CHAPTER TWO: **MAJOR BANKING TRANSACTIONS**

2.1 Deposit of Funds

- A deposit of funds is a contract whereby a person agrees to deliver and transfer the ownership of specified amount of money to a bank which agrees to repay them under the conditions agreed up-on in the contract or on the demand of the depositor.
- The bank, as the owner of money deposited, has right to use it in respect of its professional activities
- The contract of deposit of funds is almost identical to contracts of loan of money or other fungible things under Art 2471 of the Civil Code of Ethiopia in which the borrower becomes the owner of the money or fungible he borrowed and has the right to dispose of in any manner he wishes.

- However, where the deposit relates to “coins and other individual monetary tokens” and where there has been an agreement that they shall be refunded to the depositor in kind, the bank does not acquire the right of ownership and hence cannot dispose of such items. /Art 896
- The depositor mar deposit his money through two types of accounts
  - Current account and saving account
  - In current account deposit, the depositor can withdraw the money at any time he need. It is interest free.
  - It is also a check operated account either by the depositor himself or by 3rd party. / Art 897, 898. /

saving account

- If the money deposited in saving account, the depositors right to demand repayment at any time may be limited.
- It is also interest bearing account. /Art 897, 98/
- The amount of interest will be based on the agreement of the parties. But it should not exceed the amount fixed by the national bank of Ethiopia.

2.2. Bank Transfers

- This transaction represents one mode of transferring money from one account to another upon the written and signed order of the transferor
- In cases where the intended beneficiary of the transfer does not have an account of his own, transfer may still be made through the account of another person
- What about for money transfer with out account?
- There are no rules governing these types of transfer, and the rights and duties of the parties are determined by the contract concluded between the bank and the transfer.

- Bank transfer may be internal or external. Article 903(1) and 904
- When the transferee will get ownership right on the money?

❖ Article 906(1); at the time when the bank debits the account of the transfer

❖ the transferor may cancel the transfer at any time before his account is debited and before the transferee acquires ownership right to the money Article 906(1)

❖ After his account is debited, the transferor can't cancel the transfer. b/c valid contract is already formed.

exception

- But based on Article 909, if the issuance of transfer order is together with securities and collateral or to settle a debt, it shall not be extinguished until the account of the transferee is credited with the amount of money transferred.
- This is to protect the right of both the transferee and the transferor during declaration of bankruptcy on the transferee.

2.3 Deposit of securities

- our commercial code do not define this transaction
- But some jurisprudences define it as “a contract whereby an owner of securities (shares or stocks, government bonds and company bonds (debentures) or other right holder agrees to deposit the securities with a bank which agrees to provide safe custody and handle or manage them for consideration”.
- The word manage refers to; keep securities in their custody and perform all functions relating to them such as the collection of yields arising from securities deposited, i.e., dividends from shares/stocks, capital repayments and interest arising from bonds and handle purchase and sale of securities in the name and on behalf of the depositor.

- Based on Article 912 and 914, in addition to depositing the security, the bank has duty to collect interests, dividends, capital repayments, amortization and any other entitlements arising out of securities and to sell and purchase securities in the name and on behalf of the depositor
- Regarding degree of care expected of the bank, Art 913(1) provides that the bank must ensure the custody of the securities and act in relation there to with due care required of paid bailee or in the same manner that a reasonable man will protect his property of the same kind.
- Liablity will arise if damage occur due to mere negligence.

- The bank must notify the depositor before making decisions which involve several options, for instance, between receiving dividends on shares or to receive additional stocks or shares issued in lieu of cash.
- What if the depositor keep silent?
  - Based on Article 915, the bank shall make a decision to on one of the options where the depositor fails to give instructions within a reasonable period.
- **where the contract of deposit of securities is terminated either by the decision of the depositor, the bank has the duty to restore them to the depositor or his agent or his creditors, even where the securities are registered in the name of a third party**

- If Securities were deposited by the usufractuary, they will be restored to the bare owner if the latter produces evidence of the death of the former. Art 916 and 917.

- Regarding to other deposited properties (valuables, and documents such as title deeds, wills and insurance policies), the law keep silent.

