UNIT 2: Relationship Between Banker and Customer

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2.0 Aims and Objectives

At the end of this Unit, students will:

* be able to define what a banker and a customer is
* Understand the relationship that exists between banker and customer and how such relationship is established.
* Identify the obligations and right of banker while dealing with customers.
* Understand the types of accounts that can be opened by customers at the bank and the opening, operating and closing procedures.
* Identify the special types of customers and the necessary precautions in dealing with them.

**2.1 Introduction**

This unit is designed so as to create awareness of the students about banker and customer and the relationship that exists between them and the types of accounts that customers could open at the bank. It also demonstrates the types of customer’s accounts and their opening, operating and closing procedures.

2.2 Meaning of Banker and Customer

2.2.1 Meaning of Banker

“A banker or bank is a person or company carrying on the business of receiving money and collecting drafts for customers subject to the obligation of honoring cheques drawn upon them from time to time by the customer to the extent of the amount available on their current accounts” Dr. H.L.Hart

Banking means the accepting of money deposits from the public, for the purpose of lending or investment repayable on demand or otherwise, and withdrawable by cheque draft order or other wise:

No banking company can directly or indirectly deal in buying or selling or bartering of goods or engage in any trade or buy, sell or barter goods for others.

A bank can be distinguished from any other commercial institution on the bases of the following functions:

**i. Deposit accounts-** The bank receives deposits from the public in the form of savings accounts, fixed deposits accounts, demand or current deposit accounts etc.

**ii. Current a accounts-** The bank receives deposits on current accounts from the business persons. A current account is a running account. There is no limit on the number of times the account holder can withdraw his money.

**iii. Cheque Facility -** Current account holding and some savings accounts holders enjoy the cheque facility. They can withdraw money by drawing cheques on their banks. The savings account holders who do not enjoy cheque facility can withdraw money with the help of withdrawal slips. It may be noted that the account holder may issue a cheques in favor of any person. The bank will honor it if there is sufficient balance in the account.

**iv. Collection of cheque and drafts** - This is an important future of a bank. It collects cheques, drafts, and other credit instruments on be half of its customers.

**2.2.2 Meaning of a Customer**

**An old definition**

According to John Paget “To constitute a customer there must be some recognizable course or habit of dealing in the nature of regular banking business.” This definition represents an old view according to which duration of dealings of banking nature is the crucial test and is named duration theory. According to this theory, in order to constitute a customer, the following two conditions must be satisfied.

i. Duration of dealings: A person to be called a customer must be in the habit of dealing with the bank. There fore, a single transaction with the bank will not turn a person in to a customer. Thus a person does not be came a customer as soon as he opens an account with the bank.

ii. Dealings of banking nature. Here money must be deposited in the customers account and drawings should be made from this account. If a banker renders to a person services incidental to but not peculiar to the business of banking, the person thereby does not become a customer; Thus, if a person deposits valuables for safe custody with out having an account, he cannot be called a customer because this transaction is not of banking nature.

Dealings of banking nature are borrowing, lending, issuing and paying cheques and collection of cheques, but these transaction must be routed through the account with the bank,. However, if a person who doesn’t have an account at the bank, but deposit a crossed cheque for payment and the banker receives it for itself and pay the value at the counter, the banker will be liable for the payment. This is because that the person is not the customer. Crossed cheques are paid only to a customer. Thus, the issuer of the cheque can file a suit against the bank for the recovery of money.

**Modern Definition**

The new concept lays down opening a bank account as a crucial test of banker- customer relationship. Duration of relationship is not given any importance. A person becomes a customer as soon as he opens an account with a bank and the latter undertakes to honor the cheques drawn by the former up to the amount deposited in the account. A single transaction is sufficient to constitute a person a customer of the bank “so far as banking transactions concerned, a customer is a person whose money has been accepted on the footing that the banker will honor up to the amount standing to his credit, irrespective of his connection being of short or long standing. “The dealing with the bank should be in the nature of regular banking business. Thus, to constitute a customer the following essential requisites must be fulfilled: -

1. A bank account must be opened in his name by making necessary deposit of money, and
2. The dealing between the banker and the customer must be of the nature of banking business. Occasionally getting a cheque or enchased, purchasing stamps or depositing valuables for safe custody doesn’t constitute a customer. A customer of a bank need not necessarily be a person. A firm, Joint Stock Company, a society or any other legal entity may be a customer of a bank.

**2.3 CUSTOMERS Account with the Banker: Opening and Operation Procedures**

The relationship between a bank and a customer begins when the customer opens an account with the bank. The customer opens all the accounts with a deposit of cash money and that is why, they are also known as deposit account. As we know that it is the most important function of a modern bank to borrow money or to receive deposits from the public. The bulk of the resources of a bank are mobilized by accepting deposits from the public. Banks borrow money from the public by accepting deposits.

Different banks for the benefit of different types of people have introduced various deposit schemes. These include: savings deposit accounts, current/demand deposit accounts, time /fixed deposit accounts and miscellaneous deposit account. The rate of interest offered by different banks under different schemes do not vary much because these are governed by the directives from the National Bank of Ethiopia in the case of the Ethiopian experience.

**2.3.1 Current Account**

It is also known as demand deposit account. A businessperson or an organization can open current account with a bank by making an initial deposit, which may vary from bank to bank. There is no upper limit to the amount, which can be deposited in this account. The amount can be withdrawn by drawing cheques on this account. There is no restriction regarding the number of withdrawals and the amount of withdrawal so long as there is sufficient balance in the account. That is why, it is also knows as a running and active account.

A customer may be permitted to withdraw more than what he has deposited in his account, if he has entered into an agreement with the bank in this regard. Current account suits the requirements of commercial, industrial and other organizations. As a matter of fact, current accounts are not meant to solicit the savings of the people. The other features of the current account are as follows: -

i) Current accounts generally do not carry any interest, as the amount deposited in these accounts is repayable on demand without any restriction.

ii) Most of the banks charge incidental charges on such account, which depend upon the amount of balance, kept by the customer. Where a customer keeps a sufficient balance to compensate the bank, the bank may waive such charges.

1. Temporary loans and advances against fixed deposit receipt, life insurance policies and securities are granted through current accounts.
2. Third party cheques and cheques with endorsements may be deposited in the current account for collection and credit facility.

##### Advantages of Current Deposit Accounts

The customer derives the following advantages from current accounts:-

i) **It enhances business transaction: -** Demand deposits are treated at par with cash. They constitute cheque currency. Cheques are readily accepted in business for making and receiving payments.

ii) **It decreases circulation of legal tender money**. This decreases the printing cost of currencies.

iii) **It minimizes the risk and inconveniencies of carrying of huge money.** Businesspersons have to receive and make a large number of payments every day. It is difficult to handle cash. The cheque facility removes this difficulty i.e. you can issue a cheque with single leaf having huge value

iv) **It facilitates Payment**. There is no restriction on the number of cheques or on the amount to be drawn at a time by on cheque.

v) **It strengthens the credit system:** - Cheques save the use of legal tender money, which in turn save the reserve of the bank. As the reserve at the bank increases, its credit creation power also increases. It also helps to multiply derivative deposits without affecting each bank’s reserves.

vi) **It Facilitates Overdraft Loans**. The banks allow overdraft facilities to the current account holders.

vii) It facilitates documentation of flow of funds and related activities

viii) The check stubs are used to know the daily balances of the customer’s account.

