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# Riad Salameh, Crisis, and the Banks

*A Story of Gross Injustice*

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## Introduction

“There is a lack of order in some areas that are not adhering at all to the measures. This creates a wide gap for the spread of coronavirus and could collapse the containment plan that the government implemented. If this plan is not applied strictly, we may be obliged to take even tougher decisions and enforce harsh measures,” Information Minister Manal Abdel Samad said after Thursday's Cabinet session.

Lebanon is facing its worst economic crisis ever since the Lebanese Civil War in 1975. The prices of basic commodities at supermarkets have rocketed, even those that are manufactured locally, the exchange rate of the dollar sold at exchange dealers has exceeded 4,000 L.L., a 278% increase, causing nearly 800 businesses to have closed and nearly 25,000 new cases of unemployment. The rest only get paid half their salary.

A few weeks after the announcement of the first coronavirus case, the Cabinet announced a state of general mobilization in an effort to combat the novel coronavirus. The Cabinet's decision caused the closure of all public administrations and institutions, municipalities, autonomous utilities, universities, public and private schools and nurseries, along with the Rafik Hariri International Airport, land borders, and seaports, only the Central Bank, commercial banks and exchange dealers are exempted from the public shutdown. All restaurants, nightclubs, and malls have shut down in response to the virus' outbreak, so you can only imagine how much this would affect Lebanon's crumbling economy.

On March 29, two weeks after the government ordered general mobilization, the people of Tripoli took the streets chanting “death by coronavirus is better than death by hunger”. People go down to protest in Jal el Dib and Zouk Mikael in the face of risk

from COVID-19. Yes, Lebanon's economic state is that critical, and although the Cabinet's announcement of the health emergency was necessary, many people simply cannot afford to stay at home.

It is evident that much of the public rage has been directed towards Lebanon's once robust and renowned banking institutions. Many a bank has been the target of a Molotov cocktail in recent times. The institutions that have trapped peoples' deposits and are practicing draconian measures on their assets. In light of these events we found it necessary to clarify the role of BdL and private banking sector as defined by the law.

# I. Banque Du Liban: The Public Banking Sector

## A. Role of BdL

### 1. Defining the Lira exchange rate

The Banque Du Liban (BdL) was established the 1st of August 1963 by the Code of Money and Credit.<sup>1</sup> It started to operate effectively on the 1<sup>st</sup> of April 1964. BdL is a public entity enjoying financial and administrative autonomy.<sup>2</sup> Its capital is totally appropriated by the State. Despite the nature of BdL as a public entity, it is not subject to the rules applicable for the public sector.

The code of money and credit vested BdL with the exclusive right to issue the national currency.<sup>3</sup> Article 70 of the Code of Money and Credit entrusted BdL with the mission of safeguarding the national currency in order to ensure the basis for sustained social and economic growth. Some of BdL's duties are:

- Safeguarding monetary and economic stability
- Safeguarding of the soundness of the banking sector
- Development of money and financial markets
- Development and regulation of the payment systems and instruments

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<sup>1</sup> Promulgated by Decree no. 13513

<sup>2</sup> Article 13 of the Code of Money and Credit (CMC)

<sup>3</sup> Article 47 CMC

- Development and regulation of money transfer operations including electronic transfers
- Development and regulation of the clearing and settlement operations relative to different financial and payment instruments and marketable bonds

In order to fulfil this mission BdL can use all measures it deems appropriate to ensure exchange rate stability, specifically the intervention in the foreign exchange market by buying and selling foreign currencies. This topic lately became one of the country's biggest concerns as there appeared a black market where dollars were traded on Wednesday 4<sup>th</sup> of March 2020 for 2690 pounds.<sup>4</sup> The exchange rate is the value of one currency against another, it is used to determine the purchasing power of consumers in different countries. If the value of a country's currency is strong, it will be cheaper for that country to import goods. A favorable exchange rate can allow a country to attract investment. In a dollarized economy like Lebanon's case the exchange rate becomes much more important.

