

## Different types of Bank customers & Accounts

### Various type of customers:

#### **A. Accounts of Individual**

- a. Single Accounts
- b. Joint Accounts

#### **B. Accounts of Firms**

- a. Proprietorship Firms
- b. Partnership Firms [Including Limited Liability Partnership Firms]

#### **C. Accounts of Joint Stock Companies**

1. Private Limited Companies
2. Public Limited Companies
3. Govt. Companies

#### **D. Accounts of Trusts**

#### **E. Accounts of HUF [Hindu Undivided Family]**

#### **F. Accounts of Clubs & Societies**

#### **G. Accounts of Executors and Administrators**

### ACCOUNTS OF INDIVIDUALS

Any Individual can open a bank account except LUNATICS,

#### **1. Single Accounts**

- a. Operated by **Self**
- b. Operated by **Mandate**
- c. Operated by **Power of Attorney Holder**

#### **2. Joint Accounts [Two or More Individuals]**

- a. Operated by **Jointly by All**
- b. Operated by **Either or Survivors**
- c. Operated by **Former or Survivors**

**In case of some individual accounts certain special care is required owing to**

- **Some legal aspects ,**
- **Legal Provisions and**
- **Various risks attached to such accounts.**

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### SOME SPECIAL CATEGORY ACCOUNTS ARE

1. **Accounts of Blind Persons**
2. **Accounts of Illiterate Persons**
3. **Accounts of Pardanashin Women**
4. **Accounts of Married Women**
5. **Accounts of Minors**

#### 1. Accounts of BLIND PERSONS

- Like other persons, the blind persons are fully competent to enter into valid contract due to which **there is no legal bar in opening accounts** in their name or getting loan documents executed by them.
- But, like illiterate customers, the blind persons can argue that the terms & conditions were misrepresented. They may also dispute their signature due to which **the banks should be extra careful** while opening and allowing operations in the accounts of blind persons.

#### Opening and Operation of Account

- **Signature and left hand thumb impression** of the blind (**even for literate**) must be obtained in the **account opening form**, which should be **witnessed** by a respectable person **who should certify** that the contents are explained to the blind person in his presence.
- **Photographs** should be obtained and used in the same way as is done in case of illiterates.
- **Cash payments or deposits** should be made in the presence of a **witness** who should be **preferably a customer of the bank**.
- The account opening form, specimen signature sheet, pass book, cheque book must be stamped "**Blind Person**" so that **caution is exercised** while transacting with the blind customers.

#### 2. Accounts of ILLITERATE PERSONS

**An illiterate is a person** who cannot read or write. Such persons are **competent to enter into valid contracts**, but they can avoid a contract if they are able to prove that their consent was obtained by misrepresentation.

Hence, while opening deposit accounts or giving loan, the bankers have **to create proper evidence to prove** that the literate person understood the terms and conditions beyond doubt and to ensure that he cannot take the plea of misrepresentation.

**Thumb Impression** – For the purpose of entering into an agreement, they put their thumb (generally, left hand in case of male and right hand in case of a female) impression. Marking of Thumb impression is Must of Identification

#### Precautions in Opening Accounts of illiterate persons

Such customers have **to visit the bank personally** to have payment from the bank and put thumb impression before the authorized official of the bank.

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**Passing officials should ascertain** the amount from the customer which he wants to withdraw to ensure that no fraud is taking place.

**Following aspects/precautions should be looked in:**

- **Witnessing** is required (At least One witness)
- **Three photographs** should be obtained and these photographs are pasted on the pass-book, signature slip and account opening form.
- Cost of such photographs is borne by the customer himself.
- One or more **identification mark** to be noted.
- Payment on **personally calling** on the bank.
- **Rubber stamp** that depositor is illiterate is affixed **on AOF** and ledger Folio [F-10 Key]
- **Explain** rules in front of one witness.

**Types of accounts an Illiterate person can open:**

- **Savings bank and Term Deposit Accounts** can be opened with the **condition that withdrawals will be allowed only in person.**
- There is no legal bar on opening of current account but **IBA deposits guidelines** stipulate, that **no Current Account** should be opened in the name of illiterate persons.
- Joint Accounts in the name of two illiterates **can be opened** after observing usual safeguards.
- But **joint account** with a literate person should be opened carefully.

