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DIRECTORATE OF DISTANCE EDUCATION

B.B.A

Second Year – Third Semester

10434

BANKING LAW AND PRACTICE - I

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1.0. Introduction

Banks play an inevitable role in a country's economy. The demographics of a country is majorly dependent on the banking company must perform for saving and loans. The fact that banks play the dual role of accepting deposits and issuing loans prove the mettle and importance of banks in a society. The present banking structure of our country is coherent and constantly evolving to meet the immediate needs of the population. Despite the fact that there is a lot of pressure on the banking business in the present scenario,

one cannot do away with the efficiency with which banks have been delivering their services to the people.

1.1. Learning Objectives

After going through this unit, you will be able to:

- Understand the definition of banking
- Understand about the features of Banking
- Learn banker and customer

1.2. Definition of banking

Banking company plays such a major role in channeling funds to borrowers with productive investment opportunities, this financial activity is important in ensuring that the financial system and the economy run smoothly and efficiently. As a result of different kinds of banks in existence nowadays, it would be difficult, or at least cumbersome, to formulate a definition of banking which connotes the diverse activities of all kinds of banks. Some of the definitions can be formulated here:

A banking company carrying on the business of receiving moneys, and collecting drafts, for customers subject to the obligation of honoring cheques drawn upon them from time to time by the customers to the extent of the amounts available on the current accounts.

Chamber's Twentieth Century Dictionary defines a bank as an "institution for the keeping, lending and exchanging, etc. of money.

According to Crowther, "The banker's business is to take the debts of other people to offer his own in exchange, and thereby create money." A similar definition of the meaning of Banking has been given by Kent who defines a bank as "an organization whose principal operations are concerned with the accumulation of the temporarily idle money of the general public for the purpose of advancing to others for expenditure."

Sayets, on the other hand, gives a still more detailed definition of a bank thus: Ordinary banking business consists of changing cash for bank deposits and bank deposits for cash; transferring bank deposits from one person or corporation (one 'depositor') to another; giving bank deposit in exchange for bills of exchange, government bonds, the secured or unsecured promises of businessmen to repay, etc.

According to Sir John Paget - No person or body, corporate or otherwise, can be a banker who does not (i) take deposit account, (ii) take current account, (iii) issue and pay cheques and (iv) Collect Cheque, crossed and uncrossed, for his customers. This definition points out the four essential functions of banking business. Sir John Paget also lays emphasis on the performance of the above functions in a regular and recognized manner. According to him one claiming to be a banker must profess himself to be one and public must accept him such as his main business must be that of banking from which, generally he should be able to earn his living. The above mentioned functions does not include the other functions which are now being performed by modern bankers.

Section 5(b) of the Banking Companies act 1949, defines banking as "Accepting for the purpose of lending or investment of deposits of

money received from the public, repayable on demand and withdrawable cheque, draft, order or otherwise”.

The banking system is an integral part of subsystem of the financial system. It represents an important channel of collecting small savings from the households and lending it to the corporate sector. The Indian banking system has RBI as the apex body for all matters relating to the banking system. It is the Central Bank of India. It is also known as the banker to all other banks.

The RBI defines a modern bank an establishment for the custody of money received from, or on behalf of, its customers. It is essential duty is to pay their drafts on it, its profit arise from the use of the money left unemployment by them. Banks organize the borrowing and lending work (credit) of the community, they lend their funds (capital) and borrowed funds and their own credit to person engaged in trade, agriculture, manufacturing and other industries.

A savings deposit held by one person can provide the funds that enable the bank to make a mortgage loan to another person. The bank has, in effect, transformed the savings deposit (an asset held by the depositor) into a mortgage loan (an asset held by the bank). Another way this process of asset transformation is described is to say that the bank “borrows short and lends long” because it makes long-term loans and funds them by issuing short-term deposits.

Thus a bank is an institution, which accepts deposits from the public and in turn advances loans by creating credit. It is different from other financial institutions in that they cannot create credit though they may be accepting deposits and making advances.

The unit emphasizes on the definition of banking, Banking Regulation Act 1949 to transact the business of banking in India. The function of banking business that “Borrowing and lending are the two fundamental transactions of all banking business banks borrow to lend”

Features of banking

The definition of banking describes the following features of banking.

- A banking company must perform both the essential functions, accepting of deposits and lending Loans.
- Channeling funds from customers to borrowers for productive purpose.
- The Financial system and the economy run smoothly and efficiently.
- It implies that the time and made to withdrawing of the deposit. The deposit money should be repayable to the depositor on demand made by the letter or according to the agreement reached between the two parties.

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1.4. Type of banks

The classification of banks based on functions are brought under types of banks.

1.4.1. Commercial Banks

Commercial Banks are those banks whose main work is receiving of deposits, lending of money and financing the trade of a country. They give short-term credit to trade and commerce and they are not in position to grant long-term loans to industries because their deposits are only for a short-period.

In India, majority of the banks are commercial banks. Therefore it is play a vital role of the economic growth of the country.

1.4.2. Central Banks

The Central Bank is the organ of government that undertakes the major financial operations of the government and by its conduct of these operations and by other means influences the behavior of financial institutions, so as to support the economic policy of the Government.

The important responsibility of the Central Bank is to control the credit of the country in accordance with the needs of business and with a view to carrying out the board monetary policy adopted by the state. The Reserve Bank of India (RBI) is such a Bank in our country. The apex body of all the banks in a country.

1.4.3. Foreign Exchange Banks

Foreign Exchange Banks are that types of banks which normally finance foreign trade. They deal in international business of payments through the purchase and sale of exchange bills. They convert home currency into foreign currency and vice-versa. It is on this account that these banks have to keep in reserve with themselves stock of currencies various countries. They try to open branches in foreign countries to carry on their business. Majority of the foreign exchange banks working in India are under the control of foreigners.

1.4.4. Industrial Banks

Industrial Banks are those banks, which grant long-term loans to industries. There are a few Industrial Banks in India. Industrial Banks mostly have a large capital of their own. They accept deposit for longer periods. In India, to help industry and to advance long-term loans the Central Government set up as Industrial Finance Corporation of India (IFCA) in 1948. The States have also set up State Finance Corporations (SFC) and in 1964 the Industrial Development Bank of India (IDBI).

The Central Government has also established the Industrial Credit and Investment Corporation of India (ICICI) and the National Industrial Development Corporation for the financing and promotion of industrial enterprises.

1.4.5. Saving Banks

The banks perform the services of mobilizing the savings. The idea behind opening this type of bank is to encourage thrift and discourage hoarding. In India, Post Offices are also doing the work and they have opened in their premises the “Savings Bank Account” counter.

1.4.6. Agricultural Banks

The main work of the Agricultural Bank is to provide loans and advances to farmers. They work on co-operative principles.

It has been divided under two heads:

- (a) Land Mortgage Banks, and
- (b) Co-operative Banks.

Long-term loan is provided by Land Mortgage Banks while short-term loans are given by Co-operative Banks or Societies. Long-term loans are given for permanent improvements on land, while short-term period loans for purchasing implements, fertilizers and seeds etc.

1.4.7. The Indigenous Banks

The Indigenous Banks work as an individual or private firm receiving deposits and dealing in Hundies or lending money. They do business operations in different parts of the country under different names. In the Punjab and U.P. Sahukars, Mahajans and Khatri, in Madras (Chennai) they are called Chettys, in Mumbai Shroffs and Marwaris and in Bengal Seths and Baniyas.

1.4.8. International Banks

International Level Banks are the International Bank for Reconstruction and Development (IBRD) also called World Bank; International Monetary Fund (IMF); International Development Association (IDA) etc. The main aim of the above written institutions is to provide long-term loans to different countries for various projects at minimum possible interest.

Exim Banks

EXIMS Banks popularly known as Export-Import Bank is another type of bank which was set up in India in January 1981. Its Authorized capital was Rs.200 crores which can be raised to Rs.500 crores. Its main work is to provide long-term finance to exporters and importers.

Miscellaneous Banks

There are certain other kinds of banks like Investment Banks, Labour Banks and Student's Banks. American Trade Unions started Labour Banks. Some of the colleges in those countries have started Students Banks to receive the deposits of the technical and specialized students. Similarly, in England and America, there are investment banks whose object is to control the distribution of capital advanced in the country.

1.5. Definition of a Banker

The Banking Regulations Act (B R Act) 1949 does not define the term 'banker' but defines what banking is? As per Sec.5 (b) of the B R Act "Banking' means accepting, for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdrawable by Cheque, draft, order or otherwise."

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1.6. Who is a 'customer'?

The term Customer has not been defined by any act. The word 'customer' has been derived from the word 'custom', which means a 'habit or tendency' to-do certain things in a regular or a particular manner's .In terms of Sec.131 of Negotiable Instrument Act, when a banker receives payment of a crossed Cheque in good faith and without negligence for a customer, the bank does not incur any liability to the true owner of the Cheque by reason only of having received such payment. It obviously means that to become a customer account relationship is must. Account relationship is a contractual relationship.

It is generally believed that any individual or an organization, which conducts banking transactions with a bank, is the customer of bank.

1.7. Banker Customer Relationship

The relationship between a banker and a customer depends on the activities; products or services provided by bank to its customers or availed by the customer. Thus the relationship between a banker and customer is the transactional relationship. Bank's business depends much on the strong bondage with the customer. "Trust" plays an important role in building healthy relationship between a banker and customer.

Banking is a trust-based relationship. There are numerous kinds of relationship between the bank and the customer. The relationship between a banker and a customer depends on the type of transaction. Thus the relationship is based on contract, and on certain terms and conditions. These relationships confer certain rights and obligations both on the part of the banker and on the customer. However, the personal relationship between the bank and its customers is the long lasting relationship. Some banks even say that they have generation-to-generation banking relationship with their customers. The banker customer relationship is fiducially relationship. The terms and conditions governing the relationship is not be leaked by the banker to a third party.

1.8. Types of relationship:

The relationship between a bank and its customers can be broadly categorized in to General Relationship and Special Relationship.

General Relationship

1.8.1. Debtor-Creditor

When a 'customer' opens an account with a bank, he fills in and signs the account opening form. By signing the form he enters into an agreement/contract with the bank. When customer deposits money in his account the bank becomes a debtor of the customer and customer a creditor. The money so deposited by customer becomes bank's property and bank has a right to use the money as it likes. The bank has savings and it is only when the depositor demands, banker pays to the customer. Bank's position is quite different from normal debtors.

Banker does not pay money on its own, as banker is not required to repay the debt voluntarily. The demand is to be made at the branch where the account exists and in a proper manner and during working days and working hours.

The debtor has to follow the terms and conditions of bank said to have been mentioned in the account opening form. Though the terms and conditions are not mentioned in the account opening form, but the account opening form contains a declaration that the terms and conditions have been read and understood or has been explained. In fact the terms and conditions are mentioned in the passbook, which is issued to the customer only after the account has been opened.

In the past while opening account some of the banks had the practice of giving a printed handbill containing the terms and conditions of account along with the account opening form. This practice has since been discontinued. For convenience and information of prospective customers a few banks have uploaded the account opening form, terms and conditions for opening account, rate charge in respect of various services provided by the bank etc., on their web site.

While issuing Demand Draft, Mail / Telegraphic Transfer, bank becomes a debtor as it owns money to the payee/ beneficiary.

1.8.2. Law of Limitation

Lending money is the most important activities of a bank. The resources mobilized by banks are utilized for lending operations. Customer who borrows money from bank owns money to the bank. In the case of any loan/advances account, the banker is the creditor and the customer is the debtor. The relationship in the first case when a person deposits money with the bank reverses when he borrows money from the bank. Borrower executes documents and offer security to the bank before utilizing the credit facility.

In addition to opening of a deposit/loan account banks provide variety of services, which makes the relationship more wide and complex. Depending upon the type of services rendered and the nature of transaction, the banker acts as a Bailee, trustee, principal, agent, lessor, custodian etc .

1.8.3. Special Relationship

Trustee – Beneficiary

As per Sec. 3 of Indian Trust Act, 1882 ‘ A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.’ Thus trustee is the holder of property on behalf of a beneficiary.

In case of trust banker customer relationship is a special contract. When a person entrusts valuable items with another person with an intention that such items would be returned on demand to the keeper the relationship becomes of a trustee and trustier. Customers keep certain valuables or securities with the bank for safekeeping or deposits certain money for a specific

purpose (Escrow accounts) the banker in such cases acts as a trustee. Banks charge fee for safekeeping valuable

1.8.4. Bailer – Bailee

Sec.148 of Indian Contract Act, 1872, defines "Bailment" "bailer" and "bailee". A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailer". The person to whom they are delivered is called, the "bailee".

Banks secure their advances by obtaining tangible securities. In some cases physical possession of securities goods (Pledge), valuables, bonds etc., are taken. While taking physical possession of securities the bank becomes bailee and the customer bailer. Banks also keep articles, valuables, securities etc., of its customers in Safe Custody and acts as a Bailee. As a bailee the bank is required to take care of the goods bailed.

1.8.5. Lessor and Lessee

Sec.105 of 'Transfer of property Act 1882' defines lease, Lessor, lessee, premium and rent. As per the section "A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

1.8.6. Agent and Principal

Sec.182 of 'The Indian Contract Act, 1872' defines "an agent" as a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called "the Principal"

Thus an agent is a person, who acts for and on behalf of the principal and under the latter's express or implied authority and the acts done within such authority are binding on his principal and, the principal is liable to the party for the acts of the agent.

Banks collect cheques, bills, and make payment to various authorities viz., rent, telephone bills, insurance premium etc., on behalf of customers. Banks also abide by the standing instructions given by its customers. In all such cases bank acts as an agent of its customer, and charges for these services. As per Indian contract Act agent is entitled to charges. No charges are levied in collection of local cheques through clearing house. Charges are levied only when the Cheque is returned in the clearing house.

As a Custodian

A custodian is a person who acts as a caretaker of something. Banks take legal responsibility for a customer's securities. While opening a D-Mat account bank becomes a custodian.

As Guarantor

Banks give guarantee on behalf of their customers and enter in to their shoes. Guarantee is a contingent contract. As per sec 31, of Indian

contract Act guarantee is a "contingent contract". Contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

It would thus be observed that banker customer relationship is transactional relationship.

Termination of relationship between a banker and a Customer:

The relationship between a bank and a customer ceases on:

- (a) The death, insolvency, lunacy of the customer.
- (b) The customer closing the account i.e. Voluntary termination.
- (c) Liquidation of the company.
- (d) The closing of the account by the bank after giving due notice.
- (e) The completion of the contract or the specific transaction.

This units emphasizes on the definitions of banking, Features of Banking, Relationship between banker and customer. Classification of Relationship, Termination of relationship between a banker and a customer.

1.9. Check Your Progress

- i. What is a bank in simple words?
- ii. Define a Banker.
- iii. What do you mean by banker and customer?
- iv. What are the general relationship between banker and customer?
- v. What is bailor bailee relationship?
- vi. How does a bank act as a trustee?
- vii. What are the responsibilities of a trustee?
- viii. What do you mean by banker and customer?

1.10. Answers to check your progress questions

- A financial institution that is licensed to deal with money and its substitutes by accepting time and demand deposits, making loans, and investing in securities. The bank generates profits from the difference in the interest rates charged and paid.
- One who conducts the business of banking; one who, individually, or as a member of a company, keeps an establishment for the deposit or loan of money, or for traffic in money, bills of exchange, etc.,
- The relationship between a banker and a customer depends on the activities; products or services provided by bank to its customers or availed by the customer. Thus the relationship between a banker and customer is the transactional relationship.
- The relationship between a banker and a customer depends on the type of transaction. In this banker and customer relationships; both parties have some obligations and rights. The relationship between banker and customer is not only that of a debtor and creditor.
- A bailor transfers possession, but not ownership, of a good to another party, known as the bailee, in the event of a bailment. While the good is in the Bailee's possession, the bailor is still the rightful owner

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- A trustee holds or manages cash, assets or a property title for a beneficiary. The trustee has a fiduciary duty to act in the best interest of the beneficiary. Trustees play an important role for businesses and individuals.
- The trustee manages the trust's assets, a significant responsibility. The trustee's fiduciary duties include a duty of loyalty, a duty of prudence, and subsidiary duties. The duty of loyalty requires that the trustee administer the trust solely in the interest of the beneficiaries.
- 'The term banking' has been defined as 'accepting' for the purpose of lending or investment of deposit of money from the public repayable on demand or withdrawable by Cheque, draft or order.
- The relationship between a banker and his customer is essentially contractual like Debtor (banker) and creditor (customer).

1.12. Summary

- Banking plays a pivotal role in modern trade and commerce.
- Banks lend money to different categories of borrowers. The interest received on those loans becomes their primary source of income and the interest on deposits constitutes the main item of expenditure for a bank.
- Banks in India are regulated by the Banking Regulation Act, 1949.
- Commercial banks can increase the total amount of money in circulation through the process of credit creation.
- Banks give guarantee on behalf of their customers and enter in to their shoes.
- Banks collect cheques, bills, and makes payment to various authorities viz., rent, telephone bills, insurance premium etc., on behalf of customers.
- Lending money is the most important activities of a bank.
- Banking is a trust-based relationship.
- There is close association between bank and customer.
- The relationship between a banker and his customer is essentially contractual like Debtor (banker) and creditor.
- The relationship between a banker and a customer depends on the activities; products or services provided by bank to its customers or availed by the customer.
- The bank generates profits from the difference in the interest rates charged and paid.
- Banks give guarantee on behalf of their customers and enter in to their shoes.
- Banks secure their advances by obtaining tangible securities.
- The relationship between a bank and a customer ceases on the death, insolvency, lunacy of the customer, the customer closing the account i.e. Voluntary termination, Liquidation of the company. The closing of the account by the bank after giving due notice. The completion of the contract or the specific transaction.

1.13. Key Words

- Customer: A customer means a person who seeks to open account which banker accepts with proper introduction. The relationship is not based on frequency of transactions, and durations.
- Trustee: A trustee hold holds money or asset and performs certain functions for the benefit of some other person called the beneficiary.
- Banker: The term banking may define as accepting of deposit of money from the public for the purpose of lending or investing investment of that money which are repayable on demand or otherwise and with a draw by Cheque, draft or order.
- Bailment: Bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.
- Lessor: The transferor is called the lessor.
- Cheque: A Cheque, or check is a document that orders a bank to pay a specific amount of money from a person's account to the person in whose name the Cheque has been issues.

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1.14. Self-assessment questions and exercises

Short-Answer Questions

1. State the definition of bank.
2. What are the different kinds of banks in India?
3. What is the relationship between bankers and customers?
4. What do you understand by the term Customer?
5. What are the special relationship between bankers and customers?

Long-Answer Questions

1. Explain the different types of banks in India
2. Briefly explain the various classification of relationship
3. Explain the various obligation of banks
4. Discuss the Bankers and customers relationship
5. What are the salient features of Banking?

1.15. Suggested Readings

1. M.L. Tannan, revised by: Banking Law and Practice, Wadhwa & Company, Nagpur. C.R. Datta & S.K. Kataria.
2. A.B. Srivastava and Seth's Banking Law, Law Publisher's India (P) Limited. K. Elumalai.
3. R.K. Gupta: BANKING Law and Practice in 3 Vols. Modern Law Publications.
4. Prof. Clifford Gomez: Banking and Finance - Theory, Law and Practice, PHI Learning Private Limited.
5. J.M. Holden: The Law and Practice of Banking, Universal Law Publishing.

UNIT II OBLIGATIONS OF BANKER

- 2.0. Introduction
 - 2.1. Learning Objectives
 - 2.2. Duties of the banker
 - 2.3. Banker's Obligation to Honor the Customer's Cheques
 - 2.4. Obligation to Maintain Secrecy
 - 2.5. Obligation to Follow Customer's Instructions
 - 2.6. Banker's Duty to Maintain Secrecy of the Customer's Account
 - 2.7. Definition of Bank Payment Obligation
 - 2.8. Bank Payment Obligation Comparison to Open Account
 - 2.9. Summary
 - 2.10. Check your Progress.
 - 2.11. Answers to Check Your Progress Questions
 - 2.12. Key Words
 - 2.13. Self-Assessment Questions and Exercises
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2.0.Introduction

The Financial Conduct Authority's Banking Conduct of Business Sourcebook (BCOBS) contains rules and guidance on communications with customers and financial promotions; information to be made available to customers, including statements of account; post sale requirements on prompt, efficient and fair service, moving accounts and lost and dormant accounts; unauthorized and incorrectly executed payments; and cancellation rights and their effects.

Some of the main provisions of BCOBS are:

1. A bank must pay due regard to the interests of its customers and treat them fairly.
2. Banks must consider the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
3. The customer should be told of any disadvantageous change, of a material nature, to the interest rate that applies to their account before the change comes into force.
4. Pre-sale information for products and services should generally refer to the availability of similar products and services offered by the bank that the customer may be interested in.
5. Before entering into a contract, joint account customers should be told of their rights and duties and the concept of joint and several liability. Customers should be informed what this means if the relationship with the other joint account holder ends.
6. Customers should be given details of the charges that apply for the normal running of an account before the contract is entered into. A warning that the charges may change in the future should also be included.

7. If a disadvantageous change to the level of charges is made, the customer should be informed at least 30 days before the change comes into force.
8. Once a contract has been entered into, a bank must provide a service which is prompt, efficient and fair. This includes requirements, for example, to have effective systems in place to allow customers to report thefts or losses, to provide a prompt and efficient service to allow customers to switch bank accounts, and to consider any apparent cases of customer financial difficulty sympathetically and positively.
9. A customer has a right to cancel a contract for a retail banking service (including a cash deposit ISA) without penalty and without giving any reason, within 14 calendar days.

2.1. Learning Objectives

At the end of the chapter, the reader would be able to

- To study the role of banks and their regulatory and compliance requirements
- To understand the meaning of obligations of a banker
- To Understand the rights of the bank
- To acquire specialized knowledge of law and practice relating to Banking

2.2. Duties of a Banker

The relationship between the banker and customer creates some obligations on the part of a bank. The main obligations of the banker towards the customers are as follows:

Obligation to Honour Cheques: You know that a bank is the debtor of his customer. The bank has a statutory obligation to honour the cheques of its customers up to the amount standing to the credit of the customer's account. If a bank wrongfully refuses to honour the Cheque of its customer, the bank shall be liable to compensate the customer. This obligation is subject to some conditions, namely:

- a. There must be sufficient funds of the customer in the hands of the bank.
- b. The funds must be properly applicable for the payment of the customer's Cheque.
- c. The Cheque must be properly drawn up i.e., it should be complete in all respects.
- d. The Cheque must be presented for payment within a reasonable time.
- e. There must be no legal bar preventing the payment of such cheques. If the bank has received any order from a court or any other competent authority prohibiting payment, it is the duty of the bank to obey such orders.

2.3. Banker's Obligation to Honour the Customer's Cheques

Section 31 of the Negotiable Instruments Act, 1881 imposes a statutory obligation upon the banker to honour the cheques of his customer drawn against his current account so long as his balance is sufficient to

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allow the banker to do so, provided the cheques are presented within a reasonable time after their ostensible date of issue. The section runs as follows: 'The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do and in default of such payment must compensate the drawer for any loss or damage, caused by such default'. The statutory obligation may be extended by an agreement, express or implied, to the amount of overdraft agreed upon. But after giving sufficient notice, a banker can withdraw any overdraft limit already granted. In *Mohammed Hussain vs Chartered Bank*, the Court referred to the decision in *Rouse vs Bradford Banking Company*. Wherein it was held that it may be that an overdraft does not prevent the bank who have agreed to give it, from at any time giving notice that it is no longer to continue and they must be paid their money'. But if the bankers 'have agreed to give an overdraft, they cannot refuse to honour cheques, or drafts, within the limit of that overdraft, which have been drawn and put into circulation before any notice is given to the customer that the limit is withdrawn.

The circumstances under which a banker is justified in dishonoring his customer's cheques are discussed elsewhere. Before dishonoring a cheque of his customer, the banker must make it certain that circumstances permit him to do so. Otherwise, he will be liable to pay damages to the customer for injuring his credit. A businessman can recover substantial damages without pleading and proving actual damage as was held in *Robin vs Steward*. But in the case of a non-trading customer, only nominal damages will be awarded unless the damages are alleged and proved as special damages as was held in *Gibbons vs Westminster Bank Ltd*. In this connection it may be mentioned that the wrongful dishonor of a cheque for a small amount usually constitutes greater damage to the credit of the customer than the dishonor of a cheque for a larger amount as was held in *Davidson vs Barclays Bank Ltd*.

As observed earlier, when computing the customer's balance, the banker need only to take into account his credit balance at the branch on which the cheque is drawn. In *Mohammed Hussain vs Chartered Bank*, the court observed that though the bank had the right to combine several accounts of the customer, the customer had no right to require the bank to combine the different accounts in determining whether a cheque on an account may be dishonoured. The Court cited the following passage from *Halsbury's Laws of England*. 'Unless precluded by agreement, express or implied from the course of business, the bank is entitled to combine different accounts in his own right even though at different branches of the same bank, and to treat the balance, if any, as the only amount standing to his credit. The customer, however, has not the equivalent right, and cannot utilize a credit balance at one branch for the purpose of drawing cheques on another branch where he has no account or where his account is overdrawn.' In the absence of an

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express or implied agreement giving the customer a right to draw cheques against un-cleared items, the banker is entitled to return such cheques with the answer 'effects not cleared' as was held in *Underwood vs Barclays Bank Ltd*. Here it should be remembered that an implied agreement would arise from some established course of business. Thus, if the banker has been following the practice of honoring his customer's cheques drawn against un-cleared items, he cannot, without reasonable notice, return cheques with the answer 'effects not cleared'.

The duty of the banker to honour the cheques of his customer, unless improperly drawn, does not apply to bills of exchange accepted by the customer and made payable by the banker. Here also, an implied agreement would arise from some established course of business. The liability of a banker for wrongful dishonor of a cheque is only to the drawer and not the payee of the cheque. In *Meghaji Malsee Ltd vs P.C.Ommen*, one of the points which arose for consideration was whether the plaintiff company, which was the holder of the cheque, could hold the drawee bank liable.

The Court referred to Section 31 of the Negotiable Instruments Act. Which deals with the liability of the drawee of a cheque and observed that the said section referred to the liability of the drawee to the drawer and not to the payee of the cheque. The Court also referred to the following observations of the Supreme Court in *Jagjivan Mavji vs Ranchhoddas Meghaji*: 'There is no provision in the Act that the drawee is as much liable on the instrument, the only exception being under Section 31 in the case of a drawee of a cheque having sufficient funds of the customer in his hands, and even then, the liability is only towards the drawer and not the payee. This is elementary law'.

