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1. INTRODUCTION

This Report No.3 of the Committee on Procedure and Performance Audit on Public Services (CPPAPS) deals with Banking Operations: Deposit Accounts and Other Facilities Relating to Individuals (Non-Business). The report covers banks' operations essentially from the viewpoint of the instructions/procedures as set out by the Reserve Bank of India (RBI), Department of Banking Operations and Development (DBOD). The DBOD has all along been a front line Department overarching on a number of other activities of the RBI. Moreover, the Committee's examination of issues has been largely focused on deposit and related facilities for individuals (non-business). The regulatory framework and such operational matters delegated to banks impinge heavily on individuals and, therefore, the Committee has been preoccupied with the discomfort of the extant system for individuals.

1.2 The Committee takes note of the fact that there are 141 million term deposit accounts and in the case of individuals, over 61 per cent are accounted for by deposit size below Rs.25,000 and only less than 6 per cent of term deposits accounts have a size above Rs. one lakh. Again, there are staggering 289 million savings bank accounts in scheduled commercial banks. The Committee recognises that these data relate to the number of deposit accounts and an individual could have a number of accounts. Notwithstanding this, it is clear that depositors are by and large small holders. It is a major feather in the cap of the Indian banking system that the permeation of the banking habit is such that assuming an average family size of four, on average, every family has a savings bank account (Annex IA, B, C and D).

1.3 When juxtaposed against such a staggering number of small depositors, the regulatory framework appears far too sophisticated. The interests of the mass of depositors are, however, just not taken into account when formulating the complex regulatory framework. At the outset, the Committee would wish to stress that it is no fault of the DBOD that the bulk of depositors are untouched by the regulatory system. This is merely a reflection that in the Indian firmament the sophistication of the entire regulatory framework is virtually irrelevant for the mass of depositors. This is not merely an issue of fault finding with the RBI but a general national issue of the mismatch between the complex regulatory framework – both banking and general - and the capacity of the mass of deposit account holders to comprehend the system. To the extent the mandate of the Committee is the **common person** the DBOD regulatory framework just does not reach out to the **common person**. The Committee is of the view that in the process of deregulation of the banking regulatory system the sequencing of deregulation has not received due attention resulting in haphazard regulation. There are various vital areas wherein the RBI, and a self-regulatory body like the Indian Banks Association (IBA) and the banks are silent and hence there is a vacuum when it comes to providing authentic information to the depositor.

1.4 It would only be fair at the outset to state upfront that the examination of issues relating to the **common person** by the Committee in this Report, **ex definition,** cannot be deemed to be complete. The Committee recognises that a start has to be made somewhere and what has been attempted in this report is to examine the DBOD regulatory framework as it impinges on individual depositors. Even here, the Committee's limited assessment is based on anecdotal evidence in the financial capital which could be very different from the regions and rural areas. In a sense, the Committee's observations/

recommendations in the area of depositor facilities should be treated as a first cut and the Committee recognises the need for a series of reports in the area of individual deposit holders which would need to take into account the responses of *Ad hoc* Committees, discussion with depositor and consumer organisations, visits of the Committee to various regions and random visits to semi-urban/rural areas. Besides, to the extent the extant systemic arrangements flow from the governing legal provisions/ regulatory framework the Committee feels that the end results would be similar at rural/ urban/semi-urban/ metropolitan branches. The Committee is of the firm view that it has made a myriad of self-contained comments/ recommendations on which the RBI could consider appropriate decisions without waiting for subsequent reports.

1.5 As regards performance audit and benchmarking of services the Committee would deliberate on these issues after it has an opportunity to assess the *Ad hoc* Committees' reports.

1.6 Chapter 2 of this Report deals with the **disenfranchisement** of the depositor and the need to empower the depositor. Chapter 3 deals with **roadblocks** in the present RBI regulatory system and the need for remedial action. Chapter 4 is dedicated exclusively to the enervating issue of **death of a depositor** and the impact on survivors/heirs. Chapter 5 sets out a summary of comments/recommendations.

1.7 The Committee has since its inception held 11 formal meetings and innumerable informal meetings almost on a day-to-day basis.

1.8 The Committee benefitted from discussions with Deputy Governor Smt. K.J. Udeshi and Executive Director Smt. Usha Thorat. Shri C.R. Muralidharan, Chief General Manager-in-Charge, Shri B. Mahapatra, Chief General Manager and Nodal Officer General Manager Shri Ravi Mohan responded to our queries. The Committee also interacted with the Principal Legal Adviser Shri N.V. Deshpande and Legal Adviser Shri S.R. Kolarkar. Shri Vinay Baijal, General Manager provided yeoman service in a complex area of regulation and provided excellent support to enable the Committee to draft the Report. Smt. S.A. Talpade, Private Secretary and Shri G.K. Koshti, Typist provided extremely good secretarial support to the Committee. The Department of Government and Bank Accounts provided effective administrative support and placed Shri S.G. Mulye, Assistant Manager of the DGBA at the disposal of the Committee.

1.9 The Committee also had the privilege of the discussions with Shri Y.H. Malegam, Shri M.R.Umarji and Smt. K.S. Shere and their notings to the Committee have been appended to this Report.

