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MODULE 2

BANKER AND CUSTOMER



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OUTLINE:

Banker and Customer

- 1) Types of relationship between banker and customer
- 2) Bankers obligation to customers
- 3) Right of lean, set off, appropriation
- 4) Banker legal duty of disclosure and related matters

Customers accounts with banks

- 1) Opening- operation – KYC norms and operation
- 2) Types of accounts and customers
- 3) Nomination
- 4) Settlement of death claims

The Negotiable Instrument Act 1881:

- 1) The paying Bank and The collecting Banker
- 2) Negligence
- 3) Bills of Exchange and Promissory Note
- 4) Discharge of Negotiable Instrument and Hundis

WHO IS A BANKER?

Accepts deposits from the public (repayable on demand or otherwise)

Uses deposits for lending

- As per section 5(b) of BR act 1949



WHO IS A CUSTOMER?

As for as banking transaction concerned,

- Customer is a person whose money has been accepted on the footing that the banker will honor drawings up to the amount standing credit irrespective of his connection being old or long standing.



Types of relationship between bank and customer

- Commencement of primary general relationship
- The primary general relationship between banker and a customer starts from the time when the customer opens a bank account by depositing money.

RELATIONSHIP BETWEEN BANKER AND CUSTOMER

The primary relationship, which flows from the essential function of a bank is of debtor creditor or vice versa.

But depending on the other functions several other relationships may also exist.

They are:

- 1) Debtor and Creditor
- 2) Trustee and Beneficiary
- 3) Agent and Principal
- 4) Bailee and Bailor
- 5) Lessor and Lessee



1) DEBTOR & CREDITOR

- When the bank accept the deposits, it becomes debtor and depositor a creditor irrespective of the fact the bank pays interest or not.
- **Some features:**
- The customer cannot claim the same notes or coins back.
- For repayment the creditor must raise demand.
- Demand must be made by the customer in a prescribed manner only at the branch at which the account is maintained and within normal business hours on working day only.
- When the customer over draws his account, the customer becomes debtor and banker becomes creditor.



2) TRUSTEE & BENEFICIAR

- Bank may also act as trustee.
- The position of bank will be that of a trustee when
 - 1) a person having no account with a bank, deposits money with instruction to retain it till further instruction.
 - 2) the customer instructs a bank to debit his account, deposit an amount for utilising it for a specific purpose or for remitting to other branch.

- A banker becomes the trustee of his customer when he is entrusted with some trust work. For instance, when a customer deposits a certain sum of money with the banker with specific instructions to use the same for a specific purpose, the banker becomes the trustee of the customer in respect of that money until the purpose is fulfilled.



3) AGENT & PRINCIPAL

- When a banker undertakes agency services such as collection of cheques, drafts & bills, collection of interest and dividends on securities, payment of premium and subscriptions, purchase and sale of securities, etc, for a customer, he becomes the agent and the customer becomes the principal.



AGENT AND PRINCIPAL

- **As an agent the banker owes some duties to the customer they are:**
- He is required to act in accordance with the instruction of the principal, i.e. the customer.
- He is bound to return to the customer all the incomes which he earns as an agent of the customer.

4) BAILEE & BAILOR

- When the bank accepts article for safe custody, its position is that of bailee, who is duty bound to take us care of duty bailed to him.
- Bailee has right of particular lien in terms of section Indian contract act, which says that bank has right bailed until he receives remuneration for his services rendered in respect of them, unless there is no contract to the contrary.

In Simple words...

- When a banker accepts valuable documents from a customer for safe custody, he becomes a bailee and the customer becomes a bailor.

Bailor And Bailee

As a bailee, the banker owes some duties and liabilities to the customer. They are:

a) He is required to safeguard the safe custody deposits of the customer in his hands with reasonable care.

b) If he fails to take reasonable care in the preservation of safe custody deposits and the customer suffers loss as a consequence, he becomes liable to compensate the customer for the loss.

In this context, it should be noted that the banker is liable for the losses arising out of his negligence and not for those arising out of reasons beyond his control, such as fire, burglary, etc. This is because, a banker is only a bailee and not an insurer of safe custody deposits left with him.

c) He is required to handover the safe custody deposits to the depositor, whenever he demands them back.