2.4. Obligation to maintain secrecy

The relationship between the banker and customer is of a nature. The bank must not disclose to any outsider the details concerning the customer's account; as such disclosures may adversely affect the credit and business of the customer. However, a disclosure can be made under the following two situations:

- (a) When the law requires such disclosures to be made, and
- (b) When the practices amongst the banks permit such disclosure.

2.5. Obligation to Follow Customer's Instructions

The banker is under a legal obligation to follow the instructions of the customer. This is so because there is the contractual relationship between the bank and the customer.

Obligation to Maintain Proper Records

The banker is under an obligation to maintain accurate record of all the transactions of the customers made with the bank.

Obligation to give Notice before Closing the Account

If a bank wishes to close the account of a customer, it must give a reasonable notice to this effect to the customer. Thus, a bank cannot close the account of a customer on its own, because it may have serious consequences to the customer.

2.6. Banker's Duty to Maintain Secrecy of the Customer's Account

Because of the peculiarly private character of the transactions between the banker and the customer, the banker should not divulge to third parties the state of the customer's account except on reasonable and proper occasions. If the banker fails in his duty, he will be liable for damages which may be substantial in case the credit of the customer has suffered serious injury. According to Sir John Paget, this duty of the banker to maintain secrecy does not end even with the closing of the customer's account. Further it has been laid down in *Tournier vs National Provincial Bank of England* that this secrecy applies not only to information derived by the banker from the customer himself or from his account but also to information concerning the customer's credit that may come into the banker's possession in his capacity as a banker. In the instant case, a customer of the National Provincial Bank drew a cheque in favour of Tournier who, in turn, endorsed it in favor of a third party who had an account with another bank.

On return of the cheque to the National Provincial Bank, the manager of the bank enquired as to who the person to whom the cheque was paid. The manager was told that the person was a bookmaker. Tournier sued against the National Provincial Bank on the ground that the manager disclosed information that Tournier was a book-maker to outsiders. The Court held that the disclosure constituted a breach of duty on the part of the National Provincial Bank to Tournier. However, the duty to maintain secrecy is not absolute, but qualified. The following qualifications have been cited as examples by the Judge in the above quoted Tournier case. Where disclosure is under compulsion of law

- Where there is a duty to the public to disclose
- Where the interests of the bank require disclosure.
- Where the disclosure is made in accordance with an express or implied.
- Consent of the customer.

In addition to the above qualifications, there is a practice among bankers of giving opinion to one another concerning the creditworthiness of customers. In such cases, the banker should confine himself to general statements and should not disclose the details of the account, unless specifically authorized to do so. It is also important that the banker should not make statements which may make him liable for defamation or fraudulent misrepresentation. If the banker makes any statement knowing it to be false and if any third party suffers a loss for having relied on the statement, the banker will be held liable to such third party to whom the information is given. It may be noted in this connection that till recently it was believed that as far as a banker's liability to a third party was concerned, he could not be held liable.

2.7. Definition of Bank Payment Obligation

Bank payment obligation (BPO) is an irrevocable undertaking given by an Obligor Bank (typically buyer's bank) to a Recipient Bank (usually seller's bank) to pay a specified amount on an agreed date under the condition of successful electronic matching of data according to an industry-wide set of rules adopted by ICC.

2.8. Bank Payment Obligation Comparison to Open Account

Both bank payment obligation and open account are fast and easy to handle.

Open account is the riskiest payment method for the exporters. Non-payment risk is stemmed from the importer and must be covered by the exporter in full under open account payments. On the contrary, under the BPO the obligor bank is the entity that is giving the payment guarantee to the exporter through the recipient bank. As a result non-payment risk mitigates from the importer to the importer's bank under BPO transactions.

There are no rules exist for open account payments. On the other hand bank payment obligations can be issued subject to the URBPO 750. Under open account transactions exporters must finance importers, whereas they can be benefited pre-shipment finance and post-shipment finance under the BPO.

2.9. Summary

It is one of the principal duties of the banker to maintain complete secrecy of the status of customer's account and failure to do so will make the bank to compensate the customer for any damage or loss suffered.

It is a statutory obligation of the bank, having sufficient funds of the customer to pay cheques duly drawn and presented.

General lien empowers the bank to retain all movables in its possession but particular lien gives the right to retain the goods or property connected with particular debt.

The relationship between the banker and customer creates some obligations on the part of a bank. The main obligations of the banker towards the customers are Obligation to Honour Cheques:

Banks do not owe a fiduciary duty to customers. Unfortunately, when it comes to the relationship between banks and borrowers, the general rule is that no fiduciary duty owed.

Under open account transactions exporters must finance importers, whereas they can be benefited pre-shipment finance and post-shipment finance under the BPO.

A bank cannot close the account of a customer on its own, because it may have serious consequences to the customer.

The essential business of a 'Banker' is to buy money and debts, by creating other debts. A banker is therefore essentially a dealer in debts, or credit.

The term 'customer' also presents some difficulty in the matter of definition. There is no statutory definition of the term either in India or in

England. However, the legal decisions on the matter throw some light on the meaning of the term

The true relationship between a banker and a customer is that of a debtor and a creditor. The banker, when he receives money from a customer, does not hold the money in a fiduciary capacity. Another feature of the relationship between the banker and the customer is the banker's right of lien over such of his customer's securities as may come into his possession in the ordinary course of business

2.10. Check Your Progress

- What is the true relationship between a banker and a customer?
 - What are the obligations of banker?
 - What are the duties of banker to customer?
 - Do banks have fiduciary duty?
 - What are the duties of a bank teller?
-

2.11. Answers To Check Your Progress Questions

The legal relationship between a customer and the bank is based on contract and is generally classified as a debtor-creditor relationship. This means that when a bank or other type of ADI accepts money from a customer it does so as a borrower on terms that may be implied

The relationship between the **banker** and customer creates some **obligations** on the part of a **bank**. The main **obligations** of the **banker** towards the customers are **Obligation to Honour Cheques**: You know that a **bank** is the debtor of his customer.

Generally, there are many duties of a banker in a banker-customer relationship. Firstly, it is the duty of banker to honor the cheques issued by customers. Also, duty of secrecy is another key obligation of banker to the customers in a banker-customer relationship due to its confidentiality of this agreement.

As a general rule, in most states banks do not owe a fiduciary duty to customers. Unfortunately, when it comes to the relationship between banks and borrowers, the general rule is that no fiduciary duty owe.

Provides account services to customers by receiving deposits and loan payments; cashing checks; issuing savings withdrawals; recording night and mail deposits; selling cashier's checks, traveler's checks, and series e bonds; answering questions in person or on telephone; referring to other bank services.

2.12. Key Words

Obligation: An obligation in finance is the responsibility to meet the terms of a contract. If an obligation is not met, the legal system often provides recourse for the injured party.

Customer: Customer is an individual or business that purchases another company's goods or services. Most public-facing businesses compete with other companies to attract customers, either by

aggressively advertising their products or by lowering prices, in an effort to expand their customer bases.

Customer satisfaction: Consumer satisfaction means the degree to which a company's customers are happy with their purchase or experience with the company.

Banker: An individual that is employed by a banking institution and participates in various financial transactions is called a banker.

Trustee: A trustee is an individual person or member of a board given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified.

2.13. Self Assessment Questions and Exercises

Short-Answer Questions

1. Who is a banker?
2. What does a banker do?
3. What are the rights of a customer?
4. What are the obligations of a banker?

Long-Answer Questions

1. Who is a banker? Discuss the major functions of a banker.
2. The relation of banker and customer begins as soon as the first cheque is paid in and accepted for collection.' Comment on the statement with reference to the text.
3. Mention the cases in which a banker is a trustee and not an agent.
4. What are the special features of the relationship between a banker and a customer?
5. What are the duties of a banker to a customer?
6. What are the rights and duties of banker and customer?
7. Briefly explain about the Obligation to maintain Secrecy of Account

2.14. Suggested Readings

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UNIT-III BANKERS RIGHTS: RIGHT OF GENERAL LINE, SET-OFF AND RIGHT OF APPROPRIATION

- 3.0. Introduction
- 3.1. Definition
- 3.2. Learning Objectives
- 3.3. Rights of a Banker
- 3.4. Essential Features of Set – Off
- 3.5. Set-off is Banker's Right
- 3.6. Right of Appropriation
- 3.7. Right of Lien
- 3.8. Banker's Lien
- 3.9. Summary
- 3.10. Check Your Progress Questions and Answers
- 3.11. Key Words
- 3.12. Self-Assessment Questions and Exercises
- 3.13. Further Readings

3.0. Introduction

Banker is one who in the ordinary course of his business, honors cheques drawn upon him by persons from and for whom he receives money on their account. No person or body corporate can be a banker who does not (1) take deposit accounts and current accounts, (2) issue and pay cheques and (3) collect cheques crossed and uncrossed for its customers. If a customer has two or more accounts in the same right at the same bank, one loan account and others deposit accounts, the banker can appropriate the credit balances in the deposit accounts to the debit balance in the loan account provided the customer has failed to pay off the loan account on the due date. The loan should be due for repayment and the deposit (iffixed deposit) should also be matured. If it is a current or savings bank account the banker can immediately transfer the credit balances from these accounts to the loan account when it is due for repayment. This right of the banker to combine the accounts of the customer in credit and debit balances is the right of set-off. General lien is the right of the banker to retain the goods of the customer until a debt of the customer is paid, whereas setoff is the right of the banker to adjust cash balance in the deposit account of the customer to the loan account of the customer. In short, lien indicates goods; set - off is in relation to money.

3.1. Definition

Setoff is the combining of debit and credit accounts so as to arrive at a partial or full repayment of a debt. A banker has the right to setoff different accounts in the name of the same customer provided that he has not agreed to keep them separate and provided that the accounts are in the same right. In law, setoff consists of the total or partial merging of a claim of one person against another in a

counter - claim by the latter against the former. While setoff may be given by agreement it is essentially a statutory right.

Setoff is the debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor. Setoff signifies the subtraction or taking away of one demand from another opposite or cross demand, so as to extinguish the small demand and reduce the greater by the amount of the less; or, if the opposite demands are equal, to extinguish both. It was also, formerly, called stoppage, because the amount to be set – off was stopped or deducted from the cross demand.

3.2 Learning Objectives

- To enable the reader to understand the features of Indian Banking System – Know the significant contribution of different types of banks – Appreciate how important banking services for the economy.
- To Understand the definition of Right of setoff
- To Know about the Automatic right of setoff.

3.3. Rights of a Banker

Apart from the obligations, the banker has certain rights also. Following are the major rights that a banker can exercise on his customer.

- Right of set-off
- Automatic right of set off
- Right of Appropriation
- Right to charge interest
- Right to charge service charges

3.4. Essential Features of Setoff

For setoff to apply, there should be mutual debts and the debts should be for sums certain. The claim and cross - claim should be both for determined amounts. If a customer has stood as a guarantor to another party, the credit balance cannot be setoff against the borrower's dues till the exact liability under the guarantee is determined. For the purposes of setoff all the branches of a bank are treated as one entity.

The setoff can be applied only to those debts which are due and recoverable on the date of exercising the setoff. Ex: Adjusting an overdue bill to the available credit balance in the account. For adjustment the debt should be immediately payable and a debt accruing due cannot be setoff against a debt already due. In the absence of some special agreement, a bank is not entitled to retain a customer's credit balance to secure itself against a contingent liability on bills which it has discounted for the customer.

Another important essential of setoff is that the indebtedness should arise in the same rights. A solicitor's personal account which is overdrawn cannot be combined with his client's account. A personal debt cannot be combined with the credit balance in the trust account maintained by the individual. Where a bank has notice that an account contains money held by a customer on trust, the bank will have no right to setoff this money against a debit balance on another account.

In cases where a customer opens No. 2 or No.3 account and gives any indication that the funds to be paid into the account are trust moneys, the bank should record this information and never regard the balance on the new account as being available to setoff against a debit balance on the customer's other accounts. Likewise a deceased's credit account and an executor's debit account cannot be combined.

The right of setoff can be excluded by means of an express or implied agreement between the bank and the customer. The banker and customer are at liberty to agree on an express right of setoff, unless the customer is holding the money, which to the banker's knowledge is held on trust.

Automatic set - off arises in the following cases:

- On the death, insanity or insolvency of the customer
- On the insolvency of a partner of a firm or on the winding up of a company.
- On the receipt of a garnishee order
- On receiving notice of assignment of a customer's credit balance and
- On receiving notice of second mortgage over the security charged to the bank

3.5. Setoff is Banker's Right

The right of set-off is solely the right of the banker. The customer has no corresponding right. Thus if the customer has a debit balance of Rs.100/- in one account and a credit balance of Rs.1000/- in another account and then draws a cheque for Rs.200/- on the first account, he cannot demand that the banker should honour his cheque. If, however, the banker does decide to honour the cheque he has implied authority to debit the customer's second account to the extent that is necessary for him to do so.

Automatic right of setoff

Under the following cases, the right of set-off arises automatically.

Therefore, no notice of set-off is necessary:

- On the death, insanity or insolvency of the customer.
- On the insolvency of a partner of a firm.
- On the winding up of a company.
- On receipt of a garnishee order.
- On receipt of a notice of assignment of the credit balance of the customer.
- On receipt of an information of a second mortgage over the security which is charged to the bank. Second mortgage gets preference on the security in the banker's hand after the first mortgage has been paid off.

From the decision and judgment in different cases, it has been found that the banker can exercise his right of set-off on the following cases:

1. He can combine two or more accounts of the same customer in the same branch of a bank.

2. He can combine two or more accounts of a customer maintained in different branches of the bank.
3. He can adjust the surplus account of the sale proceeds or realization of the securities held as cover for one particular debt for liquidation of any other debt after realization of that particular debt.

3.6. Right of Appropriation

Where a debtor has several debts with a creditor with the appropriation of payments made by the debtor to the creditor.

The above principle of appropriation also applies to the loans obtained from bank, when there are two or more debts due to a single customer.

Priority

The general principle is that in case of a debt due with interest, any payment made by the debtor should be first applied by the bank to the interest and thereafter to the principal amount, unless there is agreement to the contrary.

Condition Payments

Bank is not bound to accept the payment from the burrower on the condition proposed by him. But where the condition is accepted, it has to be fulfilled. For example: Where the customer deposits money to meet the payment of a particular bill payable by him, bank cannot utilize this money against any other loan/advance account.

Time of Appropriation and Combining Accounts

Right can be exercised only at the time of a payment. Bank cannot unilaterally combine all the accounts of customer

Notice before Appropriation

Where the bank decides to appropriate the payment it has to send a notice to the customer. When appropriation comes to the notice of the customer, it becomes irrevocable

Frequent Transaction

Where the customer has one single overdraft account and he makes frequent transactions by way of deposits and withdrawals, each credit entry is deemed to be appropriated against debit entries in chronological order

3.7. Right of Lien

Lien is the right of an individual to retain goods and securities in his possession that belongs to another until certain legal debts due to the person retaining the goods are satisfied. Lien does not endorse a power of sale but only to retain the property. This varies from other forms of charges as it does not arise from an implied or express agreement. Whereas, it arises from the dealings between the parties.

3.7.1. Conditions for Exercising Lien

- The goods for which this right is to be executed has to be possessed by the creditor who exercises it?
 - There has to be a lawful debt due to the person in possession of the goods by the owner.
 - There should not be any contract to the contract.
-

3.7.2. Types of Lien

There are three different types of Lien namely;

- Possessory Lien
- Equitable Lien
- Maritime Lien

Possessory Lien

A possessory lien can be exercised only by the person in possession of the goods. It is lost by;

- Loss of possession
- When money due is paid
- Substitution of security
- When a right of lien is waived

The pre-requisite that is required for a possessory lien is that the possession has to be continuous, rightful and not for any special purpose. Further, this can be divided into;

Particular Lien
General Lien

Particular Lien

Particular Lien is that which confers the right to retain a specific commodity for which the particular debt arose. Such debts usually arise from services that are provided or laborer or money that is spent on the goods on which the right it is to be exercised.

The ingredients of a Particular Lien are

A right to retention of goods till debt due is paid off.

It does not need any specific agreement.

Arises in the ordinary course of business.

The essentials of a Possession Lien are a possession that is acquired in the ordinary course of business, the owner has a lawful debt of an obligation that has to be discharged

General Lien

A general lien refers to the right to retain goods and securities of a particular debt but in respect of the general balance that is due by the owner of the goods and securities, to the individual who is in possession of the goods. This may be conferred by an agreement to that effect or by custom and usage or by the provisions of any statute. The right of general lien is particularly given by law to bankers, solicitors, brokers, wharfingers and warehouse-keepers. A banker comprises cash, cheque, bill of exchange and securities that are deposited or any money that is due to him as a banker.

The ingredients of a general lien are given below.

It extends to a general balance of accounts.
It is a right of defense, not a right of action.
It also extends to prior transactions.

It extends to properties/securities which a banker has come in possession of in the ordinary course of business such as cheques that are deposited for collection.

Securities/goods that are held for a special purpose are not subjects of General Lien.

Equitable Lien

An equitable lien is an equitable right that is conferred by law to a charge on the immovable or movable property of another until the satisfaction of certain specific claims. An equitable lien is created by the operation of law. The instances of the equitable lien are given below.

Where the banker releases the pledged goods to the borrower using a trust receipt, the sale proceeds of these goods will be deposited in the loan account.

An unpaid vendor of the immovable property has an equitable lien on the property for the whole or part of the purchase money until the actual payment.

A partner who remits partnership debts on dissolution has an equitable lien on the property of the partnership.

Maritime Lien

A maritime lien is a right for binding a ship, furniture, machinery, cargo and freight for the payment of the claim which is based on the maritime law.

3.8. Banker's Lien

Banker's Lien is an implied pledged and the banker has the right to sell the property after reasonable notice where the property comes into the hands in the ordinary course of business. Section of the contract act lays down that a banker's lien can be applied if,

The property is in the control of the banker.

The instruments of the money or goods of the banker are not for a particular purpose inconsistent with the lien. The possession of the instruments is obtained lawfully as a banker. There is no implied or expressed agreement contrary to the lien.

The banker only obtains a lien over pledged goods for the recovery of his dues and is liable to sell those goods to reimburse himself. A banker's general lien will not be extended to securities that are deposited with him for a specific purpose inconsistent with the lien. Therefore, the following situations are not covered by the banker's lien. It does not extend to securities that do not belong to the customer of the banker. The articles and goods that are deposited by the owner for safe custody. The securities or valuables that are lying in safe deposit locker.

The securities that are deposited for sale, the collection of interest, dividend etc. Although he will not be able to exercise his right of lien on Government promissory notes and shares, he is entitled to do so for any

interest that is earned and the dividend is collected. A banker has no lien for fully paid-up shares except for partly-paid shares. A banker has no lien on an insurance policy that is pledged as a security for a loan post the repayment of debt. A banker has no lien on the current account balance on any bill discounts made by him. Conveyance of land is not subject to such lien but title deeds that are left without a memorandum of deposit are subject to such lien. Fixed deposit for the collection of interest from another bank will not come under the right of lien. The securities that are deposited upon a particular trust.

Any security that is left in the banker's hands to cover a proposed advance which will be subsequently declined. A banker cannot forfeit share in the satisfaction of a debt due to a shareholder.

A bank does not have a lien over the credit balance lying in a customer's account. The banker's right, in this case, is a right of 'set-off'.

Negative Lien

When an advance is made, the banker sometimes asks a borrower to execute a letter declaring that the assets are free from all charges encumbrance. The borrower also undertakes the assets that are stated in the declaration will not be encumbered or disposed of without a bank's written permit. This undertaking is called Negative Lien. The arrangement is normally drafted in the form of an agreement. The banker cannot directly realize his debts from such assets. However, the interests of the banker are protected to a certain extent.

3.9. Summary

Express instruction by Debtor

Where the debtor, owes more than one debts to one person and he makes payment, either with express intimation or under circumstances, implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly by the creditor.

Omission by Debtor to Intimate

Where the debtor has not indicated the account and circumstances also do not indicate to which debt, the payment is to be applied, the creditor at his discretion, can apply the payment to any lawful debt, actually due and payable to him from the debtor, whether its recovery is or is not barred by the law of limitation of.

Non- Appropriation

Where neither the debtor indicates nor the creditor party appropriates, the payment shall be applied in discharge debts, in order of time, whether they are or are not barred by the law of limitation. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

3.10. Check Your Progress

- What are the rights of bankers?
- What is Banker's right of appropriation?
- What does set off mean in a contract?
- What do you mean by appropriation?
- What is an example of appropriation?
- What is bankers right of general lien?
- What is the difference between general lien and particular lien?
- What is Lien and its types?

Answers to Check Your Progress Questions

Securities after giving proper notice to the customer. Entrusting the goods to the banker so that the same may not be denied by the customer later on the banker cannot exercise his right of general lien in respect of a debt due from a single person.

The banker has the right to set off the accounts of its customer. This enables a debtor (Bank) to set off a debt owed to him by a creditor (customer) before the latter recovers a debt due to him from the debtor

Legal Definition of set-off. (Entry 1 of 2) 1 : the reduction or discharge of a debt by setting against it a claim in favor of the debtor specifically : the reduction or discharge of a party's debt or claim by an assertion of another claim arising out of another transaction or cause of action against the other party.

Appropriation is the act of setting aside money for a specific purpose. A company or a government appropriates funds in order to delegate cash for the necessities of its business operations.

An example of an appropriation is a certain amount of profits that a company may decide to make available for a capital expenditure, such as a new building. An example of an appropriation is when the United States Congress makes money available from the budget for military operations.

A lien is the right of a creditor in possession of goods, securities or any other assets belonging to the debtor to retain them until the debt is repaid, provided that there is no contract express or implied, to the contrary. A legal claim or attachment against property as security (right) for payment of an obligation.

Difference between 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 related to those goods are realized.

The three types of liens (consensual, statutory and judgment) the judgment Lien is the most dangerous form, but one which the informed business owner may be able to eliminate. A judicial lien is created when a court grants a creditor an interest in the debtor's property, after a court judgment.

3.11. Key Words

Bank Rate

Bank Rate is the rate at which the RBI lends funds to commercial banks. This is usually a long-term loan. RBI's long-term monetary policies govern the Bank Rate.

Loan Balance Appropriation

Appropriation is the act of setting aside money for a specific purpose. A company or a government appropriates funds in order to delegate cash for the necessities of its business operations.

Bounced Cheque

A bounced cheque is a normal cheque which a bank refuses to pay. The reasons for refusing it include insufficient funds, signature mismatch, or some other valid reason.

3.12. Self Assessment Questions and Exercises

Short-Answer Questions

1. Can a bank take your money from another bank?
2. What does Cash offset mean?
3. Which is an example of offset?
4. How does offset formula work?

Long-Answer Questions

1. Explain the banker's right of appropriation
2. Discuss about the set-off rights
3. Critically examine on appropriation and to charge interest and incidental charges.

3.13. Further Readings

- Heggade, O. D. (2000). Banker-Customer Relationship in India. New Delhi: Mohit Publications.
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UNIT IV NEGOTIABLE INSTRUMENTS

- 4.0. Introduction
 - 4.1. Learning Objectives
 - 4.2. Types of Negotiable instruments
 - 4.2.1. Promissory notes
 - 4.2.2. Characteristics of Promissory Note
 - 4.2.3. Bill of Exchange
 - 4.3. Types of bill of exchange
 - 4.4. Features of bill of exchange
 - 4.5. Definition of a 'Banker' 'Meaning of Bill Discounting
 - 4.6. Cheques
 - 4.7. Difference between Cheque and promissory Note
 - 4.8. Check Your Progress Questions and Answers
 - 4.9. Summary
 - 4.10. Key Words
 - 4.11. Self-Assessment Questions and Exercises
 - 4.12. Further Readings
-

4.0. Introduction

In the world of business and finance, negotiable instruments are a very important tool. They provide the parties with an ease of doing business. And they can also be a source of finance when in need of funds. Negotiable Instruments are written contracts whose benefit could be passed on from its original holder to a new holder. In other words, negotiable instruments are documents which promise payment to the assignee (the person whom it is assigned to/given to) or a specified person. These instruments are transferable signed documents which promises to pay the bearer/holder the sum of money when demanded or at any time in the future. As mentioned above, these instruments are transferable. The final holder takes the funds and can use them as per his requirements. That means, once an instrument is transferred, holder of such instrument obtains a full legal title to such instrument. Let us learn more about negotiable instruments and their advantages.

4.1. Learning Objectives

After going through this unit. You will be able to

- To understand the nature and structure of Negotiable Instruments
 - To know about the meaning and types of bill of exchange, Promissory Note and Cheque.
-

4.2. Types of Negotiable Instruments

4.2.1. Promissory notes

A promissory note refers to a written promise to its holder by an entity or an individual to pay a certain sum of money by a pre-decided date. In other words, Promissory notes show the amount which someone owes to you or you owe to someone together with the interest rate and also the date of payment.

For example, A purchases from B INR 10,000 worth of goods. In case A is not able to pay for the purchases in cash, or doesn't want to do so, he could give B a promissory note. It is A's promise to pay B either on a

NOTES

specified date or on demand. In another possibility, A might have a promissory note which is issued by C. He could endorse this note and give it to B and clear of his dues this way.

However, the seller isn't bound to accept the promissory note. The reputation of a buyer is of great importance to a seller in deciding whether to accept the promissory note or not.

(Specimen)

Promissory Note Template	
Promissory Note	
Amount: _____	Date: _____
Place: _____	
I Mr. ABC, make commitment to pay XYZ Company, the Sum of \$ _____. Repayment is to be made in the form of 200 equal payments at the interest rate of 7.2% of \$ _____ payable on the 10th of each month, beginning 10/01/2011 until the total amount of debt is paid.	
IN WITNESS WHEREOF, I set my hand under seal this ____ [the day] of _____ [month], 20__ and I acknowledge receipt of a completed copy of this instrument.	
Sign: [Signature of borrower]	Notary Public - SEAL
Name & Address: [Party name]	My Commission Expire _____/_____/_____

4.2.2 Characteristics of Promissory Note

- It is a written document.
- There must be a clear and unconditional promise to pay a certain sum to a specified person or on demand.
- It must be drawn and duly signed by the maker.
- It must be properly stamped.
- It specifies the name of the maker and payee
- The amount to be paid must be certain, given in both figures and words.
- Payment is to be made in the country's legal currency.
- A promissory note may consist of various terms and conditions related to indebtedness like the principal amount, date of maturity, the rate of interest, terms of repayment, issue date, name and signature of the drawer, name of the drawee and so forth. A promissory note needs no acceptance.

4.2.3. Bill of exchange

Bills of exchange refer to a legally binding, written document which instructs a party to pay a predetermined sum of money to the second(another) party. Some of the bills might state that money is due on a specified date in the future, or they might state that the payment is due on demand.