**Operations in accounts of illiterate persons:**

- The **withdrawal** should be allowed **only in person** after proper identification.
- The passing official should **certify in the withdrawal form** that the left / right hand thumb impression has been **affixed** in his presence and the amount withdrawn is **orally** confirmed illiterate depositor.
- Where the illiterate person wishes to give a **mandate authorizing** somebody to operate his account, the mandate **should be attested by a Notary public.**

### **3. Accounts of PURDANASHIN WOMEN**

- **A purdanashin lady is a woman who remains in complete seclusion and does not transact any business with people other than her family members.**
- The contract entered into by her is not a contract free from all defects as a presumption of undue influence always exists and she can avoid the contract where she complains of undue influence, the **onus** of providing the absence of undue influence lies on the other party.

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- Hence, bank should take all precautions in opening an account in her name. Generally banks should discourage to open accounts in her name as her identity cannot be ascertained.
- Account should be **opened in the name of literate ladies only**.
- But **no current account** should normally be opened.
- **Her signature** in the account opening form should be **attested by her husband** and in case of unmarried, by her **natural guardian**.
- Photograph of the purdanashin must be obtained while opening account in her name.

### 4. Accounts of MARRIED WOMEN

The legal status of a married women is **regulated by Hindu Succession Act 1956, Married Woman's Property Act 1874 and Indian Succession Act 1925**.

The following features need to be taken care of by the banks.

- She is considered to have a **legal entity separate from her husband**.
- **Section 14 of Hindu Succession Act** provides that property of a Hindu female is her **absolute property**.
- A married woman can open accounts in her name, operate it freely and enjoys the overdraft limits **as long as the liability can be taken care of by her own property**.
- **She can be adjudicated insolvent in respect of her own debt**, even though her husband is solvent.
- Her husband shall not be liable **except** in the following, for a loan raised by a married woman:
  - **Loan is granted with the consent of her husband** who stands as surety, also
  - **Loan is availed for necessities of her life**.
- She can be an executor or administrator without any help or guidance.

Where she maintains an account in **her maiden name** (before marriage) and approaches for a **change of name** in the deposit account **consequent to her marriage**, the bank should obtain **a letter from her** asking for the change and fresh specimen signature and change the title of the account in the ledger.

### 5. Accounts of MINORS

#### MINORS:

- A minor (of Indian domicile) is a person **who has not completed 18 years of age** as per **section 3 of Indian Majority Act 1875**, amended w.e.f. **Dec 16, 1999**.

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- **Where a guardian is appointed by the Court** (for minor's person or property or both) or where a **Court of Ward** is appointed as guardian, a person attains majority on completion of 21 years of age.

**DEPOSIT ACCOUNT OF MINORS:** Under provisions of Law, banks can open different types of deposit accounts such as account operated by guardian, account operated by mother or account operated by himself.

### Guardian operated accounts:

- Account can be opened **in the sole name** of minor by the guardian to be operated by guardian.
- He can also open a **joint account in the name of the minor and himself**.
- Such guardian can obtain **premature payment** of the term deposit or **avail loan** against the same, for the benefit of the minor, till the minor attains majority.
- He can nominate also.

### • **Who is a Guardian of a Minor :**

#### (a) HINDUS :

- As per section 6 of the **Hindu Minority and Guardianship Act, 1956**, father is the natural guardian of a Hindu minor **boy** or an **unmarried girl** and **after him, the mother**.
- **In case of a married Hindu minor girl**, her husband is the natural guardian.
- If the **husband is minor** or **minor girl becomes widow**, her **father- in- law** and **after him the mother- in- law** will be the guardians though they are not natural guardian.
- Under section 9 of the Hindu Minority & Guardianship Act, 1956, a Hindu father entitled to act as the natural guardian **of his minor legitimate child**.
- He may **appoint** a guardian **by will** in respect of minor's person or property. Such a guardian is called **a Testamentary guardian**.
- But such guardian will come into picture only on the death of father as well as mother.
- Similarly, mother can also appoint **a testamentary guardian** for her minor child.
- Where no testamentary guardian is appointed by a Hindu father/mother, **the court can appoint a guardian** for person or property of the Hindu minor

#### (B) MUSLIMS:

- ❖ As per **Muslim Personal law**, father is the natural guardian.
- ❖ A Muslim father can appoint a testamentary guardian and even mother of a Muslim child can be testamentary guardian.
- ❖ If the **father dies without leaving behind a will**, father's father i.e. paternal grandfather is the guardian.
- ❖ However, the testamentary guardian appointed by the will of father will have priority over paternal grandfather.

