

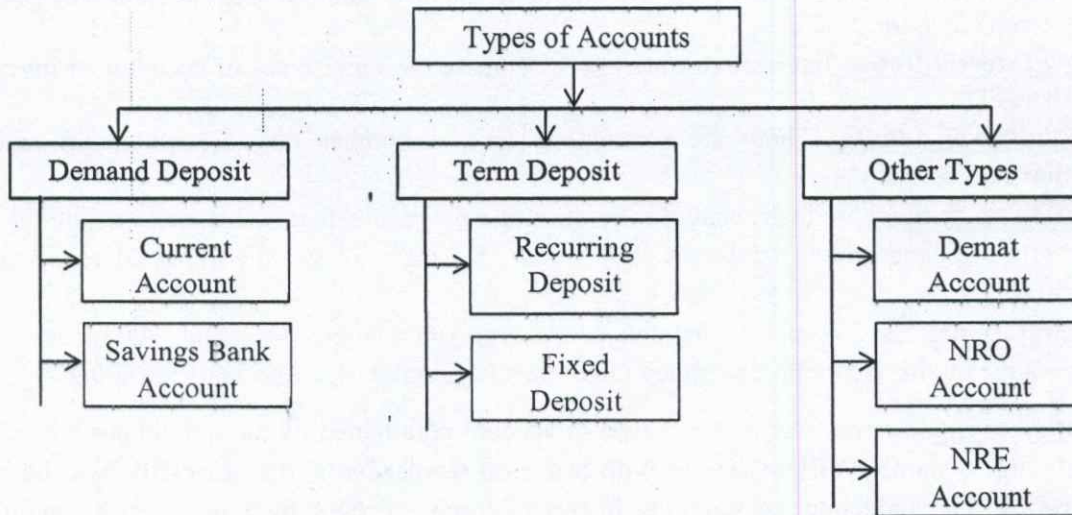
Chapter 3

Customers and Account Holders

Meaning of Customer

Customer means a person who has an account with the bank. Customers are bank depositors, who entrust their money, banking facilities, for storage and fruiting, for which they receive interest.

Types of Accounts



A. Demand Deposits: Under this type of account, the amount which is there in account can be withdrawn by making demand. These types of accounts are called demand deposit.

1. Saving Bank Account: Saving Bank Account is the account meant for individual who wish to deposit small amount out their income. Savings account is generally used by public to save their surplus money. Account holder has to give prior notice to banker to withdraw more amounts. Interest on saving account is low compare to fixed deposit.

Advantages

- **Access and availability:** Savings accounts are easy to open and can withdraw and deposit money anytime at ATMs or via 24-hour online access which also allows to quickly transfer funds from one account to another.
- **Protection:** Money kept in the banks are safe from theft or any other natural calamities. This savings can be utilized for making future payments.
- **It's a liquid asset:** Savings accounts deal in cash, which means we don't have to worry about selling investments or making other complicated moves to access your money.
- **Savings accounts accrue interest:** Banks provide interest for the amount placed in the accounts. We have more earning potential with the money compared to keeping it in a safe at home.
- **Low startup requirement/ Start with a little:** There's often low or no minimum balance requirement and can make deposits of any size as the account holder likes.

LAW & PRACTICE OF BANKING

- **Automated bill payments:** Many financial institutions allow bills to be paid automatically out of a savings account without being subjected to the withdrawal and transfer laws, helping you avoid late fees or missed payments.
- **Deposit and withdrawal of money at any location:** The savings bank account holder can deposit and withdraw the cash from any other branch of a bank other than the home branch.

Disadvantages

- **Minimum Balance Requirements:** Most savings accounts have minimum balance requirements. If your savings account falls below the minimum balance requirement, the bank will deduct fees from your account.
- **Low Interest Rates:** Interest rates are lower compared to other types of accounts or investments, such as FD.
- **Withdrawal Limits:** There are restrictions on the number and the maximum amount of withdrawals per day.
- **Rates can change:** Savings account interest rates are variable, that is financial institutions are free to set and change interest rates as they wish. This may not get the expected return from the savings.
- **Temptations:** Easy access to money means more temptations to spend. As money is easily accessible by the account holders they might develop a habit of unnecessary spending.

2. Current Account: Current Account is a type of account maintained by the individuals who carry out significantly higher number of transactions with banks on regular basis. It is generally used by business firms and people who make huge transactions. In case of current account, there is no restriction on deposit and withdrawal of money.

Advantages

- **Huge transactions:** Current account is mainly opened for businessmen such as proprietors, partnership firms, public and private companies, trust, association of persons, etc. that has a large number of daily banking transactions, i.e. receipts and/or payments.
- **No limit on withdrawals:** The businessmen can withdraw from their current accounts without any limit.
- **Deposit and withdrawal of money at any location:** The current account holder can deposit and withdraw the cash from any other branch of a bank other than the home branch.
- **Direct payments:** It helps businessmen to make a direct payment to their creditors by issuing cheques, demand-drafts or pay-orders, etc.
- It enables the current account holder to obtain overdraft (short-term borrowing) facility.
- **Easy transfer of cash:** It has the facilities of Internet-banking and mobile-banking to carry out important business transactions with ease and quickly.
- **Periodical bank statement:** Periodical (monthly, quarterly or yearly) e-mail or download of bank statements in various formats like '.XLS', '.TXT', '.PDF', etc.

Disadvantages

- **Charges:** Bank charges incidental charges and interest on current account, as current account amount cannot be utilized by bank for profitable investment.

LAW & PRACTICE OF BANKING

- **Cost of losing money:** Customers lose the opportunity cost on their funds which could have generated some portion of interest if kept somewhere else. Some of the banks offer slight interest but it is very low
- **Rate of interest:** it does not earn any interest on money deposited in this account.
- Higher amount of monthly account balance is required to be maintained in a Current account. If you do not maintain the minimum account balance, you will have to pay the penalty levied by the bank.
- The involved paperwork and fine print serves to be lengthy and confusing.