DISENFRANCHISEMENT OF THE DEPOSITOR AND THE NEED FOR EMPOWERMENT

2.1 Depositors and their interest forms the focal point of the regulatory framework for banking in India and it has been appropriately enshrined at various places in the Banking Regulation Act, 1949. In Section 5(c-a) of the Act "Banking Policy" has been defined:

> "*any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources*."

2.2 Right from the time of granting of a licence under Section 22 of the Act the **interest of the depositor'** is the prime consideration for RBI while taking any decision relating to banks. The statute is unambiguous in Section 21 (1) providing that the power of the Reserve Bank to control advances by banking companies is to be exercised where the RBI is satisfied that it is necessary or expedient, *inter alia*, '**in the interest of the depositors'** to do so. Likewise, powers of the Bank to give direction under Section 35-A and appoint additional directors under Section 36-AB of the Act are also required to be exercised in the **'interest of the depositors'**. To further strengthen the regulatory powers, the Central Government has been empowered (Section 36-AE) to acquire undertaking of a banking company in India if it is satisfied that the banking company "is being managed in a manner detrimental to the **interests of its depositors**." And finally, RBI can make an application to the High Court under Section 38 of the Act for winding up of a bank in India if, in the opinion of the RBI, *inter alia*, "the continuance of the banking company is prejudicial to the **interest of its depositors**".

2.3 From the data in table below it is obvious that the depositors are the only meaningful '**stakeholders'** of banks in India and, within depositors, the **Common Persons** are the predominant contributors to the deposits of the system. It is, therefore, the value addition for the depositors that should form the founding principle for banks' business plans in India.

Scheduled Commercial Banking Indicators
as at the end of December 2003

No.	Item	**Rs. crores**
1	Gross loans and Advances	7,74,438
2	Total Capital (Tier I+ Tier II)	1,21,975
3	Total Deposits	14,18,465
4	Total Savings deposits	3,31,421
5	Total Capital as a percentage of Gross loans and advances {(2) as a per cent of (1)}	15.75
6	Total Deposits as a percentage of Gross loans and advances {(3) as a per cent of (1)}	183.16
7	Total Savings Deposits as a percentage of Gross loans and advances {(4) as a per cent of (1)}	42.80

Source: Department of Banking Supervision, Central Office, Mumbai

2.4 To quote the late Shri M.R. Pai:

> *"The biggest asset on the balance sheets of banks today is the ignorance of customers of their own rights, and their reluctance to fight for them".* (M.R. Pai, Depositor Rights and Customer Service in Banks, All India Bank Depositors Association, 2001, page 2).

2.5 During its deliberations, while the Committee has been addressing technical issues, it has been uniformally confronted with the basic issue of lack of appreciation among all economic agents of the rights of the small deposit customer and the need to offer him friendly and efficient service. The depositor is at-best neglected or at worst tolerated on sufferance. The depositor does not get satisfactory service even after demanding it. While this is a wider issue, the RBI and the banks cannot remain insensitive to the fact that there has been a **total disenfranchisement** of the depositor. The depositor, the key stakeholder in the banking system, has been shorn off his rights. Reflecting the sorry state of affairs, as a frontline Department the DBOD has not deemed it fit to set out a **Citizen's Charter** which should have had the depositor as the centre piece; the Committee recommends that this should be rectified forthwith. The RBI and banks have taken depositor loyalty for granted and the depositors have reposed this loyalty to banks to the point of flagellation. The depositor can legitimately claim a **bill of rights** but everywhere he is in chains. How that came about is a matter of historical tragedy and years of neglect and the government, RBI and the banks all stand indicted. Lip service to the depositor customer has gone on for too long and if Governor Dr. Y.V. Reddy's directive to banks on the **Common Person** is to be given true meaning there must be a time bound roadmap to reverse the **disenfranchisement** of the depositor and the start of a process of **empowering** of the depositor.

2.6 An examination of the role definition of bank staff will reveal that it is more of a task prescription rather than a job description; the word "customer satisfaction" hardly ever appears. The banks' offerings are generally opaque - what is not charged is mentioned but what is charged is not mentioned - high hidden costs appear rampant and unjustified, i.e., countervailing balances, uncleared balances not being allowed to be drawn against, thus banks enjoy **undue enrichment**. Likewise, by stipulating high savings bank balances - the **common person** is disenfranchised and the sacred duty of banks is bartered at the altar of elitist banking. Another issue is the understanding of the system as to what constitutes good customer service. While courtesy and speed are the essence of good customer service, they are not the sole ingredients of customer service. Generally, a customer - a small one - does not look forward to be shot out like a bullet from one end of transaction to other. What he wants is a warm, friendly and sympathetic service. With the emergence of new concepts of banking treating branches as mere delivery platforms in a hub-n-spoke model, Indian banking is seriously running the risk of faceless banking separating branch from customer thereby affecting customer loyalty. In addition, the Committee has also observed that at the delivery point - viz. the branches - the levels of technical knowledge and competence have dramatically declined. This process is getting accelerated when the services are increasingly mechanised/computerised. In such a situation if a small customer goes to a bank and has a technical problem, anecdotal evidence suggests that he runs into enormous difficulties and has to submit to the whims of the person behind the counter or has to seek recourse to other means - even when he is in the right. The Committee notes with some sadness that there is substance in the widespread impression among the small depositor community that one needs to know someone higher-up for getting his/her job done.