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- ❖ On the **death of paternal grandfather**, the person appointed by the will of the paternal grandfather will be guardian.
- ❖ If the father's father **dies** intestate, court can appoint a guardian.

### On Attaining Majority:

- When the minor becomes a major, **only he has the right to operate** the account.
- The guardian **cannot operate** that account any more.
- **Cheque signed** by guardian and presented **after majority** shall be **returned**, irrespective of their date.

### Self-operated Account:

- Minors who have **completed 10 years of age** and **can sign uniformly**, can open accounts in their own name and **operate the same in the light of Section 26 of NI Act.1881**
- Minor **cannot give mandate or power of attorney** in this account.
- **No nomination** can be permitted, **as minor is not competent** for appointing a nominee.
- **No loan against the security** of a term deposit should be allowed.
- **Pre-mature** withdrawal of FDR **can be allowed**
- No minor **cannot** be declared **as insolvent**
- **A bearer cheque** presented for cash payment by a minor may be paid as a minor can give a valid discharge in the capacity of the payee
- As per **section 11 of the Indian Contract Act, 1872** a minor is **not competent to enter into a contract**. Thus the contract entered into by him is void **ab-initio**.
  
- A minor **cannot ratify an agreement entered into** by him **during his minority period, even after attaining majority**. There is **one exception** to this general rule i.e. a contract for the supply of life to a minor is a valid contract, if it is done by a person who is legally bound to supply the necessities to the minor and these necessities **must be suitable to the condition of his life**.
  
- In terms of Section **183 of Indian Contract Act, 1872** a minor **cannot appoint an agent**. However, as per section 184 of the Indian Contract Act, a minor can be appointed as an agent and he can make principal liable by his action. **Thus, a minor cannot delegate authority in his self-operated account**.
  
- A minor should **not be allowed overdraft** in his account. Thus, bankers should not grant overdraft / loan to a minor, even if a security is provided **because a contract with minor being void**, the bank will not be able to recover the loan. Even when loan has been raised on a term deposit in the name of a major person, his request for addition of the name of the minor can not be entertained.

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- In terms of Section **26 of NI Act, 1881** a minor **can draw or endorse or negotiate** a cheque or a bill **but he cannot be held liable on such cheque or bill**. However, such bill will be valid and other parties will be liable in their respective capacities.
- No minor **cannot** be declared **as insolvent**
- **A bearer cheque** presented for cash payment by a minor may be paid as a minor can give a valid discharge in the capacity of the payee.

## B. ACCOUNTS OF FIRMS

### PARTNERSHIP FIRMS:

- The law relating to partnership firms is codified in **the Indian Partnership Act 1932**.
- **u/s 4 of the Indian Partnership Act, 1932** a partnership is **the relationship** between two or more persons who agree to share the profits of business carried on by all or any of them acting for all.
- **To enter into a partnership**, there has to be a contract which **may be oral** or in **writing** (called **Partnership deed** – **required to be stamped** as per State Govt. rates).
- Where there is no partnership deed, **the rights and liabilities** of the partners shall be governed as per **Partnership Act.1932**

### WHO CAN BE A PARTNER?

Being a legal contract, persons having legal capacity to contract only, can enter into a partnership. A company or a partnership firm can become partner in another firm.

### WHO CANNOT BE PARTNER?

1. A **Minor**,
2. An **insolvent**,
3. An **insane** and
4. An **alien enemy** being **not competent**, cannot be a partner.
5. As per Supreme Court Judgement (1998), **HUF cannot** become partner **because**
  - a. HUF cannot be **created** through **agreement** and
  - b. HUF cannot be **liable** for the action of other parties.
6. NBFC **cannot** be a partner as per RBI directions of Mar 30, 2011

### MINOR AS a PARTNER IN A PARTNERSHIP FIRM.

- A minor **cannot** be a full-fledged partner in a partnership concern as **he cannot** enter into a **valid contract** and partnership is created by agreement. However, in terms of **Section 30 of Indian Partnership Act, 1932** a minor **may be admitted** to **benefits of partnership** with the consent of all partners.

