theory: a Reconciliation of Competition Goals, Comment on Andriychuk, pages 118 - 131, chapter 7 of The Goals of Competition Law, first edition, an Edward Elgar Publishing Limited Conference Research Book for The Academic Society for Competition Law (ASCOLA) Cheltenham, United Kingdom, 2012; and Johannes Persch, The Role of Fundamental Rights in Antitrust Law: a Special Responsibility for Undertakings with Regulatory Power under Article 102 TFEU, research published in the European Competition Journal, published on April 29, 2021, by Routledge Taylor and Francis, pages 1-26, available via URL accessed July 1, 2021: https://bit.ly/3l8bsuJ .

(2) BAWAG PSK Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG vs Verein für Konsumenteninformation, C-375/15, CLI: EU:C:2017:38, Judgment of the Court's 3rd Chamber, available on Curia via URL accessed on July 1, 2021: https://bit.ly/3j66gEP; and Jack Walsh, The Blocking Statute: Deciphering Its Provisions, How to Handle the EU/US Conflict, and Actions to Date, article published on March 31, 2020, for the Association of Certified Sanctions Specialists, available via URL accessed on July 1, 2021: https://bit.ly/3BVDvU7 .

(3) Facebook Ireland Ltd, Facebook Inc, & Facebook Belgium BVBA vs Gegevensbeschermingsautoriteit, Decision No. 483/2021, CJEU Grand Chamber, June 15, 2021, point 75, ECLI:EU:C:2021:483, available via URL accessed on August 17, 2021: https://bit.ly/3u79Cg2 .

interpreted as meaning that a supervisory authority of a Member State which, under the national legislation adopted in order to transpose Article 58(5) of that regulation, has the power to bring any alleged infringement of that regulation to the attention of a court of that Member State and, where necessary, to initiate or engage in legal proceedings, may exercise that power in relation to an instance of cross-border data processing even though it is not the 'lead supervisory authority', within the meaning of Article 56(1) of that regulation, with respect to that data processing, provided that that power is exercised in one of the situations where that regulation confers on that supervisory authority a competence to adopt a decision finding that such processing is in breach of the rules contained in that regulation, and that the cooperation and consistency procedures laid down by that regulation are respected."

From this quote, it is clear that GDPR specifies the one-stop shop mechanism for multinational organizations such as Facebook or Twitter which assigns a lead regulator as main prosecutor for crossborder operations' infringements. However, as an exception to that mechanism, non-lead supervisory authorities can bring cross-border cases to court if they are: local cases(Article 56.1), urgent cases (Article 66.1), unsuccessful mutual assistance requests(Article 61.8), and cases on matters of or broad application(Article 64.2) of the GDPR. In this line, lead data protection authorities are where international companies are headquartered in EU such as Ireland for Facebook in this case. However, since this case dates to 2015 before GDPR was passed; Facebook's infringing activity of utilizing hidden tracking tools to collect personal data fall under the previous 1995 directive on data protection. This explains why the CJEU affirmed the Belgian authorities' right to preside over the case. By contrast under the current GDPR, local data protection regulators may only initiate judicial proceedings for normal situations upon receiving a decision from the EDPS under the one-stop-shop mechanism since both lead and non-lead data authorities are obliged under GDPR to cooperate closely and coordinate. This leaves local infringements subject to non-lead data authorities under Articles 56(2) and 66 of the GDPR which explains Facebook's associate general counsel's relief regarding the CJEU's position on affirming the one-stop-shop mechanism leaving Facebook to face the Belgian judicial authorities only[(1)]. However, we believe that the European commission missed a great opportunity to use this case for emphasizing market discipline since Facebook's actions constitute distortive actions to the European market. Facebook's actions distort the European market every time it collects data that infringes GDPR since it uses it for a competitive advantage in marketing and targeting more customers that results in fixing trading conditions of social media services and monopolizing sources of data supply by making users agree to its terms in order to use its services or conclude its accounts' usage contracts for Facebook service subject to acceptance of supplementary obligations that are by their nature or according to their commercial usage not connected with the subject of such contracts (Article 101:a, c and e). Users can use Facebook's services without Facebook needing to illicitly collect the said data via hidden trackers. Additionally, Facebook's actions also constitute an act of abuse of dominant position within the internal market since it fits the requirements of Article 102(a) and (d) on imposing unfair services trading conditions which prejudice European consumers right to privacy when using social media services every time it hinges the right to use Facebook's social media services on data subjects accepting supplementary obligations related to data collection which by nature have no connection with subject of such contracts. This is true since the Data protection Officer under the EU commission's Data Protection Directorate as well as

(1) Merlin Gömann, A Hidden Revolution: Domestic Application of Foreign Public Law under the GDPR, Verfassungsblog on Matters Constitutional, an editorial published on 17/06/2021, available via URL accessed on August 17, 2021: https://bit.ly/3ATpfKR .

FISMA, and the Competition Directorate coordinate with EDPS to exchange data(1) for the purposes of regulating the EU's Single Market. In its powers as competition regulator, the European Commission could have utilized the theory of guilt by association(2) which is an established practice in CJEU jurisprudence since competition law sees Facebook as an undertaking whose business reality with respect to its unfair competition practices is irrespective of its legal form. Hence Facebook cannot deny that it is not directly involved in its subsidiary's GDPR infringement since it has decisive influence over its infringing entity and together, they form a single economic unit whose main objective is to provide social media services under the notion of economic undertaking from a single economic activity approach. The potential for actual control in this scenario regarding GDPR infringement as an act of abuse of dominant position is blatant since both companies have the same business model and financial objective. By analogy to the situations applicable to investment companies under the Akzo Presumption if the Irish company completely or almost completely owns the Belgian company, then the subsidiary is presumed under the parent's control. In the same line if the two companies are considered sister companies or parent companies that equally own a joint venture whose purpose is to provide social media services then Akzo presumption still applies. Absence of instructions from parent to subsidiary does not negate them constituting a single economic entity since instruction is only one precursor of decisive influence. In fact, even if Facebook supposedly claims that it had set GDPR compliance programs which the subsidiary ignored when it infringed GDPR's requirements, the said alibi could be used against Facebook as an indication of control in the form of policies that drive the Belgian company's conduct. Furthermore, the subsidiary's autonomy in Facebook's case can only be established if Facebook proves operational and financial autonomy which is impossible since both companies rely on the illicitly collected data to sustain their market shares and profit from providing social media services. Hence, should Facebook claim that the said Belgian entity is a sister company or that its Irish HQ is a non-operational holding company that would still be insufficient to rebut the fact that Facebook Inc benefited from infringing GDPR as well as the Akzo presumption of control since they both form an undertaking functioning as a single economic unit that provides social media services for profit. Even further, should Facebook attempt to prove that it did not exert any managerial influence on the Belgian company in the context of company law or the fact that the Irish HQ did not adopt any formal managerial decision during the period of infringement such as the absence of shareholder or BOD meetings of the Belgian entity during that period that would not be enough to refute the Irish HQ's control and influence on the Belgian entity(3). In this sense, the parent company is treated as the one that committed the infringement without having to establish a connection between the parent company and the anticompetitive conduct of the subsidiary since both have the same objective as an undertaking that sells social media services and there is no need for direct or indirect participation or awareness of the infringement as the CJEU has settled that the liability for undertakings breaching competition laws is strict and that it is not fault based.