During the civil war the Lebanese pound experienced a sharp devaluation. BDL's data series shows that during January 1975 a dollar was bought for 2.29 pounds, while at the end of December 1990 it was traded for 790.45 pounds. The pound continued its devaluation until the end of August 1992, standing at 2390 pounds for a dollar. There are two main types of exchange rates, fixed or floating. The floating exchange rate is determined by the market. When the demand for a currency increases, while the supply does not follow, that currency gains value. On the other hand, if the demand for this currency decreases and or the supply increases, it depreciates. The Lebanese rate exchange was floating before the establishment of a

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<sup>4</sup> Lebanon Times. As of April 28, the exchange rate exceeded 4,000 LBP for the USD.

fixed rate in 1997. Since that date we have been trading the dollar for 1,507.5 pounds. When the pound rises above 1,515 pounds per dollar, the Central Bank plays a major role selling dollars and buying pounds. It therefore injects dollars into the market and recovers part of the liquidity in pounds, so that the exchange rate remains stable. BdL therefore needs substantial foreign currency reserves to be able to defend the national currency.

BdL is the central bank of the state and regularly coordinates with the Government to establish fiscal and monetary policies. It also represents Lebanon at the international financial institutions. Practically, BdL informs the government on economic matters that might negatively affect the national economy and currency and suggests measures that might benefit the balance of payments, the price level, public finance and offers advice on how to promote economic growth.<sup>5</sup>

## 2. Organization of commercial banks sector

BdL grants licenses for the establishment of banks, financial institutions, brokerage firms, money dealers, foreign banks, leasing companies and mutual funds in Lebanon. The Banking Control Commission controls and supervises these institutions. Conferring with the Association of Banks, BdL issues circulars and resolutions governing the relations of banks with their customers. BDL controls bank liquidity by adjusting discount rates, by intervening in the open market, as well as by determining credit facilities to banks and financial institutions. It regulates banks' credit in terms of volume and types of credit by imposing credit ceiling, by directing credits towards specific purposes or sectors as well as by setting the terms and regulations governing credits in

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<sup>5</sup> Article 72 CMC

general. BdL has a major role imposing on banks' reserve requirements on assets and/or loans as determined by BdL, as well as penalties should shortfalls occur. Investment in TBs may be considered by BdL as part of the reserve requirements.

## **B. Governing Body of BdL**

### **1. Concept of a Governor**

BdL is managed by the Governor and assisted by four Vice-Governors and the Central Council. That is, the Governor's prerogatives extend over all management operations, in which he is the sole governing body responsible for such operations. The job of the four Vice-Governors and the Central Council lies in assisting the Governor.

The Governor is the legal representative of BdL and as aforementioned, has extensive authority on the management of the Bank. He is fully entrusted with the strict enforcement of the Code of Money and Credit, that which BdL was established by, and the implementation of the resolutions passed by the Central Council.

He is also responsible for signing, in the name of BdL, all contracts and agreements made between the latter and any other party. Above all, he is allowed to take legal actions and all executive or precautionary measures that are deemed appropriate, including real estate insurance.

Regarding the Governor's appointment and the length of his term, article 18 of the Code of Money and Credit expressly states that upon the proposal of the Minister of Finance, the Governor is appointed by decree sanctioned by the Council of Ministers for a six-year term. It also adds that this term could be renewed once, or several times.



## 2. Riad Salameh

Riad Salameh has been the Governor of BDL since August 1, 1993 making him one of the world's longest-serving Governors. He was reappointed for four consecutive times: most recently in 2017. Mr. Salameh is the Governor for Lebanon at the International Monetary Fund (IMF) and the Arab Monetary Fund (AMF). He chairs the Central Council, the Governing Board of the Bank, as well as the Open Market and Investment Committees. Governor Salameh is also the Chairman of the Higher Banking Commission, the Chairman of the Special Investigation Commission fighting money laundering since its establishment in 2001 and the Chairman of the Capital Markets Authority.

Lebanon has a long history of high indebtedness and global imbalances, an aftermath of the Lebanese Civil War of 1975. Despite the ample donor conferences held for Lebanon between 2001 and 2007, all of which pledging a considerable amount of monetary aid, these conferences never actually succeeded in restoring Lebanon's financial independence. Reasons for the failure of such conferences were possibly misallocation of the resources. One other possible reason has been failing to fulfill the chief condition: the implementation of radical reforms especially to combat high levels of corruption.

After the 2008 stock market crash Lebanon received around \$30bn of capital from foreign assets. This flow of capital was used by the central bank (at that time governed by Riad Salameh) for two things:

1. Growing the bank's reserves.
2. Expanding the previously large current account deficit.

Number two defies the whole purpose of capital allocation, a process that is in fact supposed to increase efficiency and maximize profits. Why would an influx of capital only cause more deficit? And how is it even possible to make no use of the inflow? Clearly a wasted opportunity.