##### Disadvantage of Demand Deposit Accounts

Although demand deposit accounts have the above stated advantages, it also initials the following disadvantages:-

i). It is non-interest bearing account to the public

ii). It is very open for fraud, if it is not handled properly

iii). The occurrence of insufficient fund and using the cheque as a promissory notes

##### Opening Procedure of Current Accounts

A bank should be very careful in entertaining a new customer. It will be taking great risk if it opens an account of a customer without knowing the where about of the latter. As said earlier, the opening of an account involves the honoring of cheques on the part of the bank so long as customer’s account has credit balance. The bank will also a number of other services to the customer like collection of cheques, dividends etc., and acting as an agent of the customer. When the bank does not adequately know the customer, it may result in wrong payment or encashment of forged cheques. Hence, it is essential that the bank should make a through enquiry regarding the customer before opening an account with him. For this purpose, the bank may follow the procedure given below:

**i) Filling Opening Application Format**

The applicant should fill in the prescribed form for opening of an account form available from the concerned bank. Banks keep different forms for individuals, partnership firms, companies, etc. The applicant should fill in the relevant form and mention his name, occupation, full address, specimen signature, and other particulars required by the bank. The applicant has also to declare that he will be bound by the bank’s rules for the time being in force for the conduct of the concerned account.

**ii) Introduction**

The banks follows the practice of opening the account only when an existing customer of the bank properly introduces the applicant. This is not, however, practical in Ethiopia at this time. The idea behind proper introduction is that the bank should entertain a person only who is honest, reliable and responsible-such a proper enquiry will prevent fraud and overdraw of money by forged means.

A question “why a bank should not open the account without proper introduction?” may arise. The answer is that if the introduction is not taken properly, the banker will invite many risks, which can be discussed as follows.

1. The bank cannot avail itself of the statutory protection given to the collecting bank. A collecting bank will incur no liability if it has acted in good faith and without negligence. If the bank doesn’t make proper inquiry and does not get proper introduction, it will be held to be negligent if the customer later on turns to be an undesirable person. The bank will remain liable to the true owner of the cheque, draft, etc, if such instruments are stolen by the customer whose identity cannot be established and proceeds are collected by the bank and withdrawn by the former.
2. If overdraft is created by mistake in the account of a customer who is not properly introduced, the bank will not be able to realize the money because the identity of the customer cannot be established.
3. Undesirable customers may cause annoyance to the public by cheating them. Such a customer might defraud the public by issuing cheques on his account without having adequate balance.
4. If the bank receives deposits from an undischarged insolvent with out proper introduction, it will run the risk of attachment of these deposits by the court declaring him insolvent

**iii) Specimen Signature**

The applicant is required to give his specimen signature on a card meant for this purpose. This will help to protect the bank against forgery because whenever the cheque is presented at the counter of the bank for payment the signature will be tallied with those on the card.

**iv) Deposit of Cash**

When the above formalities are completed, the bank will agree to open an account in the name of the applicant. Before opening the account the customer must deposit the minimum initial deposit in cash as per rules framed by the respective bank.

**v) Issue of Cheque book**

The bank issues a chequebook to the customer after the account has been opened and an account number has been allocated. The name of the customer and the account number written on the cheque and delivered to the customer after being registered on the cheque delivery book.

A Chequebook contains a number of blank forms, which can be used by the customer to withdraw money from his account. The blank cheques in the chequebook are serially numbered and designed in such a manner so as to distinguish them from the cheque forms of other banks. Cheques have their counterfoils also which indicate to the customer the amount he has taken or withdrawn from his account.

Every chequebook contains one requisition slip also to facilitate the customer to obtain a new chequebook when the old chequebook has been exhausted or is about to exhaust. To present the misuse of cheques, the bank enters the account number on each cheque and the numbers of cheques in the chequebook are recorded in the bank ledger.

Demand deposits are operated through different types of cheques, which can be discussed as follows:

* **Certified cheque**: - this is a personal cheque on which the bank has guaranteed to make payment. This avoids the problem of dishonor due to insufficient funds in the drawers account. Therefore, such checks are sure to be good unless it is forged or obtained by fraud.
* **Officer’s cheque: - It** is also known as cashier’s cheque. It is a cheque drawn on the bank itself, which a depositor buys from bank.
* **Personal cheque**: - It is a cheque drawn by individual firm’s businesspersons, etc. This cheque must be accepted with due attention as it might be dishonored by any reason.

## Operation procedures of Current Accounts

This part deals with most of the transaction affecting current account deposit and withdrawals.

**1. Deposits**

Deposits to current account can be made in different forms: cash deposits, cheque deposit (either local or foreign) and transfers (local or foreign).

**i. Cash deposits**

Here the customer complete the standard cash deposit voucher. The relevant information such as: namr, account number, branch's name, cash denomination etc., should be filled on the space provided for the purpose.

The depositor should check the following points

* Checking the receiving teller number
* Checking the name of the branch
* Checking demand of transactions
* Checking demand journal stamp

**ii. Cheque Deposits**

**a) Own Branch Cheques**: - Here both the depositor and the drawer (account holder) maintain their account at the same branch. In such instances, the customer is required to fill the cheque deposit voucher with name, A/c no, drawer's A/c No, and the name of the branch. The cheque will be handed over to signature verifier who will in turn check the genuineness of the cheque and pass it to the machine operator to deduct the face value of the cheque from the account. Before accepting cheque for deposit, check the following:-

* Drawer's signature
* Date of cheque (undated, post dated, state dated)
* Amount in words and figures
* Alteration in date, month, year and amount
* Endorsements and crossings

After all these formalities are completed the customer's account will be created against the voucher.

**b) Other Bank or branch cheque**:- In this case the cheque will be sent to the bank or branch where the account is maintained for clearance. The customer's account will always be credited after clearance. The clearing procedure is done through head office (when the cheque is drawn on another branch of the same bank) or clearing house- at national bank (when the cheque is drawn on another bank.)

**c) Foreign Cheques: -** The following are parts of foreign cheques: Traveler's cheques, personal cheques, international organizations cheques, foreign drafts, etc. All these cheques are normally drawn against accounts maintained with foreign transfers.

Transfer of money either local or foreign could be in the form of telegraphic, mail or drafts. The staff responsible should authenticate the genuine of the transfer before proceeds credited to the account.

**2)Payments**: Payments from current accounts are normally made against checks. However, there are times when payments are effected without cheques (by customers written instruction and correct order). In such cases, the bank should ascertain that the instructions given are genuine and made by an authorized person or body.

**Payments procedures:**

Prior to effecting payment of cheques, the following points should be observed.