(1) Review figure 26 in Annex I.

(2) Izel Naz Karahan, The Single Economic Entity Doctrine: Is There a Common Concept of Undertaking in EU Competition Law, Master Thesis in European Business Law, Lund University, Faculty of Law, Sweden, pages: 27-35, available via URL accessed on August 17, 2021: https://bit.ly/3tJJObL ; Case C-501/11 P Schindler Holding Ltd v Commission EU:C:2013:522, paras 113-114. ; Akzo (T-112/05) (n 212), para 60; Akzo (C-97/08 P) (n 191), para 60. For this reason, Choline Chloride (Case COMP/E-2/37.533) Commission Decision [2004], holding Akzo Nobel NV, the parent company, responsible together with its subsidiaries' cartel participation was upheld by the CJEU; and Arkema (n 223) 48; Case T-38/07 Shell Petroleum v Commission EU:T:2011:355, para 70. See Bellamy & Child (n 19) 14.094 for the list of factors that were rejected for rebuttal.

(3) Portielje (n 130) 66-69 decisive influence was inferred from personal links, from overlapping board members, albeit appointed before the acquisition). See also Mantas Stanevičius, 'Portielje: Bar Remains High for Rebutting Parental Liability Presumption' (2014) 5(1) JECL & Pract 24.

Annex 4 ─ EU Disclosure and Competition Articles

(1) Disclosure Requirements in EU

According to Directive 36/2013:
Article 40
Reporting requirements

The competent authorities of the host Member States may require that all credit institutions having branches within their territories shall report to them periodically on their activities in those host Member States. Such reports shall only be required for information or statistical purposes, for the application of Article 51(1), or for supervisory purposes in accordance with this Chapter. They shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1). The competent authorities of the host Member States may in particular require information from the credit institutions referred to in the first subparagraph in order to allow those competent authorities to assess whether a branch is significant in accordance with Article 51(1).

TITLE VI RELATIONS WITH THIRD COUNTRIES

Article 47
Notification in relation to third-country branches and conditions of access for credit institutions with such branches

1. Member States shall not apply to branches of credit institutions having their head office in a third country, when commencing or continuing to carry out their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Union.

1a. A Member State shall require branches of credit institutions having their head office in a third country to report at least annually to the competent authorities the following information:
(a) the total assets corresponding to the activities of the branch authorised in that Member State; (b) information on the liquid assets available to the branch, in particular availability of liquid assets in Member State currencies; (c) the own funds that are at the disposal of the branch; (d) the deposit protection arrangements available to depositors in the branch; (e) the risk management arrangements; (f) the governance arrangements, including key function holders for the activities of the branch; (g) the recovery plans covering the branch; and (h) any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch.

2. The competent authorities shall notify EBA of the following: (a) all the authorizations for branches granted to credit institutions having their head office in a third country and any subsequent changes to such authorizations; (b) total assets and liabilities of the authorised branches of credit institutions having their head office in a third country, as periodically reported; (c) the name of the third-country group to which an authorised branch belongs. EBA shall publish on its website a list of all third-country branches authorised to operate in the Union, indicating the Member State in which they are authorised to operate.

2a. Competent authorities supervising branches of credit institutions having their head office in a third country and competent authorities of institutions that are part of the same third-country group shall cooperate closely to ensure that all activities of that third-country group in the Union are subject to comprehensive supervision, to prevent the requirements applicable to third-country groups pursuant to this Directive and Regulation (EU) No 575/2013 from being circumvented and to prevent any detrimental impact on the financial stability of the Union. EBA shall facilitate the cooperation among competent authorities for the

B 3. The Union may, through agreements concluded with one or more third countries, agree to apply provisions which accord to branches of a credit institution having its head office in a third country identical treatment throughout the territory of the Union.

TITLE VIII DISCLOSURE BY COMPETENT AUTHORITIES

Article 143
General disclosure requirements

1. Competent authorities shall publish the following information:(a) the texts of laws, regulations, administrative rules and general
guidance adopted in their Member State in the field of prudential regulation; (b) the manner of exercise of the options and discretions available in Union law; (c) the general criteria and methodologies they use in the review and evaluation referred to in Article 97, including the criteria for applying the principle of proportionality as referred to in Article 97(4); (d) without prejudice to the provisions set out in Title VII, Chapter 1, Section II of this Directive and where applicable, the provisions set out in Title IV, Chapter 1, Section 2 of Directive (EU) 2019/2034, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State, including the number and nature of supervisory measures taken in accordance with point (a) of

Article 102(1) of this Directive and of administrative penalties imposed in accordance with Article 65 of this Directive.

2. The information published in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. The disclosures shall be published following a common format and updated regularly. The disclosures shall be accessible at a single electronic location.
3. EBA shall develop draft implementing technical standards to determine the format, structure, contents list and annual publication
date of the information listed in paragraph 1. EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014. Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 144

Specific disclosure requirements

1. For the purpose of Part Five of Regulation (EU) No 575/2013,
competent authorities shall publish the following information:
(a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of Regulation (EU) No 575/2013;
(b) without prejudice to the provisions laid down in Title VII, Chapter 1, Section II, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of Regulation (EU)
No 575/2013, identified on an annual basis.
2. The competent authority of a Member State exercising the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013 shall publish the following information:
(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013 and the number of those which incorporate subsidiaries in a third country;
(c) on an aggregate basis for the Member State: (i) the total amount of own funds on the consolidated basis of the parent institution in a Member State, which benefits from the exercise of the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013, which are held in subsidiaries in a third country; (ii) the percentage of total own funds on the consolidated basis of parent institutions in a Member State which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country; (iii) the percentage of total own funds required under Article 92 of that Regulation on the consolidated basis of parent institutions in a Member State, which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country.
3. The competent authority which exercises the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 shall publish all the following:
(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 and the number of such parent institutions which incorporate subsidiaries in a third country;
(c) on an aggregate basis for the Member State:(i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 which are held in subsidiaries in a third country;(ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 represented by own funds which are held in subsidiaries in a third country;(iii) the percentage of total own funds required under Article 92 of Regulation (EU) No 575/2013 of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of that Regulation represented by own funds which are held in subsidiaries in a third country.

According to Regulation No. 575/ 2013

Article 519c

Compliance tool

1. EBA shall develop an electronic tool aimed at facilitating institutions' compliance with this Regulation and Directive 2013/36/EU, as well as with regulatory technical standards, implementing technical standards, guidelines and templates adopted to implement this Regulation and that Directive.
2. The tool referred to in paragraph 1 shall at least enable each institution to: (a) rapidly identify the relevant provisions to comply with in relation to the institution's size and business model; (b) follow the changes made in legislative acts and in the related implementing provisions, guidelines and templates.