2.7 Intense depositor loyalty is the only plank on which the Indian banking systems is surviving. The banks have to understand that depositors are at the end of their tether and banks providing poor customer service will be punished by switching loyalty. The Committee recommends that the authorities should ensure that depositors dissatisfied with customer service have the facility to switch banks and banks should be cautioned that thwarting depositors from such switches would invite serious adverse action.

2.8 Another aspect of banking services which reinforces the process of disenfranchisement, is the fact that the customer is in near-total, if not total, darkness about his entitlements. Apart from non-disclosure, the services are so packaged that even an educated/corporate customer would not be able to know if he can avail of them. The foregoing is only a manifestation of a very complex, macro process. The Committee does not intend to, nor does it have mandate to go into that process. But an appreciation of its ill effects on the customer and his eventual dis-enfranchisement should be of fundamental concern to the RBI and the banking system. The banks, therefore, need to be proactive and develop a social conscience. The Committee appreciates the role of market forces in rewarding an efficient player and penalising an inefficient one. But it does not accept that the market forces can be the only protector of customer interest. The banks and the regulator have responsibility to act proactively.

2.9 The Committee has also looked at this issue from the national economic perspective. It is true that banks are special and, therefore, being the preferred arm of the economic system they enjoy greater systemic support irrespective of their ownership as compared with any other economic player. Towards that end, the society at large has made huge investments in the banking system including heavy subsidisation. This was inevitable in a developing economy and the proper and equitable growth of the banking industry cannot be left entirely to market forces. In this process, socio-economic aspects also get intertwined and it is not correct, nor desirable to take an extreme view and treat the market as the sole defender of the **common person.** If indeed, an exclusive market solution was accepted as the stance of policy, the bulk of depositors would get pushed back to the unorganised segments.

2.10 The Committee, therefore, strongly emphasises that the RBI and the banks must look at these issues proactively. On its part, the Committee recommends the following:

(i) Training in technical areas of banking to the staff at delivery points must be intensified. Given the constraints in relieving the staff for training purposes, the Committee recommends that banks should adopt innovative ways of training/delivery ranging from job cards to roving faculty to video conferencing.

(ii) While the RBI has asked the banks to adopt credit/investment/ALM policies, the Committee has not noticed any instructions on deposit policy. The plea of the DBOD, and not without substance, is that matters relating to depositors has been largely deregulated, this is true but in the absence of a depositor facility framework for scheduled commercial banks chaos prevails. The Committee does not recommend that the RBI should revert to micro regulation but it recommends that the RBI should ensure that a proper system is put in place. The Committee recommends that the Indian Banks Association should forthwith evolve a model deposit policy recognizing the rights of the depositor and circulate it among its members for adoption by the individual bank Boards. The RBI should stipulate that the Comprehensive Deposit Policy be adopted by banks by the end of June

2004. The IBA should undertake a meaningful and on-going depositor education campaign to develop awareness of depositor rights.

(iii) Such a policy should be explicit in regard to secrecy and confidentiality. Providing other facilities by "tying-up" with placement of deposits is clearly a restrictive practice.

(iv) Banks should periodically place a statement before their boards analysing the complaints received. The statement of complaints and its analysis should also be disclosed by banks along with their financial results.

(v) In their evaluation of a bank's performance, the RBI should also give adequate weightage to depositor complaints.

(vi) The Committee has observed that over time, the drafting of DBOD circulars leaves much to be desired. They appear to have been drafted, perhaps, consciously, in ambiguous language. The Committee recommends that the RBI/banks should take necessary steps to ensure that circulars are in a language easy to understand but have the exactitude in matching contents with intent. Furthermore, the Committee recommends that to the extent the RBI regulation are in force, the Master Circular on Deposits just cannot be on interest rates but be comprehensive to cover all aspects of deposit accounts. The Committee notes with great satisfaction the Urban Banks Department's comprehensive Master Circular on **Maintenance of Deposit Accounts** (Annex II). The Committee recommends that the DBOD should consolidate its scattered circulars relating to deposit accounts of scheduled commercial banks and the IBA could quickly issue a Master Circular on Maintenance of Deposit Accounts modeled on the UBD Circular with suitable modifications. All DBOD Circulars should have a 12 months sunset clause.

(vii) Any change in the deposit and related services should be communicated upfront to each customer individually - when they visit the branch, and also be prominently displayed.

(viii) While changing any service offerings or introducing new products, the banks should have customer at the centre of their consideration. For this purpose, the Committee is of the view that the banks should clearly establish a New Product and Services Approval Process which should require approval by the Board especially on issues which compromise the rights of the **Common Person**.