-Name of drawee bank

-Name of account holder and account number

-Date of the cheque

-Amount (in words and figures same)

-Endorsement of payee or endorsee-regular

-Signature of drawer (Verify)

-Identification of payee or endorsee

After checking the correctness of the cheque a token is given to the customer. The cheque will be handed over to the machine operator (Accountant) to debit (deduct) the customer's account. Then the cheque will be transferred to the teller who will check the token number written on the cheque with the disc presented and pays the amount if he/she is satisfied with the cheques.

* + 1. **Savings Deposit Account**

Savings deposit account is meant for small businesspersons and individuals who wish to save a little money out of their current incomes to safe guard their future and also to earn some interest on their savings. A savings account can be opened with a small sum and small amounts can be withdrawn. There are restrictions on the maximum amount that can be deposited in this account and also on the withdrawal from this account. The bank may not permit more than one or two withdrawals during a week and may lay down a limit on the amount that can be withdrawn at one time. This is always described on the inside part of the outer part of the passbook.

Savings account holders are allowed to deposit cheques, drafts, dividend warrants, etc, which stand in their name only. However, the bank does not accept cheques or instruments payable to third party for deposit in the saving deposit account. Banks allow interest on deposits maintained in savings account according to the rates prescribed by the National Bank of Ethiopia. Savings deposit account is very popular among the general public because of the following advantages.

* A savings deposit account can be opened with little sum of money. It helps the people of small means to save for their future
* The balance lying in the savings account earns some interest. The customer is benefited as his money grows with the bank.
* The money lying with the bank is quite safe. There is no fear of theft.
* The money can be withdrawn concurrently from the saving account.
* The customer may get the cheque book facility in order to facilitate payment to third parties by issuing cheques.

**Opening procedure of Savings Bank Accounts**

The banker should be very careful in entertaining a new customer as he opens a saving account. The necessary precautions should be taken here like that of the opening of current deposit accounts. The bank may follow the following procedures, in this regard, as given below,

**i). The opening application format**

This is a standard format designed by the bank, which replaces personal application. The prospective customers should complete this form. He/she should present at least one proper ID card, photocopy of renewed trade license for traders.

**ii) Specimen Signature Card**

This form is designed to obtain customers signatures at the time of opening account. This will be used by the banker to compare the signature on transaction, especially withdrawals, and to ascertain the, genuinety of the customer /presenter/.

**iii) Deposit of cash**

Before opening the account the customer must deposit the minimum initial deposit required by the respective banks.

**iv) Issue of pass Book**

The bank issues a passbook to the customer after the account has been owned and an account number has been allocated. The passbooks contain the record of transactions between the bank and the customer. It is a copy of the account in the bank's ledger as on a particular date. It is written by the bank from its records and is meant for the use of the customer. It is called a pass book because it frequently passes between the bank and the customer.

The pass book helps the customer to know the position of his account and know certain items like interest, incidental charges, dividends collected, bills paid, etc. This will also enable the customer to reconcile his records with that of the banker-used as 'Bank Reconciliation statetment'.

**Operation procedures of Savings deposit Accounts**

This part deals with transaction officiating savings deposit accounts deposit and withdrawals.

**a. Deposits**

Deposits to saving deposit accounts can be made in different forms; cash deposits, cheque deposits and transfers. All other procedures are the same as that of current account deposits. However, the standard cash deposit voucher is unique to savings accounts- a different deposit voucher is prepared- refer to deposits to current account.

**b. Withdrawals/ payments**

Withdrawals made from savings deposit accounts are made against the standard withdrawal voucher. The customer fills the withdrawal voucher, which may include, the following information:

- Name of drawee bank/branch

-Name of the account holder and account number

-Date of withdrawal made

-Amount in words and figures

-Signature of the drawer/account holder

A specimen withdrawal voucher can be depicted as follows.

**Name of the Bank**

Name of the branch where the account is maintained Date…………..

Name of account holder \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Amount\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_)

Account number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

**Payment procedures**

After checking the correctness of the withdrawal voucher, the counter clerk gives a token to the customer. The counter clerk should check the amount in words and figures to be the same, the name of the account holder, the date to be full, and the account number, the signature of the customer against the specimen signature and the genuineness of the presenter through proper identification. The withdrawal voucher with the passbook is transferred to the journal keeper to check the sufficiency of the credit balance of the customer's account. The journal keeper then transferred the voucher with the passbook to the cashier. The cashier after checking the token number written on the voucher with the token disc, count cash and handover the demanded requested to the customer.

**2.3.3 Fixed Deposit Accounts**

The term ' Fixed deposit' means the deposit repayable only after the expiry of a specified period, which ordinarily varies from fifteen days to five years. Since itis to be repayable only after a fixed period of time, which is to be determined at the time of opening the account, it is also known as time deposit.

**Deposit: -**People, who can afford to keep their money with banks for a certain period without withdrawing it, meanwhile go in for fixed deposits. Fixed deposits are the most suitable form of raising resources for a commercial bank. Since they are repayable only after a fixed period of time, the bank need not keep cashreserves more than the statutory requirement against these liabilities. It may employ these funds more profitably by lending at higher rates of interest and for relatively longer periods. It is because of this reason that banks offer higher rates of interest on such deposits.

The rate of interest on fixed deposits depends upon the length of the time of the deposit and the amount of deposit. The longer the period, the higher is the rate of interest offered and vise versa.

The principal types of bank time deposits are: savings certificates, money market certificates and certificates of deposits.

**i. Savings certificates**

They are bank liabilities issued in a designated amount, specifying a fixed rate of interest and maturity date. The interest rate is generally higher than on savings accounts. The main purpose of these accounts is to generate income to the depositor. They are important sources of funds for small, consumer-oriented banks. They are held primarily by consumers or other small depositors.

**ii. Money Market Certificates**

They are designed primarily to service consumers and small businesses. They help commercial banks to compete effectively with money market funds. The minimum amounts, maturity date and interest rates are determined by bank regulators.

**iii. Certificates of Deposit, (CD)**

Certificates of deposit commonly referred to as CDs, are very large unsecured liabilities of commercial banks issued in verity of denominations to business firms and individuals. They have a fixed maturity date, pay an explicit rate of interest, and are negotiable if they meet certain legal specifications-Negotiable CDs are issued by large, well -known commercial banks of the highest credit standing and are traded actively in a well-organized secondary market;

CDs are attractive both to holders of large funds and commercial banks. They can be redeemed at any time in the secondary market without loss of deposit funds to the bank.

**Advantages of fixed or term deposits**

Fixed deposits, after the following benefits to those who have surplus funds to be deposited for a certain period of time without being withdrawn

i). The rate of interest on fixed deposits is higher than that is higher than that allowed on savings deposit account.

ii). It enables to depositors to get loans from the bank up to 90% of the fixed deposit

iii). Even though, it is not withdrawn on demand, depositors are allowed to encash their deposit receipts before maturity by foregoing a part of the interest accrued on the deposit, with the agreement of the bank.

