

## Chapter 4

### Opening and Operating of Deposit Accounts

#### Introduction:

##### The Foundation of Banking:

Deposit accounts are the primary mechanism through which banks mobilize funds from the public. These funds form the "raw material" for banks, enabling them to perform their core function of financial intermediation—accepting deposits and lending them to borrowers. The safety and convenience offered by these accounts make them an indispensable part of the modern financial system.

#### Types of Deposit Accounts:

1. **Savings Bank Account:** Designed for individuals to encourage savings. Offers interest on deposits with restrictions on the number of transactions in some cases. Ideal for salaried individuals and students.
2. **Current Account:** Meant for businesses, firms, and companies. Offers high transaction flexibility with no limit on withdrawals. Generally, no interest is paid on credit balances. Overdraft facilities are often attached.
3. **Fixed Deposit Account (Term Deposit):** Money is deposited for a fixed tenure at a predetermined interest rate. Offers higher interest rates than savings accounts. Premature withdrawal usually attracts a penalty.
4. **Recurring Deposit Account:** Allows customers to deposit a fixed sum regularly every month for a predetermined period. The total amount along with compounded interest is paid on maturity.

#### The Bank-Customer Relationship:

The opening of a deposit account establishes a contractual relationship between the bank and the customer, creating several legal obligations:

- **Debtor-Creditor:** The primary relationship. The bank is the debtor (owes money to the depositor) and the depositor is the creditor.
- **Bailee-Bailor:** When the customer deposits securities or valuables in a safe deposit locker, the bank becomes a bailee.
- **Trustee-Beneficiary:** If the bank holds certain funds in trust for the customer.
- **Agency:** When the bank performs services like cheque collection, funds transfer, or standing instructions on behalf of the customer.

## 2. General Procedure for Opening a Deposit Account

The procedure is a critical risk mitigation exercise for the bank, designed to prevent fraud, impersonation, money laundering, and terrorist financing. It is governed by stringent guidelines from the Reserve Bank of India (RBI).

### Step 1: Application and Introduction

- **Account Opening Form (AOF):** The prospective customer must meticulously complete the AOF. This document captures vital information: full name, permanent and correspondence address, date of birth, occupation, contact details, nationality, and nomination details. Any misinformation can lead to future legal complications.
- **Introduction:** This is a fundamental security precaution. The introducer:
  - Validates the identity and integrity of the new customer.
  - Is typically an existing satisfactory account holder whose signature is verified by the bank.
  - Can also be a respectable person known to the bank (e.g., a professional, a government official).
  - **Modern Practice:** With the digitalization of KYC, the necessity of a physical introducer has been reduced. The RBI permits "officially valid documents" (OVDs) to serve as introduction, provided they are verified in original by the bank official. However, the official must record that they have seen the original.

### Step 2: Know Your Customer (KYC) & Anti-Money Laundering (AML) Compliance

This is the most crucial step, mandated by the RBI and the Prevention of Money Laundering Act (PMLA), 2002.

- **Objective:** To establish customer identity, verify address, ascertain the nature of business, and assess the source of funds to prevent the banking system from being used for illicit activities.
- **Proof of Identity (POI):** Documents must be recent, contain a photo, and be government-issued.
  - Passport
  - Driving License
  - Voter ID Card
  - PAN Card
  - Aadhaar Card (Voluntary, but widely used)
  - Letter from a recognized public authority or public servant.

- Proof of Address (POA):
  - Utility bill (not more than 3 months old) - electricity, water, gas, landline telephone.
  - Bank account statement from another bank.
  - Passport
  - Voter ID Card
  - Aadhaar Card
  - Ration Card
  - Letter from any government department.
- Photograph: Recent passport-sized photographs of all account holders/authorized signatories.
- Risk Categorization: Banks categorize customers as Low, Medium, or High risk (e.g., Politically Exposed Persons - PEPs, non-face-to-face customers, high-net-worth individuals with complex banking needs) and apply Enhanced Due Diligence (EDD) for higher-risk categories.
- Periodic KYC Updation: KYC is not a one-time exercise. Banks are required to periodically update customer records (e.g., every 2 years for high-risk, every 8 years for medium risk, and every 10 years for low-risk customers).