(ix) Banks should undertake a survey of depositor satisfaction in regard to their services annually and should have an audit of such services done every three years. The survey, as also the audit, should be focused on ascertaining the customer-friendliness of deposit services. Both these reports should be placed before the Board of Directors. The Committee recommends that the RBI should also arrange for teams to periodically radiate through the country to assess at the grassroots level the operation of policies say by June 2005, e.g., a year after the issuance of a model policy by the IBA. To start with the RBI should immediately undertake comprehensive work on assessing deposit and related services of banks are in keeping with depositor rights. As regards how this work should be undertaken there are two viewpoints in the Committee. The first alternative is that the RBI could send out its own officers. The objection to this is that the regulator should not get into such activity. The second alternative is for the RBI to farm out this work to outside agencies. The objection would be that outside agencies have difficulty understanding the requirement. The Committee feels that RBI may choose either alternative.

(x) Finally, the Committee visualises significant qualitative contribution from the bank Boards in the new paradigm shift and the Committee recommends that each bank should be asked to evolve a mechanism to achieve the meaningful involvement of its Board in the area of deposit policies and their implementation.

2.11 The Committee recommends that the process of undertaking the long journey from the existing **disenfranchisement** of the depositor to the eventual **empowering** of the depositor should be a systematic effort by the RBI and the banking system. The depositor is at present reduced to begging for access to his own money - something which should be his automatic right. The present value system is to let the depositor twirl in the wind when there are procedural difficulties and not to resolve problems. The depositor faces a savage wall of convoluted procedures and practices and a legal framework which sometimes denies the depositor a right to his money. This is not reflective of a civil society. The RBI and banks must emphasise that frontline staff must be the cream of the banking system and counter service should reflect the intelligent and sensitive application of rules and regulations. The Committee recommends that both RBI and banks should appoint **Quality Assurance Officers** who will ensure that the intent of policy is translated into the content and its eventual translation into proper procedures. The RBI and banks must work to fix the system and not punish the errant officials. Such a system would also give confidence to dealing staff to improve services.

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3. ROADBLOCKS TO DEPOSITOR FACILITIES

3.1 The Committee recognises that over the years the banking system has made considerable improvements in various facilities. While this Chapter focuses on **roadblocks** to depositor facilities it should not be viewed as a negative report. Furthermore, the attempt is to focus on a number of **nitty-gritty** issues which would enable customer service to depositors to be improved, particularly for the **Common Person.** In the rapidly changing environment and the use of sophisticated technology there is seemingly an improvement in the delivery of services but along with this improvement, and the provision of an array of services, the issue of costs comes up. When the issue of costs to depositor comes up, invariably these costs are regressive in that the small depositor (**Common Person**) ends up paying a disproportionate charge. While it is in no way even remotely suggested by the Committee that the RBI should intervene on overall service charges, the Committee would wish to enunciate the principle that these charges should not be regressive.

3.2 It would appear that the DBOD regulation relating to deposit accounts for individuals is sporadic and incomplete and does not add up to a meaningful whole. On the regulatory items set out by the DBOD the Committee has made specific suggestions. It would be best if the DBOD got out of this area of regulation and let the IBA prepare a comprehensive model policy. Moreover, the Ad hoc Committees should address all these issues.

3.3 It is often argued that Savings Bank deposit accounts pose a heavy burden on banks and, therefore, the need for higher charges. In this context it is necessary to recall the evolution of the present position on Savings Bank deposit accounts. The Savings Bank Accounts were essentially intended for small depositors but over the years the facilities have been miscued. Way back in the 1960s, balances upto only Rs.50,000 could be maintained in Savings Bank accounts and the number of withdrawals were restricted to 52 per year. In the process of competition, banks abandoned all these rules and allowed Savings Bank Accounts to be used like Current Accounts. The banks need to consider whether, in fairness to the **Common Person**, a graded system of service charges could be imposed. The Committee notes that Savings Bank deposits are a stable element and the weaker segments contribute to this stability and in fact their lack of financial acumen results in their inability to undertake in-out movements in the accounts and therefore they earn relatively lower rates of return. In contrast, the larger of the Savings Bank deposit holders shuffle funds around as if these are Current Accounts but masquerade as Savings Bank Accounts. The Committee recommends that banks should prescribe a reasonable number of withdrawals by cheque or cash in a year upto which there would be **no** service charges.

3.4 The Committee has deliberated on the tabular material setting out the DBOD regulatory instructions relating to Deposit Accounts and Other Facilities to individuals (Non-Business) and the Committee's Comments/ Recommendations are set out in the tabular material at the end of this Chapter. For a comprehensive view of the Committee's comments/recommendations it is suggested that paragraph

3.4 (i) to (x) should be seen in conjunction with the tabular material. Some of these issues are referred to below:

(i) As regards the Drop Box Facility (Item 1 of the tabular material) it is important that there should not be any curtailment of the rights of the depositor to obtain an acknowledgement by going to the concerned counter. *Per Contra* a depositor who uses the drop box cannot expect an acknowledgement.

(ii) As regards immediate credit of local/outstation cheques (Item 2 of the tabular material) there is a flagrant violation which is surely in the know of the DBOD. The DBOD has only two choices. First, it should take strong adverse action if the banks do not comply. Secondly, if the RBI does not envisage action it should withdraw the regulation. As a general rule the DBOD should not set out a regulation and not take adverse action when it is breached. As regards the RBI instruction on charging Rs.5 per local cheque the Committee recommends that the RBI should just delete this instruction.