**Opening of a Fixed Deposit Account**

In order to open a fixed deposit account, depositor is required to fill in an account from available from the bank. Here he/she will mention the amount of deposit and the period for which deposit is to be mode. He will also give his specimen signature. After the deposit of the money, the bank will issue a 'fixeddeposit receipt ' acknowledging the receipt of the amount specified in the document to be repaid at the expiry of the period mentioned in along with interest at a specified rate per determined. The terms and condition of the fixed deposit are printed on the receipt.

**Premature Withdrawal of Time/Term Deposits**

If payment under a term deposit is requested before the completion of the period of deposit agreed up on at the time of making of the deposit, the rate of interest payable in respect of such term deposit shall be the one applicable to the period for which the deposit remained with the bank less one percent penalty for a premature withdrawal. However, in the event of premature withdrawal of a deposit under reinvestment plan, which provided for reinvestment of the interest, as permissible shall be paid on a compounded basis with quarterly or longer rests for the period during which the deposit remained with the bank.

Renewal of a deposit before the date of its maturity shall not be regarded as involving premature payment of the deposit provided the deposit is held by the bank after the date of the renewal for a period longer than the remaining period of the original contract.

**Opening and operation of fixed deposit Accounts**

Requirement or procedures of opening and operation of fixed deposit account can be depicted as follows.

**Filling Application forms**

The depositor has to fill in an application form, which includes: The amount of deposits, the period for which deposit is to be made, the name/s in which the fixed deposit receipt is to be issued, in case of a deposit in joint names, instruction regarding payment of money on maturity of the deposit, the specimen signatures of the depositor/s, the banker issues a receipt of deposit. Interest rate may be included.

**Payment of interest on fixed deposits**

It is usually paid on maturity of the fixed deposit. But by the agreement of the depositor and banker, it can be paid every three, six months or any interval. The interest amount may be transferred to the saving or current account of the customer or may be invested in the time deposit account and compounded to be paid at maturity date.

**Interest on overdue deposits:-** A banker is legally not bound to pay interest on a fixed deposit after its maturity. However, the bank at its discretion shall pay interest for overdue period on such deposits subject to the following conditions

* 1. If the deposit is renewed from date of maturity
  2. If the rate applied is not more than the renewed deposit

**Surrender of deposit receipt before the maturity date**

A banker is not bound to accept surrender of the deposit before its maturity date. However, in practice the banker accepts such a request from its customer and makes payment of the amount due under the deposit receipt even before its maturity date. In such cases there will be a reckoning of interest rates by a certain value.

**Deposit receipt** is issued to the depositor at the time of deposit. This deposit receipt is not a negotiable instrument. However, it can be assigned to another person. That means it can be transferred but not negotiated. (See chapter three for negotiation and assignment)

The banker should receive an instruction at the time of deposit made by two or more persons. Deposits in joint names without further agreement shall not be paid to any of the joint depositors. No variation or revocation of instructions in a joint account can be made without the consent of the other joint account holder/s in any case.

***2.3.3.1 Difference between Fixed Deposit Receipt and cheque***

1. A fixed deposit receipt is a receipt issued by a bank acknowledging the receipt of a deposit from the depositor for a fixed period. It is usually in a printed form and contains the word 'Not Negotiable' at the top. But a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. A Cheque is an order on a specified banker directing him to pay the amount to or to the order of the person named in it.
2. A cheque originates from the customer ordering the banker to pay a certain amount to the order of the person specified in the cheque, but a fixed deposit receipt is issued by a banker acknowledging, the receipt of the amount from the customer. Moreover, if a person has a cheque, it does not mean that the customer has credit balance with the bank.
3. A fixed deposit receipt is not a negotiable instrument under law. Further, it contains words not negotiable’ which means that the transferee cannot get a better little than what the transferor has. But a cheque is a negotiable instrument and it is freely transferred from one person to another by mere delivery or endorsement and delivery. The holder in due course gets a better titleof the cheque.
4. In case of a cheque, the payment has to be made by the banker on demand to the holder of the cheque, but in case of a fixed deposit receipt, the payment will be made only after the expiry of the fixed period,. It is significant to point out that in case of fixed deposit receipt, the principal amount along with unpaid balance of interest will be paid on the due date. The amount mentioned in thecheque doesnot carry any interest. In both the case of a fixed deposit receipt anda cheque, the banker is required to make payment only on demand. In case of a fixed deposit receipt, the amount can be drawn at any time after its maturity. But in case of cheque, it becomes stale after six months from the date of drawing the cheque and it is the practice of the bankers to refuse payment of such cheques.

**Interest on overdue deposits**: - Interest ceases on the deposits after the date of maturity. However, banks have the discretion to allow interest thereon if the deposit is renewed. The overdue interest to be allowed will not exceed the rate applicable to the period for which deposit is desired to be renewed. The interest prevailing at the time of renewal is the interest allowable in such cases.

**2.4 General relationship Between Banker and Customer**

###### Debtor and Creditor Relationship

###### This is the primary relationship between a banker and its customer, the respective position being determined by the existing state of account. When the customer deposit money in the bank, the customer is a creditor and the banker is a debtor. When the customer over drawn his account he become debtor and the bank a creditor.The money deposited with the banker becomes his property and is absolutely at his disposal whether he pays or does not pay interest on it. This is because the banker undertakes to repay on demand a sum equivalent to the amount deposited with it. The customer has no right whatsoever to claim identical coins or notes deposited by him with the banker. The banker can pay in any kind of legal tender money. The banker only under takes to repay a sum equivalent to the amount deposited with him.

***A Debit by a Banker Vs an Ordinary commercial Debit***

A Debt due by a banker differs from an ordinary commercial debt in one important respect, namely that it is not due unless demanded. In the case of an ordinary commercial debt, a request by the creditors for payment is unnecessary. The bank is not liable to pay the customer the full amount of the balance until he demands payment from the bank at the branch at which the account is kept.

Although the relationship between a banker and a customer is mainly that of a debtor and creditor, it differs from similar relationship of debtor and creditor of ordinary commercial debts in the following respects.

1. Demand for repayment is necessary. The creditor (customer) must demand a payment from debtor (banker). The banker is under no obligation to refund the customer’s deposits unless demanded is made. Even in case of fixed deposit, the bank is not required to return the money on its own accord. Demand should be made at a proper time and place. The demand for repayment should be made during normal working hours of the bank on a working day. The demand should be made at the branch of the bank where the customer has his account unless otherwise agreed.
2. Demand must be made in the proper manner. The demand for payment of money should be made through a cheque or any other written order or per the common usage among the banker. A verbal or telephonic demand will not be taken as a proper demand. The proper manner may be cheque, draft, or anything which may prove the genuineness of demand by the customer whose identify must be disclosed and authenticated to the satisfaction of the bank.
3. No time bar. The deposits with a bank do not become time barred on the expiry of a certain time as in the case of other commercial debts. This is because of the reason that the amount does not become due unless it is demanded.
   * 1. **Trustee and Beneficiary Relationship**

Where a banker, pursuant to instructions, express or implied has credited the proceed of a bill or other document entrusted to him for collection, the relationships of debtor and creditor arises from the time of his doing so. Where, however, the banker has suspended his business before receipt of such amount, he holds the money as a trustee for the customer, irrespective of whether or not the latter had an account with him on the date of the receipt of money and whether or not the money has been credited in the account.