### Step 3: Obtaining Specimen Signature

- The customer provides their specimen signature(s) on a signature card or in a digital format.
- For illiterate customers, a thumb impression is taken, preferably attested by a witness known to the bank.
- This specimen is the primary tool for verifying the authenticity of cheques, withdrawal forms, and other instructions. The bank is negligent if it honors a cheque with a forged signature.

### Step 4: Nomination Facility

- Governed by the Banking Regulation Act, 1949.
- The account holder can nominate one individual who will receive the proceeds of the account upon the holder's death.
- A minor can be nominated, but an appointee must be declared to receive the amount on the minor's behalf until they attain majority.

- Nomination simplifies the settlement process, avoiding the need for a succession certificate or probate for small balances. However, it does not override the legal rights of other heirs under a will or succession law.

### Step 5: Account Opening and Initial Deposit

- After all checks are completed and the AOF is approved by a competent officer (e.g., Branch Manager), the account is opened in the core banking system (CBS).
- A unique account number is generated.
- The customer is required to make an initial deposit as per the bank's policy for the type of account (e.g., minimum balance for savings/current accounts, deposit amount for fixed deposits).
- The customer is issued a Passbook (for savings accounts) and/or a Cheque Book upon request.

### Step 6: Operational Instructions and Record Keeping

- The customer provides clear, written instructions on how the account is to be operated (e.g., singly, jointly, under Power of Attorney).
- All documents—AOF, KYC documents, signature card, nomination form, and resolution (for companies)—are meticulously stored in a dedicated account opening folder, either physically or in a digitized format. These records are maintained for a statutory period (usually 5-10 years after account closure).

## 3. Operating the Account: Key Considerations

### Mandates & Power of Attorney (PoA):

- **Mandate:** A temporary authority given by an account holder to another person to operate the account for a specific period or purpose. It is revocable. Banks must verify the mandate letter and the mandator's signature.
- **Power of Attorney (PoA):** A more powerful and often broader legal document that grants an attorneyholder the authority to act on behalf of the executant. It can be:
  - **General PoA:** Grants wide powers.
  - **Specific/Special PoA:** Grants power for a specific act (e.g., operating a bank account).
  - Banks must scrutinize the PoA document carefully, noting its validity, scope, and revocability. The PoA must be stamped as per the Indian Stamp Act.

### Garnishee Orders:

- A court order (Order 21, Rule 46 of the Code of Civil Procedure, 1908) issued to a bank (the Garnishee) to attach the funds of a judgment-debtor (the customer) to pay a decree-holder (the creditor).
- Upon receiving such an order, the bank must immediately freeze the customer's account up to the amount specified in the order.
- The bank must comply with the order; failure to do so can result in the bank being held liable for the debt.

### Dormancy and Inoperative Accounts:

- RBI Definition: A savings/current account is classified as 'inoperative' if there are no customer-induced transactions (debit or credit) for a period of two years.
- Procedure:
  - Banks should track such accounts.
  - Interest on savings accounts continues to be credited.
  - Banks may charge a fee for maintaining such accounts, as per their published schedule of charges.
  - KYC must be updated before reactivating an inoperative account.
- Dormant Accounts: After a longer period (e.g., 10 years), accounts may be transferred to a separate dormant ledger, but the bank's liability remains.

## 4. Types of Account Holders: Detailed Procedures & Practices

### A. Minor's Account

- Legal Capacity: A minor is a person below 18 years. Under the Indian Majority Act, 1875, a minor's contract is void. However, Sec. 26 of the Negotiable Instruments Act, 1881, allows a minor to draw, endorse, deliver, and negotiate an instrument, making them capable of being a party to a cheque.
- Procedure:
  1. Account Type: Only Savings or Fixed Deposit accounts. No overdraft or loan facilities can be granted to a minor.
  2. Operation: The account is opened and operated by the natural guardian (father/mother) or a court-appointed guardian. If the minor is above a certain

age (e.g., 10 years) and can sign, they can operate it themselves, but the account remains under guardianship.