(Specimen)

₹4,00,000	Bangalore 1st June, 2018
Two months after date, pay to me or my order, the sum of Rupees Four lakh only, for value received	
STAMP	
Accepted (Signed) Raj Kiran 14, Bangalore	(Signed) Kunal Singh Lal Bagh, Bangalore

A bill of exchange is used in transactions pertaining to goods as well as services. It is signed by a party who owes money (called the payer) and given to a party entitled to receive money (called the payee or seller), and thus, this could be used for fulfilling the contract for payment. However, a seller could also endorse a bill of exchange and give it to someone else, thus passing such payment to some other party.

It is to be noted that when the bill of exchange is issued by the financial institutions, it's usually referred to as a bank draft. And if it is issued by an individual, it is usually referred to as a trade draft.

A bill of exchange primarily acts as a promissory note in the international trade; the exporter or seller, in the transaction addresses a bill of exchange to an importer or buyer. A third party, usually the banks, is a party to several bills of exchange acting as a guarantee for these payments. It helps in reducing any risk which is part and parcel of any transaction.

4.3. Types of Bills Of Exchange

Bills of exchange payable at sight. These types of bills are payable on demand and the drawee has to pay the amount when the bill is presented to him for payment.

Bills of exchange payable after a certain period of time

These bills become payable after a certain period of time. In the example we took above, the bill was payable after two months and so it will fall in this category. These types of bills are also called Term Bills.

4.4. Features of Bills of Exchange

- It is an instrument in writing.
- It contains an unconditional order to pay. It means that no conditions can be attached for making the payment.
 - It mainly involves three parties: Drawer, Drawee and Payee. In most of the cases, the Drawer and Payee are the same person as the Drawer draws the bill in his/her own favor. However it must be remembered that the Drawer and Drawee cannot be same person (Its very stupid of me to mention it but I have noticed that it helps in better understanding).
- The Parties to bills of exchange must be certain.
- The Drawer (a.k.a the Maker) must sign the bill.
- The amount of money to be paid must be certain.

4.5. Bill Discounting

Bill Discounting is a discount/fee which a bank takes from a seller to release funds before the credit period ends. This bill is then presented to seller's customer and full amount is collected. Bill Discounting is mostly applicable in scenarios when a buyer buys goods from the seller and the payment is to be made through letter of credit.

It means that the bank will charge the interest amount for the credit period as an advance from the buyer's account. After that, the bill amount is paid as per the end of the time span with respect to the agreed upon document between the buyer and seller. Bill Discounting is a major trade activity. It helps the seller's get funds earlier on a small fees or discount. It also helps the bank earn some revenue. The borrower or (seller's) customer

can pay money on the due date of the credit period. Hence, this concludes the definition of Bill Discounting along with its overview.

4.6. Cheques

A cheque refers to an instrument in writing which contains an unconditional order, addressed to a banker and is signed by a person who has deposited his money with the banker. This order, requires the banker to pay a certain sum of money on demand only to the bearer of cheque (person holding the cheque) or to any other person who is specifically to be paid as per instructions given.

(Specimen)

The image shows a specimen of an HDFC Bank cheque. The cheque is dated 01/10/2016 and is payable to Rahul Sharma for Rupees One Thousand Only (₹ 1000/-). The account number is XXXXXXXXXXXX and the account type is SB AC. The cheque is payable at par through clearing/transfer at all branches of HDFC BANK LTD. The authorised signatory area is marked with a red line and the text 'Please sign above / get it smart set'.

Cheques could be a good way of paying different kinds of bills. Although the usage of cheques is declining over the years due to online banking, individuals still use cheques for paying for loans, college fees, car EMIs, etc. Cheques are also a good way of keeping track of all the transactions on paper. On the other side, cheques are comparatively a slow method of payment and might take some time to be processed.

Features of a cheque

Below given are some of the important features of a cheque

- A cheque should be in writing and properly signed by the drawer.
- A cheque contains an unconditional order.
- A cheque issued on a specified banker only.
- The amount specified is always certain and should be clearly mentioned both in figures and words.
- The payee of a cheque is always certain.
- A cheque is always payable on demand.
- The cheque should bear a date otherwise it is invalid and shall not be honored by the bank.

Types of Cheque

Generally speaking, cheques are of four types, they are

- Open cheque
- Crossed cheque
- Bearer cheque
- Order cheque

Open cheque

A cheque is called 'Open Cheque' when it is possible to get cash

over the counter at the bank. The holder of an open cheque can do the following:

- Receive the payment over the counter at the bank
- Deposit the cheque in his own account
- Pass it to someone else by signing on the back of a cheque

Crossed cheque

Open cheque is subject to risk of theft so it is dangerous to issue such cheques. But this risk can be avoided by issuing other types of cheques called ‘Crossed cheque’. The payments of such cheques are not made over the counter at the bank. It is only credited to the bank account of the payee. A cheque can be crossed by drawing two transverse parallel lines across the cheque, with or without writing ‘Account payee’ or ‘Not Negotiable’ on it.

Bearer cheque

A Bearer cheque is one which is payable to any person who presents it for payment at the bank counter. A bearer cheque can be transferred by mere delivery of it and it doesn’t require endorsement. It has been introduced in the Lok Sabha earlier this year on Jan 2nd, 2018.

The bill seeks for amending the existing Act. The bill defines the promissory note, bill of exchange, and cheques. The bill also specifies the penalties for dishonor of cheques and various other violations related to negotiable instruments.

As per a recent circular, up to INR 10,000 along with interest at the rate of 6%-9% would have to be paid by an individual for cheques being dishonored.

The Bill also inserts a provision for allowing the court to order for an interim compensation to people whose cheques have bounced due to a dishonoring party (individuals/entities at fault). Such interim compensation won’t exceed 20 percent of the total cheque value.

4.7. Difference between Cheque and promissory Note

S. No	Cheque	Promissory Note
1	Meaning of Cheque –A cheque is an order to a bank to pay a stated sum from drawer's account, written on a specially printed form.	Meaning of Promissory Note – A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to the order of a specified person, or to bearer.

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2	Definition – According to Section 6 of Negotiable Instrument Act 1881, a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.	Definition – According to Section 4 of the Negotiable Instrument Act 1881 “Promissory Note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
3	There are three parties namely 1) Drawer 2) Drawee and 3) Payee	In Promissory Note, there are two parties namely – 1) maker and 2) Payee
4	It can be drawn only by the account holder of a bank.	A promissory note can be made by any person.
5	In a cheque, an order for payment is given to the bank	In a promissory note, there is a promise to pay
6	A cheque is payable always on demand.	it may be payable on demand or after a specified time
7	Grace time –Three days of grace are not given in a Cheque	Grace time –Three days of grace are given in promissory notes payable after a specified time.
8	The drawer and payee may be the same person.	The maker and the payee/drawer may not be the same person.
9	No stamps required to be affixed	In a promissory note, stamps are required to be Affixed.
10.	Cheque can be crossed	Crossing of the promissory note is not required.

4.8. Check Your Progress

Questions

- What are the four types of negotiable instruments?
- What is meant by negotiable instrument?
- What is Cheque and its types?
- What are the features of Cheque?
- How many types of crossing Cheque are there?
- Why a Cheque is crossed?

Answers

○ Most Common types of negotiable instruments are Promissory notes, Bill of exchange, Cheque, Government promissory notes, Delivery orders, Customs Receipt.

○ Document of title or evidence of indebtedness that is freely (unconditionally) transferable in trading as a substitute for money. Negotiable instruments are unconditional orders or promise to pay, and include checks, drafts, bearer bonds, some certificates of deposit, promissory notes, and bank notes (currency).

○ Types of Cheque. Negotiable Instruments: Cheques. A negotiable instrument is a document which guarantees that the bearer of such a document will receive the sum of money specified in it either on demand or within a stipulated time mentioned in the document. Cheque.

○ A cheque should be in writing and properly signed by the drawer, a cheque contains an unconditional order. A cheque issued on a specified banker only, the amount specified is always certain and should be clearly mentioned both in figures and words. The payee of a cheque is always certain.

○ There are 14 types of cheques as under: Order Cheque: A cheque which is payable to a particular person or his order is called an order cheque. This is a cheque whereby the printed word "Bearer" on the cheque is cancelled

○ A crossed check is any check that is crossed with two parallel lines, either across the whole check or through the top left-hand corner of the check. This symbol means that the check can only be deposited directly into a bank account and cannot be immediately cashed by a bank or any other credit institution.

4.9. Summary

Negotiable Instruments are written contracts whose benefit could be passed on from its original holder to a new holder. In other words, negotiable instruments are documents which promise payment to the assignee (the person whom it is assigned to/given to) or a specified person.

Promissory notes show the amount which someone owes to you or you owe to someone together with the interest rate and also the date of payment.

When the bill of exchange is issued by the financial institutions, it's usually referred to as a bank draft. And if it is issued by an individual, it is usually referred to as a trade draft.

The borrower or (seller's) customer can pay money on the due date of the credit period. Hence, this concludes the definition of Bill Discounting along with its overview.

Cheques are also a good way of keeping track of all the transactions on paper. On the other side, cheques are comparatively a slow method of payment and might take some time to be processed. There are three parties are involved in cheque where as two persons are involved in Promissory note

4.10. Key Words

Negotiable instruments:

Most promissory notes are non-negotiable (hence the term 'promissory': a promise). Additionally, a non-negotiable instrument includes a document of title.

Promissory – Containing, implying, or having the nature of a promise.

4.11. Self-Assessment Questions and Exercises

Short Questions

1. What is a Negotiable Instrument?
2. What is a negotiable instrument in law?
3. What is the difference between negotiable and nonnegotiable instruments?
4. Why would a cheque be non-negotiable?
5. What is Cheque and its uses?

Long Questions

1. What are the difference between Cheque and promissory Note?
2. Briefly explain the features of Negotiable instruments.

4.12. Further Readings

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UNIT V TYPES OF BILL OF EXCHANGE

- 5.0. Introduction
- 5.1. Learning Objectives
- 5.2. Meaning of bill of exchange
- 5.3. Features of bill of exchange
- 5.4. Parties to bill of exchange
- 5.5. Trade Bill
- 5.6. Accommodation Bill
- 5.6.1. Meaning of Accommodation Bill
- 5.6.2. Due date of bill
- 5.6.3. Difference between Trade Bill and Accommodation Bill
- 5.7. Noting
- 5.8. Protesting (Sec.100)
- 5.9. Check your progress
- 5.10. Summary
- 5.11. Key Words
- 5.12. Self-Assessment Questions and Exercises
- 5.13. Suggested Readings

5.0. Introduction

Bill of Exchange, can be understood as a written, unconditional order by one party (the drawer) to another (the drawee) to pay a certain sum, either immediately (a sight bill) or on a fixed date (a term bill), for payment of goods and/or services received. The bill of exchange is either payable on demand, or after a specified term. In a business transaction, when the goods are sold on credit to the buyer, the seller can make the bill and send it to the buyer for acceptance, which contains the details such as name and address of the seller and buyer, amount of bill, maturity date, signature, and so forth.

5.1. Learning Objectives

After going through this unit, you will be able

To learn the meaning of Trade Bill

To understand the Accommodation bill and due date of bill

To know about the Noting and Protesting

5.2. Meaning of Bill of exchange

Bill of exchange means a bill drawn by a person directing another person to pay the specified sum of money to another person. A bill of exchange is of real use if it is accepted by the person directed to pay the amount. Example: Joseph gives a loan of Rs.1,00,000 to Alex, which Alex has to return after three months. Further, Joseph has bought certain goods from Peter, on credit for Rs.1,00,000. Now, Joseph can create a document directing Alex, to pay Rs.1,00,000 to Peter, after three months. The instrument will be called as Bill of Exchange, which is transferred to Peter, on whom the payment is due, for the goods purchased from him.

5.3. Features of bill of exchange

- An instrument which a creditor draws upon his debtor.
- It carries an absolute order to pay a specified sum.
- The sum is payable to the person whose name is mentioned in the bill or to any other person, or the order of the drawer, or to the bearer of the instrument.
- It requires to be stamped, duly signed by the maker and accepted by the drawee.
- It contains the date by which the sum should be paid to the creditor.

5.4. Parties to Bill of Exchange

- **Drawer:** The person who makes the bill, or who gives the order to pay a certain sum of money, is the drawer of the instrument.
- **Drawee:** The person who accepts the bill of exchange, or who is directed to pay a certain sum, is called drawee.
- **Payee:** The person receiving payment is called the payee, who can be a designated person or the drawer himself.
- Now, apart from the parties mentioned above, there are some other parties to a bill of exchange, described as under:
- **Drawee, in case of need:** If in any bill of exchange, a person's name is mentioned in addition to the original drawee, who can be resorted for payment. Then, that person will be called as drawee.
- **Holder:** The holder of the bill of exchange, is the person who possesses the bill and who has the right to recover the amount from the parties.
- **Acceptor:** The person who accepts the bill is called acceptor. Usually, a debtor or drawee is the acceptor. However, it can be accepted by some other person also, on behalf of the debtor/drawee.
- **Endorser:** If the holder of the bill, endorses it to another person, then the person will be called as the endorser.
- **Endorsee:** The person to whom the bill of exchange is endorsed, is called as an endorsee.

5.5. Trade Bill

Bill Discounting is a major trade activity. It helps the seller's get funds earlier on a small fees or discount. It also helps the bank earn some revenue. The borrower or (seller's) customer can pay money on the due date of the credit period. Hence, this concludes the definition of Bill Discounting along with its overview.

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bill of exchange drawn on and accepted (trade acceptance) by a trader in payment for goods.

5.6. Accommodation Bill

Bills are accepted and endorsed for the benefit received. Generally, an acceptance is made to settle a trade debt, which is due to the Drawer by the Drawee and such a Bill is called Trade Bill. Moreover, in such a Bill, we come across the words “for value received”.

This means, Bills are accepted and endorsed for value (benefit) received. Thus, it is clear that bill of exchange is usually used in the businesses for discharging of mutual indebtedness arising from genuine trading activities.

5.6.1. Meaning of Accommodation Bill

Bill of exchange endorsed by a reputable third party (called an accommodation party or accommodation endorser) acting as a guarantor, as a favor and without compensation. The bill then can be discounted on the financial strength of the guarantor whom remains liable until the bill is paid. Also called accommodation note, accommodation paper.

As contrasted with the Trade Bill, Accommodation Bills are drawn and accepted with no consideration passed or received. The Bill, which is drawn just to oblige a friend, who is in need of money, of course without any trading activities, with sole intention of raising funds required for ready cash is known as Accommodation Bill.

The accommodating party, i.e., the drawee accepts the Bill drawn by the accommodated party (drawer). That is the Drawer of the accommodation bill can be called accommodated party and drawee can be called accommodating party. After the Bill is accepted, the drawer discounts it with a bank and obtains the cash.

Before the due date of the Bill, Drawer provides funds to the Acceptor, who honours the Bill. Since the acceptance is given without consideration and to help the accommodated party to raise the funds, the accommodated party has to discharge the Bill by himself or provide funds to accommodating party.

Thus, there is always a mutual understanding between the parties and hence, these bills are called Accommodation Bills. The language of an Accommodation Bill is the same as that of an ordinary Trade Bill. The modes of drawing, accepting, discounting, honoring etc. are similar to that of any Trade Bills. A banker cannot make distinction between a genuine Trade Bill and Accommodation bill. These Bills are also called “Kites” or “Finance Bills”.

5.6.2. Due date of bill

Date on which a bill of exchange (check, draft, letter of credit, etc.) is payable. No grace period may be allowed on a sight draft (due on presentation) but is allowed for a term draft (due on or before a certain date). Also called law date, law day.

5.6.3. Difference between Trade Bill and Accommodation Bill

Trade Bill

1. It is a real bill.
2. Rightly used for financing trade

3. Drawer is a creditor
4. Drawer is a debtor.
5. Valuable consideration is there by backing real transactions
6. Bankers are willing to buy such documents.
7. Documents of title to goods are to the bill

Accommodation

1. It is an imaginary bill
2. Misused for raising a loan.
3. Drawer is pretended creditor (Really creditors is the real debtor)
4. Drawer is a pretended debtor.(Really a Creditor)
5. No value consideration is there because there is no backing of real transaction.
6. Bankers are reluctant or unwilling to buy accommodation bills.
7. No documents are attached because of no transactions existed.

5.7. Noting

The term 'noting' may be defined as the recording of the fact of dishonor by a Notary Public upon the negotiable instrument- Where a promissory note or bill of exchange is dishonored, the holder can, after giving due notice of dishonor, sue the liable parties for the recovery of amount due on the instrument. But before he files such a suit, he needs some authenticated proof of the fact, to be put up before the court, that the bill or note is actually dishonored, for this the holder takes the bill or note to the Notary Public who makes a demand for acceptance or payment upon the drawee or acceptor or maker formally and on his refusal to do so notes the same on the bill or note. Thus 'noting' means recording the fact of dishonor on the dishonored instrument or on a paper attached thereto for the purpose. Noting should be done within a reasonable time after dishonor. Noting should specify the following on the instrument:

- a. The fact of the instrument being dishonored;
- b. The date of dishonor;
- c. The reason, if any assigned to the dishonor;
- d. If the instrument has not been expressly dishonored, the reason, why it is being treated as dishonored
- e. The Notary's charges for such noting;
- f. A reference to the Notary's register.

5.8. Protesting (Sec.100)

According to Sec.100, "when the promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may, within a reasonable time, cause such dishonor to be noted and certified by a notary public. Such certificate is called a protest."

Protest or better security: (Sec-100, Para2) "When the acceptor of a bill of exchange has become insolvent, or his credit has been

publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid, such certificate is called a protest for better security.

Contents of Protest (Sec.101) A protest under Section100 must contain

The instrument itself or a literal transcript of the instrument and of everything written or printed thereupon. 2) The name of the person for whom and against whom the instrument has been protested. 3) The fact and the reasons for dishonor this is a statement that payment or acceptance, or better security, as the case may be, was demanded by the notary public from the person concerned and he refused to give it or did not answer, or that he could not be found. 4) The place and time of dishonor. 5) The signature of the Notary Public. 6) In the case of acceptance for honor or payment for honor, the names of the persons by whom and for whom it is accepted or paid.

5.9. Check Your Progress

Questions

- i. What is bills of exchange with example?
- ii. What is a bill of exchange and how does it work?
- iii. What are the types of bill of exchange?
- iv. What is noting and protesting?
- v. What is Dishonour of a bill?
- vi. What is meant by Dishonour of bill of exchange?
- vii. What is renewal of bill of exchange?'
- viii. What are the types of acceptance?
- ix. How do you prepare a bill of exchange?

Self-Assessment Answers

Normally, the drawer and the payee is the same person. Similarly, the drawee and the acceptor is normally the person. For example, Mamta sold goods worth Rs.10,000 to Jyoti and drew a bill of exchange upon her for the same amount payable after three months. Here, Mamta is the drawer of the bill and Jyoti is the drawee.

A written, unconditional order by one party (the drawer) to another (the drawee) to pay a certain sum, either immediately (a sight bill) or on a fixed date (a term bill), for payment of goods and/or services received.

Type of bill of exchange depends on its object or purpose. From the accounting point of view, Bills of exchange are of two types: Trade bill: Where the bill of exchange is drawn and accepted to settle a trade transaction, it is called Trade bill.

Noting and Protesting : (a) Noting: It is a convenient mode of authenticating the fact that a bill or note has been dishonoured. When a note or a bill has been dishonoured by non-acceptance or non-payment, the holder causes such dishonour to be noted by a Notary Public

When the drawee (a person who is liable to pay) is not able to make the payment on the date of maturity of a bill, a bill is said to

be dishonoured. In this situation liability of drawee is restored. Dishonour of a bill can be either by non-acceptance or non-payment

A bill of exchange is said to be dishonored when its acceptor refuses to pay the amount of the bill to the holder of the bill on its maturity. The bill then becomes useless and the party from whom it has been received will be liable to pay for the amount.

Thus the cancellation of the old bill maturity in return for a new bill (which includes interest) for an extended period is called "renewal of a bill of exchange". There are two more ways to renew a bill of exchange: The acceptor pays interest in cash and a new bill is accepted equal to the amount of the old bill.

There are three types of acceptance including express acceptance, implied acceptance, and conditional acceptance. In the world of merchant agreements, formal contracts are sometimes too tedious for a busy schedule.

A bill of exchange should be: An unconditional order in writing, addressed by one person to another signed by the person giving it. It requires that the person pay the amount on demand or at a fixed or determinable future time. A sum certain in money. To the order of a specified person or to bearer.

5.10. Summary

- The borrower or (seller's) customer can pay money on the due date of the credit period.
- The bill of exchange is either payable on demand, or after a specified term.
- The borrower or (seller's) customer can pay money on the due date of the credit period.
- Bills are accepted and endorsed for the benefit received
- Date on which a bill of exchange (check, draft, letter of credit, etc.) is payable.
- No grace period may be allowed on a sight draft (due on presentation) but is allowed for a term draft
- There is always a mutual understanding between the parties and hence, these bills are called Accommodation Bills
- Type of bill of exchange depends on its object or purpose
- The acceptor pays interest in cash and a new bill is accepted equal to the amount of the old bill.
- The bill then becomes useless and the party from whom it has been received will be liable to pay for the amount
- Due to insufficient funds in the drawee's A/c, The drawee is unable to pay because of insolvency, The drawee simply does not want to pay are the Possible reasons why the bill is dishonored by non-payment?

5.11. Key Words

- Negotiable instrument: is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer usually named on the document..
- Drawer: The person who makes the bill, or who gives the order to pay a certain sum of money, is the drawer of the instrument.
- Drawee: The person who accepts the bill of exchange, or who is directed to pay a certain sum, is called drawee.
- Payee: The person receiving payment is called the payee, who can be a designated person or the drawer himself.
- Endorser: If the holder of the bill, endorses it to another person, then the person will be called as the endorser.
- Endorsee: The person to whom the bill of exchange is endorsed, is called as an endorsee.

5.12. Self-Assessment questions and exercise

Short Answer Questions

1. What is a bill of exchange and how does it work?
2. What is bill of exchange in banking?
3. How do you prepare a bill of exchange?
4. What is the difference between bill of exchange and promissory note?
5. What are the features of promissory note?
6. What is the importance of promissory note?
7. Do promissory notes need to be registered?
8. Define Noting and Protesting?

Long Answer Questions

1. Briefly explain types of bills of exchange
2. What is a bill of exchange and how does it work?
3. Explain Maturity of a Bill of Exchange.
4. Describe the Dishonour of a bill of exchange.

5.13. Suggested Readings

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UNIT VI HOLDER AND HOLDER IN DUE COURSE HOLDER

Holder and Holder in Due Course Holder

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- 6.0. Introduction
- 6.1. Learning objectives
- 6.2. Holder and Holder in Due Course Holder
- 6.3. Holder in due Course
- 6.4. Differences between Holder & Holder-in-Due-Course
 - 6.4.1. Entitlement
 - 6.4.2. Consideration
 - 6.4.3. Maturity
 - 6.4.4. Title
 - 6.4.5. Right to recover amount
 - 6.4.6. Notice of defect in the Title
 - 6.4.7. Privileges
- 6.5. Right of a holder in due course
- 6.6. Payment in due Course
- 6.7. Return of Cheques
- 6.8. Basics of return cheques
- 6.9. Check your progress
- 6.10. Answers to Check Your Progress Questions
- 6.11. Summary
- 6.12. Key Words
- 6.13. Self-Assessment Questions and Exercises
- 6.14. Suggested Readings

6.0. Introduction

Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

6.1. Learning objectives

After going through this unit, you will be able to

- Understand why the concept of holder in due course is important in commercial transactions.
- Know what the requirements are for being a holder in due course.
- Determine whether a payee may be a holder in due course.
- Know what the shelter rule is and why the rule exists.
- Understand the differences between holder and holder-in-due-course.

6.2. Holder and Holder in Due Course Holder

The holder of a negotiable instrument means any person entitled to the possession of the instrument in his own name and to receive or recover the amount due there on from the parties liable

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thereto. Thus, in order to be called a 'holder' a person must satisfy the following two conditions: (Sec. 8).

He must be entitled to the possession of the instrument in his own Name. Actual possession of the instrument is not essential. What is required is a right to possession under some legal or valid title. He should be a 'de jure holder' and not necessarily 'de facto holder'. It means that the person must be named in the instrument as the payee or the indorse, or he must be the bearer thereof, if it is a bearer instrument. However, the heir of a deceased holder or any other person becoming entitled by operation of law is a holder although he is not the payee or indorse or bearer thereof.

If a person is in possession of a negotiable instrument without having a right to possess the same he cannot be called the holder. Thus, a thief, or a finder on the road, or an indorse under a forged endorsement, although may be having the possession of the instrument, cannot be called its holder because he does not acquire legal title thereto and hence is not entitled in his own to the possession thereof. Similarly, a beneficial owner claiming through a 'benamidar' in whose favor the instrument had been made or drawn is not a holder because he is not entitled to the possession in his own name and cannot by himself maintain an action on the instrument.

He must be entitled to receive or recover the amount due there on from the parties liable thereto. In order to be called a holder, besides being entitled to the possession of the instrument in his own name, the person must also have the right to receive or recover the amount of the instrument and give a valid discharge to the payer. Thus, one may be the bearer or the payee or the indorse of an instrument but he may not be called a holder if he is prohibited by a Court order from receiving the amount due on the instrument.

Where a person obtains possession of an instrument by theft, fraud or under a forged endorsement, he is not a holder and can not a holder and cannot claim payment from liable parties.

6.3. Holder in due Course

The despotic but necessary principle relating to negotiable instruments is that a person taking a negotiable instrument in good faith and for value obtains a valid title though he takes from one who had none or who was merely a thief. The property in a negotiable instrument is acquired by anyone who takes it bona-fide and for value, notwithstanding any defect of title in the person from whom he took it. Now such a person who takes an instrument "in good faith and for value" becomes the true owner of the instrument and is known as a "holder in due course".

According to Section 9 "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The essential qualifications of a “holder in due course” may be summed up as follows:

1. He must be a holder for valuable consideration. All the prerequisite of consideration should be met so as to result in a valuable consideration.
2. That he became the holder of the instrument before its maturity. Thus the person who takes a negotiable instrument after maturity does not become a holder in due course.
3. That the instrument should be complete and regular on the fact of it. Face here includes the back also.
4. The last requirement is that the holder should have received the instrument in “good faith”. There are two methods of ascertaining a person’s good faith, “subjective” and objective”. In subjective test the Court has to see the holder’s own mind and the only question is “did he take the instrument honestly”? In objective test, on the other hand, we have to go beyond the holder’s mind and see whether he exercised as much care in taking the security as a reasonably careful person ought to have done. Subjective test requires “honesty”, objective “due care and caution”. Good faith indicates a person takes the instrument without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

6.4. Differences between Holder & Holder-in-Due-Course

Various differences between holder and holder-in-due-course can be explained on the basis of the following

- Entitlement
- Maturity
- Right to recover amount
- Privileges
- Consideration
- Title
- Notice of defect in the Title.

