

Opening and Conducting of Accounts

A bank should be very careful in entertaining a new customer. It will be taking a 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 provide a number of other services to the customer like collection of cheques, dividends, etc., and acting as agent of the customer. When the customer is not adequately known to the bank, it may result in wrong payment or encashment of forged cheques. Hence, it is essential that the bank should make through enquiry regarding the customer before opening an account with him. For this purpose, the bank may follow the procedure given below.

1. **Presenting of Application:** The applicant should fill in the prescribed form for opening of an account available in the concerned bank. Banks keep different forms for individuals, families, partnership firm, 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.

2. **Introduction:** The banks follow the practice of opening the account only when the applicant is properly introduced by an existing customer of the bank. Sometimes, reference is given by the depositor and the bank may seek the opinion of the referees regarding the integrity and financial

If the bank is satisfied about the identity and standing of the applicant, it will agree to open an account. It is, however, advisable that the person introducing the applicant to the banker or acting as referee must himself be a respectable person.

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 overdrawal of money. The bank should take extraordinary care in accepting the introduction or reference from any person. The signature of the person introducing the applicant should preferably be obtained in the presence of some officer who should tally his signature on record and verify the same.

A question arises as to why bank should not open the account without proper introduction. The answer is that if the introduction is not taken properly, the banker will invite many risks which are as follows:

- (a) The bank cannot avail itself of the statutory protection given to the collecting bank by the Negotiable Instruments Act. A collecting bank will incur no liability if it has acted in good faith and without negligence. If the bank does not 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 owners of the cheques, drafts etc., if such instruments are stolen by the customer whose identity cannot be established and process are collected by the bank and withdrawn by the former.
- (b) 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.
- (c) Undesirable customers may cause annoyance to the public by cheating them. Such a man might defraud the public by issuing cheques on his account without having adequate balance.

- (d) If the bank receives deposits from an undercharged insolvent without proper introduction, it will run the risk of attachment of these deposits by the court declaring him insolvent.
3. **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 computer.
4. **Deposit 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 Reserve Bank. In case of a savings account, a minimum deposit, if no cheque book is required, if cheque book is required must be made. In case of current accounts, a minimum deposit, if the branch is in an urban area, if the branch is in any other area, must be made with the bank.

5. Issue of Pass Book: A pass book is issued by the bank to the customer after the account has been opened and an account number has been allocated. The pass book contains the record of transactions between the bank and the customer. It is a copy of the account of the customer 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.

A pass book is very important for a customer because he can know the position of his account and know certain items like interest, incidental charges, dividends collected, bills paid, etc. This will also enable him to prepare a 'Bank Reconciliation Statement'.

Forms Used in Operation of Bank Account

Operating a bank account means that the customer deposits a sum of money in near future and withdraws money from the account according to the needs. The following forms can be used for the operation of the bank account:

- (1) Pay-in-slip Book.
- (2) Cheque Book.
- (3) Pass Book.

1. **Pay-in-slip Book:** This book contains printed slips with perforated counterfoils.

The bank supplies pay-in-slip either in book form or loose to the customer while depositing cash, cheques, drafts etc., to the credit of his account. Some banks supply slips for depositing (a) Cash, and (b) Cheques/Drafts etc. It is noted that different types of forms are used for the collection of outstation cheques, bills or drafts.

The depositor is expected to fill in the amount, nature of account, account number, date, details of currency notes, and coins, signature etc., in the pay-in-slip. After recovery the cash, cheque or draft, the bank puts the date-stamp and is signed by the Cashier and counter-signed by the Accountant or Manager and the counterfoil is returned to the depositor, which is used for the record of the customer.

2. **Cheque Book:** A cheque book contains bank cheque forms with counterfoils which can be used by the customer to withdraw money from his account. The cheque book and the counterfoils are serially numbered and these numbers are entered into the cheque book register of the bank and also recorded in the bank ledger.
3. **Pass Book:** A pass book is a book in which the banker keeps a full record of the customer's account. It is written by the bank, and hence it is essential for a customer to send it (pass book) periodically to the bank, so that up-to-date entries may be entered by the bank.

Some banks, like American Express, Grindlays Bank send a Statement of Account periodically, i.e., fortnightly or monthly to the customer in place of pass book.