The banker acts as a trustee for his customers in those cases where

1. He accepts securities and other valuables for safe custody.
2. If money is deposited to the bank with a special instruction to retain it till the customer gives further instruction.
3. When a cheque or bill is deposited with the bank for collection until it is collected and credited to the customers account

In such cases the customer continues to be the owner of the valuables or securities or cheque or bills deposited with the bank and they are not available for distribution among the bank’s creditors in the event of bank going into liquidation.

* + 1. **Agent and Principal Relationship**

Banker acts as the agent of the customer in those cases where it performs agency functions:- Such as; collection of cheque and bills of exchange on behalf his customer, purchasing and selling of securities on behalf of his customer, payment of insurance premium, executing standing instructions, etc.

* + 1. **Bailer and Bailer**

When a customer deposits with the bank valuables, documents, shares, debentures, etc. for safe custody, he becomes a bailer and the bank bailee. The bank as a bailee is liable to keep those in safe custody as a custodian on specified charges. It is also liable to compensate any loss to the property under its custody.

##### 2.5 Obligation of a Banker

The obligations of the banker are the rights of the customer and the rights of the banker are the obligation of the customers. Two important obligations of the banker towards his customer are as follows.

* 1. **To honor cheques:** The banker is bound to honor his customer’s cheques if there is sufficient balance in his account and the cheque has been drawn as per provisions of the law of the country.
  2. **To Maintain Secrecy of Account:-**. In an ordinary debtor-creditor relationship, there is no obligation of secrecy. But in the case of banker, one of the implied terms of the contract is that he is obliged to keep the affairs of his customer secret except under special circumstances such as:-

a) Where disclosure is under compulsion by law

b) Where there is a duty to the public to disclose

c) Where the interest of the banker requires disclosure

d) Were disclosure is made with the consent of the customer

* 1. **Rights of Bankers**

The banks have been conferred by low two special rights which are not available to an ordinary creditor, These are:-

* + 1. **Right of Lien**

Lien means the right of a creditor to retain in his possession the goods and securities owned by the debtor until the debit has been discharged, but not the right to sell. However, the right of a banker amounts to an implied pledge, which gives him a right to sell the goods in due course to realize his dues.

The banker has the right to general line in respect of the amount due to him by the customer. It is not restricted to specific or particular goods. The banker has the right to retain possession of goods belonging to the borrower of the general balance of account.

Lien can be either (i) a general lien, or (ii) a particular lien. General lien entitles the creditor in possession to retain the goods and securities till all his claims against the power of goods have been satisfied. Thus, it is applicable in respect of all amounts due from the debtor to the creditor. But a particular lien is a specific lien, which confers a right to retain those goods for which the amount is to be paid.

#### The special features of banker’s lien are as follows

1. The banker possesse the right of general lien on all the good and securities entrusted to him in his capacity as a banker. This right will arise only when the goods and securities have been left with him in order that he may deal with them in his capacity of a banker. The banker will not obtain such a right if the goods and securities have been entrusted to him as a trustee or as an agent of the customer. Moreover, there should be not agreement, express or implied inconsistent with the lien.

ii. A banker's general lien is an implied pledge which gives him a right to dispose of the goods in due course to realize his dues. He can sell the goods on default if the time is fixed for the repayment if the loan. If the time is not fixed, he can sell after asking the customer to pay the loan and giving him a reasonable notice of his intention to sell.

iii. A banker can exercise his right of general lien only on those goods, which are the property of the borrower. The banker can't exercise this right in case of goods held in joint- ownership or partnership of which borrower is one of the joint-owners or partners.

iv. A banker can exercise his right of lien on the securities remaining in his possession after the loan, for which they were lodged, is repaid by the customer and there exists no contract to the contrary.

v. The banker possesses no right of lien on money deposited but a right of set off. The banker may exercise his right of set off rather than the right of lien in respect of the money deposited with him.

# Exceptions to the Right of Lien

The right of lien of the banker has the following exceptions: -

1. **Articles for safe custody**. The banker cannot exercise his right of lien on valuables deposited by his customer for safekeeping. Because in such cases, the bank is the bailee or trustee of the goods deposited by the customer and so the banker must perform his duties in accordance with the terms of contract.
2. **Documents left for a specific purpose**: -When a customer sends a cheque or a bill of exchange with the clear instruction to utilize its proceeds for a specified purpose, the banker cannot exert his right of lien on the proceeds of such cheque or bill of exchange because a contract inconsistent with the right of general lien is presumed to exist.
3. **Securities left negligently**: - When some securities or document are left with the banker by mistake or negligently, he cannot exercise the right of lien over such securities or documents.
4. **Securities held in trust**. The banker cannot exercise the right of general lien over the securities deposited by the customer as a trustee in respect of his personal loan.

**2.6.2 Right of Set Off**

A customer may maintain two or more accounts at one branch or at several branches of the same bank. This right enables the banker to combine the two accounts in the name of the same customer and to set to the debt, if there is no agreement to the contrary. The right of set off gives a special protection of the banker in case of a default by a customer whose one account is overdrawn and the other account has a credit balance. Thus, where a customer maintains two accounts in his name, and one of them shows a debit balance, the bank can set off the debit balance against the credit in the second account. However, depending on the custom or agreement between the banker and the customer at the time the two accounts are opened, notice to the customer of the banker's intention to combine accounts may or may not be necessary. The following rules regarding the banker's right of setoff must be taken into consideration.

1. **Debts in the Same Name and Same Right.**

Before combining the different accounts the customer, the banker should ensure that such accounts are in the same right and same name. The banker should be cautious in situations where accounts are in the same name but are in different rights or capacities. If one account is in single name in personal capacity and other account is in joint name or in the capacity of a guardian of minor, or in the capacity of a trustee, banker cannot combine these accounts. Similarly, a personal account of a partner cannot be combined with the account in his capacity as a partner.

**ii) Debts must be due.**

The right to combine two or more accounts can be applied to existing debts due from the customer. It cannot be applied to future debts.

**iii) Debts must be certain: -**

Before exercising the right of set off, the banker should ensure that debt amount is certain. In case the amount of debt cannot be determined, the right of set off cannot be exercised.

**iv) No agreement to the contrary**

The right of set -off is available to the banker without any agreement. But, if these are any agreement implied or expressed, which is contrary to such right, the banker cannot avail this right against the customer.

**v) Garnishee order**:

Garnishee order is a court order given to the Banker to stop operation of an account. If a banker has received a garnishee order against his customer, the banker should exercise right of set-off before the garnishee order is made effective. If the banker does not exercise the right of set off and informs the court of the entire balance to the court, it will be difficult for the banker to realize the debts due from the customer.