6.4.1. Entitlement

Holder is a person who is entitled for the possession of a negotiable instrument in his own name. Hence he shall receive or recover the amount due thereon. Whereas a Holder-in-due-course is a person who has obtained the instrument for consideration and in good faith and before maturity.

6.4.2. Consideration

Consideration is not necessary to become a holder. The instrument may also be given by way of a donation or gift and thus, the done of an instrument can also become a holder of it. However, consideration is a must to become a holder-in-due-course and thereby the done of a negotiable instrument can be a holder but not holder-in-due-course.

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6.4.3. Maturity

A holder may acquire the instrument even after its maturity. But a holder-in-due-course must acquire the instrument before its maturity failing which he will not enjoy the rights of a holder-in-due-course.

6.4.4. Title

A holder does not acquire a better title than that of transferor. In simple words, if the title of any of the prior party is defective, his title will not be defect free. Whereas, a holder-in-due-course derives a good title freed from all defects. His title is better than that of the transferor.

6.4.5. Right to recover amount

A holder has a right to recover the amount due on the instrument from the transferor (i.e., just preceding party) only from whom he has obtained the instrument. Holder-in-due-course, on the other hand, can recover the amount due on the instrument from any of the prior parties till the instrument is duly discharged. Thus, all prior parties shall remain liable towards the holder-in-due-course, jointly as well as severally, till the instrument is duly discharged.

6.4.6. Notice of defect in the Title

A holder-in-due-course is not only supposed to have acquired the instrument without any notice of the defect of the title of the person from whom he obtained it, but also there should be no cause on his part to believe that any defect sustains in the transferor's title. But a holder is exempt from this condition. He may have notice of defect in the title but he shall not be liable for it unless he is a party to that defect, fraud, or forgery.

6.4.7. Privileges

A holder-in-due-course enjoys certain privileges under the Negotiable instruments Act (as discussed earlier), which are not available to a holder.

6.5. Right of a holder in due course

1. Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of all defects, unless he himself was a party to fraud or illegality committed regarding the instrument (S. 53).
2. The maker of a note, or drawer of a bill or cheque, and no acceptor of a bill for the honour of the drawer, will be permitted to deny the validity of the instrument, as originally drawn, in a suit thereon by a holder in due course.
3. In case of a suit by holder in due course, no maker of a note, or acceptor of a bill payable to order, will be permitted to deny the validity of the payee's capacity at the date of the note or a bill to endorse the same (S. 121).
4. Upon a suit by a holder in due course the acceptor cannot take the defense of accommodation acceptance (S. 36).
5. The holder in due course gets a better title than that of the transferor of the instrument, even if the title of the transferor was defective,

- the holder in due course will get a good title. But in case of a forged instrument, even a holder in due course will get no title, as it is a case of total absence of title and not a mere defect of title (S. 58).
6. If a note or a bill is negotiated to a holder in due course the liable parties cannot avoid liability on the ground, that delivery of the instrument was conditional or for a special purpose (S. 46, 47).
 7. When a bill is drawn payable to the drawer's order on a fictitious name, and is endorsed by the same hand as drawer's signature, the acceptor cannot take the plea that the payee was a fictitious person (S. 42).
 8. Where a duly stamped and signed instrument is either left wholly blank or in complete in some material requirements such as date, amount, payee's name, and is delivered by one person to another for the purpose of filling it up. If such a person or any holder fills up more amount, than what he was authorized to do. The holder in due course of such an instrument can recover the whole amount, provided the stamp affixed upon it is sufficient to cover the filled sum (S.20).

6.6. Payment in due Course

Payment in due Course is defined in Section 10 of Negotiable Instruments Act 1991. Any person legally responsible to make payment under negotiable instrument must make the payment of the amount due under in due course with the purpose of obtaining a valid discharge against the holder.

Payment in due course refers to a payment in keeping with the evident tenor of the instrument, in good faith & without negligence to any person in possession thereof.

A payment will be regarded as a payment in due course if:

- (a) It is in agreement with the apparent tenor of instrument, that is, according to what comes into view on the face of instrument to be the intention of the parties;
- (b) It is made in good faith and without negligence, and under conditions which do not meet the expense of a ground for believing that the person to whom it is made is not allowed to receive the amount;
- (c) It is made to the person who possesses the instrument who is entitled as holder to obtain payment;
- (d) Payment is made under conditions which do not pay for a rational ground believing that he is not entitled to obtain payment

of the amount stated in the instrument; and payment is made in money and money only.

As per Sections 10 & 128, a paying banker making payment in due course is protected.

6.7. Return of Cheques

A returned check is a check the bank does not honor. The check will be returned to the bank that submitted the check for payment. If you are the check writer, it means your bank will not pay the person or business to whom you wrote the check. If you received the check, a returned check is one for which you won't get paid—at least not right away.

6.8. Basics of Returned Checks

Returned checks are checks the check writer's bank denies. Potential causes for returned checks include:

- Not enough money in the account, formally known as insufficient funds
- A stop payment on the check
- Check too old to honor.
- Improperly written.

Banks and businesses process checks electronically, and even consumers can deposit checks with their mobile phones. What worked in the past (writing a check while your account is low on funds) might not work anymore.

It is increasingly difficult to float checks and hope that funds will arrive in your account before your check gets deposited. Even if you write a check on paper, there's a good chance the check will be converted to an electronic check at the checkout register and funds will come out of your account very quickly within 24 hours.

6.9. Check Your Progress

1. Who is a holder in due course of a negotiable instrument?
2. Who is a holder and holder in due course?
3. What is the holder in due course rule?
4. Can a payee be a holder in due course?
5. Why is holder in due course important?
6. What is a dishonored cheque and how it is being treated in the books of account?
7. When the cheque is being dishonored?

6.10. Answers to check your progress

- **Holder in Due Course** is defined as a **holder** who acquires the **negotiable instrument** in good faith for consideration before it becomes **due** for payment and without any idea of a defective title of the party who transfers the **instrument** to him. Therefore, a **holder in due course**.
- Entitlement: **Holder** is a person who is entitled for the possession of a negotiable instrument in his own name. Hence he shall receive or recover the amount **due** thereon. Whereas a **Holder-in-due-**

- course** is a person who has obtained the instrument for consideration and in good faith and before maturity.
- In commercial law, a **holder in due course** is someone who accepts a negotiable instrument in a value-for-value exchange without reason to doubt its legitimacy. ... Even if one of these parties passed the instrument in bad faith or in a fraudulent transaction, a **holder in due course** may retain the right to enforce it.
 - The **payee can** be an HDC, but in the usual circumstances, a **payee** would have knowledge of claims or defenses because the **payee** would be one of the original parties to the instrument. Nevertheless, a **payee** may be an HDC if all the prerequisites are met.
 - The **holder-in-due-course** doctrine is **important** because it allows the **holder** of a negotiable instrument to take the paper free from most claims and defenses against it. Without the doctrine, such a **holder** would be a mere transferee.
 - Dishonored Cheque is a cheque which is presented for payment and the drawer has insufficient fund in his or her account to cover the cheque which will then be returned to the payee marked “refer to drawer”.
 - Dishonored Cheque is a cheque which is presented for payment and the drawer has insufficient fund in his or her account to cover the cheque which will then be returned to the payee marked “refer to drawer”.
 - The dishonored cheque is shown in the debit column of the bank statement.
 - We need to credit the supplier’s cash book and debit the customer’s account in the sales ledger i.e. the customer is still owing us the money as his or her cheque has been dishonored

6.11. Summary

- ✓ In commercial law, a **holder in due course** is someone who accepts a negotiable instrument in a value-for-value exchange without reason to doubt its legitimacy
- ✓ A holder may acquire the instrument even after its maturity. But a holder-in-due-course must acquire the instrument before its maturity failing which he will not enjoy the rights of a holder-in-due-course.
- ✓ A holder-in-due-course enjoys certain privileges under the Negotiable instruments Act (as discussed earlier), which are not available to a holder.
- ✓ Consideration is not necessary to become a holder.

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- ✓ A holder may acquire the instrument even after its maturity
- ✓ Normally a payee or endorsee is a holder.
- ✓ Holder in Due course must obtain the instrument in Good faith negotiable instruments are basically transferable instruments from one person to another for the purpose of payment.
- ✓ Incapacity of one or more parties to a negotiable instrument does not affect the capacity of the other competent parties, as such they continue to be liable on the instrument.

6.12. Key words

Holder for value: Holder for Value Law and Legal Definition. One who has given a legal consideration for a negotiable instrument is a **holder for value**.

6.13. Self-Assessment questions and exercises

Short answer Questions

1. Who is a holder in due course of a negotiable instrument?
2. Who is a holder and holder in due course?
3. Who is a holder in due course what are his privileges?
4. Who can be a holder?
5. Can a payee be a holder in due course?
6. Who is the holder of negotiable instruments?

Long Answer Questions

1. What is holder in due course?
2. What are the differences between Holder and holder-in-Due course?
3. Explain the right of the holder – in-Due course.
4. Describe the holder in due course rule.
5. Explain “Holder in due course”.

6.14. Suggested Readings

Desai, V.R. and Mutalik. "Banking Development in India" Mamaktalas, Bombay 1967. Economic Research Division, "Banks since Nationalization" Birla Institute of Scientific Research, Allied Publishers, New Delhi, 1981.

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UNIT VII ENDORSEMENT AND ITS KINDS-CROSSING TYPES-MCR CHEQUES-PAYING BANKERS

Endorsement and its Kinds-Crossing
types-MCR Cheques-Paying
Bankers

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- 7.0.Introduction
- 7.1. Learning Objectives
- 7.2.Definition
- 7.3.Kinds of Endorsement
- 7.3.1. Endorsement in Blank / General
- 7.3.2. Endorsement in Full / Special
- 7.3.3. Conditional Endorsement
- 7.3.4. Restrictive Endorsement
- 7.3.5. Endorsements and Recourse
- 7.3.6. Facultative Endorsement
- 7.3.7. Endorsement in Blank / General
- 7.3.8. Endorsement in Full / Special
- 7.3.9. Conditional Endorsement
- 7.3.10. Restrictive Endorsement
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- 7.5. Right and Objectives of Crossing
- 7.6. Definition of n MICR Cheques
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- 7.10.Precaution of a paying banker or mandatory function of Banker
- 7.11.Collecting Banker
- 7.12. Duties and responsibilities of a collecting banker
- 7.13. Answers to Check Your Progress Questions
- 7.14. Summary
- 7.15. Key Words
- 7.16. Self-Assessment Questions and Exercises
- 7.17. Suggested Readings

7.0.Introduction

The act of a person who is a holder of a negotiable instrument in signing his or her name on the back of that instrument, thereby transferring title or ownership is an endorsement. An endorsement may be in favor of another individual or legal entity. An endorsement provides a transfer of the property to that other individual or legal entity. The person to whom the instrument is endorsed is called the endorsee. The person making the endorsement is the endorser.

7.1. Learning Objectives

After going through this unit, you will be able to

- Understand why the concept of Endorsement
- Know the definition of Endorsement
- Learn the different kinds of Endorsement

Self Instructional Study Material

- Know MCR cheque
- Understand nature and features of Paying banks
- Endorsement is a term that has various definitions depending on the context of its use.

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7.2. Definition

Endorsement is a term that has various definitions depending on the context of its use. For example, a signature authorizing the legal transfer of a negotiable instrument between parties is an endorsement. Endorsements can be amendments to contracts or documents such as life insurance policies or driver's licenses. A public declaration of support for a person, product, or service is also an endorsement.

Endorsements are a form of advertising that uses famous personalities or celebrities who command a high degree of recognition, trust, respect or awareness amongst the people. Such people advertise for a product lending their names or images to promote a product or service. Advertisers and clients hope such approval, or endorsement by a celebrity, will influence buyers favorably. For example, Sachin Tendulkar endorsing motorcycles and biscuits can influence young men or children who look to him as role model.

7.3. Kinds of Endorsement

Endorsement is essentially is of two kinds - Endorsement in Blank and Endorsement in full. According to Section 16 of the Negotiable Instrument Act, 1881, If the endorser signs his name only, the endorsement is said to be “in blank”, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be “in full”, and the person so specified is called the “endorsee” of the instrument. There are some other kinds which are constitutional but not very popular which are given below

7.3.1. Endorsement in Blank or General

An endorsement is said to be blank or general when the endorser puts his signature only on the instrument and does not write the name of anyone to whom or to whose order the payment is to be made.

7.3.2. Endorsement in Full or Special

An endorsement is 'special' or in 'full' if the endorser, in addition to his signature also mention the name of the person to whom or to whose order the payment is to be made. There is direction added by endorse to the person specified called the endorsee, of the instrument who now becomes its payee entitled to sue for the money due on the instrument.

7.3.3. Conditional Endorsement

The conditional endorsement is negotiation which takes effect on the happening of a stated event, or not otherwise. Section 52 of the Negotiable Instrument Act 1881 provides - The endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates endorsers are liable to him.

Illustrations

(a) The endorser of a negotiable instrument signs his name, adding the words “without recourse”. Upon this endorsement, he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, “without recourse”, he transfers the instrument to B, and B endorses it to C, who endorses it to A. A is not only reinstated in his former rights but has the rights of an endorsee against B and C.

7.3.4. Restrictive Endorsement

Restrictive endorsement seeks to put an end the principal characteristics of a Negotiable Instrument and seals its further negotiability. This may sound a little unusual, but the endorsee is very much within his rights if he so signs that its subsequent transfer is restricted.

This prevents the risk of unauthorized person obtaining payment through fraud or forgery and the drawer losing his money.

7.3.5. Endorsement Sans Recourse

Sans Recourse which means without recourse or reference. As such a when the property in a negotiable instrument is transferred sans recourse, the endorser, negatives his liability and excludes himself from responsibility to all subsequent endorsees. It is one of the commonest form of qualified endorsement and virtually prohibits negotiation since the endorser says in effect.

7.3.6. Facultative Endorsement

Facultative Endorsement is an endorsement where the endorser waives some right to which he is entitled. For example, the endorsee is liable to give notice of dishonor to the endorser and normally failure to give notice will absolve the endorser from his liability.

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An endorsement is 'special' or in 'full' if the endorser, in addition to his signature also mention the name of the person to whom or to whose order the payment is to be made. There is direction added by endorse to the person specified called the endorsee, of the instrument who now becomes its payee entitled to sue for the money due on the instrument.

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Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates endorsers are liable to him.

Illustrations

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7.4. Crossing of cheque and its kinds

There are three different types of crossing of cheques and by check crossing, we mean putting or drawing two parallel transverse lines on the front side of a cheque on upper left corner, with or without the use of the word like “&Co” “Not Negotiable”.

The practice of crossing a cheque seems to have originated in **England**, when cheques were likely to be stolen by robbers who often robbed mail carried in slowly moving coaches. Crossing of cheques gradually reduced the number of payment to the wrongful holders of the cheque. With the passage of time, crossing of cheques came to have legal recognition. Cheques may be crossed by three persons. These are the drawer, holder and the bankers, according to the **section 125 of the Act 1881**.

There are three main types of check crossing.

- General crossing
- Special crossing
- Restrictive crossing
- General Crossing

A general crossing consists of two parallel lines drawn transversely the front side of the cheque with or without the word “& Co”. The effect of this cross leads the said cheque may not be cashed at the counter of the bank, but must be paid into bank accounts for collection.

Ex: General Crossing and Special Crossing

Sl. No	<u>General Crossing</u>	<u>Special Crossing</u>
1	_____	_____ SBI _____
2	_____ and Company _____	_____ A/c Payee Indian Bank _____
3	_____ & Co _____	_____ Non negotiable IOB _____
4	_____ Non Negotiable _____	_____ Canara Bank _____
5	_____ A/c Payee _____	_____ A/c Payee Not Negotiable IOB _____
6	_____ Account Payee _____	_____ - _____

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Special Crossing

A special crossing consists of the name of particular bank written across the face of the cheque. The effect of these types of crossing is that, it will be collected by the particular bank only.

Restrictive Crossing

The act provides only two types of crossing mentioned as general and special crossing. Banking usage had developed yet another type of crossing called as "Restrictive Crossing". This type of crossing includes the word like "A/c Payee" "A/c John only" between equivalent outline. So these types of crossing of cheques direct the banker to be credited the specific amount into the account of the payee whose name is mentioned on the cheque or between the equivalent lines. If proceeds are credited to some other accounts, the collecting banker will be held responsible.

7.5 Right and Objectives of Crossing

Following parties have the right to cross a cheque;

1. Drawer of the Cheque can cross the cheque at the time of writing the cheque. This crossing can be general, special or restricted.
2. Holder of the cheque, can cross the cheque in his possession, if it is already not crossed by the drawer for any reason.
3. Collecting bank crosses the cheque deposited with it, for receiving the amount of said cheque named therein or any uncrossed cheque is deposited by a customer in his account for collection. It is necessary to cross all the cheques before depositing.

It is possible that payment of a bearer or even of an order cheque is made or received to a wrong person. In this case bank has got no responsibility except for order cheque. Hence the main objective of the crossing is to make sure that the payment is made or credited to the right person. In case of any fraud or wrong payment, it is easy to detect the person or party receiving the wrong payment just by checking the record of the bank, because the said cheque is deposited, collected and posted in bank ledger through a bank account of the person concerned.

The other objective of crossing is that large amount of money is transferred from one person or place to another, without any risk of cash involved in payment.

7.6. MICR Cheques

Magnetic ink character recognition code, known in short as MICR code, is a character recognition technology used mainly by the banking industry to streamline the processing and clearance of cheques and other documents. MICR encoding, called the MICR line, is at the bottom of cheques and other vouchers and typically includes the document-type indicator, bank code, bank account number, cheque number, cheque amount (usually added after a cheque is presented for payment), and a control indicator. The format for the bank code and bank account number is country-specific.

The technology allows MICR readers to scan and read the information directly into a data-collection device. Unlike barcode and similar technologies, MICR characters can be read easily by humans. MICR encoded documents can be processed much faster and more accurately than conventional OCR encoded documents.

7.7. Meaning of MICR Cheque

The short form for Magnetic Ink Character Recognition is MICR, which is a recognition technology based on characters printed with magnetic ink or toner and processed by being magnetized and sensed magnetically. MICR characters are printed information on documents so that the code line information can be captured by magnetic recognition.

7.8. Features of MICR Cheque

The MICR Cheque has to have the following measurement:

- Payer Institution Area
- Cheque Number and Date Area
- Payee and Legal Amount Area
- Convenience Amount
- Account Title
- Signature Area
- MICR Area

7.9. Paying Banker

The banker who is liable to pay the value of a cheque of a customer as per the contract, when the amount is due from him to the customer is called “Paying Banker” or “Drawee Bank.” The payment to be made by him has arisen due to the contractual obligation. He is also called drawee bank as the cheque is drawn on him.

The payment has to be made by the banker as per the legal obligation also. Section 31 of Negotiable Instrument Act 1881, says that “the drawee of a cheque, having sufficient funds of the drawer in his hands properly applicable to the payment of such a cheque, must pay the cheque, when duly required to do so, and in default of such payment, must compensate the drawer for any loss or damage caused by such default.” According to this provision, the drawee of a cheque, *i.e.*, paying banker has a legal obligations to honour the demand of the drawer or customer. If he fails to pay the money held, he is liable for damages. Thus paying banker has certain obligations to discharge.

7.10. Precaution of a paying banker or mandatory functions of banker

- The banker on whom a cheque is drawn or the banker who is required to pay the cheque drawn on him by a customer is called the paying banker.
- Cheque should be in proper form: the cheque presented for payment should be in proper form. The banker should see that

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the cheque satisfies all the requirements of a valid cheque. The cheque must be in printed form supplied by the banker.

- Physical conditions of the cheque: the cheque should be in good physical condition. The instrument should not be torn, cancelled.
- Crossing of cheque: if the cheque is a crossed one, the payment cannot be made across the counter. It has to pass through the account holder.
- Office of drawing: the cheque should be presented for payment same bank where he has account. If the customer presents a cheque in a bank where he doesn't hold an account, the manager cannot make payment.
- Date of the cheque: the cheque should possess a date for payment and only on that date or within three months from that date the payment should be made.
- Time of presentation: the cheque should be presented for payment during the banking hours.
- Amount: the amount of the cheque presented for payment has to be recorded in both words and figures and they should tally with each other.
- Material alteration: if material alteration is apparent the banker should get confirmation from the drawer by obtaining full signature at the place of material alteration.
- Signature of the drawer: the banker has to examine the signature of the drawer on the cheque before he makes payment with the specimen he has.

7.11. Collecting banker

The collecting banker is a banker who collects cheques drawn upon other bankers for and on behalf of his customer. He is called the collecting banker as he undertakes the work of collection of cheque.

7.12. Duties and responsibilities of a collecting banker

- Banker must take at most care while presenting the cheque for collection.
- Collecting banker must present the cheque within reasonable time.
- Notice to customer in case of dishonor of cheque.
- The banker has to credit the proceeds of the cheque to the account of the customer.
- Should undertake the collection of cheque only for customer and not for stranger.
- Must receive the payment as an agent of the customer.

7.13. Check your Progress

1. What is endorsement and different types of endorsement?
2. What are the three types of endorsement?
3. What is endorsement with example?
4. What is facultative endorsement?
5. What are the endorsements?
6. What are the types of crossing?

7. What is the meaning of MICR?
8. How does an MICR work?
9. What is paying banker and collecting banker?

Answers to Check Your Progress Questions

- **Endorsement** is a term that has various definitions depending on the context of its use. For example, a signature authorizing the legal transfer of a negotiable instrument between parties is an **endorsement**. **Endorsements** can be amendments to contracts or documents such as life insurance policies or driver's licenses.
- ✓ The **three types** of check **endorsements** are blank, restrictive and special. Each **type of endorsement** has its own rules for depositing or cashing the check. A blank **endorsement**, the most common **type**, is endorsed by the payee and presented to the bank for cash or deposit.
- ✓ When a famous athlete announces that he wears a certain brand of sneakers, this is an **example** of an **endorsement** for the sneaker brand. An **example** of an **endorsement** is when you sign the back of check, telling the bank that you give your approval for the check to be cashed.
- ✓ **Facultative endorsement**: When the endorser expressly gives up some of his rights under the negotiable instrument, the **endorsement** is called a '**facultative**' **endorsement**. Thus, "Pay X or order, notice of Dishonour waived" is a **facultative endorsement**.
- ✓ High school **endorsements** consist of a related series of courses that are grouped together by interest or skill set. They provide students with in-depth knowledge of a subject area. Students can choose from five **endorsement** areas: Science, Technology, Engineering, and Mathematics (STEM) Business and Industry.
- ✓ In a general crossing, simply two parallel transverse lines, with or without the words 'not negotiable' in between, may be drawn.

7.14. Summary

- Restrictive crossing:
- Not negotiable Crossing:
- Magnetic ink character recognition (**MICR**) is the information that appears at the bottom of a check. This includes the bank's routing number, the customer's account number, and the check number.
- Each check is printed with a series of characters on the bottom of the document. The **MICR** read head is a device built into the scanner designed to read the magnetic signal emitted by the **MICR** ink characters on the check. Each character produces a unique waveform which is read and translated by the **MICR** read head.
- A **collecting banker** is one who undertakes to **collect** the amount of a cheques & bills for his customer from

the **paying banker**. 2. A **banker** is under no legal obligation to **collect** cheques drawn upon other banks for a customer.

7.15.Key word

Recognition: Recognition is that endorsement is the act or quality of endorsing while recognition is the act of recognizing or the condition.

7.16. Self-Assessment Questions and Exercises

Short answer questions

1. What are the different types of endorsements?
2. What is full endorsement?
3. What are the duties of paying Banker?
4. Who is known as paying banker?'
5. What is crossing explain different types of crossing?
6. What are the 3 types of endorsements for checks?
7. What is a Dishonored Cheque?
8. How does an MICR work?
9. What is a paying bank?

Long answer questions

1. Briefly explain the concept of Endorsement and its types.
2. Discuss the different types of crossing of Cheque.
3. Explain the difference between paying bank and collecting bank.

7.17.Suggested Reading

- Abhiman Das, Technical, Allocative and Scale Efficiency of Public Sector Banks in India, Reserve Bank of India Occasional Papers, Vol. 18, Nos. 2 & 3, 2012, pp.279-301.
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UNIT VIII PRECAUTION TO BE TAKEN BEFORE A CHEQUE FOR PAYMENT AND STATUTORY PROTECTION – COLLECTING BANKER DUTIES AND STATIONARY PROTECTION

Precaution to be taken before a Cheque for Payment and Statutory Protection – Collecting Banker Duties and Stationary Protection

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- 8.0. Introduction
- 8.1. Learning Objectives
- 8.2. Precautions to honor Cheque
 - 8.2.1. Precaution regarding “Form of the Cheque”
 - 8.2.2. Precaution regarding “Branch”
 - 8.2.3. Precautions regarding “Account”
 - 8.2.4. Precaution regarding ‘Date’
 - 8.2.5. Precaution regarding ‘Amount
 - 8.2.6. Precaution regarding “Funds of the Customer
 - 8.2.7. Precaution regarding “Drawer’s Signature”
 - 8.2.8. Precaution regarding “Material Alteration”
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 - 8.2.14. Minor Precautions
- 8.3. Statutory protection for collecting Bankers
 - 8.3.1. Good Faith and Without Negligence
 - 8.3.2. Collection for a Customer
 - 8.3.3. Agent for Collection
 - 8.3.4. Collection of Bills of Exchange
- 8.4. Check your progress
- 8.5. Answers to Check Your Progress Questions
- 8.6. Summary
- 8.7 Key Word
- 8.8. Self Assessment Questions
- 8.9. Suggested Readings

8.0.Introduction

The relation between a banker and his customer is that of a debtor and creditor. Money deposited with a banker is always belongs to the customer and the bank obliged to return its equivalent to the customer or to any person to his order on demand. This obligation has been imposed on the bank by sec. 31 of the Negotiable Instruments (NI) Act. 1881. Wherein it is stated that “The drawee of a cheque having sufficient funds of drawer in his hands, properly applicable to the payment of such, must pay the cheque when duly required to do so, and in default of such

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payment, must compensate the drawer for any loss or damage caused by such default”.

8.1. Learning Objectives

At the end of the chapter, the reader would be able to

- Understand the need for precaution to be taken before a cheque for payment know the statutory protection.
- Learn the duties of collecting bankers.
- Understand the meaning of obligations of a banker.
- Discuss the statutory protection for collecting bankers.