Special Types of Customer

Special types of customers are those who are distinguished from other types of ordinary customers by some special features. Hence, they are called special types of customers. They are to be dealt with carefully while operating and opening the accounts. They are:

1. **Minors:** Under the Indian law, a minor is a person who has not completed 18 years of age. The period of minority is extended to 21 years in case of guardian of this person or property is appointed by a court of law before he completes the age of 18 years.

2. Lunatics: A lunatic or an insane person is one who, on account of mental derangement, is incapable of understanding his interests and thereby, arriving at rational judgment. Since a lunatic does not understand what is right and what is wrong, it is quite likely that the public may exploit the weakness of a lunatic to their advantage and thus deprive him of his legitimate claims. On account of this, the Ethiopian Contract Act recognizes that a lunatic is incompetent to enter into any contract and any such contract, if entered into, is not only invalid but voidable at the option of the lunatic.

Since a lunatic customer is an incompetent party, the banker has to be very careful in dealing with such customers. Bankers should not open an account in the name of a person of unsound mind. On coming to know of a customer's insanity, the banker should stop all operations on the account and await a court order appointing a receiver.

It would be dangerous to rely on hearsay information. The bank should take sufficient care to verify the information and should not stop the account unless it is fully satisfied about the correctness of the information. In case a person suffers from a temporary mental disorder, the banker must obtain a certificate from two medical officers regarding his mental soundness at the time of operation on the account.

3. **Drunkards:** A drunkard is a person who on account of consumption of alcoholic drinks get himself intoxicated and thereby, loses the balance over his mental faculty and hence, is incapable of forming rational judgments.

The law is quite considerable towards a person who is in drunken state. A lawful contract with such a person is invalid. This is for the simple reason that it is quite likely that the public may exploit the weakness of such a person to their advantage and thus, deprive him of his legitimate claims.

A banker has to be very careful in dealing with such customers. There cannot be any objection by a banker to open an account. In case a customer approaches the banker for encashment of his cheque especially when he is drunk, the banker should not make immediate payment. This is because the customer may afterwards argue that the banker has not made payment at all. Therefore, it is better and safer that the banker should insist upon such a customer getting a witness (who is not drunk) to countersign before making any payment against the cheque.

4. **Married Women:** An account may be opened by the bank in the name of a married woman as she has the power to draw cheques and give valid discharge.

At the time of opening an account in the name of a married woman, it is advisable to obtain the name and occupation of her husband and name of her employer, if any, and record the same to enable detection if the account is misused by the husband for crediting therein cheques drawn in favor of her employer.

In case of an unmarried lady, the occupation of her father and name and address of her employer, if any, may be obtained and noted in the account opening form.

If a lady customer requests the bankers to change the name of her account opened in her maiden name to her married name, the banker may do so after obtaining a written request from her. A fresh specimen signature has also to be obtained for records.

While opening an account of a lady, the bank obtains her signature on the account opening form duly attested by a responsible person known to the bank.

5. Insolvents: When a person is unable to pay his debts in full, his property in certain circumstances is taken possession of by official receiver or official assignee, under orders of the court. He realizes the debtor's property and ratably distributes the proceeds amongst his creditors. Such a proceeding is called 'insolvency' and the debtor is known as an 'insolvent'.

If an account holder becomes insolvent, his authority to the bank to pay cheques drawn by him is revoked and the balance in the account vests in the official receiver or official assignee.

6. Illiterate Persons: A person is said to be illiterate when he does not know to read and write. No current account should be opened in

On the account opening form the bank should obtain his thumb mark in the presence of two persons known to the bank and the depositor. Withdrawal from the account by the account holder should be permitted after proper identification every time. The person who identifies the drawer must be known to the bank and he should preferably not be a member of the bank's staff.

7. Agents: A banker may open an account in the name of a person who is acting as an agent of another person. The account should be considered as the personal account of an agent, and the banker has no authority to question his power to deal with the funds in the account unless it becomes obvious that he is being guilty of breach of trust.

However, if a person is authorized to only act on behalf of the principal, the banker should see that he is properly authorized to do the acts which he claims to do. If he has been appointed by a power of attorney, the banker should carefully pursue the letter-of-attorney to confirm the powers conferred by the document on the agent. In receiving notice of the principal's death, insanity or bankruptcy, the banker must suspend all operations on the account.