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- However, **the liability of the partner** will be limited to his share in business of the firm and **he will not liable personally** for the acts of the firm.
- **On attaining majority**, a minor has to give public notice within six months of attaining majority or when it comes to his knowledge after becoming major whichever is later, whether he wants to continues as a partner.
- If he remains silent, it amounts **to his implied consent**.
- If he chooses to become a partner, he will be **held liable** as a partner **from the date he has been admitted to the benefits** of the partnership firm.
- A minor should **not be allowed overdraft** in his account. Thus, bankers should not grant overdraft / loan to a minor, even if a security is provided **because a contract with minor being void**, the bank will not be able to recover the loan. Even when loan has been raised on a term deposit in the name of a major person, his request for addition of the name of the minor cannot be entertained.
- In terms of **Section 26 of NI Act, 1881** a minor **can draw or endorse or negotiate** a cheque or a bill **but he cannot be held liable on such cheque or bill**. However, such bill will be valid and other parties will be liable in their respective capacities.
- No minor **cannot** be declared **as insolvent**

**LIABILITY OF THE PARTNERS (SEC 25):** The liability of partners is **unlimited** and they are **jointly and severally** liable for all the debts of the firm.

### **No. OF PARTNERS (SEC 11 of Companies Act)**

**Banking Business : Max 10**

**Business other than banking : Max 20**

A Minor can be admitted **for the benefits**, But, **not to be counted** towards no. of members. The number exceeding the above will make the firm an illegal association.

Where a firm is a partner in another firm, the individual number of partners **will be counted** for the purpose of total number of partners.

## **C. JOINT STOCK COMPANIES**

- **The Companies Act 1956** recognizes a joint stock company as a legal person. It is a separate legal entity. Banks have to deal with them like **a legal person**, having no physical existence through **authorized persons**.
- Generally bankers come across **3 types of companies**:
  1. **Private Limited Companies**
  2. **Public Limited Companies**



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### 3. Govt. Companies

#### **1. PRIVATE LIMITED COMPANIES**

- **Private Limited Companies** must have **minimum 2** and **maximum 50** shareholders (**excluding** those who were or are at the time of allotment of shares in the employment of the company).
- Such companies must have **minimum 2 directors** and its **name must end** with the words 'private limited'.
- They **can start business** on receiving certificate of commencement of business.
- They **need not hold** statutory meeting and submit a statutory report.
- The **shares are not quoted** in the stock market, there are **restrictions on right** of transfer of shares and the public is not invited to subscribe to the shares.
- **Minimum paid up capital** is **Rs.1 lac**.

#### **2. PUBLIC LIMITED COMPANIES:**

- **Public Limited** Companies must have **minimum 3** directors and minimum 7 shareholders.
- There is **no restriction** on the maximum. Names of such **companies must end** with the words 'Limited'.
- They **can invite, transfer shares** to or from the public and such shares **are quoted** in the stock market.
- In addition to certificate of incorporation they have to obtain the certificate of commencement of business before starting any kind of business. Minimum paid up capital is Rs. 5 lac

#### **3. GOVT. COMPANIES**

- Mean a company with **at least 51% of share capital held by Govt.**

#### **COMPARATIVE FEATURES OF PRIVATE vs PUBLIC COMPANIES:**

<b>PARTICULARS</b>	<b>PRIVATE COMPANY</b>	<b>PUBLIC COMANY</b>
Minimum members	<b>2</b>	<b>7</b>
Maximum members	<b>200</b>	<b>No ceiling</b>
Minimum directors	<b>2</b>	<b>3</b>
Maximum directors	<b>15</b>	<b>15</b> (if the No. goes <b>beyond 15</b> , <u>permission from <b>Central Govt.</b></u> is required)

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<b>PARTICULARS</b>	<b>PRIVATE COMPANY</b>	<b>PUBLIC COMPANY</b>
Start business on the basis of	Certificate of incorporation	Certificate of incorporation & Certificate of commencement of Business
Transfer of shares	<b>Restrictions</b>	No Restrictions
Name	Word 'Private'(p), or Pvt.Ltd	Word Public.Ltd
Listing of shares	<b>No listing</b>	Listing could be on <b>Stock exchange</b>
Minimum paid up capital	Rs. 1 lac	Rs. 5 lac

### IMPORTANT DOCUMENTS:

#### **1. MEMORANDUM OF ASSOCIATION**

(also known as **Charter of the Company** or **document of outdoor management**) specifies relationship of the company with outside world.