**Vi) Banker's Discretion**

The right of set -off rests on the banker's discretion:- A customer cannot expect his banker to combine the accounts at various branches for the purpose of honoring his cheque, in case the account on which cheque has been drawn shows a debt balance.

**2.6.3 Right of Appropriation**

A customer may owe several debts to a banker and make some payment to the banker, which is not sufficient to discharge all his debt. Then, the problem of appropriating this payment arises. As to which debt should be discharged first?

Right of appropriation is the right of a banker to appropriate the money paid by the customer to any of the loans including the time-barred debts. The banker can do so when the debtor has not asked the banker at the time of making the payment to cancel or reduce any one of the debts, irrespective of the order of the time when the debt is incurred. The implications regarding appropriation of payments made by the customer are as follows;

1. **Appropriation indicated by the debtor.**

If a customer has more than on debts due to the banker, he has the right to direct the banker to reduce or cancel any debt at the time of payment, For instance, if a customer has two account and one f them shows an overdraft, the customer may direct, at the time of payment, the banker to credit the same to any of the two accounts as per his instructions.

**ii) Appropriation by Banker.**

In the absence of any instructions from a customer who owes money to the banker on a number of accounts, the banker has a right to appropriate the payment to any debt or account according to his discretion. But he should inform the customer about the appropriation

**iii) When neither party appropriates.**

When neither the customer has given any instruction to the banker nor the banker has taken any action to appropriate the money, the payment must be appropriated to discharge the debts in chronological order (i.e. order of time) irrespective of the fact that some debts are time-barred. If the account is discontinued and new account is opened, the rule does not apply to the old account.

**2.6.4 Right to Close Account**

A customer may close the account with the banker at any time he feels without assigning any reason. Similarly, a banker may close the account of his customer by sending a written intimation to the customer. The banker must give the customer a sufficient notice before closing the account. If he closes the account without giving proper notice, he will dishonor cheques drawn before the closure of the account. This will injure the credit of the customer for which he may claim damages. The length of the notice will depend on the circumstances of the case and nature of the business of the customer. When a customer does not comply with the request of the banker to close his account even after the expiry of a reasonable notice given to him, the banker can close the account by returning the entire balance due to him. He must ask his customer to return the unused cheques. In the following cases, a banker can close the account of a customer without giving notice: -

* When a customer dies, the banker must close the account of his customer on receiving a notice of death.
* When a banker comes to the knowledge that a customer has become insane, he should close his account.
* When a banker comes to the knowledge that a customer has become insane, he should close his account.
* A banker should not honor cheques after receiving the garnishee order from the court attaching his customer's account in execution of a decree.
* When a banker receives a notice of assignment of his customer's account to a third party, he should not honor cheques issued after the assignment.

**2.7 Dormant Accounts**

Dormant accounts are those accounts, which are without any customer created transaction for a long time. The law doesn’t dictate how these accounts are to be created,. Every bank has its own policy in this respect. Possible reasons for an account becoming dormant account:

1. The depositor might have moved from place to another without notifying thebanker about his change
2. He may have misplaced his pass book and forgotten about the existence of an account with a particular bank
3. The depositor might have died with out banks knowledge**.** In the absence of customer’s checks, cheaters can easily manipulate the dormant account. One method of controlling frauds in case of dormant accounts is to transfer all of them into one ledger. The following principles are used in this regard.

* This ledger should list all the depositors having dormant accounts with the bank with the amount shown against each account.
* The signature cards for dormant account should also be removed from the active file and should be placed in a locker under dual control.
* The card reference of such transfers should be kept in the active file.
* The card should show the name of each depositor and the date on which the account was transferred to dormant account ledger.
* In case a depositor whose account has been taken as a dormant account wants to operate such an account, the entry must be initialed by a responsible official before the account is permitted to be operated upon. The officer concerned should also initial the control sheet when such entries are made

**2.8 Closure of Accounts of A Customer**

The relationship between the banker and the customer arises out of a contract between the two and it continues as long as both of them agree to it. This relationship may also be discontinued by the operation of law in certain cases. The following are circumstances under which a banker can close or stop the operation of the account of a customer.

1. A customer can close his account with the banker at any time he like without assigning any reason. The banker must close the account with immediate effect on receipt of notice and pay him the balance in his account. After the notice is received, the banker should not make payment of the cheques presented. It is the normal practice to require the customer to return the unused cheque leaves.
2. The banker may ask the customer to close his account if the account is not operated for a long time-became dormant account. In case the customer is not traceable, the banker may close his account and transfer the amount to unclaimed deposits account. Similarly the banker may close the account of a customer if the latter is fond "**Undesirable** " for valid reasons

A customer is deemed to be undesirable under the following circumstances:-

* + When a customer is convicted of an offence of forging the cheques or bills.
  + When a customer issues a cheque when sufficient credit balance is not there in his account; and
  + When a customer does not return the loan taken from the banker or does not repay overdrafts.

The banker must give the customer a sufficient notice before closing the account. The contents of the notice must include the intention of the bank to close the account and a request the customer to close his account by withdrawing the balance at the credit of the account. If the banker closes the account without giving proper notice, he will dishonor cheques drawn before the close of the account. This will injure the credit of the customer for which he may claims damages. The length of the notice will depend upon the circumstances of each case.

When a customer does not comply with the request of the banker to close his account even after the expiry of a reasonable notice given to him, the banker can close the account under intimation to the customer by returning the entire balance due to him and demand the return of unused cheques. The banker will not be liable for dishonoring cheques subsequently presented for payment.

C. The banker may stop the operation of the account without giving any notice is the following cases.

* When the banker learns that the customer has turned lunatic or insane or has died, the banker must stop the operation of the account.
* If the customer is declared insolvent or the corporat customer goes into liquidation, the banker must stop the operation of the account and transfer the credit balance to the official assignee or receiver of the insolvent customer.
* When the bank receives a Garnishee order from a court attaching all the funds of a customer, the banker is bound to close the account of the customer automatically. However, if the Garnishee order stipulates that only a certain amount of the credit balance of the customer should not be paid, the banker may honor the cheques for the balance amount
* When a banker receives a notice of assignment of his customer’s account to a third party, he is bound to pay the amount to the said third party and must stop the operation of the account.
  1. **Special Type of customers and precaution in Dealing with them**

General precaution are taken at the time of opening an account whenever a bank deal with majors/persons who are above the age of 18/and for all those who need to be customers of a bank. But a bank has to open and operate account for different types of customers such as individuals, partnership, join stock companies, building societies, local authorities etc. In case of individuals, the account may be opened for two or more persons in which case the account is called a joint account. Again all individuals are not alike. Although every persons is legally capable of opening an account with a banker provided the latter is willing to take him as a customer and transact banking business with him however the capacity of certain person is restricted by law. So many restrictions are placed in their capacity to contract or their power to exercise certain rights. Therefore, the banker must take the necessary precaution in dealing with such customers in order to safeguard his position. The position of the banker wish regard to these special types of customer and the precautions**,** which he should take in dealing with them, is summarized as follows.