8. Joint Stock Company: A joint stock company has been defined as an artificial person, invisible, intangible and existing only in contemplation of law. It has separate legal existence and it has a perpetual succession. The banker must satisfy himself about the following while opening an account in the name of a company:

- (a) *Memorandum of Association:* Memorandum of Association is the main document of the company, which embodies its constitution and is called the charter of the company. It gives details, especially regarding objects and capital of the company. A copy of this document should be insisted upon while opening an account.
- (b) *Articles of Association:* The Articles of Association contain the rules and regulations of the company regarding its internal management. It contains in detail all matters which are concerned with the conduct of day-to-day business of the company. The Articles of Association is also another document that a banker insists upon. It enables the banker to know the details of company's borrowing powers quantum, persons authorized to borrow etc. This will also enable the banker to understand whether the acts of the officers are within the orbit of the Company's Memorandum and Articles.

- (c) *Certificate of Incorporation*: This is another vital document the banker has to verify and insist upon receiving a copy. This document signifies that the company can commence its business activities as soon as it gets this certificate which is not the case with a public company.
- (d) *Certificate to Commence Business*: Only for public companies, the banker insists upon this document for verification. This document gives the clearance to public companies to commence their business activities. A company can borrow funds provided it has obtained this certificate.
- (e) *Application Form and Copy of the Board's Resolution*: A copy of the prescribed application form duly completed in all respects has to be submitted in the beginning and that too duly signed by the company's authorized officers. Along with this, a copy of the resolution passed at the meeting of the board regarding appointment of company's bankers is quite necessary to make everything lawful.

- (f) *A Written Mandate*: This is also another document that a banker insists upon. It contains all the details regarding operation, overdrawing of the account and giving security to the bank by the officers of the company. This document is useful to the bank for opening as well as for operating the account of the company.
- (g) *Registration of Charges*: Whenever a company borrows, it has to give certain assets by way of security and in case the banker accepts them as security, it has to be properly recorded in the company's books, register of charges and duly registered.
- (h) *Any Change in the Company's Constitution or Offices*: Whenever there is any change in the constitution like Memorandum or in respect of company's offices, it has to be communicated in writing to the bank and it should not in any way affect the earlier contracts entered into by the company with the bank. To this effect, the bankers usually take an undertaking from the company.

9. Clubs, Associations and Educational Institutions: Clubs, Associations and Educational Institutions are non-trading institutions interested in serving noble causes of education, sports etc. The banker should observe the following precautions in dealing with them:

- (a) *Incorporation:* A sports club, an association or an educational institution must be registered. If it is not registered, the organization will not have any legal existence and it has no right to contact with the outside parties.
- (b) *Rules and by-laws of the Organization:* A registered association or organization is governed by the provisions of the Act under which it has been registered. It may have its own Constitution, Charter or Memorandum of Association and rules and by-laws, etc., to carry on its activities. A copy of the same should be furnished by the organization to the banker to acquaint the latter with the powers and functions of the persons managing its affairs. The banker should ensure that these rules are observed by the persons responsible for managing the organization.

- (c) *A Copy of Resolution of Managing Committee:* For opening a bank account, the managing committee of the organization must pass a resolution—
- (i) Appointing the bank concerned as the banker of the organization.
 - (ii) Mentioning the name/names of the person or persons, who are authorized to operate the account.
 - (iii) Giving any other directions for the operation of the said account. A copy of the resolution must be obtained by the bank for its own record.
- (d) *An Application Form:* An application form duly completed in all respects along with specimen signatures of the office bearers of the institution is quite essential for operation of the account.
- (e) *A Written Mandate:* It is an important document which contains specific instructions given to the banker regarding operations, over drawing etc.

- (f) *Transfer of Funds*: All funds and cheques which are in the name of the Institution should be invariably credited to the Institution account and not to the personal or private accounts of the office bearers of the institution.
- (g) *Death or Resignation*: In case the person authorized to operate the account on behalf of an organization or association dies or resigns, the banker should stop the operations of the organization's account till the organization nominates another person to operate its account.

10. Partnership Firm: A partnership is not regarded as an entity separate from the partners. The Indian Partnership Act, 1932, defines partnership as the “relation between persons who have agreed to share the profits of the business, carried on by all or any of them acting for all.”