B. Term Deposits: Under this type of account, customer cannot withdraw the amount till the completion of the specified period of time. These types of accounts are called demand deposit. But if amount is withdrawn before the completion of time period bank will levy charges for that prior withdrawal of amount.

1. Recurring Deposit: It is a type of account where a fixed amount is deposited at regular time interval for a specific period of time. After specified period bank will return the capital along with certain interest. People who get regular incomes will adopt recurring deposit scheme to save money.

Advantages

- **High rate of interest:** This is higher than savings account interest rates. Recurring Deposits let customers earn higher interest by saving a small amount of money regularly.
- **Simple/ Hassle free documentation process:** The documents required for opening a recurring deposit account, are not difficult to arrange. All resident individuals can open a recurring deposit with a linked savings account. Once the savings account is opened, no further documentation is required. This is the simplest and most hassle-free way to save money and create wealth with a guarantee.
- **Fulfilling goals:** RD is best suited for all types of short-term goals. A short-term goal is one which you have 1-3 years to achieve. So, a recurring deposit should be used to save for yearly education expenses for your kids, furnishing and renovation costs for your existing home, saving for a dream overseas vacation and marriage expenses.
- **Save bit by bit:** The best part of a recurring deposit is that it understands that not all have the money to deposit. In case of a fixed deposit, you have to deposit all the money at one go. However, recurring deposits allow you to save small amounts regularly and earn the same attractive interest rate.
- **Start with minimum:** There is no need to think that you have to save a lot of money every month to get a recurring deposit. One of the key advantages of a recurring deposit is that you can start with minimum per month.
- **No penalty if installment is skipped for a month:** Previously, when savers for some unavoidable reason missed a recurring deposit, they were forced to pay a monetary fine. Today's customer-friendly financial institutions like Bank have no penalty if we miss a month.
- **Inculcates the habit of saving:** For salaried customers, it will be easier to set aside a particular amount every month as savings and for this, Recurring Deposit is the best option.

LAW & PRACTICE OF BANKING

- **Hypothecation for loans:** Using this facility, customers can avail as much as 95 per cent of the deposit amount as a loan (rate may vary from bank to bank).
- **Funded periodically through standing instructions:** It is effortless to make regular investments in RDs as these accounts can be funded periodically through standing instructions. The customer can just tell the bank to credit the RD account every month from the linked current or savings account.

Disadvantages

- **Rate of interest:** The interest rate that we earn on recurring deposit is much lower than fixed deposit schemes, since deposits are being made in small installments and not as a whole chunk.
- **Stringent monthly installments:** It is not possible in the case of recurring deposits to be able to change the deposit amount, regardless of financial situation at the moment. With a fixed amount for investment each month, someone with chances of extra or less funds for the deposit should be discouraged from opting for this product.
- **Penalty for premature withdrawal:** Recurring deposits come with a lock-in period determined while opening the recurring deposit account. The investor will either have to compromise on the interest rate or pay penal charges for the early withdrawal of funds.

2. Fixed Deposit: Under Fixed Deposit scheme a lump sum amount is deposited in bank for a fixed tenure at an agreed rate of interest. At the end of the tenure, we receive the amount we have invested plus compound interest.

Advantages

- **Assured interest:** The major reason why people prefer investing their funds in a fixed deposit is the assured rate of return. Once we invest funds in a fixed deposit account, we can be guaranteed of receiving the stated rate of return.
- **Hypothecation for loans:** An FD is a dependable instrument to keep in case of financial emergencies. Taking a loan against a fixed deposit is very easy. You can take a loan up to 95% of the fixed deposit amount depending on the bank.
- **Flexible interest payouts:** FDs allows in selecting the term, and when the interest is to be credited to the account. We can choose between annual, monthly or at maturity payouts. It also offers higher rate for senior citizens.
- **Automatic renewal:** FDs can also be renewed automatically. We do not even need to go to the bank for its renewal, as it can be managed through the internet banking.
- **Number of FDs:** One can open any number of FDs at a bank or at multiple banks. The FD is a great way to invest the money that one saves.

Disadvantages

- **Penalty for premature withdrawal:** Banks charge penalty to the depositors who withdraw their fixed deposits prematurely. This penalty is in the form of a reduced rate of interest.
- **Fail to counter the inflation risk:** The rate of interest on a fixed deposit remains the same for the entire duration of the fixed deposit. Even if the rates increase, the bank does not pay additional interest to the deposit holder. The interest rates do not move in line with inflation.

LAW & PRACTICE OF BANKING

C. Other Types of Accounts

1. Demat Account: A demat account is an account which is electronically maintained by the Banks or is provided by Broker agencies where you can keep money for transactions in Shares, Mutual Funds, Purchase of Gold etc. It has to be tagged with your Savings account from where the money will be paid if you purchase a share etc and receive money when you sell a share etc.

2. NRE Account: A Non-Resident External (NRE) account is a bank account that is opened by depositing foreign currency at the time of opening a bank account.

3. NRO Account: A Non-Resident Ordinary (NRO) account is the normal bank account opened by an Indian going abroad with the intention of becoming an NRI. An NRI can also open this account by remittance from his home country or by transferring funds from his other NRO account. It offers the same facilities as an NRE account, except that any repatriation done through this account should be reported to RBI by filling up prescribed forms.