### 3. Documentation:

- Proof of Date of Birth: Birth Certificate, School Leaving Certificate, Passport.
- KYC of the Guardian: POI and POA of the father/mother/guardian.
- Guardianship Certificate: If the guardian is not the natural parent.

### 4. Account Styling: The account must be styled appropriately: "Master A (minor) through Mr. B (father/guardian)" or "Mr. B (father/guardian) for Master A (minor)".

- Attaining Majority: Upon the minor turning 18, the account must be converted to a regular account. The bank:
  - Obtains a written application from the now-major customer.
  - Obtains fresh KYC and specimen signatures.
  - Closes the minor account and transfers the balance to the new account.
- Appointment of Guardian: In case of the death of the natural guardian, a fresh guardianship certificate from a court is mandatory for the new guardian to operate the account.

## B. Joint Accounts

- Concept: An account opened by two or more individuals (max. usually 4). The operation is governed by the mandate provided at the time of opening.
- Mandate Types:
  - Either or Survivor (E or S): Any one of the holders can operate the account. Upon the death of one, the survivor gets absolute right to the funds.
  - Former or Survivor (F or S): The first-named holder can operate singly. The second holder can operate only after the death of the first. Common in spouse accounts.
  - Anyone or Survivor (A or S): For more than two holders. Anyone can operate, and the survivors get the right.

- Jointly: All holders must sign for every transaction. Rarely used due to operational inconvenience.
- Procedure:
  1. Clear Mandate: The AOF must have a clear, unambiguous mandate clause selected and signed by all holders.
  2. KYC: Complete KYC of all account holders.
  3. Specimen Signatures: Signatures of all holders are obtained.
- Death of a Holder:
  - The bank must be informed and provided with a death certificate.
  - For 'E or S', 'F or S', or 'A or S' accounts, the survivor(s) can continue to operate the account. The deceased's name is removed.
  - The balance does not automatically become the property of the survivor; it forms part of the deceased's estate. However, the bank is discharged of its liability by paying the survivor as per the mandate.
  - In a "Jointly" operated account, the account is frozen upon the death of any holder, and the balance is paid to the legal heirs of the deceased upon production of legal representation.

### C. Non-Resident Indian (NRI) Accounts

- Governed by: The Foreign Exchange Management Act (FEMA), 1999, and RBI guidelines.
- Definition of NRI: An Indian citizen who resides outside India for employment, business, or any other purpose indicating an indefinite stay.
- Types of Accounts:
  1. Non-Resident External (NRE) Account:
    - Currency: Indian Rupees (INR).
    - Funding: Through foreign inward remittance.
    - Repatriability: Both principal and interest are fully repatriable (can be taken back abroad).
    - Tax: Interest earned is tax-free in India.



- Joint Holding: Can be held jointly with another NRI only.

## 2. Non-Resident Ordinary (NRO) Account:

- Currency: Indian Rupees (INR).
- Funding: For managing income earned in India (rent, dividends, pension, etc.). Can also be funded by foreign remittance.
- Repatriability: Current income (interest) is repatriable. The principal amount is repatriable up to USD 1 million per financial year, subject to tax compliance.
- Tax: Interest earned is taxable in India.
- Joint Holding: Can be held jointly with a resident Indian.

## 3. Foreign Currency Non-Resident (Bank) - FCNR(B) Account:

- Currency: Held in designated foreign currency (USD, GBP, EUR, etc.). Protects from exchange rate risk.
- Term: Fixed deposit only, for tenure 1 to 5 years.
- Repatriability: Fully repatriable.
- Tax: Interest earned is tax-free in India.