Partnership is formed or constituted on account of agreement between the partners and with the sole intention of earning and sharing profits in a particular ratio. Further, the business is carried on either by all the partners or some partners acting for all. The partners carry joint and several liabilities and the partnership does not possess any legal entity.

A banker should take the following precautions while opening an account in the name of a partnership firm:

- (a) *Application Form*: A prescribed application form duly completed in all respects along with specimen signatures of the partners of firm is quite essential for operation of the account.
- (b) *Partnership Deed*: The banker should, very carefully examine the partnership deed, which is the charter of the firm, to acquaint himself with the constitution and business of the firm. This will help him to know his position while advancing funds to the firm.

- (c) *A Mandate*: A mandate giving specific instructions to the banker regarding operations, over-drawing etc., is quite necessary. It will enable the banker to handle the accounts according to the needs of the firm.
- (d) *Transfer of Funds*: The banker has to be very careful to see that the funds belonging to the firm should not be credited to the personal or private accounts of the partners.
- (e) *Sanctioning of Overdraft*: While sanctioning funds by way of overdraft, the banker has to check up the partnership deed and examine the borrowing powers of the partners empowered to borrow and he can even ask for the financial statements of the previous years for information and perusal.

11. Joint Accounts: When two or more persons open an account jointly, it is called a joint account. The banker should take the following precautions in opening and dealing with a joint account:

- (a) The application for opening a joint account must be signed by all the persons intending to open a joint account.

- (c) The full name of the account must be given in all the documents furnished to the banker, even if the account is to be operated upon by one or a few of the joint account holders.
- (d) Banker must stop operating an account as soon as a notice of death, insolvency, insanity etc., of any one account holder is received.
- (e) The joint account holder, who is authorized to operate the joint account, he alone cannot appoint an agent or attorney to operate the account on his behalf. Such attorney or agent may be appointed with the consent of all the joint account holders.
- (f) If all the persons are operating the account, then banker must see that any cheque drawn on him is duly signed by all.
- (g) Banker must stop making payments as soon as letter of revocation is obtained.

13. Trustees: For example; 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. As per this definition, a trustee is a person in whom the author or settler reposes confidence and entrusts the management of his property for the benefit of a person or an organization who is called beneficiary. A trust is usually formed by means of document called the "Trust Deed." While opening an account in the names of persons in their capacity as trustees the banker should take the following precautions:

- (a) The banker should thoroughly examine the trust deed appointing the applicants as the trustees.
- (b) A trust deed which states the powers and functions of trustees must be obtained by the banker.

- (c) In case of two or more trustees, the banker should ask for clear instructions regarding the person or persons who shall operate the account.
- (d) In case of death or retirement of one or more trustees, banker must see the provision of the trust deed.
- (e) The banker should not allow the transfer of funds from trust account to the personal account of trustee.
- (f) The banker should take all possible precautions to safeguard the interest of the beneficiaries of a trust, failing which he shall be liable to compensate the latter for any fraud on the part of the trustee.
- (g) The insolvency of a trustee does not affect the trust property and the creditors of the trustee cannot recover their claims from trust property.
- (h) A copy of the resolution passed in the meeting of trustees open the account should be obtained.

Meaning of Pass Book

Pass book is an important book in the operation of a bank account. It contains a copy of the customer's ledger account as it appears in the banker's books. It is an exact extract or copy of the customer's account in the bank's ledger, as on a particular date. It is, in other words, a record of dealings between the customer and the bank. It is written by the bank from its own records. It is supplied by the bank to its customer free of charge. It is meant for the information of the customer. It indicates to him the "state of his account" in the bank. The customer sends it periodically to the bank so that up to date entries may be recorded by the bank. As it passes periodically between the banker and the customer, it is called a "Pass Book".

.” Every entry made in pass book is signed by a responsible official of the bank. Some big banks supply periodical statements of account in place of the pass book. In case of foreign accounts, some banks make use of photography to save the labour of writing statements of accounts. The photostat copies of the customer’s account are sent to the customers for their approval.

Object or Purpose of Pass Book

The object of a pass book is to inform the customer from time to time the status of his account as it appears on the books of the bank. It supplies evidence in favour of the customer in the event of the litigation or dispute with the bank. In this way, it protects the customer against the carelessness or fraud of the bank. The pass book also enables the customer to prepare “bank reconciliation statement” for the purpose of finding out the causes of difference between the balance as shown by his cash book and the bank pass book.