Procedure to open bank account

- **Selection of Types of Account:** When customer decides to open an account with bank, he has to decide what kind of account he requires and for what purpose he has to open. There are several types of account which is meant for different purpose based on his objective he has to open an account.
- **Selection of Bank:** After deciding types of account one should select the bank in which he desires to open account. He can select the bank based on his convenience and service criteria.
- **Filling up Application Form:** Customer desires must be conveyed to the banker through application form where he should furnish all the necessary information required by the banker like name, address, occupation, nomination, specimen signature, etc., account can be opened in his name or by jointly, if he wants to open current account he can open in the name of his business.
- **Introducer to Open an Account:** While opening bank account he has to provide any person's reference who is a customer of the bank and having more than six month long relationship with the bank. Introducer has to make sure about the familiarity of the person and has to sign the application form.
- **Submission of Application Form:** After filling of application form it has to be submitted to concerned person along with required documents for legal purpose. While opening the account one has to submit various documents like address proof, Identity proof in case of individual and Articles of Association, Memorandum of Association, Board Resolution in case of Joint Stock Company.
- **Verification of the Application by Officer:** Officer will verify the filled information and which is submitted by the person and confirms the correctness of the details and allow prospective customer to go ahead.
- **KYC Verification:** KYC means "Know Your Customer". It is a process by which banks obtain information about the identity and address of the customers. This process helps to ensure that banks' services are not misused. The KYC procedure is to be completed by the banks while opening accounts and also periodically update the same.

LAW & PRACTICE OF BANKING

To open a bank account, one needs to submit Aadhaar/enrollment number and PAN as 'proof of identity and proof of address' together with a recent photograph. If we do not provide the required documents for KYC, the bank may not be able to open bank account. Many banks provide options to complete the KYC process both in offline and online.

- **Initial Deposit:** When everything set right he has to deposit initial nominal amount with the bank. He should fill the slip and submit the slip along with cash to cashier, later the transactions, account number will be issued to that person and he will become customer of the bank.
- **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 will be allocated. The pass book contains the record of transactions between the bank and the customer. It is a copy 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/she can know the position of his /her account and know certain items interest, incidental charges, dividends collected, bills paid, etc. This will also enable to prepare a "Bank Reconciliation Statement".

Minor Account

Meaning of Minor: Minor is a person who is under the age of 18 years and will be called major when he attains the age of 18.

Definition of Minor: As per sec 3 of Indian Majority Act, 1875 "Every other person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of 18 years and nor before".

Agreement with minor: As per Indian Contract Act, 1872 minor cannot enter into contract or agreement if minor enter into any contract it becomes invalid contract but agreement can be made with minor's guardian.

Guardian: As per person Sec.4 of The Guardians or of his property And Wards Act, 1890 "guardian" means a person having care of minor or of his property or of both person and property.

Guardians are classified into three types:

- **Natural Guardian:** Father is natural guardian after him mother will be the natural guardian of minor and after marriage husband is considered as guardian. Here guardian is considered as per the culture and religion of a person.
- **Testamentary Guardian:** Testamentary Guardian is a person who is appointed by the will of minor's father or mother i.e. by the will of natural guardian.
- Guardian appointed by a court under the Guardians and Wards Act, 1890.

Problems in Minor Account: Contract made with the minor is not valid it has many problems those are listed below:

- Loans given to any minor by the bank does not backed by legal protection because minor is not a competent party for agreement and bank cannot recover loan by force.
- Any surety received by the minor cannot be sued if he fails to repay the loan and refuses to repay the loan.
- Minor cannot be stated as an insolvent by the banker or any other third parties.

LAW & PRACTICE OF BANKING

- Securities pledged by the minor which belongs to other while taking loan cannot be executed by the bank if minor refuse to repay loan.
- Section 26 of Negotiable Instrument Act allows minor to draw and endorse any cheque, bill or promissory note. It will be valid against all party except minor.

Precautions to be taken at the time of opening minor account

- **Precaution while Opening Bank Account:** Bank prefers to open saving account and fixed deposit account in the name of minor and should not allow minor to open current account and banker will not be under trouble until bank keeps minor account in credit balance, if banker allows minor to overdraw from his account then banker does not get any legal protection to recover amount due from the minor.

Banker can open account in the name of minor or joint name of minor and guardian. When Bank opens account in the name of minor only, he should be at least 14 years or more and should able to read and write regional languages or Hindi, English. In that circumstances minor can withdraw and deposit money but while withdrawing money banker should keep eye on minor that banker should not allow minor to withdraw huge amount.

- **Precaution for Date of Birth:** While opening bank account for a minor bank should collect the proof for date of birth and should retain with the bank. When minor attains his majority on that date bank should close the minor account and open new account where the minor (who has become major now) can operate the account alone and at the time bank should get his specimen signature and should not allow guardian to operate account.
- **Granting Loans to Minor:** When bank grants any loans to minor, it cannot be recovered because minor is not a competent party. As per law, if bank grants any loan to minor it is not legal and such agreement becomes void. Even bank cannot recover the loan after minor becomes major and even if minor represents himself as major and takes loan in that situation also bank cannot recover the loan amount. If minor unintentionally overdraw money from his account then also bank will not get any legal rights and power to recover the same. Hence bank should be very careful while operating minor account.
- **Guarantees:** While accepting guarantee against loan bank should not accept the guarantee of a minor and bank should not grant loan to minor against the guarantee of others. Minor is not a principal and not accepted as guarantee. The law does not permit minor to give guarantee for others and even not to get loan against others guarantee.
- **Minor as an Agent:** Minor can be permitted to act as an agent on behalf of the principal, for that, bank should get prior written consent from the original principal. That written consent given by the principal should contain the powers of agent and banker should allow agent i.e. minor to perform function upto the limit of that power not beyond the power. Minor agent can draw amount through cheque and sign the draft as per the power given by the principal and any loss or damages occurred by the operation of agent, principal will become liable for that loss and damages not the agent.
- **Minor as a Partner:** As per Indian partnership Act Minor can enter into partnership with the permission of all the other partners. He can enter into contract and operates bank account and he

LAW & PRACTICE OF BANKING

will not liable for personal asset against the loss or damages. He only gets benefits from the partnership.