**1. Minors**

According to Article 198 of the Civil Code of Ethiopia 1960 a minor is a person of either sex who has not attained the full age of eighteen years. However, in the case of some other countries when a guardian is appointed by court in respect of this person ‘s property minority extends to twenty years.

***Position of a Minor***

All contracts entered into by a minor are void. Thus, a minor is not bound to repay money borrowed by him. Further he is entitled to recover any security pledged by him for the purpose of taking a loan. A minor can always pleas infancy and is not stopped to do so even when he has procured a loan or entered into some other contracts by falsely representing himself as a major (when he in reality was a minor).

Minor’s Position as an Account Holder.

**A. Credit Account**

An account can be opened in the name of a minor, and banker runs no risk so long as the account is in credit balance.

**B. Unsecured Overdraft**

The legal position of a contracts entered by a minor is void and therefore, he is not bound to pay the overdraft.

**C. Secured Overdraft**

The position of the banker is in no way better in the case of secured overdraft. Since he cannot avail any security given by a minor.

**D. Overdraft Secured by Guarantee**

Since a guarantee presupposes a debtor against whom the debt secured can be enforced to follow that a guarantee given to cover an overdraft given to a minor is void.

**E. Joint Account**

An account can be opened in the joint names of a minor and an adult. But, a minor cannot be made personally liable for an overdraft or loan

**F. Minor as and Agent**

He can act as an agent and as agent, if authorized to do so, he can draw, accept and enders bills which are binding on his principal, and may overdraw his principal’s account, if he is authorized in this regard. In all such cases the banker must obtain a clear mandate from the principal stating the various power given to the agent.

**G. Minor as a partner**

A minor may became a partner, but he is not personally liable for the debts of the partnership incurred during his minority.

**H. Other Matters**

Deposit account can be opened in the name or minors who can give a valid discharge for the money repaid to them. A minor may be appointed as executive, but he cannot act as such until he attains majority, and if sole executor, his duties meanwhile should be performed by his guardian of such other person as the court may appoint. But he cannot be appointed as a trustee.

A minor cannot make a valid will. If, therefore, a minor who has a banking account dies, any balance to his credit cannot be withdrawn until the letters of administration taken out by his next of kin are produced before the banker.

**2. Lunatics**

A lunatic is a person who lacks understanding power and rational judgment. When a banker receives notice of a customer's lunacy or insanity, all operations on the account must be suspended until receipt of an order of the court, or proof of the customer’s recovery. He is, however, entitled to debit his lunatic customer's is account in respect of all cheques honored by him before getting the notice. This right ceases as soon as he receives the notice. Therefore, he cannot debit his customer in respect of cheques honored by him after getting the notice.

The banker will not be safe if he stops the operation of account by relying upon mere hearsay evidence of his customer’s lunacy. He must confirm such information before taking further steps. However, incases where he gets notice of his customer being detained in a lunatic asylum he can safely suspend the operation of the account. When a person becomes insane, the court appoints a receiver to take care of his property as long as continues to do so.

**3. Drunkards or Intoxicated Persons**

A contract by a drunken person is avoidable and can be ratified by him when he is sober. The position of an intoxicated person is almost similar to lunacy. It is, however, difficult to understand whether the person is so intoxicated as to be in capable of understanding the nature and effect of the contract. Under such circumstances the banker must honor the cheques of such person only in the presence of a witness and not otherwise. Such a witness preferably must be an outsider rather than an insider i.e. the member of the bank.

**4. Executors and Administrators**

An executor is a person named in the will to execute the will of a deceased person after his death.

Where no person is named in the will or the person named refused to act, then the court will appoint a person and such person is called administrator.

Sometimes two or more persons may be appointed to act as executors or administrators. Bankers do not face any risk in opening accounts for executors and administrators in their personal capacity. But if accounts are to be opened in his official capacity the following precautions are needed.

1. He must inspect the probate or letter of Administration appointing them as such executors or administrators. Then he must note in a special register the directions which the deceased in his will has given as to the disposal of the property of other matters having a bearing on the bankers relationship with personal representation of the deceased.
2. Every executor has the right to operate the account but the cheques drawn by one executor may be countermanded by the other executors. Thus it is usually necessary for a banker to obtain a clear mandate from all the executor stating clearly the power of each executor to draw cheques on the joint account and to overdraw money on behalf of the executorship.
3. Borrowing by an executor is always in his personal capacity, and, if it is not authorized, the estate of the deceased cannot be made liable for such borrowings. Similarly, if the money is misapplied, no contribution can be sought from the deceased’s person’s estate the bank should ensure in terms of will that the borrowing is authorized.
4. On the death, resignation, or insanity of one of the executors’ the banker can continue to operate the account. But if the account is overdrawn on the personal security of such insolvent or deceased person the account must be closed in order to fix the responsibility of such a person. A new mandate is necessary if the original mandate empowered only some of the executors succeed in taking the executorships. But if he dies, the person entailed must apply for grant of letter of administration.
5. In the absence of express provision in the will or in the absence of the will, the business of the deceased must not be continued longer than is necessary of winding it up. If it is carried on beyond reasonable time, the executors are committing breach of trust to which the banker also will become a party. If the banker makes any advances, other creditors and beneficiaries will have a prior right over banker, and they can claim any securities deposited with the banker.
6. The executor in order to borrow to facilitate the administration of estate, as for example, to pay off debts pending realization of assets. In all such cases the liability of the executors is personal although they have the right to be indemnified from the deceased estate. The banker can ask for a charge on the specific assets of the estate of the personal assets of the executors, to secure the debt.

**5. Local Authorities**

While opening an account in the name of local authorities a banker has to exercise the greatest care. He must in detail the statute under which such authorities are established to ascertain the following particulars

**Firstly,** he must ascertain the nature of their constitution. These authorities generally have a managing committee with a president vice – president and a treasurer.

**Secondly,** he must find out whether they are in powered to open a bank account, some authorities are prohibited from opening a bank account with private banks, if authorize to open, only certain persons are authorized to open an account and operate according to the authority given to him. Therefore, the banker must ascertain the power of the treasurer. The however in no case should be opened in the name of the treasurer but it must always be in the name of the authority.

**Thirdly,** the banker must find out whether these authorizes are permitted to borrow money with or without security. He must scrutinize the provisions of the act to satisfy himself that the proper procedure is followed in granting any advance to such authority. The extent of the borrowing, propose of the loan and the nature of securities used against the loan must be defined in the act. The banker must make sure that these provisions are complied with.