8.2. Precautions to honor Cheque

Analysis of sec.31 of the N.I.Act.1881 reveals that a banker should be very cautious both at the time of honoring as well as dishonoring his customer’s cheque. Thus, in order to safeguard it’s as well as the customer’s interests, the paying banker has to observe the following precautions before honoring a cheque:

8.2.1. Precaution regarding “Form of the Cheque”

The cheque should be in proper form. According to banking practice the cheque must be drawn in the printed forms supplied by the banks and the bank reserve the right of dishonoring a cheque in case it is not in the prescribed form. Beside this, the cheque should not contain any condition, as a cheque is an unconditional order to pay on a specified banker.

8.2.2. Precaution regarding “Branch”.

The paying banker should see whether the cheque is drawn on the branch where the account is maintained. If it is drawn on another branch, without any prior arrangement, the banker can safely return the cheque.

8.2.3. Precautions regarding “Account”

When in the same branch, a customer might have opened two or more accounts. For each account, a separate checkbook would have been issued. Hence, the paying banker should see that the cheque of one account is not used for withdrawing money from another account.

8.2.4. Precaution regarding ‘Date’

Before honoring a cheque, the paying banker must see whether there is a date on the instrument. If it is undated it cannot be regarded as a valid instrument. If a cheque is ‘ante dated’, it may be paid if it has not become stale by that time. A cheque becomes stale after six months of its issue and requires drawer’s revalidation/confirmation. The paying banker should also not honor a cheque containing future date. A future dated cheque is known as post-dated cheque and it should not be honored before its ostensible date.

8.2.5. Precaution regarding ‘Amount

The banker should see whether the amount stated in the cheque, both in words and figures, agree with each other. If the amount is stated only in figures the banker should not honor it. However, if the amount is stated only in words, the banker may honor it. If there is any difference between the amount in figures and words, the banker can return the

cheque, since, the amount is not certain. On the other hand, sec. 18 of the N.I. Act, 1881 permits the banker to honor the cheque to the extent of the amount stated in words. However, in practice, if the difference is insignificant, payment of the smaller amount sometimes made. But, usually the paying banker returns the cheque under such circumstance with a return memo containing the remarks “words and figures differ” since, there is an audit objection to the practice of honoring such cheque.

8.2.6. Precaution regarding “Funds of the Customer”

There should be sufficient balance/funds in the account of the customer to meet the cheque. Cheque has to be paid in full and not in part and therefore, if the funds are not sufficient to honor the cheque in full, the paying banker is justified in returning it. The paying banker, however, honor the cheque if he has an over draft (O/D) arrangement with the customer to that extent or more than the amount of deficit.

The cheque should be paid in chronological order of their receipt by the bank. The date of their issue or serial number is not significant in this respect. Therefore, in case of inadequacy of funds, the cheque will be paid in the order in which they are received by the bank to the extent of the funds permit and the rest will be dishonored. When several cheque are received at the same time (for example, cheque received by post) the usual practice is to honor the cheque of bigger amount unless it is for tax liability etc. where the cheque is honored first though it must be of a smaller amount. In case of two or more cheque of equal amount, the bank has the discretion to honor any of them to the extent the funds of the drawer permit.

8.2.7. Precaution regarding “Drawer’s Signature”

Before honoring any cheque, a paying banker is required to compare the drawer’s signature on the cheque with that of his specimen signature. If the banker fail to do so and pays a cheque containing forged signature of the drawer, then, the payment will not be a ‘payment in due course. When there is a joint account, both or all the signatures on the cheque should be genuine. If any one of the signatures is forged the bank should not make payment.

If the signature has been too, skillfully forged for the banker to find it out, even then the banker is liable. However, if the customer facilitates the forgery of his signature by his conduct, then the banker will be relieved from his liability.

8.2.8. Precaution regarding “Material Alteration”

A paying banker should be very cautious in finding out the alterations that may appear on a cheque. A banker will be held liable for paying any materially altered cheque. If there is any material alteration, the banker should return it with a memorandum “Alteration requires drawer’s confirmation”. A materially altered cheque can only be honored if the alteration is confirmed by the

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drawer by means of his full signature. However, in case a cheque is materially altered and the banker makes payment, he shall be discharged from liability only when he proves the following:

(i) The alteration could not be detected with reasonable care, prudence & scrutiny, and

(ii) The payment had been made in due course.

8.2.9. Precaution regarding “Crossing”

Before honoring any cheque the paying banker must find out whether the cheque is open or crossed. If it is an open one, the payment may be made at the counter. If the cheque is a crossed one, the payment should be through a collecting banker. If it is specially crossed, the payment must be specifically made to that banker in whose favor it has been crossed. If there are ‘A/C payee’ and ‘Not Negotiable’ crossing, the paying banker need not worry, as they are directions to the holder and to the collecting banker.

8.2.10. Precaution regarding “Endorsement”

Before honoring a cheque, the banker must verify the regularity of endorsement, if any, that appears on the instrument. An order cheque requires endorsement for delivery as well as payment. If there is ‘per pro endorsement’, the banker must find out the existence of authority. Failure to do so constitutes negligence on the part of the paying banker.

8.2.11. Precaution regarding “Mutilated Cheques”

A cheque is said to be mutilated when it is torn into two or more pieces. Such a cheque should not be paid unless the banker is satisfied that mutilation was unintentional and it also requires confirmations of the drawer.

8.2.12. Precaution regarding “Legal Bar”

The existence of legal bar like garnishee order limits the duty of the banker to pay a cheque. So, the paying banker should be cautious while paying cheque against any account on which any legal bar is imposed.

8.2.13. Precaution regarding “banking hours”

The paying banker should make payment of only such cheques which have been presented (to it for payment) during the banking hours on a business/working day. Payment outside the banking hours does not amount to payment in due course. However, a banker is justified in extending the time during peak days, for those, who are still waiting for encashing a cheque.

8.2.14. Minor Precautions

Paying banker should look into the following minor details also, before honoring a cheque:

- a) He must see whether there is any order of the customer not to pay a cheque.
- b) He must see whether there is any evidence of misappropriation of money. If so, the cheque should be returned.

- c) He must see whether he has got any information about the death or bankruptcy or insanity of his customer. Failure to note those instructions will land him on trouble.

8.3. Statutory protection for collecting Bankers

Section 131 of the Negotiable Instruments Act provides protection to a collecting banker who receives payment of a crossed cheque or draft on behalf of his customers. According to Section 131 of the Act “a banker who has, in good faith and without negligence, received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.”

The protection provided by Section 131 is not absolute but qualified. A collecting banker can claim protection against conversion if the following conditions are fulfilled.

8.3.1. Good Faith and Without Negligence

Statutory protection is available to a collecting banker when he receives payment in good faith and without negligence. The phrase in “good faith” means honestly and without notice or interest of deceit or fraud and does necessarily require carefulness. Negligence means failure to exercise reasonable care. It is not for the customer or the true owner to prove negligence on the part of the banker. The burden of proving that he collected in good faith and without negligence is on the banker. The banker should have exercised reasonable care and diligence. What constitutes negligence depends upon facts of each case.

Following are a few examples which constitute negligence:

- Failure to obtain reference for a new customer at the time of opening the account.
- Collection of cheques payable to ‘trust accounts’ for crediting to personal accounts of a trustee.
- Collecting for the private accounts of partners, cheques payable to the partnership firms.
- Omission to verify the correctness of endorsements on cheques payable to order.
- Failure to pay attention to the crossing particularly the “not negotiable crossing.”

8.3.2. Collection for a Customer

Statutory protection is available to a collecting banker if he collects on behalf of his customer only. If he collects for a stranger or noncustomer, he does not get such protection. As Jones aptly puts if “duly crossed cheques are only protected in their collection, if handled for the customer”. A bank cannot get protection when he collects a cheque as holder for value. In *Great Western Railway vs London and Country Bank* it was held that “the bank is entitled for protection as it received collection for an employee of the customer and not for the customer.”

8.3.3. Acts as an Agent

A collecting banker must act as an agent of the customer in order to get protection. He must receive the payment as an agent of the customer and not as a holder under independent title. The banker as a holder for value is not competent to claim protection from liability in conversion. In case of forgery, the holder for value is liable to the true owner of the cheque.

Crossed Cheques: Statutory protection is available only in case of crossed cheques. It is not available in case uncrossed or open cheques because there is no need to collect them through a banker. Cheques, therefore, must be crossed prior to their presentment to the collecting banker for clearance. In other words, the crossing must have been made before it reached the hands of the banker for collection. If the cheque is crossed after it is received by the banker, protection is not available. Even drafts are covered by this protection.

To conclude, it is necessary that the collecting banker should have acted without negligence if he wants to claim statutory protection under Section 131 of the said Act. The statutory protection is available to the banker if he collects a cheque marked “Not Negotiable” for a customer, whose name is not used as the payee there-in, provided the requirements of the said sections are duly complied with.

Duties and Responsibilities of a Collecting Banker

The duties and responsibilities of a collecting banker are discussed below:

1. Due care and diligence in the collection of cheque.
2. Serving notice of dishonor.
3. Agent for collection.

4. Remittance of proceeds to the customer.
5. Collection of bill of exchange.

Due Care and Diligence in the Collection of Cheques:

The collecting banker is bound to show due care and diligence in the collection of cheques presented to him. In case a cheque is entrusted with the banker for collection, he is expected to show it to the drawee banker within a reasonable time. According to Section 84 of the Negotiable Instruments Act, 1881, "Whereas a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person in whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage, through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid."

In case a collecting banker does not present the cheque for collection through proper channel within a reasonable time, the customer may suffer loss. In case the collecting banker and the paying banker are in the same bank or where the collecting branch is also the drawee branch, in such a case the collecting banker should present the cheque by the next day. In case the cheque is drawn on a bank in another place, it should be presented on the day after receipt.

When the cheque is dishonored, the collecting banker is bound to give notice of the same to his customer within a reasonable time. It may be noted here, when a cheque is returned for confirmation of endorsement, notice must be sent to his customer. If he fails to give such a notice, the collecting banker will be liable to the customer for any loss that the customer may have suffered on account of such failure. Whereas a cheque is returned by the drawee banker for confirmation of endorsement, it is not called Dishonour. But in such a case, notice must be given to the customer. In the absence of such a notice, if the cheque is returned for the second time and the customer suffers a loss, the collecting banker will be liable for the loss.

In case a collecting banker has realized the cheque, he should pay the proceeds to the customer as per his (customer's) direction. Generally, the amount is credited to the account of the customer on the customer's request in writing, the proceeds may be remitted to him by a demand draft. In such circumstances, if the customer gives instructions to his banker, the draft may be

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forwarded. By doing so, the relationship between principal and agent comes to an end and the new relationship between debtor and creditor will begin.

8.3.4. Collection of Bills of Exchange

There is no legal obligation for a banker to collect the bills of exchange for its customer. But, generally, bank gives such facility to its customers. In collection of bills, a banker should examine the title of the depositor as the statutory protection under Section 131 of the Negotiable Instruments Act, 1881.

Thus, In case a new customer comes, the banker should extend this facility to him with a trusted reference.

8.4. Check your progress

1. What is Dishonour of a Cheque?
2. What happens when Cheque is Dishonored?
3. What does statutory mean in law?
4. What is statutory and non-statutory?
5. What are the duties of collecting bankers?
6. Who is the paying banker?

8.5. Answers to Check Your Progress Questions

- Dishonour of cheque is a condition in which bank refuses to pay the amount of cheque to the payee. Whenever the cheque is dishonoured, the drawee bank instantly issues a 'Cheque Return Memo' to the payee banker specifying the reasons for dishonour.
- According to Section 138 of the Act, the dishonour of cheque is a criminal offence and is punishable by imprisonment up to two years or with monetary penalty or with both. The payee has to send the notice to the drawer with 30 days from the date of receiving "Cheque Return Memo" from the bank.
- Statutory Law is the term used to define written laws, usually enacted by a legislative body. Statutory laws vary from regulatory or administrative laws that are passed by executive agencies, and common law, or the law created by prior court decisions.
- Statutory body- anybody that derives its power from a 'Law' or 'Statute' made by Parliament is called as statutory body or statutory authority. Non statutory body- These are bodies which are formed by executive resolution or action, which means that they are formed by government's action only.

- A collecting banker is one who undertakes to collect the amount of a cheque for his customer from the paying banker. Exercise reasonable care and diligence in his collection work: As an agent, he should exercise reasonable care, diligence and skill in collection work.
- The banker upon whom a cheque is drawn, or at whose office a bill is accepted, and who pays it, either to the holder or to a collecting banker, is called the paying banker.

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8.6.Summary

- Cheques should only be issued on funds that are available;
- The paying banker should also not honor a cheque containing future date. A future dated cheque is known as post-dated cheque and it should not be honored before its ostensible date.
- The paying banker, however, honor the cheque if he has an O/D arrangement with the customer to that extent or more than the amount of deficit.
- The collecting banker must examine very carefully the title of his customer towards the bill. In case a new customer comes, the banker should extend this facility to him with a trusted reference.
- The collecting banker must examine very carefully the title of his customer towards the bill the collecting banker must examine very carefully the title of his customer towards the bill he collecting banker must examine very carefully the title of his customer towards the bill
- The collecting banker must examine very carefully the title of his customer towards the bill.
- While a crossed cheque is not payable over the counter but shall be collected only through a banker.

8.7.Key Words

Collecting banker: : It is also called receiving banker, who collects on instruments like a cheque, draft or bill of exchange, lodged with himself for the credit of his customer's account.

8.8.Self-Assessment Questions and Exercises

Short Answer Question

1. What are the important things to remember while filling out?
2. What are the duties of collecting bankers?
3. What is a collecting banker?

Long answer Questions:

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1. Briefly examine the precautions to be taken before a cheque for payment.
2. What are the duties and responsibilities of Collecting Banker?
3. Examine the Statutory Protection for Cheque clearance.

8.9. Suggested Readings

- Mohan, R. 2009. Global Financial Crisis: Causes, Impact and Policy Lessons. RBI Bulletin May: 879–904. Mohanty, D. 2009. Global Financial Crisis and Monetary Policy Response in India. Speech delivered at the 3rd
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UNIT IX TYPES OF CUSTOMERS AND ACCOUNT HOLDERS - PROCEDURE AND PRACTICE IN OPENING AND CONDUCTING THE ACCOUNTS OF THE CUSTOMERS

Types of Customers and Account Holders
- Procedure and Practice in Opening and
Conducting the accounts of the
Customers

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- 9.0. Introduction
- 9.1. Learning objectives
- 9.2. Bank Customer: Meaning
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 - 9.3.3. Various types of NRI Account
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 - 9.3.6. Joint stock companies (Limited Liability Companies)
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 - 9.4.1. Who can open?
 - 9.4.2. Following documents need to be furnished
 - 9.4.3. Operation of account
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- 9.5. Steps in opening the accounts for Joint Account holder
 - 9.5.1. Types of Joint Accounts in India
 - 9.5.2. Either (or) Survivor
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 - 9.5.4. Former (or) Survivor
 - 9.5.5. Latter (or) Survivor
 - 9.5.6. Jointly
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- 9.6. Procedure for Partnership Firm Bank Account Opening
- 9.7. Procedure for Joint Stock Company Account Opening
 - 9.7.1. Checking Of Documents
 - 9.7.2. Checking Of Resolution
 - 9.7.3. Directors Accounts in the same Bank
 - 9.7.4. Checking of Limit
 - 9.7.5. Winding up Case
 - 9.7.6. Charges With In Prescribed Limit
- 9.8. Answers to Check Your Progress Questions
- 9.9. Common types of bank accounts
- 9.10. Documents Required to Open a Bank of Baroda Savings Account
- 9.11. Summary
- 9.12. Key Words

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9.0. Introduction

The term customer of a bank is not defined by law. Ordinarily, a person who has an account in a bank is considered as its customer. Banks open accounts for different types of customers like an individual, partnership firm, Trusts, companies, etc. While opening the accounts the banker has to keep in mind the various legal aspects involved in opening and conducting those accounts and also practices followed in conducting those accounts. Normally, the banks have to deal with following types of customers.

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9.1. Learning objectives

After going through this unit, you will be able to

- Identify the different types of customers and account holders in banking sectors.
- Know the procedure and practices in opening the accounts of the customer in terms of Minors, Joint account holders, partnership and Joint Stock Companies

9.2. Bank Customer: Meaning

There is no statutory definition of a customer, but banks appear to rely upon to recognize a customer:

- For a person a person to be known as a customer of the bank there must be either a current account or any sort of deposit account like saving, term deposit, recurring deposit, a loan account or some similar relation.
- The relationship of banker and customer begins as soon as money or cheque is paid in and the bank accepts it and is prepared to open account.
- The word customer signifies a relationship in which duration is not of essence. A person whose money has been accepted by the banker on the footing that he undertakes to honour cheques unto the amount standing to his credit is a customer of the bank irrespective of whether his connection is short or long duration.
- To be a customer of a bank it is must that a person must have an account with the bank whether in debit or credit is immaterial for this purpose.
- Mind it merely because a person visits the office of a bank for some transactions; say for purchasing of a draft or encashing of cheque etc. he does not become a customer.

9.3. Different Kinds of Customers

1. Individuals
2. Joint Hindu Families
3. Partnership Firms
4. Limited Liability Companies

5. Clubs and Associations
6. Trusts

9.3.1. Individuals

The depositor should be properly introduced to the bank and KYC norms are to be observed. Introduction is necessary in terms of banking practice and also for the purpose of protection under section 131 of the Negotiable Instruments Act. Usually, banks accept introductions from the existing customers, employee of the bank, a locally well-known person or another bank.

A joint account may be opened by two or more persons and the account opening form etc., should be signed by all the joint account holders. When a joint account is opened in the name of two persons, the account operations may be done by

- a. Either or survivor
- b. Both jointly
- c. Both jointly or by the survivor
- d. Former or survivor

When the Joint account is in the names of more than two persons, then the following operations are made:

- a. all of them jointly or by survivors
- b. any one of them or by more than one of them jointly.

9.3.2. Non-resident individuals (NRIs)

Non-Resident Indian means, a person, being a citizen of India or a person of Indian origin residing outside India. A person is considered Indian Origin when he or his parents or any of his grandparents were Indian National. If at any time held an Indian passport, (nationals of Bangladesh and Pakistan are not deemed to be of Indian origin), a spouse (who is not a Bangladesh or Pakistan national), of a person of Indian origin shall also be deemed to be of Indian origin. Non-resident falls generally into the following two categories:

A person who stays abroad for the purpose of employment or to carry on business activities or vocation or for any other purpose for an indefinite period of stay outside India and working abroad for a specific period.

9.3.3. Various types of NRI Account

- Ordinary Non-resident Rupee Accounts (NRO Accounts);
- Non-Resident (External) Rupee Accounts (NRE Accounts);
- Non-resident (Non-Repayable) Rupee Deposits (NRNR Accounts); and
- Foreign Currency (Non-Resident) Accounts (Banks) Scheme (FCNR (B) Accounts).

9.3.4. Joint Hindu Family (JHF)

Joint Hindu Family (JHF) (also known as Hindu Undivided family) is a legal entity and is unique for Hindus. It has perpetual succession like companies; but it does not require any registration.

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The head of JHF is the Karta and members of the family are called co-parceners. The JHF business is managed by Karta.

9.3.5. Partnership firms

A is not a legal entity independent of partners. It is an association of persons. Registration of a partnership is not compulsory under Partnership Act. However, many banks insist on registration of a partnership. In any case, ie stamped partnership deed or Partnership letter should be taken when an account is opened for a partnership. The partnership deed will contain names of the partners, objective of the partnership, and other operational details, which should be taken note of by the bank in its dealings.

9.3.6. Joint stock companies (Limited Liability Companies)

A company is registered under companies Act has a legal status independent of that of the share-holders. A company is an artificial person which has perpetual existence with limited liability and common seal. Memorandum and Articles of Association, Certificate of Incorporation, Resolution passed by the Board to open account, name and designations of persons who will operate the account with details of restriction placed on them are the essentials documents required to open an account.

9.3.7. Clubs, Societies and Associations

The clubs, societies, association etc., may be unregistered or registered. Account may be opened only if persons of high standing and reliability are in the managing committee or governing body. Copy of certificate of registration and Copy of bye-law, certified to be the latest, by the Secretary/President are required to be obtained and also a certified copy of the resolution of the Managing Committee/Governing body to open the bank account and giving details of office bearers etc., to operate the account.

9.3.8. Trust Account

Trusts are created by the settler by executing a Trust Deed. A trust account can be opened only after obtaining and scrutinizing the trust deed. The Trust account has to be operated by all the trustees jointly unless provided otherwise in the trust deed. A trustee cannot delegate the powers to other Trustees except as provided for in the Trust Deed. A cheque favoring the Trust shall not be credited to the personal account of the Trustee.

9.4. Procedure and practice in opening the accounts for Minors

Children's bank accounts help parents create a corpus for their children and teach them basics of money management. Such accounts are called "Minor" accounts. A minor is a person who has not attained 18 years of age.

9.4.1 Who can open?

- A natural guardian on behalf of the minor.
- A natural guardian, jointly with the minor.

- A legal guardian in the name of the minor.
- A minor of age 10 and above in his/her name to be operated by the minor.
- The usual account opening form can be filled up to open a minor account. Details like the minor's name, address, guardian details and signature must be furnished.

9.4.2. Following documents need to be furnished

- Proof of minor's date of birth
- KYC documents of the guardian.
- Aadhaar card of the minor.
- Specimen signature of guardian.
- Minor's specimen signature in case he/she is 10 years old.

9.4.3. Operation of account

For accounts of minors below 10 years of age, the guardian must operate the account. However, minors over 10 years of age can operate the account on their own.

9.4.4. Upon turning 18 years

Once the minor turns 18, the account has to be designated as a regular savings account. Thereafter, the guardian cannot operate the account on the account holder's behalf. An application form along with KYC of minor turned major needs to be furnished

9.5. Steps in opening the accounts for Joint Account holders

- ✓ A bank account can be operated by a single account holder (or) multiple account holders. You can choose the joint account option while opening an account or whenever you require.
- ✓ We may think that this is a simple option which is available on Account opening application form. Actually it is a very useful and an important option.
- ✓ You need to be sure as to why you want to open a joint account? Who can be your joint account holder(s)? Trust and relationship equation weigh a lot while choosing the joint-account options.

9.5.1. Types of Joint Accounts in India

You need to be aware of different types of joint accounts offered by banks, based on the mode of operation and accessibility.

9.5.2. Either (or) Survivor

This is the most common form of joint account. Only two individuals can operate the account i.e., primary account holder and secondary account holder. Both can access the account and transfer the funds.

The final balance and interest (if any) will be paid to the survivor on death of anyone of the account holders. The survivor can opt to continue the account.

If the nominee is a different person then the balance money is paid to him/her after the death of the survivor.

Example: Mother and daughter can open a joint-account. On death of anyone of them, the surviving person can continue the account or get the account balance transferred to her name.

9.5.3. Anyone (or) Survivor

This is similar to “either or survivor” option. The only difference is, more than two individuals can operate the account.

9.5.4. Former (or) Survivor

In this type of joint account, only the first account holder (primary) can access and operate the account till the time he/she is alive. The second account holder (second applicant) can operate the account only on death of the primary holder (first applicant). The survivor can also get the balance transferred to his/her name (if required).

9.5.5. Latter (Or) Survivor

This is similar to “former/survivor” option. The main difference is, only the second account holder can access and operate the account till the time he/she is alive. The primary/first account holder can operate the account only on death of the secondary account holder.

9.5.6. Jointly

In this type of account, all the transactions need to be signed and mandated by all the account holders. If any of the account holder dies then the account cannot be further operated. The balance proceeds shall be payable to survivor.

9.5.7. Jointly or Survivor

This is similar to “jointly” option. The only difference being, the survivor can continue to operate the account. Alternatively, the proceeds of the account can be transferred to his/her name. Along with the above options there is another type which is “**Minor Account.**” If the primary account holder is less than 18 years of age then there should be an adult guardian, as a joint account holder.

The various types of joint accounts provide lot of advantages like ease of operating the account, convenience, rights of survivorship etc.

9.6. Procedure for Partnership Firm Bank Account Opening

A partnership is easy to form since no complex business formalities are required to be fulfilled. Partnership registration is not compulsory and in at the discretion of the partners whether they want to register the /s/documents-required-partnership-registration-

indipartnership firm or not. But a partnership firm cannot avail legal benefits if it is not registered, hence it is always advisable to register it. Documents required for partnership formation (whether registered or not) are:-

- Partnership Deed
- Documents of Firm
- Documents of Partners
- Additional Documents in case of Registration
- GST Registration
- Current Bank Account

9.7. Procedure for Joint Stock Company Account Opening

It is an association of individuals for the purpose of profit. The members contribute capital. This common capital is divided in to shares. Each member is a shareholder. These shares are transferable. While opening such account the banker should be very careful and he should adopt the following precautions

9.7.1. Checking Of Documents

A banker must check the following documents of the certificates of incorporation. It is issued by

1. The registrar of Joint Stock Company.
2. Certificate of business commencement.
3. Memorandum of Association.
4. Articles of Association.

9.7.2. Checking Of Resolution

Resolution of the company must be checked. It must be signed by the chairman and secretary of the company. It must contain the following documents:

- The name of authorized persons who will operate the account of the company.
- The name of persons who will execute the documents on behalf of the company.

All types of conditions related to powers about borrowing lending, mortgaging delegated by the company must be checked carefully by the banker.

9.7.3. Directors Accounts in the same Bank

Accounts of company and personal accounts of the directors should be in the same bank. A bankers should keep an eye that there should be no wrongful conversion of funds between the two.

9.7.4. Checking of Limit

A banker must check that a company may not use the power of borrowing than the fixed limit.

9.7.5. Winding Up Case

If company is wound up and liquidator is appointed the banker will stop the payments till the instructions of the liquidator.

9.7.6. Charges With In Prescribed Limit

The banker of a company will also check that company has got the charges of mortgages within the prescribed limit or not.

While opening the partnership account following precautions must be taken by the banker

1. The account must be opened in the name of firm. Partnership deed and changes made in it time to time must be studied carefully by the banker.
2. It is necessary that all the partners should sign on all the documents.
All the instructions about the operation of the account must be signed by all the partners.
3. The specimen signatures on cards must be taken from the partners and authorized person who will operate the accounts.
4. In case of advancing loan and execution of guarantee deed the banker will obtain the signatures of all the partners.
5. A banker must observe the various provisions of Partnership Act in case of death, entry or withdrawal of any partner.
6. A declaration and consent must be taken by the banker from all the partners in regard to the drawing and disbursement.