After his majority he should inform whether continue in partnership or not, in the absence of information it is implied that he will continue in that partnership as a general partner and then he will become liable for damages and losses and his personal assets also will become claim against the loss or damages.

Joint Account

Meaning of joint account: Joint account is a bank account registered in the name of two or more person and any one of the holder can operate it. Joint account is a bank account shared by two or more persons, any one of the individuals who is a member of the account can withdraw from the account and deposit to it. Normally family members or close relatives or business partners prefer joint account for their convenient transactions.

Precautions to be taken at the time of opening Joint Account

- **Withdrawal of Amount:** Bank should obtain clear information regarding authorized person who will operate the account and who all can sign in the cheque while withdrawing money. Bank should get confirmation regarding number of persons who act as authorized person and bank should clear payment only if there is signature of all the authorized persons otherwise not and the authorized persons can withdraw amount without signature of other person who is not authorized persons. In case any death of joint account holder the authorized person can withdraw the amount.
- **Survivorship:** Bank should obtain the information relating to distribution of money. In case of death of joint account holder, the remaining joint account holder would withdraw full amount in the joint account. In order to avoid that bank should obtain the clear information regarding distribution of money in case death of any partner. The executor has the every right to receive money in joint account in case any one holder dies but that has to be mentioned in the nominee account and banker should have clear information of that.
- **Safe Custody:** The bank should have clear information that who has been given the power to withdraw securities, assets and other items deposited for safe custody.
- **Death of one of the Joint-Account Holders:** If the account is in credit the rule of survivors, applies. But the banker should obtain a fresh mandate, from the remaining survivors, this is because death cancels the mandate.
- **Debit Balance:** In case of debit balance in the account, the banker should close the account prevent the operation to determine the liability of the deceased's estate.
- **Insolvency:** When any one of the account holder become insolvent bank must close the account and operation immediately after the receipts of notice of insolvency. If account shows credit balance, the amount can be released on the joint authority of the solvent party. If account shows debit balance, account must be stopped to determine the liability of the insolvent's estate. If there is any safe custody those are not to be delivered until banks get written consent from all other holder.
- **Rule of Survivorship in the Case of Husband and Wife:** All the rules applicable to joint accounts also hold good in cases where the account is opened in the joint names of the husband

LAW & PRACTICE OF BANKING

and wife. However, as regards the doctrine of survivorship, the following rules can be laid down which are applicable only to this type of joint account

- ✓ If the account is opened by the husband for his convenience, the balance in the absence of any written mandate to that effect, cannot be claimed by the widow, but it is to be transferred to the estate of the deceased husband.
- ✓ If the account is opened with the intention of making a provision for the wife, the balance can be claimed by the widow who is entitled to get the same and the amount cannot be claimed by the creditors.

Joint Hindu Family

Hindu Undivided Family ("HUF") which is same as joint Hindu family, it is a body consisting of persons lineally descendant from a common ancestor, including their wives and unmarried daughters, who are staying together jointly; joint in food, estate and worship. The daughter on her marriage ceases to be a member of her father's HUF and becomes the member of her husband's HUF.

Meaning of Karta: The person who manages the affairs of the family is known as the karta. Normally, the senior most member of the family acts as karta.

Meaning of Coparcenary: Coparcenary is a body of individuals who acquires interest by birth in the joint family property. They are the son, grandson and great grandson of the holder of the joint property for the time being. The coparcenary, therefore, consists of a common male ancestor and his lineal descendants in the male line within 4 degrees, running from and including such ancestor.

Precautions to be taken while Opening HUF Account

- The account should be opened in the name of Karta or in the name of family business. The bank has to obtain two copies of the photographs of the 'Karta', one to be affixed on the account Opening Form and the other on the Specimen Signature Card.
- While opening HUF of Joint Family Account introducer is mandatory.
- Bank has to take the signature of all member and declaration by the all members by stating who is Karta and other coparceners.
- If there is any minor coparcener in HUF, guardian has to sign on behalf of minor.
- On attaining majority of the minor coparcener, bank allows them to operate account.
- When any coparcener or member send notice to stop the payment, bank has to stop payment and bank has to clear further transaction after the confirmation of all the members or by the court.

Partnership Account

Meaning: Partnership Account: Partnership is a type of business in which two or more individual invest money, skill and share profit or loss in accordance with the terms of partnership agreement.

Precautions to be taken by bank while opening partnership account

- **Number of Partners:** While opening partnership account bank must consider partnership deed which is the article of partnership firm. Bank should make sure whether the number of partners are according to legality or not. As per law, in case of banking firm there is maximum limit of partner is 10 and any other firm maximum is 20, if exceeds it becomes illegal partnership firm and it is not

LAW & PRACTICE OF BANKING

allowed to enter into any contract or agreement. Partnership firm need minimum two partners to open partnership firm except minor.