Entries in passbook

A pass book is a replica of the customer's account with the banker. All money deposited by the customer with the banker will find credit in the accounts of the banker and the withdrawals will be debited. When the pass book is handed over to the customer, it amounts to a statement of account rendered by the bank.

Is it necessary for the customer to examine the pass book? No, in India and United Kingdom, it is not obligatory for the customer to examine the pass book but it is important in Ethiopia. He needs not discover any error or omission and draw the bank's attention. On failure to examine the pass book, he can't be held guilty of negligence. But if the customer agrees to this by signing the form regarding the accuracy of the balance, it becomes an 'account settled' or 'account stated'. It will be implied in such a case that the balance will be paid as a lump sum by the party agreed to be in debt without reference to the individual items.

Legal effect of Entries in the Pass Book

The entries wrongly made or included in the pass book may be favorable or advantageous either to the customer or to the banker. So the wrong entries can be divided into two types:

- 1. Entries Favorable to Customer:** The account of a customer may sometimes show a wrong credit balance, which may be due to: (a) duplication of credit entries, or (b) crediting of higher amounts, or (c) omission of any debit entry or (d) crediting the amount belonging to another customer.

If any entry is made by bank in favor of the customer, the bank can rectify it by due notice to the customer. The customer after such notice cannot withdraw such money. But as long as it is not corrected, the customer acting in good faith can rely on it as the “stated correct account.” Entry advantageous to the customer may be used as evidence against the banker.

2. Entries Favorable to Banker: Entries that are favorable to a banker arise when a credit entry has been totally omitted or wrongly stated, or any debit entry has been wrongly made in the customer's account. The legal position in this regard is stated below:

- (1) The customer can get the mistake rectified as soon as it is detected. This right exists even after he returns the pass book. He can recover the wrongly debited amount or the credit which is omitted.
- (2) However, the customer will not be entitled to get the mistake rectified if it is proved that:
 - (a) The customer was negligent.
 - (b) The entries in the pass book constitute a settled account, and
 - (c) The position of the banker has been subsequently altered to its prejudice.

Closing of a Bank Account

A bank account may be closed by either party i.e., the customer and the banker. A bank account may be closed in the following cases:

- 1. At the Request of the Customer:** If the customer requests the bank to close down his account, the bank has to close the account. The customer returns the unused cheques and presents his pass book. The bank closes down the account, completes the pass book and returns it to the customer after writing the words 'Account closed'.
- 2. Inoperative Account:** If the customer does not operate an account for a long time (May be for 2 years), the bank can close down the account. However, the banker is required to give notice to the customer to withdraw his money. In case the customer is not traceable, after a reasonable effort, the amount standing to the credit of the customer is transferred to the 'Unclaimed Deposit Account' and the account is closed. In case the customer claims the amount later on, it is returned to him.

- 3. At the Instance of the Banker:** The banker is also entitled to close the customer's account when the conduct of the customer is not desirable. For example, when the customer is guilty of forgery or frequently issues cheques without sufficient balance or does not repay the loans and advances etc. In such circumstances the banker should give a notice to the customer to close his account by a particular date. However, he should not dishonour his cheques in the mean time so long as there is balance in his account. In case the customer does not close the account within the time specified, the banker should close the account and give him a notice that his account has been closed so that he may not issue cheques to his creditors. The bank should return the credit balance standing in his account by a bank draft.
- 4. On Receipt of Notice of Customer's Death:** When the bank receives notice of death of the customer, he must stop operation of the account as death of the customer terminates his authority.

5. **On the Insanity of the Customer:** When the bank receives a notice of insanity of his customer, he must stop payment from his account.
6. **On Insolvency of the Customer:** When the bank comes to know of insolvency of his customer, he must stop payment. The balance standing to the credit of the customer, he must stop payment. The balance standing to the credit of the customer is transferred to the official receiver or assignee.
7. **On Receipt of Garnishee Order:** The banker should reserve amount specified in the Garnishee Order. He may make payment of the customer's cheques out of the remaining balance, if any.
8. **On Receiving Notice of Assignment:** When the banker has received notice of assignment of the credit balance in the customer's account, he must stop payment from the account. The bank is liable to pay the balance to the assignee.

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