This influx of capital led to inflation. BdL's fascination in foreign currency grew, and this led to the enactment of new and unconventional financial policies. These policies were comprised of the provision of subsidies to commercial banks that were in return willing to increase dollar deposits at the central bank; a strategy whose consequences afflict us to this day. Back then BdL was paying much higher interest rates as a tactic to attract dollar funds, despite the fact those funds were not making adequate returns to repay the interest and capital. This could be said to resemble fraud.

In 2011, the Syrian civil war began. This might have affected the ongoing financial crisis in Lebanon, however it could not have been the origin of it. "We have been negatively impacted by the Syrian war. Before the Syrian war, our average rate of growth was between 7 percent and 8 percent. Now it is between 1 percent and 2 percent. The Syrian refugees are a weight on the economy. The World Bank said they cost Lebanon \$1 billion per year" Salameh told Foreign Policy magazine in an interview in 2015.

By the end of 2019 and up to the present day, Lebanon started facing a shortage of dollars. As a result, the price of U.S. dollar to the Lebanese pound is at a record high way above the pegged exchange rate of 1,500 L.L for every dollar.

Under the auspices of the Governor BdL has the task of maintaining a stable currency that breeds financial confidence on the national and international level. Having said that, where is the man charged with overseeing Lebanon's monetary policy when the country is financially collapsing?

## II. Private Banking Sector

The Lebanese banking sector plays a major role in the Lebanese economy, in which banks continue to control the financial system of the country and are considered main providers of credit to individuals and businesses. The banking sector in Lebanon is regulated and followed up by BdL which is responsible for:

1. Laying the conditions for entry into the banking sector;
2. Defining the scope of banking activities;
3. Setting regulations and codes of conduct for banks.

Banking industries generally consist of many divisions. Investment banks and commercial banks represent two divisions of the banking industry. Although both divisions are critical financial institutions in a modern economy they each perform very different functions.

### A. Investment Banks

An investment bank is an entity that offers financial services and specializes in raising financial capital by underwriting or acting as the client's agent in the issuance of securities. In other words, it acts as a broker between companies that issue securities on one hand, and the individuals or entities wishing to purchase them on another hand.

Investment banks primarily expedite the purchase and sales of bonds, stocks, and other investments, negotiate mergers and acquisitions, and facilitate corporate reorganization.

For example, Audi Investment Bank s.a.l. is the Group's Investment Banking entity, and the result of the merger of 3 entities: *Audi Investment Bank s.a.l*, *Lebanon Invest s.a.l* and

*Saradar Investment House s.a.l.*, and benefits from the status of a specialized bank conferred by virtue of Law 22/67.

Audi Investment Bank s.a.l. is a well-functioning member in the field of investment banking. The bank mainly works in financial engineering, mergers and acquisitions, market activities, corporate banking, as well as structured products.

## **B. Commercial Banks**

A commercial bank is another type of bank that provides services such as taking deposits, providing checking and debit account services, making business loans, and offering basic investment products that are operated as a business for profit. As such, commercial banks act as managers for deposit accounts belonging to businesses and individuals. Along with the aforesaid services, commercial banks also offer basic bank products such as certificates of deposit and savings accounts to individuals and small businesses.

Holding a commercial bank account is way more common than holding an investment bank account, since commercial banks are those that cater for people's personal banking needs.

Commercial banks largely make money by providing loans and earning interest income from the loans. Customer accounts, including checking and savings accounts, provide the money for the banks to make loans.

## **C. Association of Banks**

The Association of Banks in Lebanon was founded in 1959, by virtue of License No 1643, dated October 6, 1959. By virtue of the bylaws, every bank enlisted in the list of banks

set up by the Banque du Liban (Central Bank) has the right to join the Association as an active member, upon its request. The Association aims at achieving the following objectives:

- Strengthening cooperation among the member banks through setting up a common picture for the higher interest of the sector.
- Representing the profession and defending collectively the interests of the banking sector.
- Highlighting the fundamental role of banks in upholding the national economy, through catering for an important share of the necessary financing needs to promote growth.
- Working with the concerned authorities to find and develop the regulations and promulgate the legislation in order to develop the banking profession, in addition to expressing opinions regarding the projects and laws pertaining to the financial and banking affairs.
- Reflecting the positive picture of the banking sector to the local and foreign public opinion, through multi-media, objective and arduous efforts.
- Enhancing the banking performance level through improving the competences of the human resources working in this sector, continuously increasing their capacities and creating an ongoing atmosphere of understanding with the users of the sector, in order to guarantee the stability of the labor force in it and ensure the joint interests for all partners.
- Endeavoring to consolidate cooperation between the banks in all other countries, especially in the Arab countries, in order to achieve the objectives of the Association.