PART SEVEN A

REPORTING REQUIREMENTS

Article 430

Reporting on prudential requirements and financial information

1. Institutions shall submit to the competent authorities all necessary information on the leverage ratio and its components in accordance with Article 429. Competent authorities shall take into account this information when undertaking the supervisory review referred to in Article 97 of Directive 2013/36/EU. Institutions shall also submit to the competent authorities the information required for the purposes of the preparation of the reports referred to in Article 511.Competent authorities shall submit the information received from institutions to EBA upon its request to facilitate the review referred to in Article 511.
2. EBA shall develop draft implementing technical standards to determine the uniform reporting template, the instructions on how to use such template, the frequencies and dates of reporting and the IT solutions, for the purposes of the reporting requirement laid down in paragraph 1.EBA shall submit those draft implementing technical standards to the Commission by 28 July 2013.Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.
7. EBA shall develop draft implementing technical standards to specify the uniform reporting formats and templates, the instructions and methodology on how to use those templates, the frequency and dates of reporting, the definitions and the IT solutions for the reporting referred to in paragraphs 1 to 4.Any new reporting requirements set out in such implementing technical standards shall not be applicable earlier than six months from the date of their entry into force. For the purposes of paragraph 2, the draft implementing technical standards shall specify which components of the leverage ratio shall be reported using day-end or month-end values. For that purpose, EBA shall take into account both of the following:
(a) how susceptible a component is to significant temporary reductions in transaction volumes that could result in an underrepresentation of the risk of excessive leverage at the reporting reference date;
(b) developments and findings at international level. EBA shall submit to the Commission the draft implementing technical standards referred to in this paragraph by 28 June 2021, except in relation to the following:
(a) the leverage ratio, which shall be submitted by 28 June 2020;
(b) the obligations laid down in Articles 92a and 92b, which shall be submitted by 28 June 2020.Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.
8. EBA shall assess the costs and benefits of the reporting
requirements laid down in Commission Implementing Regulation (EU) No 680/2014 (1) in accordance with this paragraph and report its findings to the Commission by 28 June 2020. That assessment shall be carried out in particular in relation to small and non-complex institutions. For those purposes, the report shall:
(a) classify institutions into categories based on their size, complexity and the nature and level of risk of their activities;
(b) measure the reporting costs incurred by each category of institutions during the relevant period to meet the reporting requirements set out in Implementing Regulation (EU) No 680/2014, taking into account the following principles:(i) the reporting costs shall be measured as the ratio of the reporting costs relative to the institution's total costs during the relevant period; (ii) the reporting costs shall comprise all expenditure related to the implementation and operation on an on-going basis of the reporting systems, including expenditure on staff, IT systems, legal, accounting, auditing and consultancy services; (iii) the relevant period shall refer to each annual period during which institutions have incurred reporting costs to prepare for the implementation of the reporting requirements laid down in Implementing Regulation (EU) No 680/2014 and to continue operating the reporting systems on an on-going basis;
(c) assess whether the reporting costs incurred by each category of institutions were proportionate with regard to the benefits delivered by the reporting requirements for the purposes of prudential supervision;
(d) assess the effects of a reduction of reporting requirement on costs and supervisory effectiveness; and
(e) make recommendations on how to reduce reporting requirements at least for small and non-complex institutions, to which end EBA shall target an expected average cost reduction of at least 10 % but ideally a 20 % cost reduction. EBA shall, in particular, assess whether: (i) the reporting requirements referred to in point (g) of paragraph 1 could be waived for small and non-complex institutions where asset encumbrance was below a certain threshold; (ii) the reporting frequency required in accordance with points (a),
(c), and (g) of paragraph 1 could be reduced for small and non-complex institutions. EBA shall accompany that report by draft implementing technical standards referred to in paragraph 7.

Article 430b

Specific reporting requirements for market risk

1. From the date of application of the delegated act referred to in Article 461a, credit institutions that do not meet the conditions set out in Article 94(1) nor the conditions set out in Article 325a(1) shall report, for all their trading book positions and all their non-trading book positions that are subject to foreign exchange or commodity risks,

the results of the calculations based on using the alternative standardised approach set out in Chapter 1a of Title IV of Part Three on the same basis as such institutions report the obligations laid down in points (b)(i) and (c) of Article 92(3).
2. Institutions referred to in paragraph 1 of this Article shall report separately the calculations set out in points (a), (b) and (c) of Article 325c(2) for the portfolio of all trading book positions or non-trading book positions that are subject to foreign exchange and
commodity risks.
3. In addition to the requirement set out in paragraph 1 of this Article, from the end of a three-year-period following the date of entry into force of the latest regulatory technical standards referred to in Articles 325bd(7), 325be(3), 325bf(9), 325bg(4), institutions shall report, for those positions assigned to trading desks for which they have been granted permission by the competent authorities to use the alternative internal model approach in accordance with Article 325az(2), the results of the calculations based on using that approach set out in Chapter 1b of Title IV of Part Three on the same basis as such institutions report the obligations laid down in points (b)(i) and (c) of Article 92(3).
4. For the purposes of the reporting requirement in paragraph 3 of this Article, institutions shall report separately the calculations set out in points (a)(i), (a)(ii), (b)(i) and (b)(ii) of Article 325ba(1) and for the portfolio of all trading book positions or non-trading book positions that are subject to foreign exchange and commodity risks assigned to trading desks for which the institution has been granted permission by the competent authorities to use the alternative internal model approach in accordance with Article 325az(2).
5. Institutions may use in combination the approaches referred to in paragraphs 1 and 3 within a group, provided that the calculation under the approach referred to in paragraph 1 does not exceed 90 % of the total calculation. Otherwise, the institution shall use the approach referred to in paragraph 1 for all its trading book positions and all its non-trading book positions that are subject to foreign exchange or
commodity risk.
6. EBA shall develop draft implementing technical standards, to specify the uniform reporting templates, the instructions and methodology on how to use the templates, the frequency and dates of reporting, the definitions and the IT solutions for the reporting referred to in this Article Any new reporting requirements set out in such implementing technical standards shall not be applicable earlier than six months from the date of their entry into force. EBA shall submit those draft implementing technical standards to the Commission by 30 June 2020.Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 430c