- **Name of Bank Account:** In case of partnership account bank should open account in the name of firm but not in the name of any individual partners.
- **Opening of an Account:** Banker can open the account in the name of partnership firm and at the time of opening account banker should get specimen signature of all the partners and all the partners should agree to open the account in the name of firm if there is any objection to open account by any of the partner, bank should not open the account until all the parties agree. Hence bank should obtain the authority letter signed by all partners.
- **Cancellation of Authority to Operate the Account:** When partnership account is opened any one or more partner will gain the authority to operate the account, i.e. who can withdraw and deposit amount from and to the account. In such case when bank receives any notice regarding cancellation of the authority of the partner, bank must stop the payment and operation of the account. Any partner including sleeping partner can give notice to bank regarding to stop payment or cancellation of authority.
- **Delegation of Authority:** Delegation of authority refers to transferring power and right from one person to another person when he is not available or absent. Partner cannot delegate his authority to any other person without written consent of all the partners. If he has to appoint any person to work on behalf of him he should take permission from all the partners and prepare power of attorney to transfer powers from authorized partner to any other person by the signature of all the partners. Bank should retain that power of attorney in case of delegation of authority.
- **Admission of New Partner:** On admission of any new partner to the partnership account bank must close the account and open new one and if the bank account shows debit balance at the time of admission of new partner, bank no need to close the account but written consent from all the partners should be obtained.
- **Retirement of Partner:** At the time of retirement of any partner, a notice is to be served to banker. With the absence of notice, retired partner will become liable for further transactions. When partner retires and bank balance shows credit amount, in such case no need to close bank account and when any debit balance at the time of retirement, bank must close the account and new account has to be opened with the consent of all the existing partners.
- **Incase of Death of Partner:** When partner dies the partnership firm may be dissolved or may not be dissolved. If it is dissolved then bank must close the account and if not bank can allow partners to operate account based on conditions. When partnership is not dissolved and account balance shows credit balance then banker no need to close the bank account and asks remaining partner to settle deceased partner's net balance to his executors. In case bank account shows any debit balance bank must close the account.
- **Insolvency of Partner:** In the event of insolvency of any partner, the remaining partner can be allowed to operate the account. If there is any cheque which is drawn by insolvent partner it must be stopped by the banker without paying the amount but if the cheque drawn prior to judgment of insolvent, on that event bank can honour the cheque with prior permission by the remaining partners. In the event of insolvency, if there is credit balance in bank account, it is not a problem

LAW & PRACTICE OF BANKING

for bank the same account can be continued and in other situation bank must close the account and fresh new account must be opened.

- **Lunacy of Partner:** In case of lunacy if partnership firm is not dissolved, banker allow partner to continue account if there is credit balance in the account and if any debit balance in account bank must close the account and new account has to be opened.

Joint Stock Company Account

Meaning: Joint Stock Company Account: A joint stock company is an artificial person created by law with a distinctive name, a common seal, a common capital comprising transferable carrying limited liability and having a perpetual succession.

Steps to be taken to open bank account for Joint Stock Company

- Banker should confirm whether the company is registered or not by considering certificate of incorporation issued by the Government authority.
- Banker should collect the memorandum and article of association of the company and carefully inspect the objectives, vision and mission of the company. Banker should review the directors powers, capital etc. in the memorandum and articles of association of the company.
- The banker should collect copy of business commencement certificate which is issued by the registrar.
- While creating account for joint stock company, banker should obtain copy of recent balance sheet and profit and loss account in case of existing company. In case of new company bank should receive prospectus of the company or statement in lieu of prospectus.
- The banker should obtain a certified copy of the resolution of the Board appointing him as a banker of the company and usually such resolution contains instruction regarding who can draw cheque, regarding acceptance and endorsement of bills and deals with safe custodies.
- Bank should obtain letter from the company by stating who is authorized person to operate account and the letter should be signed by chairman and the secretary of the company.
- The bankers should obtain the specimen signatures of the authorized person to operate the account and his name should be mentioned in resolution.

Precautions to be taken by the banker for Joint Stock Company account

- The bank should ascertain the borrowing power of the company with the help of memorandum and articles of association. Usually the trading company will have more borrowing power and in case of non-trading company borrowing power must be stated.
- Bank should observe while borrowing amount, whether the borrowing is done under the delegation of power and is it done under the provision of article and should examine the document produced during the borrowing.
- Bank should examine the purpose of borrowing and the purpose should be under the provision of memorandum. If the purpose of the borrowing is not falling under the provision of memorandum then the borrowing will become ultra-vires activity and it is not allowed by law. If company need to borrow for other purpose which is not mention in memorandum then company must pass resolution and should change the memorandum by providing such provision then the company can borrow money for such purpose.

LAW & PRACTICE OF BANKING

- As per section 125 of the companies Act, 1956 which provides certain list of charges to be registered within 30 days of signing those charges and those are required at the time of register.

Charges Requiring Registration

- ✓ A charge for the purpose of securing any issue of debentures
 - ✓ A charge on uncalled share capital of the company
 - ✓ A charge on any immovable property wherever situated, or any interest therein
 - ✓ A charge on any book debts of the company
 - ✓ A floating charge on the undertaking or any property of the company including stock-in-trade
 - ✓ A charge on calls made but not paid
 - ✓ A charge on a ship or any share on a ship
 - ✓ A charge on goodwill or a patent or a license under a patent, on a trade mark or on a copyright or a license under a copyright
- At the time of providing any loan to company against the mortgage of the property, bank should verify whether the security will come under the purview of any charge if it is so, then bank should consider second charge applicability and second charge applicability is equal or more than to the loan amount then bank can grant loan.
 - At the time of closing down of the company, powers of the director are cancelled except to the extent permitted by the company and director cannot borrow funds without permission of liquidator and permissible limit given by the liquidator. At the time of liquidation of the company bank should stop the banking activity of the company and should not honor the cheques drawn by the director and any other unless special permission given by the liquidator.

Trustee Account

Meaning of Trustee: Trustee is a person to whom property is given for the usage of third party i.e. beneficiary in accordance the direction given by the principal.

While opening trustee accounts, the banker should take the following precautions

- The banker should collect the trust deed and examine the deed concerning instructions regarding opening and the person who operate the account. If those information are absent, all the trustee can open the account jointly and can operate.
- Bank should receive specimen signature of all trustee who operate the account.
- Bank should note the limitation of withdrawal as per trust deed and allow operator to withdraw to that extent and restrict to withdraw more than that amount.
- Bank make sure that the trust fund should not be misused and should not allow trustee to utilize amount other than specified purpose and make sure that amount should be utilized for the benefit of the beneficiary. Bank should not allow trustee to transfer trust fund for his personal account.
- Bank should careful while pledging trust property against loan. When there is no provision provided in trust deed, it should not allow operators to pledge trust property and if there is provision in trust deed relating to pledging or mortgaging then banker can allow operator to use trust property as per trust deed.
- A trustee has no individual powers. They must all act together. All must join in signing of cheques.