(iii) The reference to a maximum withdrawal upto Rs.10,000 for outstation cheques (Item 3) is inconsistent with Item 2, reflecting slipshod regulation. This should be brought in line with the figure of Rs.15,000 referred to in Item 2. The reference to centres with 100 branches does not appear practical, as branch network is dynamic. Furthermore, each bank branch cannot be expected to have an updated list of such centres and moreover the customer would not be in the knowledge of this matter. The Committee recommends that the DBOD should review this.

(iv) As regards adding charges without advance intimation (Item 6) the Committee deplores the recourse to **stealth banking** and recommends that any changes in charges should be made known to all depositors in advance with one month's notice.

(v) As regards disposal of deposits on maturity (Item 10), the Committee recommends that banks should give the option to depositors to indicate disposal of deposits in the case of the death of one of the depositors and they should be given the option to indicate that survivors can prematurely terminate the deposit. Such a clause could be added even for existing deposits.

(vi) Forcing depositors to place deposits with banks for locker facilities (Item 13) is clearly a restrictive practice and the Committee recommends that this should be stopped forthwith. *Ad hoc* Committees should report on compliance.

(vii) While service charges (Item 16) are a matter for banks to decide the Committee strongly recommends that there should be no **stealth** charges.

(viii) As regards Senior Citizens deposit accounts, the Committee recommends that changes in any instructions (Item 17) on the operation of the account should be confirmed within one month to the depositor in writing.

(ix) Banks which send statements of Accounts should adhere to the monthly periodicity prescribed by RBI and *Ad hoc* Committees should report compliance.

(x) The Committee deplores that even in large metropolitan branches Enquiry Counters are non-existent and in some cases even hostile (Item 20). The *Ad hoc* Committees should examine this matter.

3.5 The Committee appreciates the efforts made by the DBOD in bringing out a Master Circular on **Interest Rates on Deposits** dated August 14, 2003. In the Note to paragraph 16 of the Master Circular on Interest Rates on Rupee Deposits held in Non-resident Ordinary (NRO) and Non-Resident (External) (NRE) Account it is stated that "NRE deposit should be held jointly with a non-resident only". As a logical conclusion NRE account cannot be opened jointly with a resident. Since the caption of the circular relates

to NRE/NRO Accounts some banks have interpreted that the Circular is equally applicable to NRO Accounts and that a non-resident account cannot open an NRO Account jointly with another resident. This inference is incorrect. The Committee has observed that in terms of paragraph 7 of Schedule 3 to the Reserve Bank Notification No.FEMA.5/2000-RB dated May 3, 2000, an NRO account can be held jointly with another resident. The Committee recommends that DBOD should amend its Master Circular to explicitly follow the above mentioned instruction under the FEMA Notification.

3.6 The Committee appreciates the context in which the Department of Banking Supervision (DBS) has issued a circular on Frauds in Non-Resident Accounts {Ref.DBS.FGV(F).No.BC.13/23-04.001/2000-02 dated May 21, 2002}. This circular has a fall out of causing operational difficulties for non-residents. First, on the granting of loans against non-resident deposits it is stated that "The loan should be granted only when the depositor himself executes the loan document in the presence of bank officials and a witness acceptable to the bank". Furthermore, it is stated that Advances to third parties against such deposits should not be granted on the basis of Power of Attorney {Paragraph 4.1(b) and (c) of the above mentioned circular}. While appreciating the objective of the DBS to avoid frauds, the granting of loans to third parties is rendered infructuous.

3.7 As a further fall out of this circular considerable difficulties are being experienced in NRO Account remittances. NRO Accounts can be jointly held by a non-resident with a resident and a Power of Attorney can be used freely to undertake rupee transaction but cannot be used to effect foreign exchange transactions. The NRO non-resident holder has to send a request for the remittance in writing and the Power of Attorney holder (resident) can no longer effect the remittance. This runs counter to the present liberal foreign exchange regime. It would stand to reason that the authorities should be neutral, as far as operational instructions are concerned, between rupee and forex transactions. While recognising the need to prevent frauds, the RBI should be sensitive to the operational difficulties created to the entire body of users. To the extent a fraud is committed abroad the authorities have less recourse than if the fraud is committed in India. The Committee, therefore, recommends that the Foreign Exchange Department and the DBS should revisit the issue and the procedural hassles as a result of the DBS circular could be examined with a view to facilitating legitimate transactions.

3.8 The Committee is distressed to observe that some banks do not allow depositors to collect their cheque book at the branch but insist on despatching the cheque book by courier to the depositor. The depositor is forced to sign a declaration that **the despatch by courier is at the depositor risk and consequence and that the depositor shall not hold the bank liable in any manner whatsoever in respect of such despatch of cheque book**. This is clearly a reflection of a gunboat unfair practice and the Committee recommends that the RBI should, forthwith, unequivocally prohibit banks to refrain from obtaining such undertakings from depositors.