5) LESSOR & LESSEE

- On hiring out of locker, bank becomes lessor and hirer a lessee and the relationship is that of landlord and tenant.
- The lessor is not responsible for any loss or damage. A suitable clause to the effect is also incorporated in the lease deed and hirers are advised, in their own interest, to insure their valuables deposited in locker.

OBLIGATIONS/ DUTIES OF A BANK

- Primary duty - Honour cheque of its customer subject to certain conditions (Under section 31 of NI act)
- An account cannot be closed unilaterally.
- Erroneous credit.
- Pass book/statement of accounts.
- A banker is obliged to maintain the secrecy of the state of accounts after closure of the accounts, unless required to do so by,
 - 1) by law
 - 2) in bank's interest
 - 3) as per consent of the customer
- The bank is responsible for the fraud committed by its employees.
- An instrument with the forged signature is no mandate at all and cannot debit its customer account in such case.
- While giving SI, the customer undertakes to maintain sufficient balance in account, if not the bank should inform customer and discontinue

RIGHT OF BANKER:

- Bankers Lien
- Right of Set Off
- Right of Appropriation
- Right to charge the interest
- Right to charge the service charges.

BANKERS LIEN:

- In term of section 171 of Indian Contract Act, a bank in the absence of a contract to the contrary, retain as security for the general balance of account any goods bailed to them.
- Lien means right to retain goods in possession (but not sale) until debit is discharged.
- Bankers right of general lien is applicable only over goods for services received during normal course of business but not those goods received for a specific purpose as an agent or trustee etc..

LIEN

- ‘**Lien**,’ a right to keep in possession, the movable goods belonging to another person, till the time the debt owed by that person is realized.
- It can be classified as the general lien and particular lien. When one party is entitled to retain the goods belonging to another party, until all the dues are discharged, is called **general lien**.
- In contrast, **particular lien** implies the right of retention of specific goods, until the claims relating to those goods are realized.

RIGHT OF SET OFF:

- Banker has right to combine two or more accounts.
- If one of them is in the debt of customer same name and same right.

- Account really belonging to same persons, but in different names can be combined. thus an account of sole proprietorship concern can be combined with that in personal name.
- two accounts, of solicitor, one in his personal name and one marked clients account cannot be combined.
- Two accounts one belonging to an individual and other with someone, cannot be combined.
- The right can be exercised only when debt is due.
- The right can be exercised only after giving due notice.
- The right may be exercised before the garnishee order becomes effective.

Right of Appropriation

- If a customer has more than one account and while making certain deposit does not instruct as to how the deposit be appropriated, the banker may appropriate the amount as per discretion.
- Thus, a deposit without specifying the account which is meant, may be created to an account of the customer showing debt balance.

CLAYTON'S RULE

- In case of multiple debts, credit will be appropriated:
 - ✓ To discharge of the particular debt as per the instructions of the debtor.
 - ✓ If the debtor does not intimate or the circumstances do not indicate, as per the discretion of the court.
 - ✓ When neither party indicates, to discharge in order of time.
 - ✓ First to discharge of interest and then principal in chronological order.

Right to charge interest, service charge

- When a banker grants an advance to a customer, he becomes the creditor of the customer.
- When he is creditor of the customer, the banker has an implied right to charge interest on the customer by virtue of banking custom.



BANKERS LEGAL DUTY OF DISCLOSURE

- Bankers books evidence act 1891
- Code of civil/criminal procedure
- Company act 1956
- Tax laws
- RBI Act

(Refer Introduction to Banking By Vijayaraghavan)

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CUSTOMERS ACCOUNT WITH BANK

GENERAL PRECAUTIONS TO OPEN AN ACCOUNT

- Application Form
- Specimen Signature
- Letter Of Introduction
- Interview
- Account in cash
- Mandate in writing
- Verification of documents
- Conversant with the provisions of special acts
- Pay-in-slip, cheque book and pass book
- Passport size photograph
- KYC

Different types of Account

- Savings Bank Account
- Current Deposit Account
- Fixed Deposit Account
- Recurring Deposit Account



Different types of Custome

1. Hindu undivided family
2. Married women
3. Pardanshin lady
4. Illiterate persons
5. Blind persons
6. Insolvent persons
7. Insane person
8. Intoxicated
9. Executors and administrators
10. Liquidator, receiver/assignee
11. Trusts
12. Societies and clubs
13. Minors
14. Agent/attorney
15. Joint accounts
16. Partnership firms
17. Joint stock companies

ACCOUNTS OF SINGLE INDIVIDUAL

- This is purely a personal account in the name of an individual and is normally operated upon by the individual account holder itself.
- He may authorise the another person to operate the account by giving power of attorney.
- And in order to avoid legal complications after the death it is desirable to obtain proper nomination.
- Individual should be major.
- Should be of sound mind.