- a) The **Object Clause** set out the powers which the company can exercise for achievement of its objectives.
- b) A loan given for an activity which is **not stated in objective clause** is **unauthorized (ultra vires)** and cannot be recovered from the company.
- c) **Borrowing powers of a company** i.e. shareholder arise from MOA. These are unlimited
- d) **Notice** can be issued to a company **on its Registered Office address only**.
- e) **Similarly charges on assets** requiring registration with ROC are to be registered with that ROC under whose jurisdiction, the **registered office of the company** falls.

#### **2. ARTICLES OF ASSOCIATION**

(Also known as document of indoor management) This document lays down the regulations for carrying the

- **objectives,**
  - **activities and**
  - **management of its internal affairs**
- as defined** in its Memorandum of Association.

Articles of Association contains

- The **rights** and **powers** of the **directors,**
- The **rules** of conducting **meetings,**

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- The use of **common seal**,
- The use of **borrowing powers**,
- The **nature of business** etc.

### **3. CERTIFICATE OF INCORPORATION**

- a) **Certificate of Incorporation** is birth certificate of a company.
- b) It is issued by the **Registrar of Companies (ROC)** to all types of companies i.e. private Limited and public Limited etc.
- c) It is conclusive evidence that all formation of a company are duly compiled with.

### **4. CERTIFICATE OF COMMENCEMENT OF BUSINESS:**

It is also issued by the Registrar of Companies (after ensuring that the minimum capital required by the company is subscribed by the public) to all public limited companies. **Private limited companies are not required to obtain this certificate.**

### **5 RESOLUTION OF THE BOARD:**

- Shareholders are **the owners of a company** but a company functions through its Board of Directors (**who represent shareholders**) and all decisions are taken by the Board (**no one else authorized to take decision on behalf of the company**).
- As per **sec 292, The Companies Act 1956** for a loan, **a resolution should be passed in a duly held meeting of Board** (and not by circulation).

### **BANK ACCOUNTS OF COMPANIES (Documents Required)**

While opening the accounts of joint stock companies, the bankers have to obtain the following:

- A copy of the **Memorandum of Association**
- A copy of the **Articles of Association**
- A copy of the **Certificate of commencement of business** (for public limited companies only)
- A copy of **Resolution from the Board of Directors** of the company **certified** by the Chairman of the meeting and one other official.

#### **This should normally cover**

- a) Name of the **authorized** person/s,
- b) Scope of their **authority**,
- c) Their **designation**,
- d) Their **signatures**,
- e) Operational **instructions** and
- f) Details about **any change** in office bearers etc.)

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### D. TRUST ACCOUNTS:

#### **What is a trust?**

**U/s 3 of Indian Trust Act 1882**, “**A trust** is an obligation annexed to the ownership of property and arising out of a confidence imposed in and accepted by the owner or declared and accepted by him for the benefit of another and the owner.”

Hence, **a trust is created** when ownership of a property is transferred to someone for holding or managing it **for benefit** of another person(s).

1. **PARTIES** – There are **three parties** i.e.
  - a) **A .Author**-The person transferring the ownership is called the **author** of the trust
  - b) **A Trustee**-The person in whose favour the possession is transferred
  - c) **A Beneficiary**-The person/s for whose benefit the trust is formed is called **beneficiary**.
2. The document which **creates** a trust is called **instrument of trust**. It generally mentions the names of the trustees or of a person who can appoint trustees. Provision can be made for appointment of trustees by the **surviving trustees** OR by the **Court**.
3. While the Indian Trust Act 1882 governs **private trusts**,
4. While the Public Trust Act,2001 governs **Public trusts**

There are **registered** with and **controlled** by **Commissioner of Charity** of the State concerned.

### POWERS OF TRUSTEE:

- Trustees are **not empowered** to delegate their authority. (**Sec 47** – Indian Trust Act)
- All the trustees must **act jointly** unless the trust deed so provides (**Sec 48** of Indian Trust Act-1882)
- Trustees have **no implied authority** to borrow unless so provided in the trust deed.
- **Cheques in favour of the Trust** for credit of an account of the trustee, is not permitted.

### DEATH OF TRUSTEE/S:

- If one or more trustees die, the authority **vested remains** with the remaining trustees if the trust deed provides for that. Otherwise, court's permission is to be obtained.
- However in the event of **sole trustee**, new trustee will be appointed by **the court**.

