No Banking Reform Without Legal Guarantees

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There is no disagreement that reforming Lebanon's banking sector has become an urgent necessity.

There is also no dispute that Lebanon needs a clear law to restructure the banks, identify those that are viable from those that require addressing their situation.

The fundamental question, however, is this: What kind of law do we need?

We need legislation that restores confidence, protects the rights of both depositors and banks, and lays the foundation for the banking sector to return to its essential role in financing the economy.

However, this reform cannot begin by suspending legal guarantees or restricting the right of defense.

The need for swift action does not justify bypassing the right of defense. The proposed Banking Resolution Law addresses critical issues affecting bank ownership, shareholder rights, creditor claims, customer deposits, and the continuity of banking institutions. A decision to place a bank under restructuring or liquidation is far more than a technical administrative measure. It determines the future of an institution, its shareholders, depositors, employees, and the network of financial and economic relationships that depends on it.

Therefore, it is essential to consider several fundamental principles.

First, the banking sector cannot be reformed without clearly defining responsibilities.

If the crisis is systemic – as has become unmistakably clear – the banking resolution law cannot become a tool for placing the entire burden on the banking sector alone. The crisis was the result of flaws caused by the state, the public finances, the Central Bank, and successive fiscal and monetary policies. No reform law should implicitly seek to reduce the state's contribution to resolving the crisis or absolve it of responsibility when it played a fundamental role in causing the collapse.

Second, the multiple roles of the state and the central bank in this crisis must be acknowledged.

Public authorities control both the legislative and executive processes, while the Central Bank serves as the primary regulatory and monetary authority. Yet both are also central parties to the crisis, particularly regarding commercial banks' deposits with the central bank and the unresolved question of their recovery. Therefore, a reform mechanism is essential to prevent conflicts of interest and ensure a genuine institutional balance among the State, the Central Bank, commercial banks, and the judiciary.

Third, the right to object and challenge decisions is not an obstacle to reform, it is a safeguard for its legitimacy.

No matter how severe the crisis, it cannot justify the absence of effective judicial oversight. Decisions that fundamentally affect a bank, its shareholders, creditors, or depositors should not be made subject to a right of objection restricted by narrow grounds or short timeframes that effectively prevent the preparation of a serious defense. The broader the powers granted to administrative authorities, the stronger, clearer, and more efficient judicial oversight must be. Confidence cannot be restored if investors, depositors, and banks believe that decisions of such consequence are effectively beyond meaningful judicial scrutiny.

Fourth, reform does not mean turning administrators or liquidators into judges.

A temporary director or liquidator has an essential role in managing a bank and implementing the resolution process. But they should not be granted powers that properly belong to the judiciary, such as invalidating legal acts, determining legal rights, or altering settled legal positions. Those functions must remain the exclusive domain of the judiciary. Administrative authorities implement the law, whereas the judiciary resolves legal disputes.

Fifth, the bail-in mechanism must be approached with extreme caution.

A bail-in can fundamentally alter a bank's ownership structure and affect the rights of depositors, creditors, and shareholders. It must not become an inequitable tool for reallocating losses. If it is to be used, it should operate under clear legal rules and in full coordination with the broader Financial Regularization and Deposit Recovery framework. A bail-in is not merely a financial technique; it is a measure that directly affects property rights and legal entitlements. It must therefore be applied with transparency, consistency, and accountability, not left to discretion or ambiguity.

Sixth, ensure the continuity of viable banks.

The objective of restructuring should be to restore the banking sector's ability to finance the economy, not to weaken institutions that remain viable. If sound and viable banks remain threatened by undefined or unlimited additional burdens, or by the reopening of legal matters that had already been settled, new investors will stay away, new depositors will hesitate to place their trust, and the banking system will remain unable to participate in financing the economy.

Seventh, the banking reform law must fully align with the Financial Regularization and Deposit Recovery Law.

The two laws cannot pull in opposite directions. If the deposit recovery framework establishes a specific mechanism for addressing deposits and allocating losses, the banking reform law should not create parallel paths for litigation, appeals, or compensation claims that could obstruct implementation and overwhelm both the courts and the banking sector with endless disputes.

In conclusion

Banking reform cannot be achieved by suspending rights, bypassing the judiciary, or relieving the state of its responsibilities. It requires a legal framework that is fair, balanced, and capable of being implemented. The right of access to justice is not a procedural technicality; it is an indispensable safeguard for any reform that seeks to endure. Lebanon needs legislation that clearly allocates responsibility, protects depositors, preserves banks capable of recovery, and prevents the crisis from recurring under the guise of addressing it.

Note: This editorial is part of a series written by the Secretary General of the Association of Banks in Lebanon as part of his introductory articles to a number of periodicals published by ABL. It reflects his personal opinion and analysis of the developments and does not bind ABL.