9.8. Check your progress

Questions

1. What are the 5 types of customers?
2. What is customer?
3. What is the account holder?
4. What are the 4 types of bank accounts?
5. What is the procedure of opening bank account?
6. What are the documents required for opening bank account?
7. Can bank account be opened online?

Answers to Check Your Progress Questions

1. Five type of customer
2. Potential customer – The Potential Paul
3. New customer – New Neil.
4. Impulsive Customer – Impulsive Iggy
5. Discount customer – Discount Dan
6. Loyal customer

Customer is the one who uses the products and services and judges the quality of those products and services. Hence it's important for an organization to retain customers or make new customers and flourish business.

Notes

The person whose name is on a bank account. Enter the name of the account holder (as shown in your cheque book). Accounts are labelled 'dormant' by banks when they can no longer find the account holder.

9.9. Common types of bank accounts

- Bank accounts at a glance. Account type
- Checking accounts
- Savings accounts
- Money market accounts
- Certificates of deposit (CDs)
- Individual retirement arrangements (IRAs)
- Brokerage accounts
- Bottom line.

Most often, you'll need to provide paperwork and personal information in order **to open a bank account**. First off, you need to bring at least one form of photo ID. Some banks may require two forms of identification. These forms can be a state ID, Social Security card, passport or birth certificate

9.10. Documents Required to Open a Bank of Baroda Savings Account

- ✓ Proof of identity - Passport, Driving license, Voter's ID card, etc.
- ✓ PAN card.
- ✓ Form 16 (only if PAN card is not available)
- ✓ 2 latest passport size photographs

In some cases, you can't do everything, you need online and visit a branch or provide additional documentation to open an account. Some common reasons include: "Thin" credit: Banks verify your identity as you open your account Under 18: People under the age of 18 cannot open bank accounts on their own.

9.11. Summary

- ✓ A person who has an account in a bank is considered as its customer.
- ✓ The relationship of banker and customer begins as soon as money or cheque is paid in and the bank accepts it and is prepared to open account.
- ✓ A person visits the office of a bank for some transactions; say for purchasing of a draft or encasing of cheque etc. he does not become a customer.
- ✓ A joint account may be opened by two or more persons and the account opening form etc., should be signed by all the joint account holders

- ✓ The clubs, societies, association etc., may be unregistered or registered. Account may be opened only if persons of high standing and reliability are in the managing committee or governing body.
- ✓ Partnership registration is not compulsory and in at the discretion of the partners whether they want to register the /s/documents-required-partnership-registration-indiapartnership firm or not.
- ✓ The various types of joint accounts provide lot of advantages like ease of operating the account, convenience, rights of survivorship etc.

9.12.Key Words

Zero balance: It means that you needn't maintain a minimum balance in this account.

9.13. Self-Assessment Questions and Exercises

Short answer Questions

1. What are the documents required for a company to open a bank account?
2. What are the basic steps to open a bank account?
3. How to open an account on on-line?
4. How to open a bank account for a minor?
5. What are procedure to open an account for Partnership firm?

Long Answer questions

1. Briefly explain on the procedure for opening an account
2. Examine the different types of Joint Stock Company
3. Describe the various customers and account holders
4. How bank deals with the partnership firm, joint account company?

9.14.Suggested Reading

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UNIT X EXECUTORS AND TRUSTEES, CLUBS, ASSOCIATION, HINDU FAMILY AND NRI ACCOUNTS

Executors and Trustees, Clubs,
Association, Hindu Family and NRI
Accounts

NOTES

- 10.0. Introduction
- 10.1. Learning objectives
- 10.2. What do executors do?
- 10.3. What do trustees do?
- 10.4. Clubs and Associations
 - 10.4.1. Structure
 - 10.4.2. When it is used
 - 10.4.3. Legal Liability
 - 10.4.4. The Risks
- 10.5. Meaning of Joint Hindu Family Business
 - Characteristics of a Joint Hindu Family Business: Management, Membership by Birth, Liability, Permanent Existence, Implied Authority of Karta, Minor also a Partner, Dissolution.
- 10.6. Advantages of Joint Hindu Family Business
 - Efficient Management, Secrecy, Prompt Decision, Economy, Credit, Facilities, Natural Love between Members, Freedom regarding Selection of Business,
- 10.7. Disadvantages of Joint Hindu Family Business
- 10.8. Non-Resident Account, Meaning, Types of NRI Accounts
 - Comprehensive features of each type of account, NRO Savings Account/Fixed Deposit Account FCNR Account
- 10.9. Check Your Progress
- 10.10. Summary
- 10.11. Key Words
- 10.12. Self-Assessment Questions and Exercises
- 10.13. Suggested Readings

10.0.Introduction

The executor (sometimes referred to as executrix for females) is responsible for managing the affairs of and settling the estate, including initiating court procedures and filing the deceased's final tax returns. The trustee acts as the legal owner of trust assets, and is responsible for handling any of the assets held in trust, tax filings for the trust, and distributing the assets according to the terms of the trust. Both roles involve duties that are legally required. If you don't feel you can carry them out effectively, you may be able to hire a professional to help carry out the duties or step down and allow someone else to assume the tasks.

10.1. Learning objectives

After reading this article you will learn about:- 1. Meaning of Joint Hindu Family Business 2. Characteristics of a Joint Hindu Family Business 3. Advantages 4. Disadvantages.

Self Instructional Study Material

10.2. What do executors do?

The executors are the people responsible for carrying out your wishes as you have set them out in your will. At the same time, they are also responsible for ensuring that your estate is dealt with according to the law. So they have a duty to you, to your heirs, and to the law.

An executor is responsible for a number of tasks in relation to your estate, including:

- Valuing your estate;
- Collecting together all of your assets;
- Assessing all your debts and liabilities;
- Applying for a grant of probate;
- Making an inheritance tax return and paying any inheritance tax due;
- Ensuring all your debts are paid and other liabilities are met;
- Ensuring that funeral expenses are paid out of your estate; and
- Distributing the remainder of your estate in accordance with your will.

For specific gifts of assets or possessions, distributing the estate means transferring the asset or money to the beneficiaries. For the residuary estate, it means transferring it to the trustees.

The role of an executor comes to an end once the assets of your estate have been distributed (either outright to beneficiaries or to the trustees if there are any ongoing will trusts).

More often than not, the executors and the trustees are the same people but their role changes from executor to trustee.

10.3. What do trustees do?

In contrast, the role of a trustee of a will trust starts after the administration period of your estate. If assets in the estate are to be held on ongoing will trusts, the executors pass those assets to the trustees of the will trust who then become the legal owners of the assets and manage them in accordance with the terms of the will trust.

This explains why a will that contains a trust makes reference to the ‘executors’ and then, later in the will, to the ‘trustees’. If the will creates a trust of the whole estate, or the residuary estate, then the residuary estate is usually referred to as the ‘trust fund’ in the will.

Trustees have a number of duties and powers. Some of those are described by the trust document – which is often the will itself. The trustees must act in accordance with the terms of the trust, and the law. The trust may include powers relating to:

- Investment;
- Distribution of trust assets;
- Management of property;

- Use of capital;
- The exercise of discretion in relation to a discretionary trust; and so on. Many of these are not stated directly in the will, but are often contained in a document called the STEP Provisions. The will often contains a section which states that the STEP Provisions are to be treated as part of your will, and this is what gives the trustees many of their powers.

Additionally, trustees must:

- Act in the interests of the beneficiaries;
- Act promptly and with reasonable care; and
- Not personally make a profit from the will trust.

Professional trustees can be appointed, and the STEP Provisions allow professionals to charge for their services. Many people choose the executors also to be their trustees and many wills make this a standard provision. This is worth remembering when considering whether to appoint professional persons as executors, because you may also be choosing trustees, for which there may be additional charges if the trusts are ongoing.

10.4. Clubs and Associations

There are many situations where a group of individuals come together to further a common aim or interest such as a sporting or other social activity, educational or community improvement. Most of these organizations do not have a written Constitution or Rules, or if they do, they are very brief. They have not been formed as a trust, limited company, partnership or other legally recognized entity. These groups are known in legal terms as an unincorporated association. However, without proper protection the officers and members have personal responsibility for any debts incurred and claims which may be brought against the association. So, officers of tennis clubs, fishing associations, theatre groups, sports clubs and numerous other organizations need to be careful.

10.4.1. Structure

An unincorporated association is not a legal entity in its own right. It has no legal personality distinct from that of its members. There is usually a Constitution and Rules and the members appoint a committee to represent them. If the association owns property, it will be necessary to appoint Trustees. This may also be the case if the association has a bank account and other assets.

10.4.2. When it is used?

An unincorporated association is often appropriate where the organization does not need a more formal corporate structure, where personal liability is of little concern and the organization has a wider membership. It is easy to set up and operate, and is flexible which makes it an attractive structure to many organizations.

10.4.3. Legal Liability

When dealing with third parties, members of an unincorporated association are treated as individuals and their membership gives them no protection against potential personal liability to third parties. This means that every member has full personal liability for any type of claim against the association, including if the association should become bankrupt. Exactly which of the members are liable to a third party can vary from situation to situation. It is normally the committee who will be pursued first of all by anyone making a claim. The committee can then bring into the claim all other members. The types of claim will include such matters as debts owed to creditors or compensation owed to injured third parties (to the extent of course that these are not covered by insurance or available funds of the organization)

10.4.4. The Risks

Unfortunately, with ever increasing legislation, members are at risk of claims for situations including health and safety, employment, discrimination, and child protection

10.5. Meaning of Joint Hindu Family Business

The Joint Hindu Family Business is a distinct form of organization peculiar to India. Joint Hindu Family Firm is created by the operation of law. It does not have any separate and distinct legal entity from that of its members.

The business of Joint Hindu Family is controlled under the Hindu Law instead of Partnership Act. The membership in this form of business organization can be acquired only by birth or by marriage to a male person who is already a member of Joint Hindu Family.

“When two or more families agree to live and work together, throw their resources and labor with joint stock and share profits and the losses together, then this family is known as composite family.”

The business of the Joint Hindu Family is controlled and managed by one person who is called ‘Karta’ or ‘Manager’. The Karta or manager works in consultation with other members of the family but ultimately he has a final say. The liability of Karta is unlimited while the liability of other members is limited to their shares in the business.

Characteristics of a Joint Hindu Family Business

1 .Governed by Hindu Law:

The business of the Joint Hindu Family is controlled and managed under the Hindu law.

Management

All the affairs of a Joint Hindu Family are controlled and managed by one person who is known as 'Karta' or 'Manager'. The Karta is the senior most male member of the family. He works in consultation with other members of the family but ultimately he has a final say.

The members of the family have full faith and confidence in Karta. Only Karta is entitled to deal with outsiders. But other members can deal with outsiders only with the permission of Karta.

Membership by Birth

The membership of the family can be acquired only by birth. As soon as a male child is born in family, he becomes a member. Membership requires no consent or agreement.

Liability

Except the Karta, the liability of all other members is limited to their shares in the business. The Karta is not only liable to the extent of his share in the business but his separate property is equally attachable and amount of debt can be recovered from his separate property.

Permanent Existence

The death, lunacy or insolvency of any member of the family does not affect the existence of the business of Joint Hindu Family. The family goes on doing its business.

Implied Authority of Karta

In a joint family firm, only Karta has the implied authority to contract debts and pledge the credit and property of the firm for the ordinary purpose of the businesses of the firm.

Minor also a Partner

In a partnership, minor cannot become co-partner though he may be admitted to the benefit of partnership. In a Joint Hindu Family firm minor is a partner.

Dissolution

The Joint Hindu Family Business can be dissolved only at the will of all the members of the family. Any single member has no right to get the business dissolved.

10.6. Advantages of Joint Hindu Family Business

Easy to Start

It is very easy to start the Joint Hindu Family Business. No legal formalities are required to be faced, such as registration. It requires no agreement.

Efficient Management

The management of Joint Hindu Family Business is centralized in the hands of Karta of family. In this business, Karta takes all decisions and gets them implemented with the help of other member. No other member interferes in his management.

Secrecy

In Joint Hindu Family Business, all the decisions are taken by the 'Karta' himself. He is in a position to keep all the affairs to himself and maintains perfect secrecy in all matters.

Prompt Decision

The Karta is the only person who exercises control and direction over the business. He may not consult anyone in taking decisions. This ensures prompt or quick decisions. Being the sole master, he takes prompt decisions and makes advantage of the opportunity.

Economy

For the success of any business, economy is a must. It is well-balanced and maintained in Joint Hindu Family Business. The Karta of family spends money with great caution and economy.

Credit Facilities

In Joint Hindu Family Business the credit facilities are more. One reason for this is that liability of the 'Karta' is unlimited. Karta is having personal relations with others, which are also helpful in raising credit.

Natural Love between Members

In Joint Hindu Family Business, it is the natural love and affection which the members are having for each other. It helps to run the business more efficiently and smoothly.

Freedom regarding Selection of Business

The Karta is at freedom to select any business of his choice. He has not to depend on others.

10.7. Disadvantages of Joint Hindu Family Business

1. Limited Membership
2. Limited Sources of Capital
3. Limited Managerial Skill
4. Unlimited Liability
5. Misuse of Power

10.8. Non-Resident Account

Meaning

NRI stands for non-resident Indian account and this account has the purpose of repatriate money that was earned by a person of Indian origin overseas back to India and another purpose of the NRI account is to keep the money earned in India inside India.

NRI accounts are for people who live in other countries or work or visit other countries for a season or also for people who are in India but who receive earnings from foreign countries. One person has the option of either opening a NRE account non-resident rupee account or a NRO account non-resident ordinary account.

Types of NRI Accounts

- Non-Resident Ordinary (NRO) Savings Account/ Fixed Deposit Account
- Non-Resident External (NRE) Savings Account/ Fixed Deposit Account
- Foreign Currency Non -Resident (FCNR) Fixed Deposit Account.

Comprehensive features of each type of account

- NRE Accounts are maintained in INR. This means that when you deposit the money in the NRE Account, the foreign currency is converted to Indian rupees at the prevailing foreign exchange rates.
- It is mainly used to house your savings from income that you have earned abroad.
- The principal amount, as well as the interest, are fully repatriable, i.e., transferable.
- The interest income earned on the amount in an NRE account is non-taxable in India.
- You can have other NRIs or Resident Indians as joint account holders on NRO Accounts

NRO Savings Account/Fixed Deposit Account

- NRO Accounts are maintained in INR. This means that when you deposit the money in the NRO Account, the foreign currency is converted to Indian rupees at the prevailing foreign exchange rates.

- It is used to house funds from your income that you have earned from India or abroad.
- Income like rent, dividend, pension, etc. can be sent abroad through the NRO Account.
- Interest income earned on the amount in an NRO Account is liable for TDS or Tax Deductible at Source.
- You can have other NRIs or resident Indians as joint account holders on NRO Accounts.

FCNR Account

- Foreign Currency Non -Resident Accounts have to be opened and maintained in foreign currency.
- Your principal amount and the interest in an FCNR Account are fully reparable, i.e., transferable
- Interest income earned on your money in an FCNR account is non-taxable in India.

10.9. Check your progress

1. What is the role of an executor and trustee?
2. What is the difference between successor trustee and executor?
3. What are the duties of a successor trustee?
4. What do you mean by joint family?
5. What is a partnership firm?
6. What is an NRI account?

Answers to Check Your Progress Questions

- An executor is a fiduciary, meaning that he has the highest duty of care in administering the estate for the benefit of the beneficiaries of the estate. A trustee is also a fiduciary, meaning that a trustee has the highest duty of care to administer the assets of the trust for the benefit of the trust's beneficiaries.
- A Trustee is the person in charge of the assets held in a trust, and is normally named as trustee in the trust. If the trust is created in the deceased person's Will, it is a testamentary trust and it will be subject to the supervision of the Probate Court.
- A successor trustee does not have any duties until the trustee can no longer perform his duties. A trustee is a person responsible for managing the affairs of a trust and distributing assets.
 - A **jointfamily** (also undivided **family**, **joint** household, extended **family** system) is a large undivided **family** where more than one generation live

together in a common house. A **joint family** is a form of **family** where the grand-parents, father, mother, and children live unitedly under one roof.

- A **partnership firm** is an organization which is formed with two or more persons to run a business with a view to earn profit. Each member of such a group is known as **partner** and collectively known as **partnership firm**. These **firms** are governed by the Indian **Partnership Act, 1932**.
- As an **NRI** you can open **accounts** in INR and/or in a foreign currency. These can be in the form of savings **accounts**. **Non-Resident External (NRE) Account:** A savings **account** to maintain income earned outside India. ... Principal amount and interest earned are fully repatriable from India.

10.10. Summary

There is a lot of pressure on the banks in the present scenario, one cannot do away with the efficiency with which banks have been delivering their services to the people.

The membership of the family can be acquired only by birth. As soon as a male child is born in family, he becomes a member. Membership requires no consent or agreement.

The interest income earned on the amount in an NRE account is non-taxable in India

Foreign Currency Non -Resident Accounts have to be opened and maintained in foreign currency

Principal amount and the interest in an FCNR Account are fully repatriable, i.e., transferable

10.11. Key Words

Hindu Undivided Family: A joint Hindu family or Hindu Undivided Family can also consist of a single male member and widows of deceased male members

Foreign Exchange Management Act (FEMA) :The Foreign Exchange Management Act, 1999 (FEMA) is an Act of the Parliament of India "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India".

10.12. Self-Assessment Questions and Exercises

Short Question Answers

1. What is the role of an executor and trustee?
2. What are the trustees' responsibilities?
3. What are the rights of trustee
4. What is meant by joint Hindu family?
5. What is an NRI account?
6. Why NRI account is required?

Long Question Answers

1. What is the difference between an Executor and a Trustee?
2. What is the difference between NRE and NRI account?
3. What are the benefits of NRI account?

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UNIT XI DIFFERENT TYPES OF ACCOUNTS IN A BANK SAVINGS ACCOUNT, CURRENT AND FIXED DEPOSIT ACCOUNTS

Different types of Accounts in a Bank
Savings account, Current and fixed
Deposit accounts

Notes

11.0. Introduction

11.1. Learning Objectives

11.2. Various type of accounts

11.2.1. Savings Account

11.2.2. Regular Savings Bank Account

11.2.3. Current Account

11.2.4. Recurring Deposit Account

11.2.5. Fixed Deposit Account

11.2.6. DEMAT Account

11.2.7. NRI Account

11.3. Check your progress

11.4. Answers to Check Your Progress Questions

11.5. Summary

11.6. Key words

11.7. Self-Assessment Questions and Exercises

11.8. Suggested Readings

11.0. Introduction

A bank account is a financial account maintained by a bank for a customer. A bank account can be a deposit account, a credit card account, a current account, or any other type of account offered by a financial institution, and represents the funds that a customer has entrusted to the financial institution and from which the customer can make withdrawals. Alternatively, accounts may be loan accounts in which case the customer owes money to the financial institution.

The financial transactions which have occurred within a given period of time on a bank account are reported to the customer on a bank statement and the balance of the accounts at any point in time is the financial position of the customer with the institution.

The laws of each and every country specify the manner in which accounts may be opened and operated. They may specify who may open an account, for example, how the signatories can identify themselves, deposit, withdrawal limits among other specifications. The minimum age for opening a bank account is 18 years old in most countries. However, in some countries, the minimum age to open a bank account is 16 years old.

11.1. Learning Objectives

After going through this unit, you will be able to

- Understand the different types of accounts in banking sectors.

Self Instructional Study Material

11.2. Various type of Accounts

1. Saving Account
 2. Regular Savings
 3. Current Account
 4. Recurring Deposit Account
 5. Fixed Deposit Account
 6. DEMAT Account
 7. NRI Accounts
-

11.2.1. Savings Account

a) Basic Savings Bank Deposit Accounts (BSBDA)

- This account will be considered as normal banking service.
- For this account, maintenance of minimum balance is not required.
- ATM card/ ATM cum Debit card, Rupay card will be given for the account holders.
- There are going to be no limit on the number of deposits that can be made in a month but, account holders will be allowed most of 4 withdrawals in a month, which includes ATM withdrawals also.
- The above facilities will be given without any charge. There will be no charge levied for non-operation/ activation of in-operative basic saving bank deposit account.
- For this account, overdraft facility will be provided up to Rs. 5000/-.

b) Basic Saving bank Deposit Accounts Small scheme (BSBDS)

- ✓ These are accounts with relaxed KYC, with a minimum document requirement of self-attested address proof & photograph.
- ✓ Total credit should not exceed 1Lakh rupees in a year.
- ✓ Maximum balance should not exceed Rs. 50,000/- at any time.
- ✓ Cash withdrawals & transfers must not exceed Rs.10, 000/- in a month.
- ✓ Remittance from foreign account cannot be credited to this account without completing normal KYC formalities.
- ✓ This account can be opened only at Core Banking Solution linked branches of banks or at such branches, where it is possible to manually monitor the fulfillments of the conditions.

11.2.2. Regular Savings Bank Account

Any resident individual- single accounts, two or more individuals in joint accounts, Associations, clubs etc., are eligible for this account.

- ✓ Modest credit option available to the depositor.
- ✓ Two free cheque books will be issued per year.

- ✓ Internet banking facility will be provided without any charge.
- ✓ Balance enquiry, NEFT, Bill payment, Mobile recharge etc., are provided through mobile phones.
- ✓ Students can open this account with zero balance by providing the required documents.

11.2.3. Current Account

Any resident individual- single accounts, two or more individuals in joint accounts, Associations, Limited companies, Religious Institutions, Educational Institutions, Charitable Institutions, clubs etc., are eligible for this account.

- ✓ Payments can be done unlimited number of times.
- ✓ Funds can be remitted from any part of the country to the corresponding account.
- ✓ Overdraft facility will be available.
- ✓ Internet banking facility is available.

11.2.4. Recurring Deposit Account

- ✓ Cumulative Deposit Scheme
- ✓ Any resident individual- single accounts, two or more individuals in joint accounts, Associations, clubs, Institutions/Agencies specifically permitted by the RBI etc., are eligible to open this account in single/joint names.
- ✓ Periodic/Monthly installments can be for any amount starting from as low as Rs.50/- onwards.
- ✓ Account can be opened for any period ranging from 6 months to 120 months, in multiple of 1 month.
- ✓ The amount selected for installment at the start of the scheme will be payable every month.
- ✓ The number of installments once fixed, cannot be altered.
- ✓ Approved rate of interest is compounded every quarter.
- ✓ The amount after maturity will be paid to customers one month after the deposit of the last installment.
- ✓ Pass book will be given to the depositor.
- ✓ TDS will be applicable on the interest, as per the latest changes in the Income Tax Act on cumulative deposits also.

11.2.5. Fixed Deposit Account

a) Short deposit receipt

- Banks accepts deposits from customers varying from 7 days to a maximum of 10 years.
- The period of 7 days & above but not exceeding 179 days deposits is classified as 'Short Deposits'.
- The minimum amount that can be deposited under this scheme is Rs.5 lakh for a period of 7-14 days.

b) Fixed deposit receipt

- Any resident individual- single accounts, two or more individuals in joint accounts, associations, minors, societies, clubs etc., are eligible for this account.
- The minimum FDR in metro & Urban branches is Rs.10,000/- & in Rural & Semi urban & for Senior citizens is Rs.5000/- .
- For the subsidy kept under the government sponsored schemes, Margin money, earnest money and court attached/ordered deposits, minimum amount criteria will not be applicable.
- Depositors may ask for repayment of their deposits before maturity. Repayment of amount before maturity is allowable.
- Interest rate differs from bank to bank depending upon the tenure of the deposits & as when the bank changes the rate.
- Additional interest of 0.50% is offered for senior citizens on deposits placed for a year and above.

11.2.6. Demat Account

- Used to conduct stress-free transactions on the shares.
- An individual, Non-Resident Indian, Foreign Institutional Investor, Foreign National, Corporate, Trusts, Clearing Houses, Financial Institution, Clearing Member, Mutual Funds, Banks and Other Depository Account.
- For opening this account, an individual has to fill a form, submit a photo of the applicant along with a photocopy of Voter ID/ Passport/ Aadhar card/ Driving License & Demat account number will be provided to the applicant immediately after the completion of processing of the application.
- Facilities provided under this account are- Opening and maintaining of Demat accounts, Dematerialization, Rematerialization, Purchases, sales, Pledging and Unpledging, safe custody.

11.2.7.NRI ACCOUNT

- NRO(Non-Resident Ordinary Rupees) Account
- NRE(Non-Resident External Rupees) Account
- FCNR (Foreign Currency Non-Resident) Account

11.3.Check your progress

- ✓ What are the different types of accounts in a bank?
- ✓ What are the NRI related Accounts.

11.4. Answers to Check Your Progress Questions

- Savings accounts. Checking accounts, including interest checking Money market accounts.Certificates of deposit (CDs)Retirement account
- **NRO** (Non-Resident Ordinary Rupees) Account
- **NRE** (Non-Resident External Rupees) Account

- **FCNR (Foreign Currency Non-Resident) Account**

11.5.Summary

- Balance enquiry, NEFT, Bill payment, Mobile recharge etc., are provided through mobile phones.
- Accounts may differ from bank to bank but the purpose remain the same
- Interest rate differs from bank to bank depending upon the tenure of the deposits & as when the bank changes the rate.
- Account can be opened for any period ranging from 6 months to 120 months, in multiple of 1 month
- With the advancement in bank technology, many banks are offering tailor made products to suit individual needs.

11.6.Key Words

Demat Account

Demat Account is an **account** that allows investors to hold their shares in an electronic form. Stocks in **Demat account** remain in dematerialized form. Dematerialization is the process of converting physical shares into electronic format.

11.7.Self-Assessment Questions and Exercises

Short Answer Questions

- ✓ How do Demat accounts work?

Long Answer Question

- ✓ Explain the different types of bank accounts in India.

11.8. Suggested Reading

- Garhwal, S., ‘Commercial Banking and Economic Development’, Pointer Publishers, Jaipur-3, 1993.
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UNIT XII OPENING, OPERATION AND CLOSING OF ACCOUNTS – LEGAL ASPECTS OF ENTRIES IN THE PASS BOOK

- 12.0. Introduction
 - 12.1. Learning Objectives
 - 12.2. Procedure for opening a bank account
 - 12.3. Know your customer (KYC) guidelines of RBI
 - 12.4. Specimen signature and verification
 - 12.5. Power of attorney
 - 12.6. Operations and different types of customers
 - 12.7. Bank's customer as joint depositor
 - 12.8. Deposit accounts with illiterate persons
 - 12.9. Nomination in deposit accounts
 - 12.10. Closing a deposit account upon customer's request
 - 12.11. Closure of deposit accounts by bank
 - 12.12. Garnishee order or order of courts
 - 12.13. Legal Aspects entries in the pass book
 - 12.14. Check your progress
 - 12.15. Summary
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 - 12.18. Suggested Readings
-

12.0. Introduction

One of the **primary function of a Commercial Banks** are accepting deposits from public and in return, bank will give interest earnings for the deposited money to the account holder depending on the type of deposit accounts. It is a three part article, which will look into various aspects of deposit accounts, its operations, and types of deposit accounts, offered our commercial banks in India. Opening aspects and KYC is the first part that everybody should know before they get into the bank for having relationship with bank and their deposit accounts.