As we can see, the Association of Banks does not exceed being a union concerned with banking sector affairs, nor does it have any legislative powers, as its role is

limited to cooperating with the competent authorities in order to provide advice and consultations with a view to establishing financial and economic policies that are in line with the needs of the banking sector. However, reality may look different. Lebanon has witnessed in recent months a clearly arbitrary and repressive policy headed by the association of Banks. Depositors are no longer completely free to dispose of their money deposited with banks - the banks set a maximum limit for withdrawals and transfers. This constitutes a flagrant violation of the current deposit contract between the customer and the bank. Under the aforementioned contract, it is the responsibility of the bank to return the money deposited with it upon the request of the depositor without any hesitation or delay, otherwise it is considered a violation of contractual obligations for what amounts to a criminal liability.

The Governor of BdL later on issued a circular organizing the relationship between the banks and their customers, and it is very important to highlight that this intervention heaped by the Governor between banks and clients is not, strictly speaking, *legal*. Because BdL breaks the general rules of the credit, it is according to BdL's directives that the banks must establish their credits policies. With that said, BdL does not intervene in the relation which exists between the bank and these customers. The contractual relationship between the bank and its client, remains bilateral. The current intervention of BdL raises an enormous number of legal problems even if BdL justifies this as the "the continuity of the public sector". In fact BdL intervention hurts customers more than it helps them.

## D. Banks' Strike

The banking sector in Lebanon is one of the most important sectors in Lebanon's economy. There has never before been a strike of the financial sector, nor a prolonged closure of banks – not even in the darkest days of the civil war. The October 17 revolution set a new precedent, as banks were called to strike for two whole weeks. This shocking event was quite bizarre. That it happened due to security issues remains an unconvincing excuse. Lebanese economic journalist Sarkis Naoum said that people will rush to the banks to transfer their money or withdraw it, which is why it does not dare to open its doors. In the same context, former Minister of Economy Raed Khoury feared that "some deposits will flee from banks and transfer bank accounts from the lira to the dollar, after the banks open their doors, which is the most dangerous thing that can happen," he later added: "We do not have the luxury to lose deposits in the absence of significant liquidity in dollars, neither in the central bank nor in banks ... I think it is one of the reasons why banks continue to close their doors."

## III. Investigating Commercial Banks

As one of the most heavily indebted countries in the world, Lebanon has defaulted on upwards of \$2.5bn in Eurobonds due 2020. It is at this time that Lebanese politicians are being accused of scandalously transferring billions of dollars abroad. In this regard, an emergency meeting was held on Thursday 26 December between the Finance and Budget parliamentary committee and Central Bank Governor Riad Salameh, who declared that an "investigations will be conducted in reports about officials and bankers making transfers abroad this year."

On Monday the 2<sup>nd</sup> of March Lebanon's financial prosecutor, Ali Ibrahim, called in the heads of 14 banks and the head of the Association of Banks of Lebanon for questioning. On Thursday the 5<sup>th</sup> of March he issued a decision to freeze the assets of 20 Lebanese banks and the personal assets of their chairmen and board<sup>6</sup>. He said that the concerned parties will not be allowed to dispose of shares, properties, real estate, buildings, and cars. Since a copy of that decision was sent to the Directorate General of Land Registry and Cadastre, the Secretariat of Commercial Registry, the Traffic and Vehicles Management Authority, the Governor of the Central Bank, the Association of Banks, and the Capital Markets Authority.

Ibrahim's decision is an unprecedented one as it affects nearly 70% of Lebanon's commercial banks. The Association of Banks discussed on Thursday night the consequences of this decision in order to take the appropriate position thereon. Among the proposals was the suggestion of an open-end strike and to then wait for directions from BDL, other unaffected banks would follow to avoid a "run on banks" from confused customers. The said proposal seemed more like a threat. The meeting felt, according to the information of "Al Modon", that banks should continue to work in parallel with the use of a legal team, to study the reasons for the decision and the extent of its legality: "Especially that Judge Ibrahim made the decision in isolation from the Bank of Lebanon or the Banking Control Committee. This raises many questions," according to the source.