LAW & PRACTICE OF BANKING

- Unless expressly provided otherwise in the trust deed, no trustee can delegate his power to another.
The banker should note the objects for which the trust has been created so as to facilitate the passing of cheques.
- Bank should see whether the trust is registered with right authority, if it is registered bank should obtain a copy of certificate.
- If one of the trustee dies or retires, the bank on receiving of notice should suspend all operations in the account. However, if the trust deed is silent, it can let the operations to continue.
- In case of breach of trust the bank must see that it does not become a party to the breach. The banker is justified in dishonouring the cheque drawn by a trustee, if intended for breach of trust.
- If the trustees are authorized to borrow to discharge the functions of the trust, the banker must get specific assets of the trust as security.

Clubs and Association Account

Clubs, societies, charitable trusts normally do not function for the intention of making profit, but their intention may be to cater the services to fulfill social needs.

Bank should take the following precautions in case of clubs and association account

- **Incorporated club and non-incorporated club:** Normally there are two types of clubs i.e. registered and unregistered club. While opening bank account for clubs and society bank must see whether it is incorporated or not, if it is incorporated, bank should obtain incorporation certificate and then allow club to open account.
If the club is not incorporated it is a problem for bank to recover the amount due by the clubs because bank will not be able to sue on unregistered club, if it do so it is on own risk of the bank.
- **Rules and laws of club:** If the club is registered one, it must formulate rule and regulation of its own. It will have its own constitution and own rules and laws. Bank has to obtain the copy of the same and retain with bank for further reference.
- **A resolution from managing committee:** Managing Committee should pass a resolution to open bank account and bank should receive a copy of the resolution. The resolution should include the following information
 - ✓ Banker of the club
 - ✓ Information regarding the name of authorized person who operate the account and who can withdraw and deposit fund
 - ✓ Borrowing limit
- **Borrowings:** While borrowing bank should confirm whether the club is eligible to borrow or not and clearly note the borrowing limit. Bank should get a copy of special resolution from the managing committee or board regarding borrowing fund until and unless bank should not allow club to borrow.
- **Special care to be taken in case of Club Account and Personal Account:** If the club account and personal account of the operator is maintained in same bank, banker should take certain care. Bank should not club personal account of operator and club account in any reason and it is not applicable for right to set off of debit and credit balance of club account and personal account of operator.

LAW & PRACTICE OF BANKING

- **Death of Operator:** In case any notice or information on death of operator bank must stop the activities of trust account and should not honour cheque until board appoint new person as operator and bank should obtain clear written consent from the board.

Lunatic Account

Meaning of Lunatics: Lunatics are persons of unsound mind. Lunatics are not a competent party for contract but the disqualification does not apply to contract entered by lunatics prior to the period of lunacy.

Following are banker's duty in case of lunatics

- Lunatics are not competent to enter into contract so according to Section 11 of the ICA banker should not allow lunatics to open bank account in their names if banker noticed the person is lunatic.
- The customer becomes insane in that moment only bank must stop his banking activities and should not honour any cheque drawn by the insane then after. When banker comes to know the fact that moment only the contract becomes void.
- The banker must confirm the information about the fact and should not stop the banking activities on the basis of rumours or hearsay. If banks stop activities on the basis of rumours the bank should has to face trouble and will become liable for damages.
- If the banker dishonors the cheque without confirming about the lunacy, he will liable for wrongful dishonor of cheque and customer can sue in court and bank should compensate damages.
- After the confirmation of lunacy bank should return all the cheques of customer with the note of "refers to drawer" and not as customer is insane. Bank should be very careful while dealing such sensitive matters and it should not harm to anyone.
- In case of any authority is given to draw amount by the insane before the insanity of the person, bank should not allow the authorized person to draw amount when the principal i.e. account holder became insane.
- In case of insanity, account can be operated by the person who is appointed by the court. In such case bank allow the person to operate account and bank should honour the cheques drawn by him and handle the account as per the instruction of that person.
- In case insane proves that he is not insane by providing certificate by two doctors in that circumstances, banker should allow that person to operate account.

Illiterate Account

Meaning of Illiterate: Illiterate refers to situation of a person who is unable to read and write. Bank can open account in the name of illiterate person because he is competent person to a contract but only the problem is he is not able to read and write, so bank has to take certain special care and attention.

The following are special care to be taken by banker

- The account of an illiterate person may be opened provided he/she calls the bank personally along with a witness who is known by both banker and customer.
- A passport size photograph of the illiterate person is identified before the banker in presence of the account holder. The photographs have to be attested by the bank officer/ witness.

LAW & PRACTICE OF BANKING

- Bank has to take left hand thumb impression in case of male illiterate and right hand thumb impression in case of female illiterate and that thumb impression is duly attested by any responsible person on the account opening form.
- While opening illiterate account banker should collect few identification marks from the account holder and the same has to be noted down in account opening form.
- The illiterate person should be provided with a passbook which should also contain an attested photograph of the illiterate person.
- Illiterate person cannot make signature so banker should not provide cheque book facility in order to avoid misuse of cheque by some other person.
- While withdrawing amount from the bank, depositor should bring authorized person and depositor should give thumb impression in withdrawal form.
- When depositor submits any withdrawal form to banker, it is his responsibility to verify correctness of information and also verify the thumb impression of depositor with the support of specimen thumb impression which is there with bank.

Account of Married Women

The Hindu married women are governed by the Hindu Succession Act and other married women by Indian Succession Act. A banker may open an account for married women as like any other person.