Feasibility Report on the Integrated Reporting System

1. EBA shall prepare a report on feasibility regarding the development of a consistent and integrated system for collecting statistical data, resolution data and prudential data and report its findings to the Commission by 28 June 2020.
2. When drafting the feasibility report, EBA shall involve competent authorities, as well as authorities that are responsible for deposit guarantee schemes, resolution and in particular the ESCB. The report shall take into account the previous work of the ESCB regarding integrated data collections and shall be based on an overall cost and benefit analysis including as a minimum:
(a) an overview of the quantity and scope of the current data collected by the competent authorities in their jurisdiction and of its origins and granularity;
(b) the establishment of a standard dictionary of the data to be collected, in order to increase the convergence of reporting requirements as regards regular reporting obligations, and to avoid unnecessary queries;
(c) the establishment of a joint committee, including as a minimum EBA and the ESCB, for the development and implementation of the integrated reporting system;
(d) the feasibility and possible design of a central data collection point for the integrated reporting system, including requirements to ensure strict confidentiality of the data collected, strong authentication and management of access rights to the system and cybersecurity, which: (i) contains a central data register with all statistical data, resolution data and prudential data in the necessary granularity and frequency for the particular institution and is updated at necessary intervals; (ii) serves as a point of contact for the competent authorities, where they receive, process and pool all data queries, where queries can be matched with existing collected reported data and which allows the competent authorities quick access to the requested information; (iii) provides additional support to the competent authorities for the transmission of data queries to the institutions and enters the requested data into the central data register;(iv) holds a coordinating role for the exchange of information and data between competent authorities; and(v) takes into account the proceedings and processes of competent authorities and transfers them into a standardised system.
3. By one year after the presentation of the report referred to in this Article, the Commission shall, if appropriate and taking into account the feasibility report by EBA, submit to the European Parliament and to the Council a legislative proposal for the establishment of a standardised and integrated reporting system for reporting requirements.

DISCLOSURE BY INSTITUTIONS

TITLE I

GENERAL PRINCIPLES

Article 431

Scope of disclosure requirements

1. Institutions shall publicly disclose the information laid down in Title II, subject to the provisions laid down in Article 432.
2. Permission granted by the competent authorities under Part Three for the instruments and methodologies referred to in Title III shall be subject to the public disclosure by institutions of the information laid down therein.
3. Institutions shall adopt a formal policy to comply with the disclosure requirements laid down in this Part, and have policies for assessing the appropriateness of their disclosures, including their verification and frequency. Institutions shall also have policies for assessing whether their disclosures convey their risk profile comprehensively to market participants. Where those disclosures do not convey the risk profile comprehensively to market participants, institutions shall publicly disclose the information necessary in addition to that required in accordance with paragraph 1. However, they shall only be required to disclose information which is material and not proprietary or confidential in accordance with Article 432.
4. Institutions shall, if requested, explain their rating decisions to SMEs and other corporate applicants for loans, providing an explanation in writing when asked. The administrative costs of the explanation shall be proportionate to the size of the loan.

Article 432

Non-material, proprietary or confidential information

1. With the exception of the disclosures laid down in point (c) of Article 435(2) and in Articles 437 and 450, institutions may omit one or more of the disclosures listed in Titles II and III where the information provided by those disclosures is not regarded as material. Information in disclosures shall be regarded as material where its omission or misstatement could change or influence the assessment or decision of a user of that information relying on it for the purpose of making economic decisions. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on how institutions have to apply materiality in relation to the disclosure requirements of Titles II and III.
2. Institutions may also omit one or more items of information referred to in Titles II and III where those items include information that is regarded as proprietary or confidential in accordance with this paragraph, except for the disclosures laid down in Articles 437 and 450.Information shall be regarded as proprietary to institutions where disclosing it publicly would undermine their competitive position. Proprietary information may include information on products or systems that would render the investments of institutions therein less valuable, if shared with competitors. Information shall be regarded as confidential where the institutions are obliged by customers or other counterparty relationships to keep that information confidential. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on how institutions have to apply proprietary and confidentiality in relation to the disclosure requirements of Titles II and III.
3. In the exceptional cases referred to in paragraph 2, the institution concerned shall state in its disclosures the fact that the specific items of information are not disclosed, the reason for non-disclosure, and publish more general information about the subject matter of the disclosure requirement, except where these are to be classified as proprietary or confidential.
4. Paragraphs 1, 2 and 3 are without prejudice to the scope of liability for failure to disclose material information.

Article 433

Frequency of disclosure

Institutions shall publish the disclosures required by this Part at least on an annual basis. Annual disclosures shall be published in conjunction with the date of publication of the financial statements .Institutions shall assess the need to publish some or all disclosures more frequently than annually in the light of the relevant characteristics of their business such as scale of operations, range of activities, presence in different countries, involvement in different financial sectors, and participation in international financial markets and payment, settlement and clearing systems. That assessment shall pay particular attention to the possible need for more frequent disclosure of items of information laid down in Article 437, and points (c) to (f) of Article 438, and information on risk exposure and other items prone to rapid change. EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines by 31 December 2014 on institutions assessing more frequent disclosures of Titles II and III.

Article 434

Means of disclosures

1. Institutions may determine the appropriate medium, location and means of verification to comply effectively with the disclosure requirements laid down in this Part. To the degree feasible, all disclosures shall be provided in one medium or location. If a similar piece of information is disclosed in two or more media, a reference to the synonymous information in the other media shall be included within each medium.

2. Equivalent disclosures made by institutions under accounting, listing or other requirements may be deemed to constitute compliance with this Part. If disclosures are not included in the financial statements, institutions shall unambiguously indicate in the financial statements where they can be found.

Article 434a

Uniform disclosure formats

EBA shall develop draft implementing technical standards specifying uniform disclosure formats, and associated instructions in accordance with which the disclosures required under Titles II and III shall be made.

Those uniform disclosure formats shall convey sufficiently comprehensive and comparable information for users of that information to assess the risk profiles of institutions and their degree of compliance with the requirements laid down in Parts One to Seven. To facilitate the comparability of information, the implementing technical standards shall seek to maintain consistency of disclosure formats with international standards on disclosures. Uniform disclosure formats shall be tabular where appropriate. EBA shall submit those draft implementing technical standards to the Commission by 28 June 2020. Power is conferred on the Commission to adopt those implementing technical standards in accordance with Article 15 of Regulation (EU) No 1093/2010.

TITLE II

TECHNICAL CRITERIA ON TRANSPARENCY AND DISCLOSURE

Article 435

Risk management objectives and policies

1. Institutions shall disclose their risk management objectives and policies for each separate category of risk, including the risks referred to under this Title. These disclosures shall include:
(a) the strategies and processes to manage those risks;
(b) the structure and organisation of the relevant risk management function including information on its authority and statute, or other appropriate arrangements;
(c) the scope and nature of risk reporting and measurement systems;
(d) the policies for hedging and mitigating risk, and the strategies and processes for monitoring the continuing effectiveness of hedges and mitigants;
(e) a declaration approved by the management body on the adequacy of risk management arrangements of the institution providing assurance that the risk management systems put in place are adequate with regard to the institution's profile and strategy;
(f) a concise risk statement approved by the management body succinctly describing the institution's overall risk profile associated with the business strategy. This statement shall include key ratios and figures providing external stakeholders with a comprehensive view of the institution's management of risk, including how the risk profile of the institution interacts with the risk tolerance set by the management body.