12.1. Learning objectives

After reading this article you will learn about:-

- Understand the nature of opening and closing of accounts
 - Know the various legal aspects of entries in the pass book
 - Learn about the legal aspect of entries in the pass book
-

12.2. Procedure for opening a bank account

Public starts their bank relationship mostly opening a Savings bank account (SB Account) depositing small sums of amounts as and when they have surplus money in their hand.

To open a deposit account, person has to fill up an account opening application form, submit to the concerned branch. Application

form should be accompanied with the following documents in order to avoid misuse or illegal dealings:

1. Introductory reference of an acceptable person or an existing account holder with the branch.
2. Acceptable proof of his / her identity and residential address. It may be one of Aadhaar Card / photo identity card such as Passport, Ration card, PAN card, Driving license, Election identity card etc.
3. Recent photographs (2 to 3 varies from bank to bank, branch to branch).
4. An initial deposit amount not less than the minimum amount decided by the bank (amount varies from bank to bank ranging from 0 to Rs 10,000/ or even more).
5. The bank keeps attested photo copies of all the documents along with the account opening form.

12.3. Know your customer (KYC) guidelines of RBI

In 2002, RBI issued an order to all banks to follow the procedure of "**Know Your Customer**" with all their new and existing Domestic customers and Non-resident customers. It helps to verify the identity and residential address of the customers with the help of specific documental evidence. Hence, proper KYC prevents misuse of the banking system for money laundering and financing of terrorist activities.

The "Rules" would help to stop illegal moneys coming into the banking stream. It is mandatory requirement to all religious and non-religious trust accounts should also have to follow all KYC processes.

The RBI needs all banks to strictly follow the KYC guidelines and cash transaction norms. The KYC Rules of RBI support the existing practice of some banks and makes it a compulsory requirement to be followed by all the banks in regard to all of their customers who maintain domestic / Non-resident rupee / foreign currency accounts.

12.4. Specimen signature and verification

A Specimen (sample) signature of the customer is obtained on the account opening form in the presence of the bank staff and it is attested by an Authorized bank officer on the form itself. A customer is recognized mainly by signature on the cheque / vouchers and these are compared with the specimen signature on record to verify the genuineness of the customer's signature.

12.5. Power of attorney

At times a depositor would like to transact his business through another person. Banks accept this arrangement if account holder authorizes his/her representative as power of attorney. A power of attorney is a document which is correctly stamped as

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per Stamp Act and submitted to the bank by the account holder. Power of attorney gives permission to the person whose name is on the document to operate the account in the place of the account holder, for example – Attorney.

12.6. Operations and different types of customers

Operations of deposit accounts varies types of customer's mainly individual customers and business customers. Accounts of individuals comprise a majority of the deposit accounts in Personal segment of most banks. Any individual who is a major and of sound mind can open a - Savings account and / or Fixed deposit accounts.

Accounts of individuals comprise a majority of the deposit accounts in Personal segment of most banks. Any individual who is a major and of sound mind can open a - Savings account and / or Fixed deposit accounts.

An account for a minor child can also be opened and operated by the Father / Mother / Guardian. This minor's account can be operated in one of the following modes (child will operate the account only on attaining the majority):

- In the single name of the child through the father / mother / guardian.
- In the joint names of the father / mother / guardian and the child (payable to either or survivor).
- "Kids accounts" - Many banks allow minor children above specified age to open and operate savings account in their single name. These accounts have certain limitations on withdrawals. This is to inculcate savings and banking habits in the children while they are young.

12.7. Bank's customer as joint depositor

Joint deposit accounts are accounts that are opened by multiple number of people coming together for some specific reasons or convenience. For practical reasons the transactions are done by:

- One of the persons who is on the account as a account holder
- Jointly by two or more persons

Their transactions would be accepted as per the instructions given for at the time of opening of the account. These are generally as: Either or survivor / Former or survivor / both jointly or survivor / any two jointly or last survivor.

12.8. Deposit accounts with illiterate persons

Illiterate persons who cannot sign are allowed to open only Savings account (without cheque facility) and Fixed deposit account. Current account is not generally opened for such persons. Withdrawals

are permitted from the account on production of the passbook after verification of the thumb impression and proper identification of the account holder.

12.9. Nomination in deposit accounts

A valid nomination is required in the event of the death of the sole depositor or all depositors, the amount lying in the account will be returned to the nominee without any further legal formality.

12.10. Closing a deposit account upon customer's request

A customer is entitled to terminate the relationship with a bank by applying for closing the deposit account if account holder is not satisfied with the services of the bank or for any other reason e.g. transfer to another place.

12.11. Closure of deposit accounts by bank

A banker may close an account or stop operation on a customer's deposit account by giving reasonable notice to the customer, in any of the following cases:

- An Account may be closed on receipt of notice of death
- A joint account may also be closed on the death of any one of the account holders and fresh account opened in the names of the surviving account holders, to avoid legal problems.

12.12. Garnishee order or order of courts

If a bank is served with a prohibitory order in execution of a decree of a court, a garnishee order, or by Income Tax authority, the bank would immediately note a "caution" in the account and stop payment of cheque or debits to the account, until the order is lifted in writing by the court or Income Tax department. The customer will at the same time be advised of such an order and the freeze on the withdrawals from the account that would follow the account operations are 'stopped' for temporary period of the court order.

12.13. Legal Aspects entries in the pass book

With the account thus opened, the **depositor** receives a pass book which from his standpoint is the most important of all savings-bank documents. It serves (a) as a contract between customer and bank, (b) as a miniature ledger of all deposits and withdrawals, and (c) as an instrument which is assignable. The pass book contains a statement of the regulations governing both depositor and bank. In general, the former is regarded as a creditor who has given a sum of money to the latter, who thus becomes the debtor. The bank promises to exercise due care in investing this fund, while the client, on his part, consents to follow certain rules relating to the making and withdrawing of deposits, and in all these transactions he agrees to present his pass book

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The importance of this instrument can best be seen by tracing the manner in which a savings bank receives and pays deposits. A deposit usually consists of cash, but occasionally checks are also offered. To be acceptable these checks must be drawn directly to the order of the bank, or to the order of the depositor, and then properly indorsed by him. The items thus presented are entered on a deposit slip which is usually filled out by the customer himself, but if he cannot write, a clerk of the bank is permitted to complete the record. The customer then presents the deposit, the slip, and the pass book to the receiving teller, who enters the amount in the pass book.

While the savings bank thus receives the deposit in much the same way as in the commercial bank, a withdrawal is more complicated, because special care must be taken to safeguard the interests of savings depositors. As they do not withdraw their money regularly, the paying teller has little opportunity of knowing them personally. Besides, they are often foreigners or individuals with little knowledge of business, and are therefore less able to protect themselves against fraud.

In withdrawing money from a savings bank, the customer signs either a check or a receipt. The check is quite similar to the ordinary instrument used in drawing against a commercial account. This withdrawal order may read as follows:

The X Savings Bank

Pay to myself or order the sum of one hundred dollars and charge my pass book Number 10

A receipt for the payment of savings funds is filled out by the bank clerk and then signed by the customer. This form contains simply a statement which reads:

Received from the X Savings Bank on account of pass book Number 10. The checks and the receipts used in large savings banks are often printed in even denominations of \$5, \$10, \$50, or \$100 for the convenience of customers. The signature is compared with the specimen previously written by the depositor when he opened the account. In the event of forgery the savings bank is not liable to the same degree as is the commercial bank. It will be recalled that the latter is fully responsible if it makes payment on a forged check. However, the savings bank is not compelled by law to know the signature of its customers.

A surer means of identification than test questions or even a signature of the depositor is his fingerprint. This method is based on the well-known principle that the lines on the finger tips are formed differently in almost every individual and thus he can easily be identified. Savings banks are now applying this test, especially to depositors who are unable to write. When the customer has met this test, the amount of his withdrawal is recorded on the bank's ledgers and entered in the pass book.

While the bulk of deposits and withdrawals are made in person over the counter, these transactions can also be conducted by mail. In this

way the bank receives deposits of cash, checks, and money orders, and also complies with the requests of customers for payment by sending them drafts. In every case the pass book must be forwarded to the bank.

Because of the care taken to enter all deposits and withdrawals in the pass book, it always represents the net balance which the bank owes the depositor. He is therefore able to use his book as an instrument assignable to another person. The pass book can be used when the depositor buys property from a seller, who in exchange receives title to the funds in the savings bank. A depositor can also use his pass book for the purpose of pledging it as collateral for a loan.

Due to the importance of the pass book, the bank exercises utmost care in issuing a duplicate when the original is lost by the depositor. He is expected to give immediate notice of such loss to the bank, which then stops further payment against the account. An advertisement describing the book is usually inserted in the newspapers at the customer's expense. If the account is large, the bank may further require an affidavit in which the depositor attests to the loss, and may even exact a bond of indemnity covering the bank to twice the amount.

In the case of most savings accounts, deposits about equal withdrawals, and the increment from year to year results from the amount of interest paid by banks to their customers.

The savings bank pays interest not on the average balance, but on the lowest amount which remains to the credit of the customer within a limit of time. If before the end of this time the customer withdraws any portion, he loses the interest on that amount. Interest is usually computed from the 1st of January and July, but some banks grant it from the beginning of each month. There is a recent tendency to shorten the reckoning of interest to one month.

This method possesses certain advantages in that it renders the business of the bank more uniform by spreading the interest payments over the entire year, and it encourages systematic saving among customers who otherwise are inclined to withhold deposits until the beginning of the interest period. To the bank, however, the monthly plan usually brings a net loss, for profits tend to decline directly with decrease in the period of interest payment. This is due to the fact that a bank has at its disposal a large amount of money bearing no return to the depositor until the next interest date, but these funds at the same time serving as an earning asset to the bank itself.

12.14. Check your progress

- ✓ What is the procedure of opening a bank account?
- ✓ What is mode of operation in bank account?

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- ✓ What is the procedure of opening a savings bank account?
- ✓ Who can open joint bank account?
- ✓ What is an operating bank account?
- ✓ What are the entries in a bank passbook?

Answers to Check Your Progress Questions

- Most often, you'll need to provide paperwork and personal information in order **to open a bank account**. First off, you need to bring at least one form of photo ID. Some **banks** may require two forms of identification. These forms can be a state ID, Social Security card, passport or birth certificate.

- **Mode of operation** specifies how a **Bank account** will be operated and by whom. When you are opening a **savings bank account**, you can specify either you can **operate** it by yourself or do it jointly with some one. If you mentioned mode of operation as single, the money can be drawn by only you

- An existing customer of the bank should introduce you to the bank or from a respectable citizen known to the bank. The following are the documents to be submitted for accounting **opening procedure**: PAN card, photocopy of Voter ID or Passport or Aadhar card. Address Proof.

- Traditionally, joint bank accounts are opened by married couples. But it's not only married couples who can open a joint bank account. Civil partners, unmarried couples who live together, roommates, senior citizens and their caregivers and parents and their children can also open joint bank accounts.

- Operating checking account: Almost all companies have at least one checking account that's earmarked for operations — customer payments are deposited into that account, and vendors are paid from it. Checks may be the primary instrument for withdrawing the company's funds.

- Traditionally, a passbook is used for accounts with a low transaction volume, such as a savings account. A bank teller or postmaster would write, by hand, the date and amount of the transaction, the updated balance, and enter his or her initials.

12.15. Summary

- Opening aspects and KYC is the first part that everybody should know before they get into the bank for having relationship with bank and their deposit accounts.
- Any individual who is a major and of sound mind can open a - Savings account and / or Fixed deposit accounts.
- Power of attorney gives permission to the person whose name is on the document to operate the account in the place of the account holder.
- A banker may close an account or stop operation on a customer's deposit account by giving reasonable notice to the customer.
- An account for a minor child can also be opened and operated by the Father / Mother / Guardian.
- The pass book contains a statement of the regulations governing both depositor and bank. In general, the former is regarded as a creditor who has given a sum of money to the latter, who thus becomes the debtor.

12.16. Key Words

Pass book

Passbook is a copy of the account of the customer as it appears in the bank's books. When a customer deposits money and cheques into his bank account or withdraws money, he records these transactions in the bank column of his cashbook immediately.

Mode of Operation

Specifies how a Bank account will be operated and by whom.

12.17. Self-Assessment Questions and Exercises

Short Answer Questions

1. What is the process of opening bank account?
2. Who can be nominee in bank account?
3. What is the journal entry in pass book for depositing cash into bank?

Long answer questions

1. Describe the mode of opening, and Operation of accounts in banks.
2. Briefly explain the legal aspects of entries in the pass book.

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12.18.Suggested Readings

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- **R.K. Gupta:** BANKING Law and Practice in 3Vols. Modern Law Publications.
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UNIT XIII SERVICES TO CUSTOMERS: REMITTANCE OF FUNDS, SAFE DEPOSIT, LOCKERS GUARANTEE, LETTERS OF CREDIT

- 13.0. Introduction
- 13.1. Learning Objectives
- 13.2. Meaning of remittance of funds
 - 13.2.1. Inward Remittances
 - 13.2.2. Outward Remittance (Non Trade)
- 13.3. Services to customers: Safe Deposit
 - 13.3.1. Services to customers: Safety Lockers
 - 13.3.2. Advantages and disadvantages of bank lockers
- 13.4. Advantages of a bank locker
- 13.5. Disadvantages of a bank locker
- 13.6. Bank Guarantee
 - 13.6.1. Features of a valid Guarantee
 - 13.6.2. Types of Bank Guarantees
 - 13.6.3. Letter of Credit
- 13.7. Check your progress
- 13.8. Answers to Check Your Progress Questions
- 13.9. Summary
- 13.10. Key words
- 13.11. Self-Assessment Questions and Exercises
- 13.12. Suggested Readings

13.0.Introduction

Customer service is the provision of service to customers before, during and after a purchase. The perception of success of such interactions is dependent on employees "who can adjust themselves to the personality of the guest". Customer service concerns the priority an organization assigns to customer service relative to components such as product innovation and pricing. In this sense, an organization that values good customer service may spend more money in training employees than the average organization or may proactively interview customers for feedback.

From the point of view of an overall sales process engineering effort, customer service plays an important role in an organization's ability to generate income and revenue. From that perspective, customer service should be included as part of an overall approach to systematic improvement. One good customer service experience can change the entire perception a customer holds towards the organization.

Services to Customers: Remittance of funds, Safe deposit, Lockers guarantee, Letters of credit

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Self Instructional Study Material

13.1. Learning objectives

The objectives of this chapter are:

- To understand the nature of services to customers in terms of Remittance of funds, safe deposits lockers guarantee and Letter of credit

13.2. Meaning of remittance of funds

A Remittance is money that is sent to another party, usually one in another country; typically the sender is an immigrant, and the recipient a relative "back home."

A remittance is funding that is sent or transferred to another party, usually one in another country. Remittances can be sent via a wire transfer, mail, draft, or check.

Remittances can be used for any type of payment, including invoices. But the term is typically used to in reference to money sent to family members back in a person's home country.

13.2.1. Inward Remittances

Bank's wire transfer instructions is one of the easiest methods of receiving money to your current/business account in India. All you need to do is, select the currency in which the remittance is intended to be received, fill in your 12-digit current account number and brief details of remittance and forward the wire transfer instructions to your overseas business partner in getting the remittance. Please remember to advise your overseas partner to send instructions to their Bank with "OUR" in their charges column when they send the wire transfer.

From the time your overseas business partner places the funds transfer request with his local bank, it takes 24-48 banking hours for the funds to reach our account held with our correspondent bank. The Wire transfer will be processed and the money will be credited to your account in quick time, provided you submit the required documents defining the purpose to your ICICI Bank branch.

13.2.2. Outward Remittance (Non-Trade)

Outward remittance is a transfer of funds in the form of foreign exchange by a person from India, to a beneficiary outside India (except for Nepal and Bhutan) for any bonafide purposes as permissible under Foreign Exchange Management Act (FEMA), 1999. It includes the following two types of payment:

1. Outward remittance (non-trade)
2. Outward remittance DD issuance or any other type of payments as permitted by Reserve Bank of India as and when introduced.

13.3. Services to customers: Safe Deposit

In the event of death of the depositor before the date of maturity of deposit and amount of the deposit is claimed after the date of maturity

If the depositor has registered nomination with the Bank, the balance outstanding in the account of the deceased depositor will be

transferred to the account of/ paid to the nominee after the Bank satisfies itself about the identity of the nominee, etc.

When a term deposit is renewed on maturity, on the renewed deposit interest rate for the period specified by the depositor as applicable on the date of maturity would be applied.

Nomination facility is available on all deposit accounts opened by the individuals. Nomination is also available to a sole proprietary concern account. Nomination can be made in favour of one individual only.

Bank recommends that all depositors avail nomination facility. The nominee, in the event of death of the depositor(s), would receive the balance outstanding in the account as a trustee of legal heirs.

The Bank shall always protect customers' interest and shall maintain confidentiality of custom The Bank may consider request of the depositor(s) for loan / overdraft facility against term deposits duly discharged by the depositor(s) on execution of necessary documenter's personal information.

The bank has the discretion to disallow premature withdrawal of a term deposit in respect of bulk deposits of INR 1 crore and above of all depositors, including deposits of individuals and HUFs.

In case the depositor desires to renew the deposit by seeking premature closure of an existing term deposit account, the bank will permit the renewal at the applicable rate on the date of renewal, provided the deposit is renewed for a period longer than the balance period of the original deposit Banks provides advances against Deposits.

13.3.1. Services to customers: Safety Lockers

The Bank's Safe Deposit Locker service is available to the customers for storing the valuables for a nominal annual rent (payable in advance), which depends upon the size of the locker and the center at which the branch is located.

Online Locker Booking: After successful completion of locker booking through Online, customer has to visit the branch within two working days along with the required documents else the request will be get revoked.

Documentation: locker can be hired by submitting the following documents: 1. KYC documents 2. Pass Port size Photograph 3. Current or Savings account 4. Security Deposit 5.

Locker Agreement (stamp duty payable as per respective state/Union Territory laws).

13.3.2. Advantages and disadvantages of bank lockers

Bank lockers are one of the safest options to keep your jewelry and important papers said. Some lockers are made o high quality thicksteel plates with screws fitter on them mailing it difficult for robber to break open .

13.4. Advantages of a bank locker

- Safe lockers are probably the cheapest compared to any other form of safe deposit locker.
- Bank lockers are secured by insurance cover against fire and other hazards.
- One can nominate or appoint a family member to operate the locker in his or her absence.
- Total privacy is maintained in a bank locker as bank officials do not see what you keep inside your locker.

13.5. Disadvantages of a bank locker

- One of the main disadvantages of a safe locker is that one can operate only during business hours and so you need to plan in advance if you want to operate the locker. You cannot take out any contents in case of emergency.
- Normally, banks charge locker rent in advance for a specific period (for example, for one year). So, if you vacate the locker in the middle of the year, you don't get back the refund.
- Banks usually insist, albeit orally, on one depositing a sizeable sum as fixed deposits to be held with them for a longer period for letting out a locker.
- Sometimes you don't get the locker size of your choice. You probably have to use a large locker when a medium sized locker can serve your purpose.
- It is difficult to get lockers in rural and semi-urban areas.
- However, safety of bank lockers is a prime concern and one need to be extra vigilant. One should operate the locker regularly, as inactive lockers are prime targets of robbers.

Whatever be the advantages and disadvantages of a bank locker, it is still the best option than keeping your valuables in your home.

13.6. Bank Guarantee

Bank Guarantee (BG) is an agreement between three parties viz. the bank, the beneficiary, and the applicant. The beneficiary is the one to who takes the guarantee. And the applicant is the party who seeks the bank guarantee from the bank. BGs are an important banking arrangement and play a vital role in promoting international and domestic trade.

The bank issues BG on the receipt of the request from the applicant. This receipt is of the "guarantee amount" towards some purpose / underlying transaction towards the "beneficiary". If the bank i.e. "the guarantor" receives the "claim" from the beneficiary, it results in "BG invocation". In the case of foreign BG, apart from these three parties, there is also a "correspondent bank". If a bank does not have a branch in some foreign country, it issues BG in that country through its "correspondent bank". The bank does all the required due diligence, financial and business analysis before issuing the guarantee.

13.6.1. Features of a valid Guarantee

- The period until which the guarantee holds is clearly specified
- The guarantee issuance is always for a specific amount
- The purpose of the guarantee is clearly stated
- The guarantee is valid for a specifically defined period
- The grace period allowed to enforce guarantee rights is also stated in the guarantee
- Guarantee clearly states the events under which it can be enforced

It is important that guarantee can be enforced based on terms of the contract (i.e. guarantee agreement) existing between the bank and the beneficiary. Generally, beneficiaries do state a clause to be included for charging penal interest in the case of delayed payment. Hence, it is essential for the bank to be cautious while finalizing the format and text of the contract (the guarantee agreement). While signing the same, the provision of penal interest and clauses attached to delays and default are to be carefully noted.

13.6.2. Types of Bank Guarantees

Financial Guarantee

Here, the bank guarantees that the applicant will meet the financial obligation. And in case he fails, the bank as a guarantor has to pay.

Performance Guarantee

Here the guarantee issued is for honoring a particular task and completion of the same in the prescribed/agreed upon manner as stated in the guarantee document.

Advance payment Guarantee

This guarantee assures that they would return the advance amount in case of no fulfillment of the terms.

Payment Guarantee / Loan guarantee

The guarantee is for assuring the payment/loan repayment. In case, the party fails to do so, a guarantor has to pay on behalf of the defaulting borrower

Bid bond Guarantee

As a part of the bidding process, this guarantee assures that the bidder would undertake the contract he has bid for, on the terms the bidding is done.

Foreign Bank Guarantee

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Foreign BG is a guarantee which is issued for a foreign beneficiary.

Deferred Payment Guarantee

When the bank guarantees some deferred payment, the guarantee is termed as Deferred Payment Guarantee. For example, A company purchases a machine on credit basis with terms of payment being 6 equal installments. In this case, since the payment is deferred to a later period, creditor seeks deferred payment guarantee for an assurance that the payment would reach him in the given time period.

Shipping Guarantee

This guarantee protects the shipping company from all kinds of loss, in case the customer does not pay. This document helps the customer to take possession of goods.

Guarantee for warranty obligation or Warranty Bond

This is an assurance that there will be a proper delivery of the ordered goods as per the agreement.

13.6.3. Letter of Credit (L/C)

A letter of credit is a letter from a bank guaranteeing that a buyer's payment to a seller will be received on time and for the correct amount. In the event that the buyer is unable to make a payment on the purchase, the bank will be required to cover the full or remaining amount of the purchase.

Due to the nature of international dealings, including factors such as distance, differing laws in each country, and difficulty in knowing each party personally, the use of letters of credit has become a very important aspect of international trade.

How a Letter of Credit Works?

Because a letter of credit is typically a negotiable instrument, the issuing bank pays the beneficiary or any bank nominated by the beneficiary. If a letter of credit is transferable, the beneficiary may assign another entity, such as a corporate parent or a third party, the right to draw.

Banks also collect a fee for service, typically a percentage of the size of the letter of credit. The International Chamber of Commerce Uniform Customs and Practice for Documentary Credits oversees letters of credit used in international transactions. There are several types of letters of credit available.

Types of Letters of Credit

Commercial Letter of Credit

This is a direct payment method in which the issuing bank makes

the payments to the beneficiary. In contrast, a standby letter of credit is a secondary payment method in which the bank pays the beneficiary only when the holder cannot.

Revolving Letter of Credit

This kind of letter allows a customer to make any number of draws within a certain limit during a specific time period.

Traveler's Letter of Credit

For those going abroad, this letter will guarantee that issuing banks will honor drafts made at certain foreign banks.

Confirmed Letter of Credit

A confirmed letter of credit involves a bank other than the issuing bank guaranteeing the letter of credit. The second bank is the confirming bank, typically the seller's bank. The confirming bank ensures payment under the letter of credit if the holder and the issuing bank default. The issuing bank in international transactions typically requests this arrangement.

13.7. Check your progress

1. What is remittance of funds?
2. What is an example of a remittance?
3. What is the difference between remittance and payment?
4. What do you understand safety of deposits?
5. Why bank lockers are better than home?
6. What are the types of letter of credit?

13.8. Answers to Check Your Progress Questions

- ✓ A remittance is funding that is sent or transferred to another party usually abroad. Remittances can be sent to another country via a wire transfer, mail, draft, or check. Remittances can be used for any type of payment such as an invoice, but it's typically used to pay family members back in a person's home country.
- ✓ An example of remittance is what a customer sends in the mail when a bill is received. Remittance is defined as money that is sent to pay for something. An example of remittance is the check sent to pay for the treadmill you bought on TV.
- ✓ Remittance is typically sent to family and friends, its money sent without any commercial purpose whereas Payments is tied to exchange of money for a service or product. In international payments, remittance is used to denote family payments and also called as home remittance.
- ✓ A safe deposit box is a locked storage bin, usually in a vault or secure area, that banks and credit unions rent.

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Some banks may offer keyless systems that allow access by scanning a finger or a hand.

- ✓ Insurers say that bank lockers can be considered a safe option in comparison to keeping jewelry and valuables at your home. However, none of your contents kept in your locker is insured. As per the RBI, however, banks in any case will not be responsible for the contents kept in a locker by the hirer.
- ✓ There are various types of letter of credit (LC) prevails in the trade transactions. They are Commercial, Export / Import, Transferable and Non-Transferable, Revocable and Irrevocable, Stand-by, Confirmed and Unconfirmed, Revolving, Back to Back, Red Clause, Green Clause, Sight, Deferred Payment, and Direct Pay LC.

13.9. Summary

- One good customer service experience can change the entire perception a customer holds towards the organization.
- Remittances can be used for any type of payment, including invoices. But the term is typically used to in reference to money sent to family members back in a person's home country.
- Nomination facility is available on all deposit accounts opened by the individuals. Nomination is also available to a sole proprietary concern account.
- Bank lockers are one of the safest options to keep your jewelry and important papers safe. Some lockers are made by high quality thicksteel plates with screws fit on them making it difficult for robber to break open.
- The bank issues BG on the receipt of the request from the applicant. This receipt is of the “guarantee amount” towards some purpose / underlying transaction towards the “beneficiary”.
- Total privacy is maintained in a bank locker as bank officials do not see what you keep inside your locker.
- Since the payment is deferred to a later period, creditor seeks deferred payment guarantee for an assurance that the payment would reach him in the given time period.