2.4 Hiring of safes

- Banks will deposit valuables like jewelry, negotiable securities, and documents of title to properties
- Banks deposit their customer’s values in two ways those are;

  1. safe custody 2. safe deposit.

- In the first case, customer's valuables are handed over to the bank either openly or in a sealed cover box.
- Nowadays, safe-custody service is being abolished, because of the nature of the service in increasing the liability of banks for the loss of customer's valuables;

safe deposit

- In this case, the bank hires out safe boxes and the valuables to be deposited are not as such handed over to the bank; rather the customers themselves place them in the hired safe boxes
- In this case, The particulars of the deposit will not be disclosed to the bank.
- Look Article 919-923

2.5 Discount

- Discount is a contract whereby a bank agrees to pay to a holder of a commercial instrument or security having a future date of payment an amount which is lesser than its actual value.
- It is an agreement between the holder of the instrument and the bank to receive an amount which is lesser than the actual value of the instrument
- The amount of commission and interest charged by the bank which discounts the instrument shall be calculated by taking into account the time remaining until maturity of the instrument and the value of the instrument respectively. /Art 941/2/ and 942/
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- The bank, which discounts a commercial instrument, shall acquire all the rights of the beneficiary of discount on the instrument including the right to demand payment from the person who are liable on the instrument
- In addition, where the bank receives the full value of the instrument at maturity, the obligations arising out of discount shall be extinguished
- But what if the bank is not successful in its claim for payment at maturity?
- Article 944(1); the bank will have two alternative remedies

1. It may proceed against parties liable on the instrument under Art 790 of the commercial code, or the company which issued the share or bond, or

2. It may proceed against the beneficiary of the discount on the of basis the contract of discount (Art 941(1) and 943).

2.6 Bank Lending

- It is a contract between the bank (lender) and the borrower to give some amount of money for a specified period of time.
- If the amount of money is less than 500 birr, the contract can be made in any form.
- However, the contract or the repayment of loan of money exceeding five hundred Birr has to be proven by producing documents such as receipts, accounts, registers and so on.
- It may also be proven by confession of either party as to the existence of the contract of loan or its repayment, or the oath taken in court by either party

- However, where the contract of loan is concluded between a bank and its customers, the contract of loan or its repayment may be proven even by witnesses or presumptions

2.7 Documentary Credit

- A documentary credit is a credit provided to persons engaged in foreign trade particularly importers who need to pay the price of goods in foreign exchange
- This type of credit is required because it is only banks which are allowed to handle and deal in foreign exchange and importers are required to pay the price of goods imported from abroad through opening letters of credits
- Where the bank accepts the application of the importer to open letter of credit, it will open the letter of credit equivalent to price of the goods and will communicate it to to a bank with which it has a correspondence.

- The correspondent bank will notify the seller and will pay him the price
- The correspondent bank which has paid the agreed amount to the seller or third parties to whom the right to receive payment is transferred, shall send the documents it has received from the seller to the opening bank and the opening bank will hand over these documents to the importer after receiving the amount equivalent, in Ethiopian Birr, to the amount paid to the seller,
- In the absence of a contrary agreement, the bank is entitled to the hold and dispose of the goods imported (represented by the documents at its hand) and recover the amount of money it or its correspondent has paid plus interest and service charge or commission. /Art 959/

- Art 961 recognizes two types of document credits
- Revocable credits Vs. Irrevocable Credits
- **Revocable credit do not constitute a binding agreement between the opening bank and the beneficiary.**
- **Therefore, it may be modified or cancelled by the opening bank at any time by a notice communicated to the correspondent bank prior to payment or negotiation.**
- **A documentary credit is presumed to be revocable in the absence of a provision that clearly specifies that it is irrevocable. Art 962,961**

- **Irrevocable credits: are credits, which, on the other hand, represent a definite undertaking between the opening bank and the seller/beneficiary or good faith holders of bills of exchange, drawn by the beneficiary**
- **Irrevocable credits, once the correspondent bank confirm the request of the opening bank, a binding relation will be created between the beneficiary of the credit and the correspondent bank**
- **in this case the opening bank can't modify or cancel the letter and the correspondent bank is obliged to pay the price for the seller. Article 963 and 964.**