JOINT ACCOUNTS OF AN INDIVIDUAL

- Joint accounts of more than one individual is opened for operational convenience or to avoid legal complication after death of one of the joint account holders.



स्टाफ प्रशिक्षण महाविद्यालय, भोपाल

MODE OF OPERATIONS OF THE JOINT ACCOUNT

A/c in the names of	Mode of operation
A & B	Either or Survivor
A & B	Both of us jointly or Survivor
A & B	Former or Survivor
A B C D F	Any one/two or more of us or one/two or more of the survivors of us or the survivors of us or the survivor
A, B & C	Former or Survivors

KYC

KNOW YOUR CUSTOMER

MEANING:

- It is a process by which banks obtain information about the identity and address of the customers.
- This process helps to ensure that bank services are not misused.
- The KYC procedure is to be completed by banks while opening accounts and periodically update the same.

- Reserve Bank of India has advised banks to make the KYC procedures mandatory for opening and operating the accounts and has issued the KYC guidelines under section 13 of the Banking Regulations Act, 1949
- RBI introduced KYC guidelines for all banks in 2002.

WHAT KYC MEANS?

- **CUSTOMER:** One who maintains an account and establishes business relationship.
- **YOU:** who should know?
Branch Manager, Audit Officer, Monitoring officials.
- **KNOW:** What you should know?
True identity, registered and administrative address, source of funds, nature of business

WHEN DOES KYC APPLY

- Opening a new account
- In respect of account where documents as per current KYC standards have not been submitted while opening the initial account.
- Opening a locker facility where these documents are not available.
- When the bank feels it is necessary to obtain additional information.
- When there are changes to signatories, mandate holders, beneficial owners etc.

ADVANTAGES OF KYC

- Safety and soundness of banks
- Help to protect bank reputation and the int
- Essential part of sound risk management

KEY ELEMENTS OF KYC POLICY

- Customer Acceptance policy
- Customer Identification Procedure
- Monitoring of Transactions
- Risk Management



CUSTOMER ACCEPTANCE POLICY

- No accounts is opened in anonymous
- Parameters are risk perception are clearly defined
- Documentation requirements and other information to be collected
- Circumstances, in which a customer is permitted to act on behalf of another person should be clearly spelt out.



CUSTOMER ACCEPTANCE POLICY

- The Bank will:
 - ✓ Classify customers into various risk categories.
 - ✓ Accept customer after verifying their identity as per laid down in Customer Identification procedure.
 - ✓ Not open an account in the name of anonymous/fictitious/benami persons.

CUSTOMER IDENTIFICATION PROCEDURE

- The policy approved by the Board of Directors should clearly spell out the customer identification Procedure to be carried out at different stages:
- While establishing a banking relationship
- Carrying out a financial transaction
- When bank has doubt about the authenticity or the adequacy of the previously obtained customer identification data.



CUSTOMER IDENTIFICATION PROCEDURE

LEGAL NAME AND ANY OTHER NAMES USED	Passport PAN card Voter identity card Driving licence with photograph Identity card Letter from the recognized public authority account Confirmation/letter from employer
CURRENT PERMANENT ADDRESS	Telephone bill Bank account statement Electricity bill Ration card
ACCOUNTS OF COMPANIES -NAME -PLACE -MAILING ADDRESS -TELEPHONE	CERTIFICATE OF INCORPORATION AND AOA COPY OF PAN
ACCOUNT OF PARTNERSHIP FIRMS -LEGAL NAME -ADDRESS -NAMES OF ALL PARTNERS AND ADDRESSES TELEPHONE NUMBER	REGISTRATION CERTIFICATE PARTNERSHIP DEED POWER OF ATTORNEY ANY OFFICIAL DOCUMENT

- Photograph
- Risk perception
- High risk category
- Medium risk category
- Low risk category
- Negligible risk category/ applicability of reduced KYC procedure



MONITORING OF TRANSACTION

- Monitoring of transactions will be conducted taking into consideration the risk profile of the account.
- Special attention will be paid to all complex, unusually transactions.
- Which have no apparent logical or visible law purpose.
- Branches would be maintaining a close watch cash transactions of Rs.10 lakhs and above.