13.10. Key Words

Letter of Credit: Letter of credit is a letter from a bank guaranteeing that a buyer's payment to a seller will be received on time and for the correct amount.

13.11. Self-Assessment Questions and Exercises

Short Question and answers.

1. What does remittance mean in banking?
2. What does a letter of credit do?
3. What are bank lockers?
4. What do you understand the safety of deposits in bank?

Long Question and Answers.

1. Examine the services to consumers in terms of remittance of funds, safe deposits, lockers, guarantee and letters of credit.

13.12. Suggested Reading

- Agarwal, D.C., Indian Economy, Sahitya Bhawan Publications, Agra, 2004.
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- Basu, S.K., Commercial Banks and Agricultural Credit : A study on regional disparity in India, Allied Publishers Pvt. Ltd, Bombay, 1997.
- Desai, Vasant., Indian Banking - Nature and Problems, Himalaya Publishing House, Bombay, 2010.
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Services to Customers: Remittance of funds, Safe deposit, Lockers guarantee, Letters of credit

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Self Instructional Study Material

UNIT XIV TRAVELLERS CHEQUES, GIFT CHEQUES, CREDIT CARDS, RURAL BANKING SERVICES, INVESTMENT COUNSELLING, MISCELLANEOUS SERVICES AND MODERN BANKING PRACTICES

- 14.0. Introduction
- 14.1. Learning Objectives
- 14.2. Traveler Cheque
- 14.3. Gift Cheque
- 14.4. Credit Card
- 14.5. Miscellaneous a services
- 14.6. Modern Banking
- 14.7.Changes in banking sectors by RBI
- 14.8.Modern Banking practices
- 14.9.E-Banking
 - 14.9.1.Types of e banking
 - 14.9.2.Importance of e-banking
- 14.10. Internet Banking
 - 14.10.1.Features of Internet Banking
- 14.11.Mobile Banking
- 14.12. Whatis an Automated Teller Machine (ATM)
- 14.13. Meaning of EFT
- 14.14.Real-time gross settlement (RTGS)
- 14.15. Special Considerations RTGS
- 14.16. NEFT
 - 14.16.1. Who can make NEFT transaction?
 - 14.16.2. What is NEFT Transfer Limit?
- 14.17. MICR Cheque:
- 14.18. Check your progress
- 14.19.Summary
- 14.20. Key words
- 14.21.Self-Assessment Questions and Exercises
- 14.22. Suggested Readings

14.0.Introduction

In the current dynamic environment, individuals, to attain their professional growth and development, need not only education but also their professional skills. The aim of this certification program is to hone the professional banking skills of the individuals by training them on Banking domain and usage of Banking application software. The program is designed to teach the concepts of modern day banking operations. Today the Banking industry requires more competent banking professionals which demands that these individuals are provided proper knowledge and skills to ready themselves for this important role. This certification would familiarize the students with all aspects of bank

operations including savings, loans, operations and audit functions. The program would encapsulate all the key aspects of modern banking system among the participants

14.1. Learning objectives

After having gone withrough this chapter the students able to understand to:

- ✓ Understand the meaning of Travelers cheque
- ✓ Know the nature and uses of credit cards
- ✓ Learn the meaning of ATM, EFT, RTGs, NEFT, MICR

14.2. Traveler Cheque

A traveler's cheque is a medium of exchange that can be used in place of hard currency. They can be denominated in one of a number of major world currencies and are preprinted, fixed-amount cheques designed to allow the person signing it to make an unconditional payment to someone else as a result of having paid the issuer for that privilege.

They were generally used by people on vacation in foreign countries instead of cash, as many businesses used to accept traveler's cheques as currency. The incentive for merchants and other parties to accept them lay in the fact that as long as the original signature (which the buyer is supposed to place on the cheque in ink as soon as they receive the cheque) and the signature made at the time the cheque is used are the same, the cheques issuer will unconditionally guarantee payment of the face amount even if the cheque was fraudulently issued, stolen, or lost. This means that a traveler's cheque can never 'bounce' unless the issuer goes bankrupt and out of business. If a traveler's cheque were lost or stolen, it can be replaced by the issuing financial institution.

The financial institutions issuing traveler's cheques earn income in a number of ways. Firstly, they would charge a fee on sale of such cheques. In addition, they can earn interest for the period that the cheques are uncashed, while not paying any interest to the cheque holder, making them effectively interest-free loans. Also, the foreign exchange rate commonly used on traveler's cheques (generally based on rates applicable at the time of purchase) is less favorable compared to other forms of obtaining foreign currency, especially those on credit card transactions (which use a rate applicable at the statement date). On the other hand, the set up cost and the cost of issuing and processing traveler's cheques is much higher than for credit card transactions. The cheque issuer carries the exchange rate risk, and would normally pay a fee to hedge against the risk.

Their use has been in decline since the 1990s, when a variety of more convenient alternatives, such as credit cards, debit

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cards, pre-paid currency cards and automated teller machines, became more widely available and were easier for travelers to use. Traveler's cheques are no longer widely accepted and cannot easily be cashed, even at the banks that issued them. The alternatives to traveler's cheques were generally cheaper and more flexible. Travel money cards offer similar features to traveler's cheques, including prepurchase of foreign currency at rates applicable at date of purchase, but offer greater ease and flexibility, such as use like a regular credit card, no need to get change in a local currency, besides other features.

There are four parties involved in the Travelers cheque transaction:

- The **Issuer or Obligor**, an organization that produces the travelers cheque
- An **Agent**, the bank or any other party that sells the cheque
- The **Purchaser**, the person who buys it
- The **Payee or Merchant**, a person to whom the cheque is handed over in exchange for goods and services.

The Travelers cheque can be replaced by the issuer, in case it is lost or stolen. This requires the purchaser of the cheque to maintain a copy of cheque receipt or its number in a safe custody so that it can be produced to the issuer to get the cheque replaced. The traveler's cheques are available in varied currencies such as US Dollars, Great Britain Pounds (GBP), Japanese Yen (JY), Australian Dollars (AUD) and Canadian Dollars (CAD).

14.3. Gift Cheque

Gift cheques are intended to substitute cash and other gifts in kind to our near and dear on special occasions like marriages etc. They are encashable by beneficiary mentioned in it. They are payable at par without any hassles to beneficiary.

Gift Cheque customers can get the following benefits:

- Accepted at thousands of locations - stores, movie theaters, sporting events, restaurants, hotels, museums, and more.
- May be refunded if lost or stolen. (Terms, conditions and restrictions apply. Identification and proof of purchase required.)
- No expiration date, unlike some store gift certificates.

14.4. Credit Card

- A credit card is a payment card issued to users (cardholders) to enable the cardholder to pay a merchant for goods and services based on the cardholder's promise to the card issuer to pay them for the amounts plus the other agreed charges. The card issuer (usually a bank) creates a revolving account and grants a line of

credit to the cardholder, from which the cardholder can borrow money for payment to a merchant or as a cash advance.

- A credit card is different from a charge card, which requires the balance to be repaid in full each month. In contrast, credit cards allow the consumers to build a continuing balance of debt, subject to interest being charged. A credit card also differs from a cash card, which can be used like currency by the owner of the card. A credit card differs from a charge card also in that a credit card typically involves a third-party entity that pays the seller and is reimbursed by the buyer, whereas a charge card simply defers payment by the buyer until a later date.

14.5. Miscellaneous a services

- Produce Marketing Loan
- Setting up of Agri Clinic and Agri Business centres
- Land Purchase Scheme
- SBI Krishak uthan Yojna
- Scheme for Debt Swapping of borrowers

14.6.Modern Banking

- ✓ Modern banking in India is said to be developed during the British era. In the first half of the 19th century, the British East India Company established three banks – the Bank of Bengal in 1809, the Bank of Bombay in 1840 and the Bank of Madras in 1843. But in the course of time these three banks were amalgamated to a new bank called Imperial Bank and later it was taken over by the State Bank of India in 1955. Allahabad Bank was the first fully Indian owned bank. The Reserve Bank of India was established in 1935 followed by other banks like Punjab National Bank, Bank of India, Canara Bank and Indian Bank.
- ✓ In 1969, 14 major banks were nationalized and in 1980, 6 major private sector banks were taken over by the government. Today, commercial banking system in India is divided into following categories.

Central Bank

The Reserve Bank of India is the central Bank that is fully owned by the Government. It is governed by a central board (headed by a Governor) appointed by the Central Government. It issues guidelines for the functioning of all banks operating within the country

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Public sector banks

- State Bank of India and its associate banks called the State Bank Group
- 20 nationalized banks.
- Regional rural banks mainly sponsored by public sector banks

Private Sector Banks

- Old generation private banks
- New generation private banks
- Foreign banks operating in India
- Scheduled co-operative banks
- Non-scheduled banks

Co-operative Sector

The co-operative sector is very much useful for rural people. The co-operative banking sector is divided into the following categories.

- State co-operative Banks
- Central co-operative banks
- Primary Agriculture Credit Societies

14.7. Changes in banking sectors by RBI

As per the expert analysis saying that recession is not going to affect their banks in any way, and they have enough liquidity and assets to bank up the shares, deposits and assets of customers. The nationalized banks in India, taking cue from the RBI, keeps the Indian liquidity as liquid as possible as to keep the global monetary Tsunami off our financial bays. It's all good from the bankers' point of view.

Due to recession in 2007 there is huge crisis of money thus it affects almost all sector of entire world hence there is also impact on Indian industry for that RBI which is the central bank of India makes several changes to make low impact of recession.

1. RBI cuts its CRR to 6% as CRR is the main factor in which every financial bank have to deposited certain percentage money to RBI due to which shortage of money but RBI cuts its CRR up to 6% to make money available to the financial banks. So financial banks had a great money in their hand.
2. REPO rate is also reduced up to 3.25% through which other financial banks make available loan at a lower in interest so make money for every one every nationalized bank reduced its repo rate at the time of recession major factor behind that RBI wants to make loan policy to every field.

3. Reserve Repo rate also changes by RBI and cuts repo rates up to 4.25% to increase the facilities and improve to condition of the market. Due to reduction in these terms there is not heavily effect of recession in India.

14.8. Modern Banking practices

In the current dynamic environment, individuals, to attain their professional growth and development, need not only education but also their professional skills. The aim of this certification program is to hone the professional banking skills of the individuals by training them on Banking domain and usage of banking application software. The Program is designed to teach the concepts of modern day banking operations. Today the Banking industry requires more competent banking professionals which demands that these individuals are provided proper knowledge and skills to ready themselves for this important role. This certification would familiarize the students with all aspects of bank operations including savings, loans, operations and audit functions. The program would encapsulate all the key aspects of modern banking system among the participants.

14.9. E-Banking

Electronic banking has many names like e banking, virtual banking, online banking, or internet banking. It is simply the use of electronic and telecommunications network for delivering various banking products and services. Through e-banking, a customer can access his account and conduct many transactions using his computer or mobile phone.

14.9.1. Types of e banking

Banks offer various types of services through electronic banking platforms. These are of three types:

- ✓ **Level 1** : This is the basic level of service that banks offer through their websites. Through this service, the bank offers information about its products and services to customers. Further, some banks may receive and reply to queries through e-mail too.
- ✓ **Level 2** : In this level, banks allow their customers to submit instructions or applications for different services, check their account balance, etc. However, banks do not permit their customers to do any fund-based transactions on their accounts.
- ✓ **Level 3** : In the third level, banks allow their customers to operate their accounts for funds transfer, bill payments, and purchase and redeem securities, etc.

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Most traditional banks offer e-banking services as an additional method of providing service. Further, many new banks deliver banking services primarily through the internet or other electronic delivery channels. Also, some banks are 'internet only' banks without any physical branch anywhere in the country.

Therefore, banking websites are of two types

1. **Informational Websites** – These websites offer general information about the bank and its products and services to customers.
2. **Transactional Websites** – These websites allow customers to conduct transactions on the bank's website. Further, these transactions can range from a simple retail account balance inquiry to a large business-to-business funds transfer. The following table lists some common retail and wholesale e-banking services offered by banks and financial institutions.

14.9.2. Importance of e-banking

We will look at the importance of electronic banking for banks, individual customers, and businesses separately.

Banks

1. Lesser transaction costs – electronic transactions are the cheapest modes of transaction.
2. A reduced margin for human error – since the information is relayed electronically, there is no room for human error.
3. Lesser paperwork – digital records reduce paperwork and make the process easier to handle. Also, it is environment-friendly.
4. Reduced fixed costs – A lesser need for branches which translates into a lower fixed cost.
5. More loyal customers – since e-banking services are customer-friendly, banks experience higher loyalty from its customers.

Customers

1. Convenience – a customer can access his account and transact from anywhere 24x7x365.
2. Lower cost per transaction – since the customer does not have to visit the branch for every transaction, it saves him both time and money.
3. No geographical barriers – In traditional banking systems, geographical distances could hamper certain banking transactions. However, with e-banking, geographical barriers are reduced.

Businesses

1. Account reviews – Business owners and designated staff members can access the accounts quickly using an online banking interface. This allows them to review the account activity and also ensure the smooth functioning of the account.
2. Better productivity – Electronic banking improves productivity. It allows the automation of regular monthly payments and a host of other features to enhance the productivity of the business.
3. Lower costs – Usually, costs in banking relationships are based on the resources utilized. If a certain business requires more assistance with wire transfers, deposits, etc., then the bank charges it higher fees. With online banking, these expenses are minimized.
4. Lesser errors – Electronic banking helps reduce errors in regular banking transactions. Bad handwriting, mistaken information, etc. can cause errors which can prove costly. Also, easy review of the account activity enhances the accuracy of financial transactions.
5. Reduced fraud – Electronic banking provides a digital footprint for all employees who have the right to modify banking activities. Therefore, the business has better visibility into its transactions making it difficult for any fraudsters to play mischief.

14.10. Internet Banking

Internet Banking is a convenient way to do banking from the comfort of your home or office. Avoid the queue or delays and try our simple and secure Internet Banking facility for an unmatched online banking experience.

14.10.1. Features of Internet Banking

- Check Account Statement
- Payments using Net Banking
- Transfer Funds
- Open a Fixed Deposit
- Pay Utility Bills
- Open Deposits
- Recharge prepaid mobile/DTH and a lot more.
- Buy General Insurance
- Pay Taxes
- Order Cheque Book
- Track your Deliverables

14.11. Mobile Banking

With ICICI Bank Mobile Banking discover quick, simple and convenient way to take command of your bank account, on your mobile phone.

Mobile Banking has the following advantages:

- Convenient way to access your account
- Safe and Secure Banking
- Convenient way to pay bills (Telephone, electricity & other utilities)
- Get exciting offers and discounts

14.12. What is an Automated Teller Machine (ATM)?

An automated teller machine (ATM) is an electronic banking outlet that allows customers to complete basic transactions without the aid of a branch representative or teller. Anyone with a credit card or debit card can access most ATMs.

The first ATM appeared in London in 1967, and in less than 50 years, ATMs spread around the globe, securing a presence in every major country and even tiny little island nations such as Kiribati and the Federated States of Micronesia.

ATMs are convenient, allowing consumers to perform quick, self-serve transactions from everyday banking like deposits and withdrawals to more complex transactions like bill payments and transfers.

14.13. Meaning of EFT

An electronic funds transfer (EFT) is a transaction that takes place over a computerized network, either among accounts at the same bank or to different accounts at separate financial institutions.

How it works?

EFTs include direct-debit transactions, wire transfers, direct deposits, ATM withdrawals and online bill pay services. Transactions are processed through the Automated Clearing House (ACH) network, the secure transfer system of the Federal Reserve that connects all U.S. banks, credit unions and other financial institutions.

For example, when you use your debit card to make a purchase at a store or online, the transaction is processed using an EFT system. The transaction is very similar to an ATM withdrawal, with near-instantaneous payment to the merchant and deduction from your checking account.

Why it matters?

The increased use of EFTs for online bill payments, purchases and pay processes is leading to a paper-free banking system, where a large number of invoices and payments take place over digital networks. EFT systems play a large role in this future, with fast, secure transactions

guaranteeing a seamless transfer of funds within institutions or across banking networks.

EFT transactions, also known as an online transaction or PIN-debit transaction, also offer an alternative to signature debit transactions, which take place through one of the major credit card processing systems, such as Visa, MasterCard or Discover, and can cost as much as 3% of the total purchase price. EFT processing, on the other hand, only charges an average of 1% for debit card transactions.

14.14. Real-time gross settlement (RTGS)

Real-time gross settlement (RTGS) is the continuous process of settling payments on an individual order basis without netting debits with credits across the books of a central bank (e.g., bundling transactions). Once completed, real-time gross settlement payments are final and irrevocable.

How Real-Time Gross Settlement (RTGS) Works?

Real-time gross settlement is a system that is generally used for large value interbank funds transfers. These often require immediate and complete clearing and are usually organized by a country's central bank.

Real-time gross settlement lessens settlement risk overall as interbank settlement usually occurs in real time throughout the day—instead of simply all together at the end of the day. This eliminates the risk of a lag in completing the transaction. (Settlement risk is often called delivery risk.) RTGS can often incur a higher charge than processes, which bundle and net payments.

RTGS Versus Bankers' Automated Clearing Services (BACS)

A real-time gross settlement system is in contrast with net settlement systems, such as the U.K.'s Basic Payment Schemes Limited (previously the Bankers' Automated Clearing Services, or BACS). With BACS, for example, transactions among institutions are accumulated during the day; at the close of business, a central bank will adjust the active institutional accounts by the net amounts of the funds exchanged.

While RTGS does not require a physical exchange of funds; most often, a central bank will subsequently adjust the accounts of the sending and receiving bank, in electronic form. For example, Bank A (the sender's) balance will be reduced by \$1 million, while Bank B's (the recipient's) balance will be increased by \$1 million.

14.15. Special Considerations

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RTGS systems, increasingly used by central banks worldwide, can help minimize the risk of high-value payment settlements among financial institutions. Although companies and financial institutions, which deal with sensitive financial data, have high levels of security in place to protect information and funds, in reality, the range and nature of online threats are constantly evolving.

Real-time gross settlement can allow a smaller window of time for critical information to be vulnerable, thus helping mitigate threats. Two common examples of cybersecurity threats to financial data include social engineering or phishing (tricking people into revealing their information) and data theft, whereby a hacker obtains and sells data to competitors.

The first system resembling an RTGS system was the U.S. Fed wire system, which was launched in 1970. The system was an evolution of a previous system telegraph-based system that was used to transfer funds electronically between U.S. Federal Reserve banks. In 1984, the United Kingdom and France both implemented RTGS type systems.

The British system, called CHAPS, was developed by the Bankers Clearing House. The French system was called SAGITTAIRE. Since then, other developed countries launched systems that varied widely in how they worked. Most were usually based upon previous processes and procedures used in each country.

14.16. Meaning of NEFT:

National Electronic Fund Transfer (NEFT) is a nation-wide payments system that allows transfer of funds from one bank's account to another. With an increased focus on online banking, NEFT has become one of the most popular ways of transferring funds. Since it can electronically transfer funds from any bank branch to any individual, it has eliminated the need to visit a bank branch for transfer of funds. Let us learn about the how NEFT operates in India and what benefits it offers. Let us find out what is NEFT.

14.16.1. Who can make NEFT transaction?

The Reserve Bank of India provides a list of participating bank branches, which are NEFT-enabled, meaning that one can conduct NEFT transactions through these bank branches. As has already been said, any individual, firm or corporate, who holds a bank account with a participating branch, can make a NEFT transfer at any time. However, if someone does not hold a bank account, even he can make a cash deposit at an NEFT-enabled branch, provided that he furnishes complete details regarding his address, email ID, contact number, and more to the bank. Such transfers shall be restricted to a maximum amount of Rs.50,000.

14.16.2. What is NEFT Transfer Limit?

There is no upper or lower limit on the amount that can be transferred via NEFT. There is only a single limitation on the amount of one-time transaction through cash mode, which is Rs. 50,000. Depending on each bank, timings and settlement period for each transaction could be different. Ordinarily, if funds are transferred within the same bank account, one can expect to receive them within a matter of few seconds. However, when such transfers take place between different banks, the settlement time could be longer.

Benefits of using NEFT

In the process of NEFT, you just have to enter the details of the beneficiary for the first time after which you can just select the beneficiary from the list, enter the amount and send. Take a look at some of the benefits of NEFT transactions that could make your daily transactions simpler:

- No physical presence of either party is required to conduct a transaction. Also, no physical instrument needs to be transferred at any point of time, between the conducting parties, to conclude the transaction.
- No visit to the bank is required, as long as a person holds a valid bank account.
- Shortcomings of a physical instrument are easily overcome. This means that NEFT has completely omitted instances of physical damage of any monetary instruments, its theft or forging.
- NEFT is simple and efficient. It can be done in under a minute's time and hardly involves any major formality.
- Confirmation of a successful transaction can be easily received and viewed through email and SMS notifications.
- Internet banking can be initiated and conducted from any place. This means that a person does not need to be present at a particular location to make NEFT transactions.
- Real time transactions provide assurance to both the parties.

14.17. MICR Cheque

The short form for Magnetic Ink Character Recognition is MICR, which is a recognition technology based on characters printed with magnetic ink or toner and processed by being magnetized and sensed magnetically. MICR characters are printed

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information on documents so that the code line information can be captured by magnetic recognition.

Advantages of MICR

- Quick processing and reduced cheque clearing time
- Reduced cheque related fraudulent activities

Features of MICR Cheque

The MICR Cheque has to have the following measurement

- ✓ Payer Institution Area
- ✓ Cheque Number and Date Area
- ✓ Payee and Legal Amount Area
- ✓ Convenience Amount
- ✓ Account Title
- ✓ Signature Area
- ✓ MICR Area

14.18. Check your progress

- What do you mean by Travellers Cheque?
- Which credit cards give you instant approval?
- What is meant by net banking?
- What is EFT treatment?
- What is RTGS payment method
- What is NEFT and how it works?

Answers to Check Your Progress Questions

- ✓ A traveler's cheque is a medium of exchange that can be used in place of hard currency. They were generally used by people on vacation in foreign countries instead of cash, as many businesses used to accept **traveler's cheques** as currency.
- ✓ No Deposit: Credit One Bank® Platinum Visa® for Rebuilding Credit. Bad Credit: OpenSky® Secured Visa® Credit Card. No Credit: Capital One® Secured Mastercard, Fair Credit: Capital One® Platinum Credit Card., Rewards: Discover it® Secured.
- ✓ **Net banking** allows the customers to access their **bank** accounts and make any transactions without physically visiting any of the branches of the financial institutions. Customers can just conduct their transactions through net banking.
- ✓ Emotional freedom technique (**EFT**) is an alternative treatment for physical pain and emotional distress. It's also referred to as tapping or psychological acupressure. People

who use this technique believe tapping the body can create a balance in your energy system and **treat** pain.

- ✓ Transactions through Branch. But for RTGS. It means that funds transfers happen immediately, in real time. Instructions are processed at the time they are received rather than later. 'Gross Settlement' means the settlement of funds transfers occur on an instruction by instruction basis.
- ✓ National Electronic Funds Transfer (NEFT) is an electronic funds transfer system maintained by the Reserve Bank of India (RBI). NEFT enables bank customers in India to transfer funds between any two NEFT-enabled bank accounts on a one-to-one basis. It is done via electronic messages.

14.19. Summary

- In the current dynamic environment, individuals, to attain their professional growth and development, need not only education but also their professional skills.
- National Electronic Fund Transfer (NEFT) is a nation-wide payments system that allows transfer of funds from one bank's account to another
- RTGS systems, increasingly used by central banks worldwide, can help minimize the risk of high-value payment settlements among financial institutions
- Today the Banking industry requires more competent banking professionals which demands that these individuals are provided proper knowledge and skills to ready themselves for this important role.
- Internet Banking is a convenient way to do banking from the comfort of your home or office.
- The aim of this certification program is to hone the professional banking skills of the individuals by training them on Banking domain and usage of Banking application software.

14.20. Key words

NEFT and RTGS:: TGS means Real Time Gross Settlement. NEFT means National Electronic Funds Transfer. Both are used for transferring funds to an outside bank account (that is a bank other than the one you are using). RTGS is faster.

14.21. Self-Assessment Questions and Exercises

Short Question Answers

NOTES

NOTES

1. What are Travellers Cheques and how do they work?
2. What is E banking?
3. What is the limit of NEFT?
4. What is RTGs Define MICR?

Long Question Answers

1. Examine the uses of E-Banking
2. What are the difference between RTGs and NEFT?

14.22. Suggested Readings

- Bhadoria, R.S., (Edt.) Reflections on the Indian Economy, Commonwealth Publishers, Delhi, 1987.
- Chandra Prasanna, Financial Management, Theory and Practice, Tata Margew Hill, Delhi, 1990.
- Dhar, P.K., Indian Economy : Its' Growing Dimensions, Kalyani Publishers, New Delhi, 2000
- Rangavajan, C., Inovations in Banking, Oxford and IBH Publishing Co, New Delhi, 1982.
- Rao, B Ramaehandra., Currcut Trends in Indian Banking, Deep & Deep Publications, New Delhi, 1984.

MODEL QUESTIONS
DISTANCE EDUCATION –CBCS-(2018-19 Academic Year
Onwards)
Question Paper Pattern (ESE- Theory)
UG Programme
Time : 3 HoursMaximum : 75 Mark

Part-A (10x2=20 Marks)

Answer all the Questions

1. State the definition of bank.
2. What are the rights of a customer?
3. How does offset formula work?
4. What is Cheque and its uses?
5. Who can be a holder?
6. What is a Negotiable Instrument?
7. What are the duties of collecting bankers?
8. What are procedure toopen an account for Partnership firm?
9. What is an NRI account?
10. How do DEMAT accounts work?

Part-B (5x5=25 Marks)

Answer all the Questions(Choose A or B)

1. Explain the different types of banks in India (or)
Who is a banker? Discuss the major functions of a banker
2. Explain the banker's right of appropriation (or)
What are the difference between Cheque and promissory Note?
3. Briefly examine the precautions to be taken before a cheque for payment. (or)
Describe the various customers and account holders
4. What are the benefits of NRI account? (or)
Explain the different types of bank accounts in India.
5. Briefly explain the legal aspects of entries in the pass book. (or)
Examine the services to consumers in terms of remittance of funds, safe deposits, lockers, guarantee and letters of credit.

Part –C

(3x10=30 Marks)

Answer any three Questions

1. Discuss the Bankers and customers relationship
2. Briefly explain about the Obligation to maintain Secrecy of Account
3. Critically examine on appropriation and to charge interest and incidental charges.
4. Briefly explain the features of Negotiable instruments.
5. Explain “Holder in due course”.
6. Examine the Statutory Protection for Cheque clearance.