**6. Unincorporated Bodies**

In opening an account in the names of an incorporated bodies like clubs, committees, etc. the banker must see whether they are properly registered pr not, by laws of such associations or clubs. It must also obtain a copy of the resolution appointing him as their banker. A mandate containing the names of persons authorized to operate the account and their specimen signature should be obtained. It should be remembered that an incorporated body couldn’t be held liable in respect of any liabilities incurred by its officials, as it has no legal personality. Moreover, the persons authorized to sign cheques cannot be held personally liable for any overdraft, if in signing the cheques they clearly indicated that they are acting in their representative capacity and not in their individual capacity. However, if the account is opened and operated in the form ‘Alemu a/c The Amateur Arts club’, the banker is entitled to consider it as a personal account of Alemu.

**7. Trustees**

In general, according to sir John Poget, the banker is quite safe in opening an account for persons professing to be trustees of an estate, and he is under no obligation to see the trust deed or other evidence of their appointment.

Others think that in all cases where the banker knows that a particular account is a trust account, he should clearly ascertain the terms of trust and file a copy of their trust – deed for future reference.

**8. Joint Accounts**

Joint accounts are accounts opened in the name of two or more partners who are neither trading partners’ executors nor trustees. Before opening, the banker must satisfy himself that:

1. All persons should sign the application for opening the account
2. The banker should ascertain the system under which the account is to be opened
3. The nature of accounts must also be ascertained
4. He must ascertain the mode of operation of the account
5. In the absence of specific instructions all the joint account holders must sign the cheques

A mandate from persons desiring to open a joint account is required from all members containing the following particulars.

1. **Drawings**: - the mandate must state the name of persons who are authorized to draw cheques.
2. **Survivorship**: - the mandate should also deal with the question of survivorship. To avoid future disputes, the application to open joint account must contain the clause “in the event of death, insolvency or withdrawal of any of us, the survivor or survivors of us shall have full control of any money, then and thereafter standing to our credit account with you.”
3. **Power to overdraw**: - the mandate must also contain the names of persons who are authorized to overdraw.
4. **Other matters**
   * **Death of one of the members**: if the account is in credit the rule of survivorship will be applied. In case of debit account, the banker should close the account to determine the liability of the deceased’s estate.

* + **With regard to safe custody of valuables**: it is safe for the banker to receive a mandate dealing with the handling of valuables accepted for safe custody. The participation of the survivor and the representatives of the deceased party must be declared.

**Insolvency of one of the joint account holders**: the operation of the account must be stopped immediately after the receipt of notice of insolvency.

Joint accounts could be “And” and / OR”. “And” accounts specify that all the joint account holders must sign the withdrawing document that may be cheques or withdrawal slips. Otherwise no withdrawal can be made. However, “and /or” account dictates that all or any of them can sign the withdrawing document.

**9. Partnership**

A banker should never open an account in the name of a partnership firm unless and until one or more partners make an application. A banker should not open a firm’s account in the name of the firm. Particulars required to open a partnership account can be expressed as a mandate as follows:

1. the name of partners who are authorized to draw or sign cheques
2. The names of partners who are entitled to borrow money on behalf of the firms
3. The names of persons who have the power to overdraw, endorse, make and accept bills of exchange and promissory notes on behalf of the firm, and
4. The names of the partners who have power to mortgage or sell any property belonging to the firm.

The mandate must also provide specific powers incase of insolvency of the firm.

Whether the accounts are in credit or debit balances, they must be stopped immediately after the banker receives notices of insolvency of the firm.

**10. Joint Stock companies**

While opening an account in the name of a joint-stock company, the banker should ascertain the powers of its directors and managers from the articles of associations and memorandum of association, inspect its certificates to commence business, and further ask for a company of the resolution appointing him as the banker. It should be accompanied by a mandate in the usual form containing such information as the name of the persons authorized to sign cheques and other documents, their specimen signatures, the extent of their authority and, etc,.

The company should be instructed to inform the banker of any variation in the appointment of directors and other officers concerned. Such notification should be accompanied by a duly signed copy of the resolution affecting such a change.

A trading company ahs implied powers to borrow and pledge the property of the company to such an extent as may be reasonable and necessary for the carrying out of the objects stated in the objective clause. If the memorandum of association limits the borrowing powers to a fixed amount, the banker should strictly adhere to it. So also their banker should see whether or not articles of association compose any limitation on the directors powers to pledge property, or to borrow money. In case of a non-trading company, borrowing powers would be expressly given in the memorandum of association.

A banker lending money need not enquire about the purpose for which the company is taking loan. If the loan is misapplied it cannot be avoided, provide their banker has acted in good faith and without knowledge of the intended misapplication. However, if a banker is asking to lend the money for the purpose outside the company’s powers the banker should not grant it.

On receiving notice of the passing of a resolution to wind up the company, or of the presentation of a petition to wind up the company, the banker should immediately suspend all operation on the account.

**11. Undischarged Bankrupts**

A banker must be very careful in dealing with undischareged bankrupts who are subject to a number of disabilities. In a the case of a customer who was solvent at the time of opening an account but, who subsequently files an insolvency petition, the banker must stop all the operations in the accounts as soon as he gets notice of such a petition being filed in the court. The same thing will apply even in cases where the petition filed by the creditors.

In this connection it must be understood that the banker can safely honor the cheques issued by such a customer until he gets of the petition being filed or an order being passed in respect of that person. There after, he must act according to the directions given by the official receiver (or assignee) of such person in whose hands the property is vested.

**Check Your Progress Exercise**

1. Explain the different types of accounts which a person can open with a bank. State the procedure of opening an account in a bank.

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. What is the difference between current, savings and Fixed deposit account? Explain.

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. What is the procedure followed by a the banker to open a new account of any kind?

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. Discuss in detail the different form of banker-customer relationships. When does the banker become a debater? How does it differ from an ordinary commercial debt? Discus.

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. How do you differentiate a banking firm form other forms of organizations?

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. Is a customer of a banker, the one who only opens an account in the bank at his own name? Discuss.

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. What are the different form of depositing and drawing money into and out of your accounts: current, savings and time?

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. How do you identify an account as a dormant account?

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. Who has the right to close an account? Discuss.

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. Discuss the right and obligations of a banker?

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

1. List the different types of special customers and discus in detail about each of them.

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

**2.10 Summary**

A bank/banker is a person or an institution that accepts customers deposits and honor cheques and Bank drafts drawn by customers up to the credit balance of the customers account. a customer is individual or an institution that opens an account in his name and deposit money.

A bank and a customer establish relationship that may be defined as- Debtor and Creditor, Trustee and beneficiary, Agent and principal and Bailor and Baliee.

Banks provide alternative forms of deposit accounts to their customers account opened for convenience, savings deposit accounts for saving and time/fixed deposit for interest income. Banks have special customers that need special treatment compared with others like: minors, Lunatics, Drunkards or Intoxicated persons, Executors and Administrators, Local Authorities, unincorporated.

**2.11 Answers to Check your Progress questions**

1. Refer section 2.3
2. Refer section 2.3
3. Refer section 2.3
4. Refer section 2.4
5. Refer section 2.2.1
6. Refer section 2.2.2
7. Refer section 2.3
8. Refer section 2.7
9. Refer section 2.8
10. Refer sections 2.5& 2.6
11. Refer sections 2.9