### Documents required for opening bank account:

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1. Certified true copy of the trust deed.
2. In case of public trust a copy of the **registration** and **certificate** from Charity Commission, and,
3. An undertaking from the trust on appropriate adhesive stamped paper to indemnify the bank against proceeds, actionable claims etc.

**Operations in Account:** The account shall be **operated jointly**, if the number of trustee is two or more. OR as **per mandate** through resolution given by the trustees, if the Trust deed provides for that.

**Transfer of funds from trust account:** Bank should not allow any trustee to transfer funds from trust account to his own account without making proper enquiry.

**Loans:** Loan can be granted if it is for the purpose of the trust. Trustee is authorized to borrow as per the trust deed.

### **E. HINDU UNDIVIDED FAMILY (HUF)**

**HUF** property, business or estate is **ancestral** and its **common possession, enjoyment and ownership** is **the basis** of formation of **HUF**.

- As per Hindu common law, the **Hindus, Sikhs, Jains** are the communities who can form **HUF**.
- **Joint owners** of HUF are known as **coparceners**. HUF is also called **Coparcenary**.
- It consists of **one common living ancestor and his male (female also w.e.f Sept 2005) descendants up to three generation next to him.**

**There are two schools of Hindu Law** i.e.

**Dayabhaga:** applicable in Bengal and according to which **father is absolute** owner of property.

**Mitakshara:** applicable at other places and according to which **all male members** have a right on joint family property **by birth**.

- a. **Sons or Daughters\*\*** and members **by birth** or **adoption** get the right to property and family business and become **coparcener**. (\*\* In case of Mitakshara Law, w.e.f. Sept 05, 2005 by way of amendment to Hindu Succession-Amendment Act 2005)
- b. **Senior most** coparcener is a **Karta or Manager**.
- c. When the **Karta expires** or is declared personally **insolvent** or becomes **insane**, the **next senior male** coparcener becomes the **karta**.

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### AUTHORITY OF KARTA:

- **He alone is empowered** to handle the affairs of HUF business or property.
- He has **powers to raise loan** for family business and legal necessity of the family.
- He can **execute document, create charge** including pledge **on behalf** of the family for family business, for which **no consent of coparceners** is required.
- He can also **appoint agent** and can **delegate authority** to operate the account to one or **some of the coparceners** or even to the **outsiders**.
- Karta's liability is **unlimited**.
- He can **compromise** and refer a dispute to arbitration.
- He can **give valid discharge** of debt and **can make part payment**.
- He **cannot enter into partnership** on behalf of HUF (at personal level, he can be a partner)
- He **cannot revive** a time-barred debt.

### OPERATIONS IN HUF BANK ACCOUNTS:

- HUF **declaration form** or **account opening form** and **loan documents** should be **executed by the Karta** in **Karta's capacity** and by all the other adult (major) coparceners **in their personal capacity** to make them personally liable.
- Minor's **consent is to be obtained** on his **attaining majority**.
  
- **Documents:** When the documents are **executed by the Karta alone** and not by the coparceners, HUF assets are liable and Karta is personally liable and coparceners' share (including the minor's) in HUF is liable, **but coparceners are not personally liable**.
- **Stop payment** by coparceners: **A coparcener cannot countermand** a cheque unless he has the authority to do so.
  
- **Change in family:** Wherever there is any change due to **death, insolvency** or **insanity** of either Karta or any coparceners, it is advisable to **obtain** fresh account opening form along with **fresh HUF declaration**.

### F. CO-OPERATIVE SOCIETIES

- They can open account with co-operative banks and commercial banks by **permission** from **Registrar of Cooperative Societies**.
  
- The bank can open accounts of unregistered clubs/institutions, societies, associations, schools **after satisfaction** about the reputation, responsibilities and standing of the office bearers of such bodies

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- **No lending** should generally be made to such **unregistered bodies**. On death, resignation of the authorised office bearer, bank should **stop operations** till nomination of another.
- **Cheques payable** to such bodies even if endorsed **should not be collected** for personal accounts of the office bearers.
- **Cheques drawn** by such bodies **favours** self or cash should be paid after obtaining confirmatory **endorsement** by authorised person/s of such bodies.
- This endorsement has **double effect**: one for authorizing the presenter to collect the cash and the other that the withdrawal is within constitutional limits.
- Where **there is change** in the office bearer/s the same account can continue. Obtain a certified true copy of the resolution.