3.9 With its limited anecdotal experience the Committee notes with pain that banks invariably show credit entry in depositors passbooks/statements of account as "By clearing" or "By cheque". In the case of Electronic Clearing System (ECS) and RBI Electronic Funds Transfer (RBIEFTR) banks invariably do not provide any details even though brief particulars of the remittance is provided to the receiving bank. In

some cases computerised entries used sophisticated codes which just cannot be deciphered by the depositor such as “By CLG/ZN MICROUT 2/SET 27” or “By CLG/ZN MICROUT 4/SET 18”. The depositor surely deserves better service than such inscrutable entries in the passbooks/statements of account. *Ad hoc* Committees should examine these matters.

3.10 As a part of the Know Your Customer (KYC) requirements some banks are using the ruse of KYC to gather additional information of the client including his/her personal assets, living habits etc. unrelated to the bank account and then using this information to canvas for the bank/subsidiary/affiliate ancillary services. In some cases the bank has provided information on the movements in the accounts of customers to other agencies also. These operations get intertwined as banks also act as brokers for ancillary business. Release of such information is clearly anathema and the Committee recommends that the RBI should take early action to stop such reprehensible practices. Towards that end, the Committee also recommends that information should not be gathered in the name of KYC with the intention using it for cross-selling of services. The banks should obtain the information required for opening an account independent of any other information that they may seek for cross-selling purposes. The forms containing this information must not be a part of the account opening form. While obtaining the other forms, permission of the customer for sharing information furnished to entities within the organisation for cross selling purposes must be obtained specifically. In case the information is to be shared with an external agency while obtaining permission from the customer the name of the external agency should also be disclosed upfront by the bank. The *Ad hoc* Committees should examine the practices in their respective banks.

Existing Position on Banking Operations : Deposit Accounts and Other Facilities Relating to Individuals (Non-Business) (As made available by Department Of Banking Operations And Development, Central Office)					Committee's Comments/ Recommendations
Sr. No.	**Item**	**Reference**	**RBI Instructions**	**DBOD Remarks**	
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
1.	Cheque Drop Box Facility	• Circular BC. 69 dt. 16 June 1986 (Public Sector Banks) • Circular BC.. 10 dt. 23 March 1987 (Private Sector Banks)	Boxes for depositing cheques for collection and clearing should be provided at larger offices. The boxes should be cleared at regular intervals and receipted counter-foils placed at a convenient place for customer to collect. This should be in addition to the regular collection counter.	Some customers insist on acknowledgement for cheque dropped in the boxes. RBI has written to I BA to introduce a fool proof system for accounting such instruments received through drop boxes.	The Committee is of the view that both the drop box facility and the facility for acknowledgement of the cheques at the regular collection counters should be available to customers. No branch should refuse to give an acknowledgement if the customer goes to the concerned counter for such an acknowledgement. Once a customer opts for the drop box facility he can not expect an acknowledgement. The *ad-hoc* committees should ascertain compliance.
2.	Immediate Credit of Local / Outstation cheques Continued… …..	Circular BC. 21 dt. 23 August 2002	The banks may afford immediate credit in respect of outstation / local cheques upto Rs.15,000/-, tendered for collection by their customers., subject to certain conditions. Major conditions being: (i) the bank being satisfied about the proper conduct of the customers' accounts and (ii) recovery of Rs.5/- for local cheques and normal collection charges for outstation cheques.	----	This facility is observed in the breach. In many cases the passbook /statement shows a credit but since it is uncleared the amount is blocked at the time of drawal. In effect, the facility as provided for in the RBI instructions is **not** available. This tantamount to undue enrichment of the bank. The ad-hoc Committees should ascertain compliance (ii) The Rs.5/- charge per local cheque is not implemented and it is not clear as to why RBI has given this instruction. The Committee recommends that the RBI should rescind the instructions.

Existing Position on Banking Operations : Deposit Accounts and Other Facilities Relating to Individuals (Non-Business) (As made available by Department Of Banking Operations And Development, Central Office)					Committee's Comments/ Recommendations
Sr. No.	**Item**	**Reference**	**RBI Instructions**	**DBOD Remarks**	
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
3.	Collection of outstation instruments Continued… …..	Circular BC. 59 dt. 17 May , 1995	Time stipulated for collection of outstation cheques is as follows: (i) within one week from the date of presentation in respect of cheques drawn on other metropolitan centers (ii) within 10 days in respect of state capitals and centres with more than 100 bank offices. Withdrawal should be allowed upto a maximum Rs. 10,000/- or value of cheque so that the collecting bank will have an exposure for amount not exceeding Rs. 10,000/- against any individual customer.	Often complaints are received that banks are not extending this facility as a matter of course.	The Committee observes that while Item 2 relates to crediting of outstation cheques upto Rs.15,000. Item 3 (which is an earlier instruction) relates to an amount of only Rs.10,000. It is obvious that Item 3 is based on an earlier circular which is not updated, the Committee recommends immediate rectification by the RBI. (ii) The reference to centres with 100 branches does not appear practicable as branch network is dynamic. Furthermore, each bank branch cannot be expected to have an updated list of such centres. The Committee recommends that the DBOD should review this.
4.	Payment of interest for delays in collection of outstation cheques and other instruments Continued… …	Circular BC. 147 dt. 09 March 2000	The collecting bank should pay interest on the amount of cheques / instruments drawn on outstation branches and sent for collection, if the proceeds are not realized /credited to the customers' accounts within a period of 14 days from the date of their lodgements till the proceeds are realized / credited to the customers' accounts or the instruments are returned. In the case of instruments drawn on State Headquarters, banks will be required to pay interest beyond 10 days if they are not collected within 10 days. However, we have also advised banks that there is a scope for banks to further reduce this period of outer limit by introducing 'quick collection service' or by ascertaining the fate of collection by fax etc.	Banks should implement these instructions.	The Committee's information based on a random check is that this instruction is observed in the breach and if at all such interest is paid it is only to select parties who have sufficient clout to take on the concerned bank. The *Ad-hoc* Committees should examine the matter. The Committee recommends that this instruction should be strictly followed by banks and that RBI should view any breach as

