**TRAINING IN FINANCIAL AND BUSINESS MANAGEMENT FOR ROAD CONTRACTORS**

**MODULE FIVE: SESSION ONE PARTICIPANTS’ NOTES**

**OVERVIEW OF CUSTOMER-BANK RELATIONSHIP**

**1.0 Relationship between Banker and Customer:**

The relationship between a banker and a customer depends on the activities, products or services provided by bank to its customers or availed of by the customer. Thus the relationship between a banker and customer is the transactional relationship. A Bank’s business depends much on having a strong bonding relationship with the customer. **“Trust”** plays an important role in building a healthy relationship between a banker and its customer.

**1.2 Definition of a ‘BANKER’**

The Banking Act does not define the term ‘banker’ but defines what banking is. As per the Act “Banking' means accepting, for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise."

Otherwise a bank may be defined as a body corporate that:

*(a) Accepts deposits from public.*

*(b) Lends or*

*(c) Invests the money so collected by way of deposits.*

*(d) Allows withdrawals of deposits on demand or by any other means.*

**1.3 Who is a ‘Customer’?**

The term Customer has not been defined by any act. The word ‘customer’ has been derived from the word ‘custom’, which means a ‘habit or tendency’ to do certain things in a regular or a particular manner.

Bank customers can be categorized into four broad categories as under:

*(a) Those who maintain account relationship with banks i.e. existing customers.*

*(b) Those who had an account relationship with the bank i.e. former customers*

*(c) Those who do not maintain any account relationship with the bank but frequently visit a branch* of a bank for availing of banking facilities such as for purchasing a draft, encashing a cheque, etc. Technically they are not customers, as they do not maintain any account with the bank branch.

*(d) Prospective/ Potential customers:* Those who intend to have an account relationship with the bank. A person will be deemed to be a 'customer' even if he had only handed over the account opening form duly filled in and signed by him to the bank and the bank has accepted it for opening the account, even though no account has actually been opened by the bank in its books or records.

**1.4 Banker-Customer Relationship:**

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

**1.5 Classification of Relationship:**

The relationship between a bank and its customers can be broadly categorized into General Relationships and Special Relationships.

**General Relationships**

1. **Debtor-Creditor:** When a 'customer' opens an account with a bank, he fills in and signs the account opening form. By signing the form he enters into an agreement/contract with the bank.

When customer deposits money in his account the bank becomes a debtor of the customer and customer a creditor. The money so deposited by customer becomes the bank’s property and bank has a right to use the money as it likes. The bank is not bound to inform the depositor of the manner of utilization of funds deposited by him. **Bank does not give any security to the depositor** i.e. the bank is a debtor of the depositor who is a creditor of the bank. The bank has borrowed money and it is only when the depositor demands it that the banker pays.

1. **Creditor–Debtor:** *Lending money is the most important activity of a bank*. The resources mobilized by banks are utilized for lending operations. A customer who borrows money from a bank owns money to the bank. In the case of any loan/advances account, the banker is the creditor and the customer is the debtor. The relationship is the reverse of the first case when a person deposits money with the bank. A **Borrower executes documents and offers security to the bank before utilizing the credit facility**.

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

**Special Relationships**

1. **Bank as a Trustee: “A trust is an obl**igation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.” **Thus a trustee is the holder of property on behalf of a beneficiary.**
2. **Bailee – Bailor: “*A bailment* is the** *delivery of* goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.” The person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee".

Banks secure their advances by obtaining tangible securities. In some cases physical possession of securities or goods (Pledge), valuables, bonds etc., is taken. While taking physical possession of securities the bank becomes bailee and the customer bailor. Banks also keeps articles, valuables, securities etc., of its customers in Safe Custody and act as a bailee. **As a bailee the bank is required to take care of the goods bailed.** Where a bailor (customer) deposits moveable items with a bailee (bank) for safe custody, there is an intention that the goods will be returned at the end of the bailment period. Banks that operate Custodial Services will be heavily involved in contracts of bailment. Also when customers rent safe deposit lockers in the bank to keep items, a bailment contract arise. The bank must exercise a high standard of care over the items deposited. Bank will be liable for loss, theft of the deposited items if this arises due to bank’s negligence.

Bank should return the bailed goods to the lawful owner in accordance with the contract. When goods are deposited, a receipt which states the mode of withdrawal is issued. Such receipt should be produced during withdrawal and acknowledgement should be duly signed by the customer or the authorized person before the goods are released**.**

1. **Lessor and Lessee:**  “A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

The relationship between the bank and the customer can be that of lessor and lessee. Banks lease, that is, hire their immovable property to the customer and give them the right to enjoy such property during the specified period and charge rentals. Bank has the right to terminate the lease in case the lease holder defaults in payment of rent.