### **G. EXECUTORS AND ADMINISTRATORS**

In the event of a customer dying testate (**i.e. leaving a will**) the person named in the will to look after the property of the deceased is called **executor**.

However, if the customer dies intestate (**i.e. without a will**), the person so appointed shall be known as an **administrator**.

**Probate and letter of administration:** When the will is got **certified a court**, its called **probate**. When court appoints an administrator it is done through a letter of administration.

**Status of the Executor/ Administrators:** They are **not owners** and have the right to administer estate of the deceased. They are **just like trustees** for the legal heirs.

#### **Powers of Executors/Administrators:**

1. **U/s 269 of Indian Succession Act 1925**, the executors have **full powers** to administer the property of the deceased person.
2. **All executors are administrators** are considered **as one person u/s 221 of Indian Succession Act**.
3. **On the death of an executor** his powers are vested in the surviving executor and in the case of sole executor, **fresh probate has to be obtained**.

#### **BANK ACCOUNTS:**

**Opening of Account:** While the account of an executor is to be opened on production of probate, production of letter of administration is the document needed for administrator's account. An account is opened in the style "ABC executors of the estate of DEF".

**Account is to be operated** by the executor or administrator.

- But in case of **more than one** executors or administrators, it shall be by all of them jointly.

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- If **one of them dies**, as per **Section 226**, **other joint holders can continue to operate** the account.

**Stop payment:** The instructions to stop payment of the cheque can be issued by a single executor/ administrator in the event of more than one executors /administrator but its revocation is possible when all of them join.

### H. INSOLVENT

The law relating to **Insolvency is governed** by the **Presidency Towns Insolvency Act 1909 (applicable in Mumbai Calcutta and Chennai)** and **Provincial Insolvency act 1920 (for all other places)**.

- When a person is **not able to discharge his liabilities** in full or fails to pay his debts, he can be as an insolvent by a competent court (dues should not be less than Rs. 500/- for this purpose).
- **A creditor** or **the person himself** can approach the court for declaring him as insolvent.
- Declaration of insolvency renders all the transactions entered into subsequently, as **invalid**.
- The entire state of the insolvent is vested in the official assignee (where Presidency Towns Insolvency Act is applicable) or Official receiver (where Provincial Insolvency Act is applicable) **appointed by the court**.

### BANK ACCOUNTS:

- **New account or loan:** Insolvent's new account should not be opened nor money should be advanced to un-discharged insolvent.
- **Operations in existing account:** The operations in the existing account of a person declared insolvent **should be stopped** as the account can be operated by the official receiver.
- **Cheques signed by the insolvent person** should be **returned** with the memo "drawer's title requires confirmation"
- **Credit balance in existing account:** Any credit balance lying in the account should be disposed off **as per instruction of the official receiver**.
- In case of joint accounts, where one of them is declared insolvent, the balance in the account will be held **jointly by the receiver and the other account holder**.
- **Insolvent as payee:** If the insolvent is payee of a cheque, it cannot be paid and it shall be returned with the memo "payee's title requires confirmation".
- **Minors or Lunatics:** Who are not competent to enter into any contract, **cannot be declared insolvent**.
- **Agent:** An Insolvent person can act as an Agent u/s 201 of Indian Contract Act 1872.



## Different types of Bank customers & Accounts

### I. INCAPACITATED PERSONS

- Where “a person is incapacitated due to illness or other reason”, **to sign** a cheque /withdrawal or is unable **to come** in person to the bank to withdraw the money,
- He can put his **thumb impression**, which should be **witnessed by two independent** witnesses known to the bank, one of them being a responsible bank official.
- In case the customer **cannot put his thumb impression**, the bank can make payment by impression of other body part, by obtaining two independent witnesses, one of them being a responsible bank official along with a certificate from competent doctor.
- **IBA Legal Opinion** in case of a person **who cannot sign** due to loss of both hands:  
In terms of the **General Clauses Act**, the term ‘**Sign**’ include ‘**mark**’. Supreme Court has held that the signature can be by means of a mark. This mark can be placed by the person in any manner (including the toe impression)

### J. INSANE PERSON

As per provisions of **Indian Lunacy Act 1912** insane or lunatic means **a person who is of unsound mind**.