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(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
					a serious lapse on the part of the bank.
5.	Banking hours /working days of bank branches Continued… …	Circulars • BC.72 dt. 15 September 1975 • BC.76 dt. 11.February 1993	Banks have been advised that they should normally function for public transactions for 4 hours on week days and 2 hours on Saturdays in the larger interest of public and trading community. Banks may extend business hours for non-cash / non-voucher generating transactions except cash, up till one hour before close of the working hours.	Banks are taking steps on their own to provide additional working hours to meet customer service and to meet the competition.	The RBI stipulation should be treated as minimum. Many banks provide extended hours even for cash and other transactions. The Committee recommends that the RBI stipulation relating to facility of extended hours to non-cash/ non-voucher generating transactions should be removed. The State Governments could be urged to declare the three national holidays under the Negotiable Instruments Act and other holidays as public holidays.
6.	Minimum balance in Savings bank accounts. Continued… …	Circular BC.53 dt.26 Dec. 2002	At the time of opening the accounts banks should inform their customers regarding the requirement of maintaining minimum balance and levying of charges etc. for shortfall in minimum balance. Any subsequent changes in this regard should also be intimated to the account holders.	A number of complaints are received that the banks are insisting on maintenance of higher minimum balance in SB accounts and also are levying penal charges if such balances are not maintained. Apart from transparency requirement, banks do have the freedom in this regard. The customers would have to choose banks based on their perceptions and abilities.	The Committee observes that invariably banks are adding charges which are not made known to existing depositors. Any charges which apply to depositors should be transparently made known to all depositors and any charges should be made known to all depositors in advance with one month's notice. The Committee deplores the recourse to **stealth banking** to impose charges on customers' deposit accounts. The Committee recommends that charge should be known upfront to depositors. The Committee notes that the Savings

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(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
					Bank rules are not easily accessible to depositors. The Ad-hoc Committees should examine the issue
7.	Intimation regarding change in minimum balance in savings bank accounts.	Circular BC.53 dt. 26 December 2002	At the time of opening the accounts banks should inform their customers regarding the requirement of maintaining minimum balance and levying of charges etc., if the minimum balance is not maintained, in a transparent manner. Any subsequent changes in this regard should also be intimated to the account holders. The banks may decide the manner in which the information is made available to the customers.	As in Item 6.	The Committee urges that the RBI should ensure adverse action where there are violations.
8.	Telephone enquiry Recommendation	Circular BC 74 dt. 28 January 1992	Password system may be evolved to respond to routine queries over phone.	--	--
9.	Pass books for term deposits	Circular BC 74 dt. 28 January 1992	Banks may accept term deposits in units of Rs. 5000/- or in multiplies and issue pass books doing away of deposit receipt system.	The issue of pass books or receipts for fixed deposits is left to the banks.	--
10.	Disposal of deposits on maturity	Circular BC. 70 dt. 16. January 2001.	Advance instructions from depositors regarding the manner of disposal of deposits on maturity may be obtained in the application form itself. Wherever such instructions are not obtained intimation for deposit becoming due should be sent as a rule.	Some new private sector banks are issuing deposit advices with specific understanding of renewal/payment of deposits.	The Committee notes that this is observed in the breach. Banks should give the option to depositors to indicate disposal of deposits in the case of the death of the deposit holder or one of the joint holders and also provide option for a clause that in the event of death of the depositors the survivor/s can prematurely terminate the deposit. Depositors should be allowed to add this clause even for existing deposits.
11.	Reversal of erroneous debits arising on fraudulent or other transactions.	Circular BC. 86 dt. 8 April , 2002	Banks were advised to adhere to the guidelines and procedure for opening and operating deposit accounts to safeguard against unscrupulous persons opening accounts mainly to use	---	The Committee recommends that the *Ad-hoc* committees could be required to