2. Institutions shall disclose the following information, including regular, at least annual updates, regarding governance arrangements:
(a) the number of directorships held by members of the management body;
(b) the recruitment policy for the selection of members of the management body and their actual knowledge, skills and expertise;
(c) the policy on diversity with regard to selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which these objectives and targets have been achieved;
(d) whether or not the institution has set up a separate risk committee and the number of times the risk committee has met;
(e) the description of the information flow on risk to the management body.

Article 436

Scope of application

Institutions shall disclose the following information regarding the scope of application of the requirements of this Regulation in accordance with Directive 2013/36/EU:
(a) the name of the institution to which the requirements of this Regulation apply;
(b) an outline of the differences in the basis of consolidation for accounting and prudential purposes, with a brief description of the entities therein, explaining whether they are: (i) fully consolidated; (ii) proportionally consolidated; (iii) deducted from own funds; (iv) neither consolidated nor deducted;
(c) any current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities among the parent undertaking and its subsidiaries;
(d) the aggregate amount by which the actual own funds are less than required in all subsidiaries not included in the consolidation, and the name or names of such subsidiaries;
(e) if applicable, the circumstance of making use of the provisions laid
down in Articles 7 and 9.

Article 437

Own funds

1. Institutions shall disclose the following information regarding their own funds:

(a) a full reconciliation of Common Equity Tier 1 items, Additional Tier 1 items, Tier 2 items and filters and deductions applied pursuant to Articles 32 to 35, 36, 56, 66 and 79 to own funds of the institution and the balance sheet in the audited financial statements of the institution;
(b) a description of the main features of the Common Equity Tier 1 and Additional Tier 1 instruments and Tier 2 instruments issued by the institution;
(c) the full terms and conditions of all Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments;
(d) separate disclosure of the nature and amounts of the following: (i) each prudential filter applied pursuant to Articles 32 to 35; (ii) each deduction made pursuant to Articles 36, 56 and 66; (iii) items not deducted in accordance with Articles 47, 48, 56, 66 and 79;
(e) a description of all restrictions applied to the calculation of own funds in accordance with this Regulation and the instruments, prudential filters and deductions to which those restrictions apply;
(f) where institutions disclose capital ratios calculated using elements of own funds determined on a basis other than that laid down in this Regulation, a comprehensive explanation of the basis on which those capital ratios are calculated.
2. EBA shall develop draft implementing technical standards to specify uniform templates for disclosure under points (a), (b), (d) and (e) of paragraph 1.
EBA shall submit those draft implementing technical standards to the
Commission by 28 July 2013.Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 438
Capital requirements

Institutions shall disclose the following information regarding the compliance by the institution with the requirements laid down in
Article 92 of this Regulation and in Article 73 of Directive 2013/36/EU:
(a) a summary of the institution's approach to assessing the adequacy of its internal capital to support current and future activities;
(b) upon demand from the relevant competent authority, the result of the institution's internal capital adequacy assessment process including the composition of the additional own funds requirements based on the supervisory review process as referred to in point (a) of Article 104(1) of Directive 2013/36/EU;
(c) for institutions calculating the risk-weighted exposure amounts in accordance with Chapter 2 of Part Three, Title II, 8 % of the risk-weighted exposure amounts for each of the exposure classes specified in Article 112;
(d) for institutions calculating risk-weighted exposure amounts in accordance with Chapter 3 of Part Three, Title II, 8 % of the risk-weighted exposure amounts for each of the exposure classes specified in Article 147. For the retail exposure class, this requirement applies to each of the categories of exposures to which the different correlations in Article 154(1) to (4) correspond. For the equity exposure class, this requirement applies to: (i) each of the approaches provided in Article 155; (ii) exchange traded exposures, private equity exposures in sufficiently diversified portfolios, and other exposures; (iii) exposures subject to supervisory transition regarding own funds requirements; (iv) exposures subject to grandfathering provisions regarding own funds requirements;
(e) own funds requirements calculated in accordance with points (b) and (c) of Article 92(3);
(f) own funds requirements calculated in accordance with Part Three, Title III, Chapters 2, 3 and 4 and disclosed separately. The institutions calculating the risk-weighted exposure amounts in accordance with Article 153(5) or Article 155(2) shall disclose the exposures assigned to each category in Table 1 of Article 153(5), or to each risk weight mentioned in Article 155(2).

Article 439
Exposure to counterparty credit risk

Institutions shall disclose the following information regarding the institution's exposure to counterparty credit risk as referred to in Part Three, Title II, Chapter 6:
(a) a discussion of the methodology used to assign internal capital and credit limits for counterparty credit exposures;
(b) a discussion of policies for securing collateral and establishing credit reserves;
(c) a discussion of policies with respect to Wrong-Way risk exposures;
(d) a discussion of the impact of the amount of collateral the institution would have to provide given a downgrade in its credit rating;
(e) gross positive fair value of contracts, netting benefits, netted current credit exposure, collateral held and net derivatives credit exposure. Net derivatives credit exposure is the credit exposure on derivatives transactions after considering both the benefits from legally enforceable netting agreements and collateral arrangements;
(f) measures for exposure value under the methods set out in Part Three, Title II, Chapter 6, Sections 3 to 6 whichever method is applicable;
(g) the notional value of credit derivative hedges, and the distribution of current credit exposure by types of credit exposure;

(h) the notional amounts of credit derivative transactions, segregated between use for the institution's own credit portfolio, as well as in its intermediation activities, including the distribution of the credit derivatives products used, broken down further by protection bought and sold within each product group;
(i) the estimate of α if the institution has received the permission of the competent authorities to estimate α.

Article 440
Capital buffers

1. An institution shall disclose the following information in relation to its compliance with the requirement for a countercyclical capital
buffer referred to in Title VII, Chapter 4 of Directive 2013/36/EU:(a) the geographical distribution of its credit exposures relevant for the calculation of its countercyclical capital buffer; (b) the amount of its institution specific countercyclical capital buffer.
2. EBA shall develop draft regulatory technical standards specifying the disclosure requirements set out in paragraph 1. EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 441
Indicators of Global Systemic Importance

1. Institutions identified as G-SIIs in accordance with Article 131 of Directive 2013/36/EU shall disclose, on an annual basis, the values of the indicators used for determining the score of the institutions in accordance with the identification methodology referred to in that Article.
2. EBA shall develop draft implementing technical standards to specify the uniform formats and date for the purposes of the disclosure referred to in paragraph 1. In developing those technical standards, EBA shall take into account international standards .EBA shall submit those draft implementing technical standards to the Commission by 1 July 2014.Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 442
Credit Risk Adjustments