Precautions to be taken by banker on married women account

- While opening bank account for married women banker should collect the information of her husband. i.e. name, occupation, and address of him, his income status etc.
- When any married women opens account with bank and ask for overdraft facility bank should examine whether she has any business and if she is having any business bank should verify the status and position of the business and based on that she has to be granted overdraft facility or else bank may face difficulties to recover overdraft facility.
- While granting any loan to married women banker must see the security against the loan because her husband cannot liable to pay the loan. Hence banker should consider whether she has any property in her name and her credit worthiness.
- Banker must ensure to have credit balance in married women account.
- When married women provide surety for any other person banker should accept that surety only when she ensures her own property otherwise not.
- In case the married women is illiterate banker must obtain her thumb impression on account opening form and identification of her.

Deceased Customer Account

In case death of customer the bank has to discharge the credit balance or properties of customer to his executor.

Bank can discharge obligation based on the following grounds

- **Will of Customer:** When customer made any will and mentioned executors name in the will, banker has to discharge all amount and property as per the will of the customer. The will must be in writing, subjected to exceptions and should contain witness name and signature.

LAW & PRACTICE OF BANKING

- **Nomination by the Customer:** Banker may suggest customer to avail nomination facility at the time of opening account and if the customer did so, banker can discharge amount and customer's belongings to the nominees who is specified by the customer.
- **Order by the Law:** When absent of nomination and will of customer, banker can take the help of court in discharging obligation and perform as per the court direction.
- **Legal Representation:** After the death of customer banker can surrender amount to legal heirs of the customer through careful verification. In case of Hindu male; his son, grand son, etc. are the legal heirs of the customer. In case of Hindu female, her children, husband are the main legal heirs.

Non Resident Account

Meaning of Non Resident Account: Non-Resident bank accounts are those, which are maintained by Indian nationals and Persons of Indian origin resident abroad, foreign nationals and foreign companies in India. In terms of the Foreign Exchange Management Act (FEMA), 1999 a person resident outside India means a person who is not resident in India.

If a person is NRI, she/he can, without the permission from the Reserve Bank, open, hold and maintain the different types of accounts given below with an Authorised Dealer in India, i.e. a bank authorised to deal in foreign exchange. NRO Savings accounts can also be maintained with the Post Offices in India. However, individuals/ entities of Bangladesh and Pakistan require prior approval of the Reserve Bank.

Types of accounts which can be maintained by an NRI in India

A. Non-Resident Ordinary Rupee Account (NRO Account): It is an account of an NRI in India to manage the income earned in India.

- NRO accounts may be opened / maintained in the form of current, savings, recurring or fixed deposit accounts.
 - ✓ **Savings Account** - Normally maintained for crediting legitimate dues /earnings / income such as dividends, interest etc. Banks are free to determine the interest rates.
 - ✓ **Term Deposits** - Banks are free to determine the interest rates. Interest rates offered by banks on NRO deposits cannot be higher than those offered by them on comparable domestic rupee deposits.
- Account should be denominated in Indian Rupees.
- Permissible credits to NRO account are
 - ✓ Transfers from rupee accounts of non-resident banks
 - ✓ Remittances received in permitted currency from outside India through normal banking channels
 - ✓ Permitted currency tendered by account holder during his temporary visit to India
 - ✓ Legitimate dues in India of the account holder like current income like rent, dividend, pension, interest, etc
 - ✓ Sale proceeds of assets including immovable property acquired out of rupee/foreign currency funds
- Eligible debits such as

LAW & PRACTICE OF BANKING

- ✓ All local payments in rupees including payments for investments as specified by the Reserve Bank
- ✓ Remittance outside India of current income like rent, dividend, pension, interest, etc.,
- ✓ Net of applicable taxes, of the account holder
- NRI may remit from the balances held in NRO account an amount not exceeding USD one million per financial year, subject to payment of applicable taxes.
- The limit of USD 1 million per financial year includes sale proceeds of immovable properties held by NRIs.
- The accounts may be held jointly with residents or with non-resident Indian.
- The NRO account holder may opt for nomination facility.
- NRO (current/savings) account can also be opened by a foreign national of non-Indian origin visiting India, with funds remitted from outside India through banking channel or by sale of foreign exchange brought by him to India. The details of this facility are given in the FAQs on "Accounts opened by Foreign Nationals and Foreign Tourists" available on the RBI website.
- Loans to non-resident account holders and to third parties may be granted in Rupees by Authorized Dealer / bank against the security of fixed deposits subject to certain terms and conditions.

B. Non-Resident (External) Rupee Account (NRE Account): It is an account of an NRI in host country to transfer foreign earnings to India.

- NRE account may be in the form of savings, current, recurring or fixed deposit accounts. Such accounts can be opened only by the non-resident himself and not through the holder of the power of attorney.
 - ✓ **Savings** - Banks are free to determine the interest rates.
 - ✓ **Term deposits** - Banks are free to determine the interest rates of term deposits of maturity of one year and above. Interest rates offered by banks on NRE deposits cannot be higher than those offered by them on comparable domestic rupee deposits.
- NRIs may be permitted to open NRE account with their resident close relatives (relative as defined in Section 6 of the Companies Act, 1956) on 'former or survivor' basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance with the extant instructions during the life time of the NRI/ PIO account holder.
- Account will be maintained in Indian Rupees.
- Balances held in the NRE account are freely repatriable.
- Accrued interest income and balances held in NRE accounts are exempt from Income tax and Wealth tax, respectively.
- Authorised dealers/ authorised banks may at their discretion/commercial judgment allow for a period of not more than two weeks, over-drawings in NRE savings bank accounts, up to a limit of Rs 50,000 subject to the condition that such over-drawings together with the interest payable thereon are cleared/repaid within a period of two weeks, out of inward remittances through normal banking channels or by transfer of funds from other NRE/FCNR accounts.
- Permissible credits to NRE account are
 - ✓ Inward remittance to India in permitted currency