1. **Agent and Principal:** *“An agent”* is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called “the Principal”. Thus an agent is a person, who acts for and on behalf of the principal and under the latter’s express or implied authority and the acts done within such authority are binding on his principal and, the principal is liable to the party for the acts of the agent. Banks collect cheques, bills, and make payment to various authorities viz., rent, telephone bills, insurance premium etc., on behalf of customers. Banks also abide by the standing instructions given by its customers. In all such cases bank acts as an agent of its customer, and charges a fee for these services.
2. **As a Custodian:** A custodian is a person who acts as a caretaker of something. Banks take legal responsibility for a customer’s securities.
3. **As a Guarantor:** Banks give guarantee on behalf of their customers and enter into their shoes. Guarantee is a contingent contract. **It should thu**s be observed that the banker-customer relationship is a transactional relationship.

**1.6 Termination of relationship between a banker and a customer:**

The relationship between a bank and a customer ceases on:

(a) The death, insolvency, lunacy of the customer.

(b) The customer closing the account i.e. voluntary termination

(c) Liquidation of the company/business

(d) The closing of the account by the bank after giving due notice.

(e) The completion of the contract or the specific transaction.

The relationship developed between a banker and customer involves some duties on the part of both. The banker-customer contract ends once the customer closes his account. However the banker-customer relationship exists even after the closure of an account and the bank is expected to maintain the duty of confidentiality indefinitely.

The banker customer relationship can be terminated in one of the following ways.

1. **Express Notice by the customer**

A bank must close an account when requested to do so in writing by a customer. A customer may demand full repayment of his credit balance at any time ***(Joachimson v Swissbank Corporation).*** A bank should not close an account with a nil balance unless it receives a client's written confirmation. A customer with a debit balance may not close an account unless he repays the balance.

1. **Termination by the bank**

A bank may only close an account after giving sufficient notice and making provisions for outstanding cheques ***(Joachimson v Swissbank Corporation).*** In ***Prosperity v Lloyds*** one month notice was not sufficient since the customer's banking arrangements were complex. Under normal circumstances, 30 days will be sufficient notice (Banking Code). A customer can make claims for unauthorized debits in his account even after closure of his account (Limpage Limited v Bank of Credit & Commerce International, 1986)

1. **Termination by Operation of Law**
* A banker customer contract will be terminated by: **Death or Mental incapacity of customer**. A bank's authority to pay cheques is terminated once it receives notice of the death of a customer ***(*s75 *Bills of Exchange Act).*** A bank is therefore protected if it pays cheques after the death of a customer but before the notice of death is received.
* When a bank receives notice of mental incapacity of a customer, all his accounts should be ruled off until the court appoints a receiver to manage the customer's affairs. The bank can thereafter operate the accounts under instruction from the receiver.
* **Bankruptcy of a customer**. Property dispositions, including bank balances, made after the presentation of a bankruptcy petition but before issuance of a bankruptcy order are void unless ratified by a court. If a bank pays in ignorance of a petition it may only hope that the court will ratify the payment. If a bank receives notice of bankruptcy petition when the account is overdrawn, it may not be able to claim the debt. The bank can still accept deposits into an account in credit. The credit balance vests in the trustee in bankruptcy. Payments into an overdrawn account will serve to reduce the debt if the bank is ignorant of the petition and acts in good faith otherwise, if the bank is aware of the petition, the funds will vest in the trustee in bankruptcy. However, the court may ratify such disposition. Once a bankruptcy petition is issued, the bankrupt should not be let to operate the account unless the court issues a validation order

**1.7 Duties of a banker:**

A 'Banker' has certain duties vis-à-vis his customer. These are:

1. *Duty to maintain secrecy/confidentiality of customers' accounts.*

Banker has a duty to maintain secrecy of customers' accounts. Maintaining secrecy is not only a moral duty but bank is legally bound to keep the affairs of the customer secret. The principle behind this duty is that disclosure about the dealings of the customer to any unauthorized person may harm the reputation of customer and the bank may be held liable.

**Failure to maintain secrecy:**

Bank is liable to pay damages to the account holder for loss of money and reputation if it fails in its duty to maintain secrecy and discloses information relating to a customer's account or conduct of the account to any unauthorized person. Bank can also be liable to the third party if its wrongful disclosure harms the interest of the third party.

**Circumstances under which banker can disclose information of customer's account:**

A bank can disclose information regarding customer's account to a person(s) under the following circumstances:

(a) Under compulsion of law.

(b) Under banking practices.

(c) For protecting national interest.

(d) For protecting bank’s own interest.

(e) Under express or implied consent of the customer.

1. *Duty to honour cheques drawn by customers on their accounts and collect cheques, bills on his behalf.*

As 'banking' means accepting of deposits withdrawable by cheque, draft, order or otherwise, the banker is duty bound to honour cheques issued by the customers on their accounts. **Duty to honour cheques ceases on receipt of:**

1. Stop payment instructions from the account holder.
2. Notice about the death of the drawer.
3. A garnishee order attaching the balance in the account or an income-tax attachment order received by the banker.
4. Drawer of the cheque becoming insolvent and/or a lunatic at the time of drawing the cheque.