## • Procedure:

- Documentation: Special emphasis on proof of NRI status.
  - Copy of Passport.
  - Copy of Visa/Work Permit/Residence Permit.
  - PIO/OCI Card (if applicable).
  - KYC documents as per Indian address (for NRO) and overseas address.
- Account Opening: Can be opened remotely by sending documents attested by an Indian embassy/notary/banker overseas, or by Power of Attorney given to a resident relative.
- Repatriation: Banks must ensure strict adherence to FEMA rules and obtain necessary declarations (e.g., Form 15CA/CB for large remittances) for repatriation from NRO accounts.



### D. Sole Proprietorship Account

- Legal Status: The business is not a separate legal entity. The proprietor is personally liable for all business debts.
- Procedure:
  1. Account Name: Crucial to establish it is a business account. Styled as: "Mr. X Proprietor of M/s. ABC Traders" or "M/s. ABC Traders (Prop. Mr. X)".
  2. Documentation:
    - KYC of the Proprietor: All individual KYC documents (PAN, Aadhaar, etc.).
    - Proof of Business Existence:
      - GST Registration Certificate/Certificate of Registration under Shops & Establishment Act.
      - Trade License issued by Municipal Authority.
      - VAT/CST Registration (if applicable).
    - Business PAN Card: Though the business income is clubbed with the proprietor's personal income for tax purposes, a separate PAN for the business is often obtained and is required by the bank.
    - Utility Bill in the business name.
- Operation: The proprietor operates the account. A PoA can be given to an employee/manager to operate it.
- Liability: The bank can have recourse to both the business and the personal assets of the proprietor in case of an overdraft or loan default.

### E. Partnership Firm Account

- Legal Framework: Governed by the Indian Partnership Act, 1932. The firm is not a separate legal entity distinct from its partners.
- Procedure:
  1. Partnership Deed: The single most important document. The bank must obtain a certified true copy. It outlines:
    - Name and nature of the business.

- Names and addresses of all partners.
  - Profit-sharing ratio.
  - Capital contribution.
  - Rules for admission, retirement, and expulsion of partners.
  - Who can operate the bank account and borrow on the firm's behalf?
2. Mandate: A mandate letter signed by all partners, authorizing specific partners to operate the account and borrow.
3. Documentation:
- Registration Certificate: While registration is not mandatory, banking with an unregistered firm is risky as it restricts the firm's ability to sue third parties. Banks prefer registered firms.
  - KYC of all Partners: POI, POA, and photographs of every partner.
  - Firm's PAN Card.
  - Proof of Business Address (GST, Trade License).
- Changes in Partnership:
    - New Partner: The bank must obtain a new mandate signed by all old and new partners and a copy of the new partnership deed. The new partner's KYC must be obtained.
    - Retirement/Death of a Partner: The bank must obtain a Letter of Consent from all continuing partners and a copy of the dissolution deed or public notice of retirement. The retired partner's liability for existing debts continues unless a clear No-Objection Certificate (NOC) is obtained by the bank and the continuing partners absolve them of liability for the bank's debts.
  - Liability: All partners have joint and several unlimited liability.

#### F. Joint Stock Company Account

- **Legal Framework:** A company is a separate legal entity, distinct from its shareholders and directors. Governed by the Companies Act, 2013.
- Procedure:

1. Board Resolution: A mandatory document passed by the company's Board of Directors. It must:

- Authorize the opening of the account.
- Specify the bank and branch.
- Authorize specific officials/directors to operate the account (by naming them and their designations).
- Confer borrowing powers, if required.
- Be signed by the Chairman/Company Secretary and bear the company's seal.

2. Documentation:

- Certificate of Incorporation (Proof of legal birth).
  - Certificate of Commencement of Business (for public companies).
  - Memorandum & Articles of Association (MOA & AOA): The bank must scrutinize the Object Clause of the MOA to ensure the company has the power to borrow and open accounts. The AOA outlines the rules for internal management.
  - List of Directors: Form DIR-12.
  - KYC of all Directors and the authorized signatories.
  - Company's PAN Card.
  - Proof of Registered Office Address.
- Changes in Management: The bank must be immediately informed of any change in directors or authorized signatories. A fresh Board Resolution and KYC of the new signatories/directors must be obtained to update the operating instructions.
  - Charging of Assets: If the company creates a charge (mortgage, hypothecation) on its assets in favor of the bank, it must be registered with the Registrar of Companies (ROC) within the stipulated time.