RISK MANAGEMENT

- Internal audit shall specifically check and verify the application of KYC procedures at the branches and comment on the lapses observed will be put up before the Audit committee of the Board at quarterly inter

NOMINATION



MEANING

- Nomination is a facility that enables a depositor(s) or account holder(s) (individual or sole proprietor) or safe deposit locker holder(s) to nominate an individual, who can claim the proceeds of the deposit account(s) or contents of the safe deposit locker(s), post the demise of the depositor(s) or locker holder(s).

NOMINATION ARE AVAILABLE FOR

- Nomination is available to safe custody and bank deposits, bank safe locker facilities.
- There can be one nominee for the account held whether singly or jointly.
- There can be two nominees for jointly held lockers.

- The nomination facility enables the bank to make payment to the nominee of a deceased depositor of the amount standing credit of the depositor.
- I. Return to the nominee, the articles left in the bank's custody by a deceased person.
- II. Release to the nominee of the hirer, the contents of a safe deposit locker in the event of the death of the hirer.



BOI Staff Training College, Bhopal

NOMINATION FORM

Account	Registration	Cancellation	Value
DEPOSITS	DA <input type="checkbox"/> -1	DA <input type="checkbox"/> -2	D
SAFE CUSTODY	SC <input type="checkbox"/> -1	SL <input type="checkbox"/> -2	S
SAFE DEPOSIT LOCKER	SL <input type="checkbox"/> -1 or SL1A (JOINT A/C)	SL <input type="checkbox"/> -2	S

SILENT FEATURES OF NOMINATION

- Nomination is made only in favour of individual, not in favour of trust or societies.
- Nomination can be made in favour one person.
- It can be made in existing or new account and can be cancelled or changed subsequently by depositor.
- Government deposit schemes allows more nominee in their accounts, such as PPF, samruddi scheme , PF, Gratuity etc..

WHO CAN NOMINATE?

- Bank account holders having deposit accounts in their names or in joint names of two or more individuals can nominate to their accounts.

A sole proprietor can appoint a nominee to the sole proprietorship account with the bank.

- In the case of a deposit account in the name of a minor, nomination shall be made by a person lawfully entitled to act on behalf of the minor in respect of a deposit account.
- Safe deposit locker holder(s) can appoint nominee(s) on the safe deposit locker(s).
- A nomination can be made only in respect of a deposit account which is held in the individual capacity of the depositor, and not in a representative capacity such as the holder of an office like a Company, Secretary of an Association, partner of a firm, or an HUF.

HOW TO NOMINATE?

- Specific forms are provided for available nomination facility.
- The account holder will have to fill relevant form.
- The bank will acknowledge in writing concerned account holder the received nomination form.
- And the nomination will be registered in the books of bank.

FEATURES OF THE NOMINATION FACILITY

- Nomination facility is available to a/c holders having current savings account and all types of term deposits.
- Nomination can be made in favor of one person only.
- The depositor has the option to execute mandate authorizing to indicate the name of the person in the pass book.
- Nomination favoring the minor is permitted on the condition that a/c holder, while making the nomination, appoints another person not being minor, to receive the amount of the deposit on behalf of the nominee, in the event of the death of the depositor.
- A nomination will continue to be in force even on renewal of deposit unless specially cancelled or changed.
- In case of joint accounts, on the death of one depositor, the surviving depositor can change or cancel the nomination.

LEGAL STATUS OF NOMINEE

- The nominee cannot be the absolute owner of the amount received by him.
- The nomination indicated that the hand was authorized to receive the amount.
- On the payment of which the banker will get a valid discharge of his liability.