**A Bank can refuse to honour the cheques if:**

1. There is insufficient balance in the account to make payment of the cheque.
2. Cheque issued does not pertain to the account on which it has been drawn.
3. If the cheque is not in order (post dated, stale, payment countermanded, amount in words and figure differs, etc.)
4. The balances held in account are earmarked for some specific purpose and the remaining balance is not sufficient to honour the cheque.
5. *Duty to pay bills etc., as per standing instructions of the customer.*
6. *Duty to provide proper services.*
7. *Duty to act as per the directions given by the customer. If directions are not given the banker has to act according to how he is expected to act.*
8. *Duty to submit periodical statements i.e. informing customers of the state of the account.*

Banks are under duty bound to provide proper accounts to the customer of all the transactions done by him. Bank is required to submit a statement of accounts/passbook to the customer containing all the credits and debits in the account.

1. *Articles/items kept should not be released to a third party without due authorization by the customer*

**1.8 Banker’s duty of care**

1. While paying cheques the bank should only pay cheques that are properly drawn by the customers
2. Non-payment of a properly drawn cheque amounts to failure to obey instructions and may result in claims for damages or even libel
3. Payment of a properly drawn cheque while there are insufficient funds may result in bad debts.
4. Bank should inform a customer if his signature has been forged on a cheque or other instruction. Mere suspicion is not enough since it could result in a breach of secrecy
5. While responding to status enquiries/references a bank may be liable in libel if it erroneously gives an adverse report on a customer’s credit rating.
6. While posting transactions: When a bank credits wrong amounts to an account and the customer honestly relies on the balance and irreversibly changes his position, the bank may be estopped from recovering the funds.
7. Customer’s duty of care: To take reasonable care while issuing cheques so that his bank will not be misled into making a payment that he has not authorized.
8. When the client expressly or impliedly authorizes the disclosure. The authority should be in writing.

**1.9 Rights of a banker:**

It is not that the bank has only duties towards its customers; it too has certain rights vis-à-vis his customers. The rights can broadly be classified as:

1. Right of General Lien. A lien is the right of a creditor in possession of goods, securities or any other assets belonging to the debtor to retain them until the debt is repaid, provided that there is no contract express or implied to the contrary.
2. Right of Set-Off. The banker has the right to set off the accounts of its customer. It is a statutory right available to a bank, to set off a debt owed to him by a creditor from the credit balances held in other accounts of the borrower.
	1. **Conditions while exercising right of Set-off:**
		1. The account should be in the sole name of the customer.
		2. The amount of debts must be certain and measurable.
		3. There should not be any agreement to the contrary
		4. Funds should not be held in trust accounts
		5. The right cannot be exercised in respect of future or contingent debts.
		6. The banker has the right to exercise this right before a garnishee order is received by it.
3. Right of Appropriation. It is the right of the customers to direct his banker against which debt (when more than one debt is outstanding) the payment made by him should be appropriated. In case no such direction is given, the bank can exercise its right of appropriation and apply it in payment of any debt.
4. Right to act as per the mandate of customer
5. Right to Charge Interest, Commission, Incidental Charges etc. Banker has an implied right to charge for services rendered and sold to a customer. Bank charges interest on amount advanced, processing charges for the advance, charges for non-utilization of credit facilities sanctioned, charges commission, exchange, incidental charges etc. depending on the terms and conditions of advance banks charge interest at monthly, quarterly or semiannually or annually. Banks charge customers if the balance in deposit account falls below the prescribed amount. Usually the bank informs such charges to the customer by various means.

**2.0 TYPES OF BANK CUSTOMERS**

Individual customers must have the capacity to enter into the contract. Minors and insane persons do not have the capacity to enter into a contract. So as to ensure that only persons with capacity open accounts with the bank the bank has account opening procedures.

**2.1 A SOLE PROPRIETORSHIP CUSTOMER**

A sole proprietorship is the simplest form of business organization to start and maintain. It is a business owned by one individual. The liabilities of the business become the liabilities of the owner. The owner undertakes the risks of the business for all assets owned, whether used in the business or personally owned.

**2.2 PARTNERSHIP CUSTOMER**

A business that subsists between persons carrying on a business with a view of profit registered under the Partnership Act. The rights and responsibilities of each partner in a partnership are laid down in the Act e.g.

* Implied authority to bind the firm.
* Severally & jointly liable for the debts of owed by the firm.

**2.3 COMPANIES**

An artificial legal person with a separate legal identity from its members and is registered under the Companies Act. Its directors, shareholders and employees are connected to the company by a network of contracts, but, in law, the company is regarded as separate from them. A company has power to sue and be sued in its own name. The company is governed by Memorandum and Articles of Association. The articles are regulations for internal management of the company, while the Memorandum regulates relationship with outsiders.

**2.4 SOCIETIES**

A Society is a voluntary association of individuals dedicated to common ends. A society can include a club, company, partnership or other association of ten or more people. It is registered under the Societies Act and governed by its rules and regulations. The bank has established several requirements before a society can open an account with the bank.