LAW & PRACTICE OF BANKING

- ✓ Proceeds of account payee cheques, demand drafts / bankers' cheques, issued against encashment of foreign currency
- ✓ Transfers from other NRE / FCNR accounts
- ✓ Sale proceeds of FDI investments
- ✓ Interest accruing on the funds held in such accounts, interest on Government securities/dividends on units of mutual funds purchased by debit to the NRE/FCNR(B) account of the holder, certain types of refunds, etc.
- Eligible debits are
 - ✓ Local disbursements
 - ✓ Transfer to other NRE / FCNR accounts of person eligible to open such accounts
 - ✓ Remittance outside India, investments in shares / securities/commercial paper of an Indian company, etc.
- Loans up to Rs 100 lakh can be extended against security of funds held in NRE Account either to the depositors or third parties.
- Such accounts can be operated through power of attorney in favour of residents for the limited purpose of withdrawal of local payments or remittances through normal banking channels to the account holder himself.

C. Foreign Currency Non Resident (Bank) Account: This is a kind of fixed deposit account opened for depositing income earned overseas. The account is held in foreign currency.

- FCNR (B) accounts are only in the form of term deposits of 1 to 5 years
- All debits / credits permissible in respect of NRE accounts, including credit of sale proceeds of FDI investments, are permissible in FCNR (B) accounts also.
- Account can be in any freely convertible currency.
- Loans up to Rs.100 lakh can be extended against security of funds held in FCNR (B) deposit either to the depositors or third parties.
- The interest rates are stipulated by the Department of Banking Operations and Development, Reserve Bank of India. Interest shall be paid within the ceiling rate of LIBOR/SWAP rates plus 125 basis points. On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency/ maturity plus 125 basis points. For floating rate deposits, the interest reset period shall be six months.
- When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him.
- Terms and conditions as applicable to NRE accounts in respect of joint accounts, repatriation of funds, opening account during temporary visit, operation by power of attorney, loans/overdrafts against security of funds held in accounts, shall apply to FCNR(B). NRI can open joint account with a resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on former or survivor basis. The resident close relative will be eligible to operate the account as a Power of Attorney holder in accordance with extant instructions during the life time of the NRI/ PIO account holder.

LAW & PRACTICE OF BANKING

Government Department Account

Commercial Banks will collect amount account on behalf of the Government make payment on behalf of the Government, so it maintains the account of the Government. It maintains central Government Account and collect income tax, wealth tax etc and even banks maintain State Government Account and collect sales tax, service tax, professional tax and other state related tax and maintain both Government account. Generally SBI and its subsidiary banks deals on behalf of Government.

An Executor or Administrator Account

- An Executor is a person named in the will of a deceased person to administer his estate after his death. The executor derives title and authority from the will for the purpose of administration of the property of the deceased. But before acting upon the will he must obtain a Probate from a competent court of law. Letter of Probate means a copy of the 'will' certified by the Competent Court under its seal to "prove" the validity of the last will.
- An Administrator is a person appointed by the Court to wind up the estate of the deceased when a person dies intestate (meaning that a person dies without leaving behind a will). The 'Administrator' is also appointed when
 - ✓ the testator (the deceased) has not mentioned the name of Executor in the will
 - ✓ executor named in the will dies before the testator
 - ✓ refuses to act as Executor.
- The following documents are required for opening an account of Executor or Administrator in banks for the opening of accounts of the Executors / Administrators, the applicant has to submit a letter of probate/ letter of Administration issued by a competent court of law empowering them to act as Executor or Administrator. The duties and rights of Executors and Administrators are substantially the same. They differ only in the manner of their appointment.
- Account Opening Form should be signed by all the Executors / Administrators if there is more than one Executor / Administrator - photographs of all Executors / Administrators have to be obtained and retained on Bank records.
- Cheques drawn in favour of Executor / Administrator should not be credited to the personal account of the Executor / Administrator.
- Executors and Administrators cannot delegate power to third parties.
- Bank Officer at the branch must very carefully read the contents of the Will or Letter of Administration so that the operations in the account of Executor / Administrator are allowed only as per the terms of the Will.
- The account should be opened in the name of the individual with the addition of the words "Executor or Administrator".

Closing of Bank Account

- **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".
- **In-operative Account:** If the customer does not operate an account for a long time (3yrs) the bank can close down the account. However, the banker is required to give notice to the customer to

LAW & PRACTICE OF BANKING

withdraw his money. In case, the customer is not traceable, after a reasonable effort, the amount standing to the credit that is unclaimed amount of the customer is transferred to the "Depositors Education and Awareness Fund" and the account is closed.

- **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.
- **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. **On the Insanity of the Customer:** When the bank receives a notice of insanity of his customer, the bank must stop payment from his account.
- **On Insolvency of the Customer:** When the bank comes to know of insolvency of his customer, it must stop payment. The balance standing to the credit of the customer is transferred to the official receiver or assignee.
- **On Receipt of Garnishee Order:** The banker should freeze the amount to the extent specified in the Garnishee Order. He may make payment of the customer's cheques out of the remaining balance, if any.
- **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.

Assignment Questions

Section A

1. What is a joint account, NRI account, Executor's account, Lunatic account, Partnership account, Administrator account?
2. Who is minor, Executor, Administrator, NRI?

Section B

1. Explain the precautions to be taken by the banker while opening joint account, HUF?
2. What are the steps to be followed while opening and closing a bank account?

Section C

1. Explain the precautions to be taken by the banker while opening joint stock company account, minor account.
2. State the precautions to be taken by the banker while opening while opening and operating an account in the following cases
 - a. Trustee account
 - b. Executor and Administrator account
3. Explain any three types of customer accounts in brief.
4. What are the different types of NRI accounts? Explain.

(NOTE: Precautions to be taken by the banker for opening any of the above given account can be asked)