CLOSURE OF A BANK ACCOUNT

1. Mutual agreement
2. Notice by the customer to the bank
3. Notice by the banker to the customer
4. Death / insolvency of the customer
5. Garnishee order by the court

SETTLEMENT OF DEATH CLAIM



INTRODUCTION

Banks are advised to **settle** the **claims** in respect of deceased depositors and release payment to the survivor(s) / nominee(s) within a period from the date of receipt of the **claim** subject to the production of proof of **death** of the depositor and suitable identification of the **claim(s)**.

SETTLEMENT OF DEATH CLAIM

- An announcement of death , production of certificate or a report from a reliable source will be sufficient notice to the Bank about the death of the Account Holder.
- As soon as the Branch becomes aware of the death of the A/C Holder, it will record the fact in the relevant account in the system and stop operating the A/C.

SETTLEMENT OF DEATH CLAIM

- On receipt of notice of the death of the customer, the banker must stop the operation of the account because the authority of the customer terminates soon as he dies.

Intimation to the Nominee, if

- If the deceased A/C holder had appointed a nominee, a letter will be issued to the nominee informing him/her about the death of the account holder.

Further operation in the Account

- *a) Individual A/Cs:*
- No further cheques should be paid even though they be dated prior to the date of death of the A/C holder.

b) Joint A/Cs:

- If the balance is payable to the survivor(s), it is preferable that survivor(s) is/are advised to close the old a/c and transfer the balance to a new a/c in his/her/their name(s).

c) Proprietary A/Cs:

- No further cheques should be paid even though they be dated prior to the date of death of the A/C holder.

d) Partnership A/Cs:

- The surviving partner(s) can, however, operate for the purpose; and any cheques drawn by the surviving partner(s) can be paid.
- Cheques drawn by the deceased partner and paid after his death, should not be paid.
- The branches should request the surviving partner to close the a/c by drawing a cheque signed by all partners and open a new a/c through which all transactions may be passed.

e) Joint Hindu Family Firm A/c:-

- After the death of karta, if there is no member, the wife of karta not becomes a karta.
- If a Karta, leaving behind his widow and minor son, even then, wife is not permitted to become a karta.

f) Trust A/cs.:-

- The Trustees have to act jointly unless there is an express provision to the contrary in the Trust Deed.
- In case of death of any, trustee, the operation on the A/C should be stopped unless the, relative Trust Deed contains express powers on the surviving trustee to act.
- In the absence of any specific provision in the Trust Deed, it is not safe for the Bank to assume that the surviving trustees possess full powers to deal with the A/C.
- Branches should, therefore, not allow the surviving trustees to operate on the a/c or withdraw the balance in the ~~case of death of sole trustee, operation on the A/C~~ be immediately stopped.

g) Executor's and Administrator's A/C: -

- On the death of an executor or administrator otherwise provided for in the Will or Probate or Administration, all the powers of the office bearee vested in the surviving executors or administrators.
- The a/c should be allowed to be operated by co-ex but the cheques signed by the deceased executor or administrator and presented after notice of his death not be paid in the a/c.
- In case of death of a sole Executor or Administrator, it be necessary to obtain fresh order of the court appointing a new Administrator.

h) Limited Company's A/Cs:

- Where notice of death is received in respect of a person who is authorized to operate an A/C of a Limited Co., outstanding cheques drawn by that person of the Company can still be paid.
- The Board resolution submitted by the Co. regarding the operation of its A/C should be examined by the branch to see whether an amendment or new resolution is necessary.

i) Association, Society, club A/c.:

- The instructions given in respect of I Company's A/Cs shall also apply to A Association, Society, Club etc.

j) Accounts operated by a holder of Power of Attorney or Letter of Mandate:

- Upon the death of the principal, the authority of the Attorney or Mandate holder stands cancelled.
- The operation on the a/c should be immediately stopped and no cheques signed by Attorney/Mandate holder should be paid after receipt of notice of the Principal.

ASSIGNMENT 2:

- Explain briefly the Settlement of Death Claims.
- Briefly explain different types of Current accounts with banks.
- Explain the types of relationship between Bank and customer. June/July 2016 (10 marks)
- Discuss special types of Banker's Customers. (5marks)
- Explain the Know Your Customer. June/July 2016 (7 marks)