Institutions shall disclose the following information regarding the institution's exposure to credit risk and dilution risk:
(a) the definitions for accounting purposes of 'past due' and 'impaired';
(b) a description of the approaches and methods adopted for determining specific and general credit risk adjustments;
(c) the total amount of exposures after accounting offsets and without taking into account the effects of credit risk mitigation, and the average amount of the exposures over the period broken down by different types of exposure classes;
(d) the geographic distribution of the exposures, broken down in significant areas by material exposure classes, and further detailed if appropriate;
(e) the distribution of the exposures by industry or counterparty type, broken down by exposure classes, including specifying exposure to SMEs, and further detailed if appropriate;
(f) the residual maturity breakdown of all the exposures, broken down by exposure classes, and further detailed if appropriate;
(g) by significant industry or counterparty type, the amount of: (i) impaired exposures and past due exposures, provided separately;(ii) specific and general credit risk adjustments;(iii) charges for specific and general credit risk adjustments during the reporting period;
(h) the amount of the impaired exposures and past due exposures, provided separately, broken down by significant geographical areas including, if practical, the amounts of specific and general credit risk adjustments related to each geographical area; (i) the reconciliation of changes in the specific and general credit risk adjustments for impaired exposures, shown separately. The information shall comprise: (i) a description of the type of specific and general credit risk adjustments; (ii) the opening balances; (iii) the amounts taken against the credit risk adjustments during the reporting period; (iv) the amounts set aside or reversed for estimated probable losses on exposures during the reporting period, any other adjustments including those determined by exchange rate differences, business combinations, acquisitions and disposals of subsidiaries, and transfers between credit risk adjustments;(v) the closing balances. Specific credit risk adjustments and recoveries recorded directly to the income statement shall be disclosed separately.

article 443
unencumbered assets

EBA shall issue guidelines specifying the disclosure of unencumbered assets, taking into account Recommendation ESRB/2012/2 of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions (1) and in particular Recommendation D — Market transparency on asset encumbrance, by 30 June 2014. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010. EBA shall develop draft regulatory technical standards to specify disclosure of the balance sheet value per exposure class broken down by asset quality and the total amount of the balance sheet value that is unencumbered, taking into account Recommendation ESRB/2012/2 and conditional on EBA considering in its report that such additional disclosure offers reliable and meaningful information. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2016.Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 444
Use of ECAIs

For institutions calculating the risk-weighted exposure amounts in accordance with Part Three, Title II, Chapter 2, the following information shall be disclosed for each of the exposure classes specified in Article 112:
(a) the names of the nominated ECAIs and ECAs and the reasons for any changes;
(b) the exposure classes for which each ECAI or ECA is used;
(c) a description of the process used to transfer the issuer and issue credit assessments onto items not included in the trading book;
(d) the association of the external rating of each nominated ECAI or ECA with the credit quality steps prescribed in Part Three, Title II,
Chapter 2, taking into account that this information needs not be disclosed if the institution complies with the standard association published by EBA;
(e) the exposure values and the exposure values after credit risk mitigation associated with each credit quality step prescribed in Part Three, Title II, Chapter 2 as well as those deducted from own funds.

Article 445
Exposure to market risk

The institutions calculating their own funds requirements in accordance with points (b) and (c) of Article 92(3) shall disclose those requirements separately for each risk referred to in those provisions. In addition, the own funds requirement for specific interest rate risk of securitisation positions shall be disclosed separately.

Article 446
Operational risk

Institutions shall disclose the approaches for the assessment of own funds requirements for operational risk that the institution qualifies
for; a description of the methodology set out in Article 312(2), if used by the institution, including a discussion of relevant internal and
external factors considered in the institution's measurement approach, and in the case of partial use, the scope and coverage of the different methodologies used.

Article 447
Exposures in Equities Not Included in the Trading Book

Institutions shall disclose the following information regarding the exposures in equities not included in the trading book:
(a) the differentiation between exposures based on their objectives, including for capital gains relationship and strategic reasons, and
an overview of the accounting techniques and valuation methodologies used, including key assumptions and practices affecting valuation and any significant changes in these practices;
(b) the balance sheet value, the fair value and, for those exchange traded, a comparison to the market price where it is materially different from the fair value;
(c) the types, nature and amounts of exchange-traded exposures, private equity exposures in sufficiently diversified portfolios, and other exposures;
(d) the cumulative realized gains or losses arising from sales and liquidations in the period; and
(e) the total unrealized gains or losses, the total latent revaluation gains or losses, and any of these amounts included in Common Equity
Tier 1 capital.

Article 448
Exposure to interest rate risk on positions not included in the trading book

Institutions shall disclose the following information on their exposure to interest rate risk on positions not included in the trading book:
(a) the nature of the interest rate risk and the key assumptions (including assumptions regarding loan prepayments and behavior of non-maturity deposits), and frequency of measurement of the interest rate risk;
(b) the variation in earnings, economic value or other relevant measure used by the management for upward and downward rate shocks
according to management's method for measuring the interest rate risk, broken down by currency.

Article 449
Exposure to securitisation positions

Institutions calculating risk-weighted exposure amounts in accordance with Part Three, Title II, Chapter 5 or own funds requirements in accordance with Article 337 or 338 shall disclose the following information, where relevant, separately for their trading and non-trading book:
(a) a description of the institution's objectives in relation to securitization activity;

(b) the nature of other risks including liquidity risk inherent in securitised assets;
(c) the type of risks in terms of seniority of underlying securitisation positions and in terms of assets underlying those latter securitization positions assumed and retained with re-securitisation activity;
(d) the different roles played by the institution in the securitisation process;
(e) an indication of the extent of the institution's involvement in each of the roles referred to in point (d);
(f) a description of the processes in place to monitor changes in the credit and market risk of securitisation exposures including, how the behavior of the underlying assets impacts securitisation exposures and a description of how those processes differ for resecuritization exposures;
(g) a description of the institution's policy governing the use of hedging and unfunded protection to mitigate the risks of retained securitisation and re-securitisation exposures, including identification of material hedge counterparties by relevant type of risk exposure;
(h) the approaches to calculating risk-weighted exposure amounts that the institution follows for its securitisation activities including the types of securitisation exposures to which each approach applies;
(i) the types of SSPE that the institution, as sponsor, uses to securitize third-party exposures including whether and in what form and to what extent the institution has exposures to those SSPEs, separately for on- and off-balance sheet exposures, as well as a list of the entities that the institution manages or advises and that invest in either the securitisation positions that the institution has securitised or in SSPEs that the institution sponsors;
(j) a summary of the institution's accounting policies for securitisation activities, including: (i) whether the transactions are treated as sales or financings; (ii) the recognition of gains on sales; (iii) the methods, key assumptions, inputs and changes from the previous period for valuing securitisation positions; (iv) the treatment of synthetic securitisations if not covered by other accounting policies; (v) how assets awaiting securitisation are valued and whether they are recorded in the institution's non-trading book or the trading book; (vi) policies for recognising liabilities on the balance sheet for arrangements that could require the institution to provide financial support for securitised assets;
(k) the names of the ECAIs used for securitisations and the types of exposure for which each agency is used;
(l) where applicable, a description of the Internal Assessment Approach as set out in Part Three, Title II, Chapter 5, Section 3, including the structure of the internal assessment process and relation between internal assessment and external ratings, the use of internal assessment other than for Internal Assessment Approach capital purposes, the control mechanisms for the internal assessment process including discussion of independence, accountability, and internal assessment process review, the exposure types to which the internal assessment process is applied and the stress factors used for determining credit enhancement levels, by exposure type;
(m) an explanation of significant changes to any of the quantitative disclosures in points (n) to (q) since the last reporting period;
(n) separately for the trading and the non-trading book, the following information broken down by exposure type:(i) the total amount of outstanding exposures securitised by the institution, separately for traditional and synthetic securitizations and securitisations for which the institution acts only as sponsor; (ii) the aggregate amount of on-balance sheet securitisation positions retained or purchased and off-balance sheet securitization exposures; (iii) the aggregate amount of assets awaiting securitisation; (iv) for securitised facilities subject to the early amortization treatment, the aggregate drawn exposures attributed to the originator's and investors' interests respectively, the aggregate capital requirements incurred by the institution against the originator's interest and the aggregate capital requirements incurred by the institution against the investor's shares of drawn balances and undrawn lines; (v) the amount of securitisation positions that are deducted from own funds or risk-weighted at 1 250 %; (vi) a summary of the securitisation activity of the current period, including the amount of exposures securitised and recognised gain or loss on sale;
(o) separately for the trading and the non-trading book, the following information: (i) the aggregate amount of securitisation positions retained or purchased and the associated capital requirements, broken down between securitisation and re-securitisation exposures and further broken down into a meaningful number of risk-weight or capital requirement bands, for each capital requirements approach used; (ii) the aggregate amount of re-securitisation exposures retained or purchased broken down according to the exposure before and after hedging/insurance and the exposure to financial guarantors, broken down according to guarantor credit worthiness categories or guarantor name;
(p) for the non-trading book and regarding exposures securitised by the institution, the amount of impaired/past due assets securitized, and the losses recognised by the institution during the current period, both broken down by exposure type;
(q) for the trading book, the total outstanding exposures securitised by the institution and subject to a capital requirement for market risk, broken down into traditional/synthetic and by exposure type;
(r) where applicable, whether the institution has provided support within the terms of Article 248(1) and the impact on own funds.