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<sup>6</sup> The banks targeted are: Bank Audi, BLOM Bank, Fransabank, Byblos Bank, SGBL, Bank of Beirut, BankMed, Banque Libano-Française, Credit Libanais, AM Bank, IBL Bank, First National Bank (FNB), Lebanon and Gulf Bank, BBAC, MEAB, Federal Bank of Lebanon, BSL Bank, Lebanese Swiss Bank, BML Bank, Saradar Bank, and Cedrus Bank.



On Friday the representatives of the Association visited State Prosecutor Judge Ghassan Aouidat, to discuss Judge Ali Ibrahim's decision and to consult on the issue of bank closure. Al-Nahar learned that the delegation explained the repercussions of the decision on many levels, starting with the relationship with correspondent banks which will end all open credits to finance the import of oil, medicine and wheat. The decision also constitutes a threat to the reputation of the banking sector, which indirectly affects their customers. Also, preventing the sale of real estate held by banks, including what is a settlement of debt, will lead to liquidation.

State Prosecutor Ghassan Oueidat has suspended the decision taken by Financial Prosecutor Ali Ibrahim to freeze the assets of banks.

In his decision Judge Oueidat said that:

“The measures taken by Judge Ibrahim, regardless of its validity, is a temporary administrative measure that can be reversed or suspended when national interests become threatened,

Whereas we have received from reliable sources that the international financial authorities intend to stop dealing with local banks and local financial authorities following this decision.

Whereas the continuation of such measures could lead to chaos in the country's monetary, financial, and economic sectors, and will obstruct the work of those responsible for finding solutions to the crisis in Lebanon.

Pursuant to the provisions of Articles 13<sup>7</sup> and 21<sup>8</sup> of the Code of Criminal Procedure, we decide to freeze the decision taken and its effects until a study of its effects on national currency and banking transactions is studied and on the depositors' money and on economic security”.

As stated in article 13 of the code of criminal procedure, the general prosecution of the Court of Cassation is headed by the deputy General, his authority includes all judges of the public prosecution, he may direct to each of them written or oral instructions in the conduct of the public right suit. The Public Prosecution constitutes an exception to the general principle that does not recognize a hierarchy within the judicial body. Therefore, the general prosecution of the Court of Cassation can overture, suspend and overrule the decisions of public prosecution. Furthermore, article 21 of the code of criminal procedure states that the financial general prosecutor shall exercise his powers stipulated in this law under the supervision of general prosecution of the Court of Cassation.

The two decisions proved quite controversial, and public opinion was divided between two main streams. The first praised the legal precedent sending a clear message that no one is above the law, the decision delighted a large portion of the depositors who suffer from arbitrary banking practices and was perceived as step toward justice. On the other hand, the decision to cancel the measure emerged as an expected diplomatic decision that reduces the extent of the economic crisis and the crisis of confidence in the banking sector. The second

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<sup>7</sup> Article 13 Code of Criminal Procedure

<sup>8</sup> Article 21 Code of Criminal Procedure

decision is highly welcomed by the politicians and investors where their interests coincide with the proper functioning of the banks.

Far from political auctions and press talk, it was remarkable that judge Ibrahim's decision did not specify a period for the interim measure. The decision neglected mentioning for which crimes the banks are being sued exactly, because the investigation covered the capital control applied by the banks illegally depriving depositors of their rights and the money transfer abroad – which is not really illegal, since there is no law forbidding the transfer of money abroad. Finally and as stated in article 19 section d of the code of criminal procedure “Crimes that undermine the financial position of the state or Lebanese or foreign bank bonds in circulation legally or custom in Lebanon, crimes of counterfeiting, counterfeiting, and promoting currency, public bonds, stamps, and stamps” banks could be sued by the financial prosecutor for selling Eurobonds in this critical time. Furthermore, for any investigation to be thorough, the Luxembourg Stock Exchange must be notified to ensure international banking cooperation – ‘smuggled’ funds do not just disappear they are merely funneled elsewhere and international cooperation would be crucial in finding and identifying the perpetrators and their funds. We will not tell you whether or not the Luxembourg Stock Exchange was notified, because you must know the answer already given the incompetence displayed so far.

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