**Capacity to contract:** As per Section 11 of **Indian Contract Act 1972**, a person of unsound mind is **not capable** of entering into a contract (sound mind defined in Sec 12)

**Guardian of insane:** As per RBI guidelines of Nov 19, 2007, Courts can appoint guardian under **Mental Health Act 1987**. In addition, **Local Level Committees** set up under National Trust for welfare of such persons, **can also** appoint their guardian.

**Bank Accounts:** Account of insane person **cannot be opened**. Right of set off can be exercised in insane accounts.

**Operations in existing accounts:** On a notice of lunacy or mental unsoundness of a customer, the banker should **stop all operations** in the account after ascertaining the correct position and wait for court’s order appointing **a receiver**. Balance is payable to the guardian or manager appointed by the court.

**Temporary Lunacy:** if person suffers from **temporary mental disorder**, then **medical certificate** from two approved doctors is to be obtained regarding mental soundness at the time of payment. But it is always safe to avoid dealings with such person.

### JOINT ACCOUNTS:

- When an account is opened by two or more individuals, such accounts are known ‘**joint accounts**’.
- These are opened to facilitate operations and are **governed u/s 45 of Indian Contract Act 1872** (Devolution of joint Rights).
- The **balance** in these account are **joint property** of the account holders and can be disposed off as per instructions of joint account holders.

## Different types of Bank customers & Accounts

- **Who can open or close the account:** Accounts can be **opened by** all of them joining together. Similarly, accounts can be **closed when all of them sign** the authority to close the account.
- **Operations in accounts:** Accounts can be operated in **various manners**
- such as **jointly by all**,
- by **all of them** or **survivor**,
- by **either** or **survivor**,
- by **former** or **survivor**,
- by **latter** or **survivor** and
- by **one** or **more of them**.
- Bank will allow operations in the account by all the account holders jointly,
- If there are **no instructions** regarding operations. **None of them can singly delegate** the authority to an outsider.

### **RBI Clarifications dated 04-11.2011:**

#### **Either or Survivor:**

- The **signatures** of both the depositors **need not be obtained** for payment of the amount of the **fixed deposits on maturity**.
- The **signatures of both the depositors to be obtained**, if the deposit is to be paid **before maturity**
- If **one of the depositors expires before the maturity**, **premature payment can be allowed with concurrence of the legal heirs** of the deceased joint holder.
- However payment can be made to the **survivor on maturity**

#### **Former or Survivor:**

- The '**former**' alone can **operate/withdraw** the matured amount of the fixed/term deposit, when **both the depositors are alive**.
- The **signatures of both the depositors** are to be obtained, if the deposit is to be paid **before maturity**.
- If the **former expires before maturity**, the '**Survivor**' can withdraw the deposit **on maturity**.
- Premature withdrawal would require consent of both parties, when both of them are alive, and that of surviving depositor and legal heirs of deceased, in case of death of one of depositors.

#### **In case of specific joint mandate:**

- If depositors prefer to allow **premature withdrawals** of deposits in accordance with the mandate of
  - '**Either or Survivor**' or
  - '**Former or Survivor**',
- It would be **open to banks** to do so, provided they have taken a **specific joint mandate** from the depositors, for the said purpose.

## Different types of Bank customers & Accounts

**Whom to pay balance** - The balances in such accounts if made payable to either or survivors OR former or survivors OR latter or survivor, are to be disposed off, as above.

Where **no such option is given**, balance will be paid to the surviving account holders and legal heirs of the deceased account holder, **if any one of the joint account holder dies**.

**Mandate & nomination in joint accounts**- In case of appointment of an agent, the mandate should be **signed by all the joint holders**.

Mandate given in respect of operations, **can be revoked by any of them any time**.

Similarly, the nomination can be made, changed or cancelled by them jointly.

**Who can stop payment** – any of the account holders (**except 2<sup>nd</sup> named person in case of former or survivor**), can stop payment of cheques or other operation.

**Cancellation of stop payment** instruction or other operations (i.e. restoration of operations) is possible only when **all of them sign**.

**Term Deposits** – Balance is payable to all of them on maturity in case of joint operations.

**Loans** – Loans can be raised jointly only against the term deposit receipts. But if mandate provides for raising of loan by either of them, the loans can be allowed to them singly also.