Article 450
Remuneration Policy

1. Institutions shall disclose at least the following information, regarding the remuneration policy and practices of the institution for those categories of staff whose professional activities have a material impact on its risk profile:
(a) information concerning the decision-making process used for determining the remuneration policy, as well as the number of meetings held by the main body overseeing remuneration during the financial year, including, if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders;
(b) information on link between pay and performance;
(c) the most important design characteristics of the remuneration
system, including information on the criteria used for performance measurement and risk adjustment, deferral policy and vesting criteria;
(d) the ratios between fixed and variable remuneration set in accordance with Article 94(1)(g) of Directive 2013/36/EU;
(e) information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based;
(f) the main parameters and rationale for any variable component scheme and any other non-cash benefits;
(g) aggregate quantitative information on remuneration, broken down by business area;
(h) aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the institution, indicating the following: (i) the amounts of remuneration for the financial year, split into fixed and variable remuneration, and the number of beneficiaries; (ii) the amounts and forms of variable remuneration, split into cash, shares, share-linked instruments and other types; (iii) the amounts of outstanding deferred remuneration, split into vested and unvested portions; (iv) the amounts of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments;(v) new sign-on and severance payments made during the financial year, and the number of beneficiaries of such payments;(vi) the amounts of severance payments awarded during the financial year, number of beneficiaries and highest such award to a single person;
(i) the number of individuals being remunerated EUR 1 million or more per financial year, for remuneration between EUR 1 million and EUR 5 million broken down into pay bands of EUR 500 000 and for remuneration of EUR 5 million and above broken down into pay bands of EUR 1 million;
(j) upon demand from the Member State or competent authority, the total remuneration for each member of the management body or senior management.
2. For institutions that are significant in terms of their size, internal
organisation and the nature, scope and the complexity of their activities, the quantitative information referred to in this Article shall also be made available to the public at the level of members of the management body of the institution. Institutions shall comply with the requirements set out in this Article in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities and without prejudice to Directive 95/46/EC.

Article 451
Leverage

1. Institutions shall disclose the following information regarding their leverage ratio calculated in accordance with Article 429 and their management of the risk of excessive leverage:
(a) the leverage ratio and how the institution applies Article 499(2) and (3);
(b) a breakdown of the total exposure measure as well as a reconciliation of the total exposure measure with the relevant information
disclosed in published financial statements;
(c) where applicable, the amount of derecognized fiduciary items in accordance with Article 429(11);
(d) a description of the processes used to manage the risk of excessive leverage;
(e) a description of the factors that had an impact on the leverage ratio during the period to which the disclosed leverage ratio refers.
2. EBA shall develop draft implementing technical standards to determine the uniform disclosure template for the disclosure referred to in paragraph 1 and the instructions on how to use such template. EBA shall submit those draft implementing technical standards to the Commission by 30 June 2014. Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

TITLE III
QUALIFYING REQUIREMENTS FOR THE USE OF PARTICULAR INSTRUMENTS OR METHODOLOGIES

Article 452
Use of the IRB

Approach to credit risk Institutions calculating the risk-weighted exposure amounts under the IRB Approach shall disclose the following information:

(a) the competent authority's permission of the approach or approved transition;
(b) an explanation and review of: (i) the structure of internal rating systems and relation between internal and external ratings; (ii) the use of internal estimates other than for calculating risk-weighted exposure amounts in accordance with Part Three, Title II, Chapter 3; (iii) the process for managing and recognising credit risk mitigation; (iv) the control mechanisms for rating systems including a description of independence, accountability, and rating systems review;
(c) a description of the internal ratings process, provided separately for the following exposure classes:(i) central governments and central banks;(ii) institutions; (iii) corporate, including SMEs, specialized lending and purchased corporate receivables; (iv) retail, for each of the categories of exposures to which the different correlations in Article 154(1) to (4) correspond;(v) equities;
(d) the exposure values for each of the exposure classes specified in Article 147. Exposures to central governments and central banks, institutions and corporates where institutions use own estimates of LGDs or conversion factors for the calculation of risk-weighted exposure amounts, shall be disclosed separately from exposures for which the institutions do not use such estimates;
(e) for each of the exposure classes central governments and central banks, institutions, corporates and equity, and across a sufficient number of obligor grades (including default) to allow for a meaningful differentiation of credit risk, institutions shall disclose:
(i) the total exposures, including for the exposure classes central governments and central banks, institutions and corporates, the sum of outstanding loans and exposure values for undrawn commitments; and for equities the outstanding amount; (ii) the exposure-weighted average risk weight; (iii) for the institutions using own estimates of conversion factors for the calculation of risk-weighted exposure amounts, the amount of undrawn commitments and exposure-weighted average exposure values for each exposure class;
(f) For the retail exposure class and for each of the categories set out in point (c)(iv), either the disclosures outlined in point (e) (if applicable, on a pooled basis), or an analysis of exposures (outstanding loans and exposure values for undrawn commitments) against a sufficient number of EL grades to allow for a meaningful differentiation of credit risk (if applicable, on a pooled basis);
(g) the actual specific credit risk adjustments in the preceding period for
each exposure class (for retail, for each of the categories as set out in point (c)(iv)) and how they differ from past experience;
(h) a description of the factors that impacted on the loss experience in the preceding period (for example, has the institution experienced higher than average default rates, or higher than average LGDs and conversion factors);
(i) the institution's estimates against actual outcomes over a longer period. At a minimum, this shall include information on estimates of losses against actual losses in each exposure class (for retail, for each of the categories as set out in point (c)(iv) over a period sufficient to allow for a meaningful assessment of the performance of the internal rating processes for each exposure class (for retail for each of the categories as set out in point (c)(iv). Where appropriate, the institutions shall further decompose this to provide analysis of PD and, for the institutions using own estimates of LGDs and/or conversion factors, LGD and conversion factor outcomes against
estimates provided in the quantitative risk assessment disclosures set out in this Article;
(j) for all exposure classes specified in Article 147 and for each category of exposure to which the different correlations in Article 154 (1) to (4) correspond: (i) for the institutions using own LGD estimates for the calculation of risk-weighted exposure amounts, the exposure-weighted average LGD and PD in percentage for each relevant geographical location of credit exposures;(ii) for the institutions that do not use own LGD estimates, the exposure-weighted average PD in percentage for each relevant geographical location of credit exposures. For the purposes of point (c), the description shall include the types of exposure included in the exposure class, the definitions, methods and data for estimation and validation of PD and, if applicable, LGD and conversion factors, including assumptions employed in the derivation of these variables, and the descriptions of material deviations from the definition of default as set out in Article 178, including the broad segments affected by such deviations.