G. Hindu Undivided Family (HUF) Account

- Legal Framework: A HUF is a unique entity recognized under Hindu Law. It consists of all persons lineally descended from a common ancestor, including their wives and unmarried daughters.

- Key Persons:
  - Karta: The manager of the HUF (usually the eldest male member). He has unlimited liability and absolute authority to manage the family business and finances.
  - Coparceners: Members who have a birthright in the HUF property (sons, daughters, grandson).
- Procedure:
  1. Account Styling: In the name of the HUF, e.g., "M/s. ABC HUF".
  2. Operation: Operated by the Karta.
  3. Documentation:
    - HUF PAN Card (separate from the Karta's personal PAN).
    - Affidavit from the Karta: Declaring the existence of the HUF, listing all coparceners, their names, ages, and relationships.
    - KYC of the Karta.
- Loans to HUF: While the Karta can borrow, the bank may require the consent of major coparceners for large loans, as the debt binds the entire HUF property.
- Death of the Karta: The next eldest male member becomes the Karta. The bank must obtain a death certificate, a fresh affidavit, and a new specimen signature from the new Karta.

## 5. Closing of Customers' Accounts

### A. Closure by the Customer:

1. Written Request: A signed application from the account holder(s) requesting closure.
2. Surrender: The customer must surrender the unused cheque book, passbook, and debit/ATM card (if any). The customer should provide a written confirmation of the surrender.
3. Account Verification: The bank checks for:
  - Any uncleared cheques or pending transactions.
  - Any outstanding charges or dues.

- Any linked liabilities (loans, guarantees).
- 4. Settlement: After all cheques are cleared and charges are recovered, the bank issues a final statement and a cheque for the outstanding balance. The cheque should be "Account Payee" and crossed, preferably payable at the home branch.
- 5. System Closure: The account is formally closed in the CBS, and the account number is deactivated to prevent future misuse.

#### B. Closure by the Bank:

A bank can unilaterally close an account after giving due notice, under circumstances such as:

1. Inactivity: As per RBI guidelines, after the account becomes inoperative.
2. Death of Sole Holder: After receiving legal representation from the heirs.
3. Insolvency/Lunacy: Upon receiving court orders.
4. Unsatisfactory Conduct:
  - Frequent issuance of cheques without sufficient funds.
  - Use of the account for illegal or unauthorized activities.
  - Furnishing false information in the AOF.
  - Failure to comply with KYC requests.
5. Non-Maintenance of Minimum Balance: After giving sufficient notice (usually one month) to the customer to regularize the account.
6. Order of Competent Authority: Such as a Garnishee order or order from a regulatory body.

#### Post-Closure Procedures:

- All records relating to the closed account must be preserved for the statutory period (minimum 5 years from the date of closure, but longer for legal cases).
- The closed account folder should be marked "CLOSED" and stored in a separate archive.

#### 6. Appendices

##### Appendix A: Key Legal Frameworks

- Indian Contract Act, 1872

- Negotiable Instruments Act, 1881
- Banking Regulation Act, 1949
- Reserve Bank of India Act, 1934
- Foreign Exchange Management Act (FEMA), 1999
- Prevention of Money Laundering Act (PMLA), 2002
- Indian Partnership Act, 1932
- Companies Act, 2013
- Hindu Law

#### Appendix B: Common KYC Documents

*(A detailed table listing all acceptable OVDs for POI and POA, as per latest RBI master circular)*

#### Appendix C: Sample Mandate Clauses

- "The account shall be operated by any one of the joint account holders and the balance shall be paid to the survivor(s). (Either or Survivor)"
- "The account shall be operated by Mr. A (first holder) during his lifetime and thereafter by Mr. B (second holder). (Former or Survivor)"
- "All operations on this account require the joint signatures of Mr. A AND Mr. B. (Jointly)"