

Duties of a Banker towards his customer

1. Duty of secrecy
2. Duty to honor Cheques
3. Duty to submit periodical statements
4. Duty to collect Cheques / bills

Duty of secrecy

- A bank is legally obliged to keep the affairs of his customer's secret.
- There is no need to have separate agreement for it; it is implied in banker customer relationships.
- This is also mandatory as per section 13 of Banking Companies (Acquisition and Transfer of Undertaking) Act 1970.

(A) Circumstances where disclosure is authorized by law:-

1. Order of the court.
2. Disclosure as per Income tax Act -1961 and Gift Tax Act 1958.
3. Criminal Procedure Code 1973.
4. Other Acts giving similar power to authorities like 1) CBI 2) Custom Authorities 3) Central Excise Authorities. 4) Sales tax Authorities.
5. Foreign Exchange Management Act
6. Companies Act -1956
7. Reserve Bank of India Act -1934 etc.

(B) Circumstances where disclosure is permitted as per banking practices:--

1. Disclosure to another bank to supply credit information / opinion on Customers when requested by another bank ----to be supplied on IBA 's format, in general terms, without fixing bank's signatures and in coded words as supplied by IBA among banks.
2. Disclosure as per express or implied consent of the customer.

(C) Disclosure in public interest.

The obligation to maintain secrecy continues even if the account is closed or customer expires. In case of unauthorized disclosure, the customer can sue the bank for damages and any third party who relies on such information and suffered loss can sue the bank if the information turns out to be false.

Duty to honor Cheques:

As per Section 31 of NI Act, a bank is bound to honour his customer's Cheques if the following three conditions are fulfilled.

1. There must be sufficient balance in the account
2. The balance must be properly applicable for the payment of the cheque.
3. The bank must be duly required to pay the amount

However this obligation to honor Cheques stands extinguished upon receipt of

- a) Garnishee order
- b) Income Tax Attachment Order

Garnishee Order

- A garnishee order is an attachment order issued by a competent court under section 60 of civil procedure code at the request of a creditor to attach his debtor's funds in the hands of a Banker.

- A garnishee order is issued in two stages, first order Nisi and then an order Absolute
- Banker - Garnishee; Person approached the court - judgment creditor and person whose funds are to be attached - Judgment Debtor.

Order Nisi

- An order Nisi requires the banker to explain as to why the funds of the depositors should not be attached
- On receipt of order Nisi the bank is bound to stop operation in the depositors account
- Bank must immediately inform the customer about the receipt of the order.

Order Absolute

- After receipt of the explanation from the bank the court may issue order Absolute.
- On receipt of an order Absolute the bank should pay the amount to the court.
- Production of pass Book/ Deposit receipt not necessary for making such payment
- Amount of the Garnishee Orders
- A Garnishee order usually does not mention the amount. In case, no amt is mentioned, the entire balance to be attached. If issued for specific amount only that amount to be attached

Accounts to be attached

- Garnishee order extends only to those accounts, which are held in the same capacity in which the order is issued.
- If garnishee order is in the name of 'A', joint account of A, B and C cannot be attached.
- But if the garnishee order is in the joint names of A, B and C, it will not only attach the joint account but also accounts in their individual names.
- If the order is in the name of A and the account is in the name of a partnership firm where A is a partner the firm account cannot be attached.
- If the order is in the name of a partnership firm, not only the firm account but also the balance in the individual partner's account can be attached.
- If the order is in the name of individual it would extend any account maintained by him in the name of a firm as sole proprietor
- Accounts held by a person as a trustee (Trust Accounts) are not attached by a Garnishee order issued in individual name

Accounts not attached

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- Deceased person's account
- Insolvent person's account

Types of deposits attached

- All deposits due and accruing due are attached
- Deposit due means SB CD and overdue time deposits
- Deposits accruing due are term deposits, which will mature for payment in future. Hence Garnishee order attaches the term deposits, but the amount is payable only on their maturity.
- Where amount is passed for payment, debit entry made and token issued but the actual payment is not made by the cashier, the Garnishee order attaches such amount.
- Clearing Cheques passed can be attached till the time prescribed for clearing returns.

Types of Assets not attached

- Funds held in safe custody, safe custody locker
- Undrawn balance of cash - credit account
- Unclear balance in SB/CD account
- Credits/Deposits given after receipt of the order
- Bank is entitled to exercise its right of set off for all debt due from the customer before complying with the order.

Income - Tax Attachment Order

- As per 226(3) of IT Act, 1961, it can attach SB, CD term deposit (payable on maturity), proceeds of collection items to be credited to account
- Even though the order is received in a single name, it attaches balance (pro rata) in any joint account maintained by such person)
- Even the amount deposited after the receipt of order, it is attachable
- No need to insist upon presentation of Deposit Receipt to make payment

Procedure for attaching joint account

- There should be a mention on the order that a copy of the same is sent to other joint account holders. In case, no such remark is there, income tax dept should be advised, "you have not sent therefore, unable to comply with your demand".
- IT attachment order attaches the funds held on account of a deceased or insolvent depositor
- The order attaches the money held or that may be subsequently held
- The Bank is entitled to first exercise its right of set off before acting on the order.

- On receipt of the order the customer must be given notice.
- Permission from higher office is to be obtained before remitting the funds to ITO
- If Bank fails to attach the amount it would be deemed to be an assessee in default.

Sl. No.	Garnishee order	Attachment order
01	Issued by court	Issued by IT Dept/Govt Dept
02	Usually amount not mentioned	Amount mentioned
03	Deposits held at the time of receipt of order	same and future credits
04	Proceeds of instruments on collection not attached	Attached
05	If issued in single name joint a/c not attached	Attached prorata
06	Issued in joint names, balance in individual attached	Same
07	A/c of deceased/ insolvent cannot be attached	Are attachable

Garnishee /Attachment order

- Acknowledge receipt of the order by writing the exact time and date
- Verify the order and ensure that it is against your customer
- Ascertain the attachable funds
- Mark caution
- Report to the court within a period of time
- Inform the customer

IF GARNISHEE ORDER AND IT ATTACHMENT ORDER ARE RECEIVED AT THE SAME TIME, INCOME TAX ORDER SHOULD BE PREFERRED

Rights of a Banker

1. Right of general lien

It can be exercised on the goods and securities of the debtor, which are received in the capacity of a creditor. A banker can sell goods/securities after giving the debtor a reasonable notice. In case of time barred jewel loan, bank has got a right to sell the jewels and appropriate the amount to loan account and other dues of the borrower.

2. Right of set- off

When a customer has credit balance in one account and debit balance in another account, the banker has a right to combine both the accounts to arrive at net sum, is

called right to set-off. Debit balance should be due. Term deposits which are yet to mature are not available for set-off. Both the balances should be held in same capacities of the customer. Prior notice to customer to exercise right must be given.

3. Right of Appropriation

When a debtor owing several debts makes a payment, the creditor should appropriate it as per the rules of appropriation.

4. Right to act as per the mandate of the customer

A mandate is just a simple letter of authority given by an account holder to the bank to allow a certain named person to operate his account on his behalf. A mandate is given for allowing somebody to operate the account; to make, draw, accept or otherwise sign bills of exchange or other negotiable instruments or to overdraw the account whenever required.

The Joint Account opened by more than one individual can be operated by single individual or by more than individual jointly. The mandate for operating the account can be modified with the consent of all account holders.