For the purposes of point (j), the relevant geographical location of credit exposures means exposures in the Member States in which the institution has been authorised and Member States or third countries in which institutions carry out activities through a branch or a subsidiary.

Article 453
Use of Credit Risk Mitigation Techniques

The institutions applying credit risk mitigation techniques shall disclose the following information:
(a) the policies and processes for, and an indication of the extent to which the entity makes use of, on- and off-balance sheet netting;
(b) the policies and processes for collateral valuation and management;
(c) a description of the main types of collateral taken by the institution;
(d) the main types of guarantor and credit derivative counterparty and their creditworthiness;
(e) information about market or credit risk concentrations within the credit mitigation taken;

(f) for institutions calculating risk-weighted exposure amounts under the Standardised Approach or the IRB Approach, but not providing own estimates of LGDs or conversion factors in respect of the exposure class, separately for each exposure class, the total exposure value (after, where applicable, on- or off-balance sheet netting) that is covered — after the application of volatility adjustments — by eligible financial collateral, and other eligible collateral;
(g) for institutions calculating risk-weighted exposure amounts under the Standardised Approach or the IRB Approach, separately for each exposure class, the total exposure (after, where applicable, on- or off-balance sheet netting) that is covered by guarantees or credit derivatives. For the equity exposure class, this requirement applies to each of the approaches provided in Article 155.

Article 454
Use of the Advanced Measurement Approaches to Operational Risk

The institutions using the Advanced Measurement Approaches set out in Articles 321 to 324 for the calculation of their own funds requirements for operational risk shall disclose a description of the use of insurances and other risk transfer mechanisms for the purpose of mitigation of this risk.

Article 455
Use of Internal Market Risk Models

Institutions calculating their capital requirements in accordance with Article 363 shall disclose the following information: (a) for each sub-portfolio covered:(i) the characteristics of the models used;(ii) where applicable, for the internal models for incremental default and migration risk and for correlation trading, the methodologies used and the risks measured through the use of an internal model including a description of the approach used by the institution to determine liquidity horizons, the methodologies used to achieve a capital assessment that is consistent with the required soundness standard and the approaches used in the validation of the model; (iii) a description of stress testing applied to the sub-portfolio; (iv) a description of the approaches used for back-testing and validating the accuracy and consistency of the internal models and modelling processes;
(b) the scope of permission by the competent authority;
(c) a description of the extent and methodologies for compliance with the requirements set out in Articles 104 and 105;
(d) the highest, the lowest and the mean of the following: (i) the daily value-at-risk measures over the reporting period and as per the period end; (ii) the stressed value-at-risk measures over the reporting period and as per the period end; (iii) the risk numbers for incremental default and migration risk and for the specific risk of the correlation trading portfolio over the reporting period and as per the period-end;
(e) the elements of the own funds requirement as specified in Article 364;
(f) the weighted average liquidity horizon for each sub-portfolio covered by the internal models for incremental default and migration risk and for correlation trading;
(g) a comparison of the daily end-of-day value-at-risk measures to the one-day changes of the portfolio's value by the end of the subsequent business day together with an analysis of any important overshooting during the reporting period.

(2) EU Competition Rules from the TFEU

Title VII Common Rules On Competition, Taxation And Approximation Of Laws
Chapter 1 Rules On Competition

Section 1 Rules Applying To Undertakings

Article 101
(ex-Article81 TEC)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
— any agreement or category of agreements between undertakings,
— any decision or category of decisions by associations of undertakings,

— any concerted practice or category of concerted practices,
which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102
(ex-Article82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.
Such abuse may, in particular, consist in:
(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 103
(ex-Article83 TEC)

1. The appropriate regulations or directives to give effect to the principles set out in Articles 101 and 102 shall be laid down by the Council, on a proposal from the Commission and after consulting the European Parliament.
2. The regulations or directives referred to in paragraph 1 shall be designed in particular:
(a) to ensure compliance with the prohibitions laid down in Article 101(1) and in Article 102 by making provision for fines and periodic penalty payments;
(b) to lay down detailed rules for the application of Article 101(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
(c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 101 and 102;
(d) to define the respective functions of the Commission and of the Court of Justice of the European Union in applying the provisions laid down in this paragraph;
(e) to determine the relationship between national laws and the provisions contained in this Section or adopted pursuant to this Article.

Article 104
(ex-Article84 TEC)

Until the entry into force of the provisions adopted in pursuance of Article 103, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the internal market in accordance with the law of their country and with the provisions of Article 101, in particular paragraph 3, and of Article 102.

Article 105
(ex-Article85 TEC)

1. Without prejudice to Article 104, the Commission shall ensure the application of the principles laid down in Articles 101 and 102. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.
2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorize Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.
3. The Commission may adopt regulations relating to the categories of agreement in respect of which the Council has adopted a regulation or a directive pursuant to Article 103(2)(b).

Article 106
(ex-Article86 TEC)

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.EN C 202/90 Official Journal of the European Union 7.6.2016
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the

particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.
3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

Section 2 Aids Granted By States

Article 107

(ex-Article87 TEC)

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
2. The following shall be compatible with the internal market:
(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
(b) aid to make good the damage caused by natural disasters or exceptional occurrences;
(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.
3. The following may be considered to be compatible with the internal market:
(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

Article 108

(ex-Article88 TEC)

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.
If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct.
On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.
If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.
3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.
4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

Article 109

(ex-Article89 TEC)

The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure.

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