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	Continued… …		them as conduit for fraudulently encashing payment instruments. However, we continue to receive complaints of fraudulent encashment by unscrupulous persons opening deposit accounts in the name/s similar to already established concern/s resulting in erroneous and unwanted debit of drawers' accounts. With a view to redressing the grievances of the customers in this regard, banks were advised that (i) in case where banks are at fault, they should compensate customers without demur and (ii) in case where neither the bank is at fault nor the customer at fault but the fault lies elsewhere in the system, then also banks should compensate the customers (upto a limit) as part of a Board approved customer relations policy. Continued… …		examine this matter.
12.	Nomination Clarification given on Banking Companies (Nomination) Rules, 1985 Continued… …..	Circular BC. 58 dt. 14. May. 1986.	(a) There cannot be more than one nominee in respect of a joint deposit account. Banks may allow variation/ cancellation of a subsisting nomination by all the surviving depositor(s) acting together. This is also applicable to deposits having operating instructions " either or survivor". It may be noted that in the case of a joint deposit account the nominee's right arises only after the death of all the depositors. (b) Nomination facility is available for Savings Bank Account opened for credit of pension. Banking Companies (Nomination) Rules, 1985 are distinct from the Arrears of Pension (Nomination) Rules, 1983 and nomination exercised by the pensioner under the latter rules for receipt of arrears of pension will not be valid for the purpose of deposit accounts held by the pensioners with banks for which a separate nomination is necessary in terms of the Banking Companies (Nomination) Rules, 1985 in case a pensioner desires to avail of nomination	The rationale for instructions is based on the Nomination Rules.	-- Re: (b) The Committee wishes to draw attention to Report No. 2 of the Committee wherein the Committee has recommended that the RBI should take up with the Government the

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(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
			facility.		serious difficulties in insisting on single account of pensioners and the need to allow joint accounts.
13.	Safe deposit lockers Continued…….	Circular BC. 27 dt. 27 March 1984.	(a) Branches to prepare a waiting list for allotment of lockers, acknowledge receipt of applications and to give waiting list number. (b) 80% of lockers to be allowed on first come first served basis and remaining at branch manager's discretion. (c) Banks should not insist on fixed deposit as a prerequisite for allotment of lockers. However, there is no objection to banks seeking a deposit the interest which may cover the annual rent of the locker. Alternatively, advance locker rent could be collected up to three years.	The instructions were issued in the past to remove the restrictive practice in allotment of lockers.	Re: Item 13 (C) This is observed in the breach. Linking the lockers facility with placement of fixed or any other deposit beyond what is prescribed, is restrictive practice and should be prohibited forthwith. There is no reason why such arrangements should be forced on the customers as locker charges are determined by banks and are allowed to be recovered upfront upto three years. The Committee recommends that the RBI should clearly instruct that banks must refrain from such restrictive practices and the *Ad hoc* Committees should be required to report on the extant practices in their respective banks.
14.	Transfer of account from one branch to another Continued…….	• Circular BC. 69 dt. 16 June 1986 (Public Sector Banks) • Circular BC.. 10 dt. 23 March 1987 (Private Sector Banks)	Banks to attend immediately to such requests. To hand over transfer form to the customer for delivery at the transferee branch if he so desires. To attend queries regarding transfer of account expeditiously.	----	This needs to be revisited in the context of being a fraud prone area.
15.	Issue of demand draft (a) Identification for encashment (b) Payment in cases of non	Circular BC. 13 dt. 5 September 1990.	Banks to pay drafts promptly. There is no objection to banks putting a ceiling of Rs. 25000/- for payment of drafts against production of passport/ postal identification card. The banks should ensure that drafts drawn on their branches are paid immediately. Payment of draft should not be refused for the only reason that relative advice has not been received.	(a) The procedure may be left to the individual bank for more flexibility. (b) With increased adoption of technology and telecommunication facilities, it should be	--

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	receipt of advices			possible to do away with the need for branch advice.	
16.	Services Charges Continued…….	Circular BC.86 dt.7 September 1999	With effect from September 1999, the practice of IBA fixing the benchmark service charges on behalf of member banks was done away with and the decision to prescribe service charges had been left to the individual banks with the approval of their respective Boards. Banks had been advised that while fixing service charges for various types of services like charges for cheque collection, etc., they should ensure that the charges are reasonable and are not out of line with the average cost of providing these services. Banks should also take care to ensure that customers with low volume of activities are not penalised.	--	While the Committee recognizes the need for fixing service charges, the Committee finds it anathema that service charges are not revealed up front. Some of the banks are imposing unreasonable charges wherein customers are charged for seeking information on entries in their account. The Committee recommends that the RBI should emphasise that there must be total transparency on service charges and there should be no **stealth** charges. The *Ad hoc* Committees should examine the matter.
17.	Deposit scheme for senior citizens Continued……	Circular BC. 107 dt. 19 April 2001.	Based on representations from senior citizens and with a view to partly meeting the hardships faced by senior citizens on account of falling interest rates, banks have been permitted to formulate fixed deposit schemes specifically for senior citizens offering higher and fixed rates of interest as compared to normal deposits of any size with the approval of their Board of Directors. IBA has prescribed that a person who has completed the age of 60 years may be treated as senior citizens.	Some complaints are being received that some of the banks, especially foreign banks, are not offering the above scheme.	The Committee recommends that the *Ad hoc* Committees examine treatment of senior citizens not only on the interest rate incentives for fixed deposits. To ensure that the passbook/ statement of account and the computer information are in sync, the Committee recommends that whenever there is a change in operating instructions or addition/ deletion of any name in an

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					account, banks must confirm latest instructions of the change to the customer by post **within one month** without any exception. Moreover, the bank should provide facilities in the account opening form (and in existing accounts an attachment to the account opening details) to indicate their instructions, if any, as to whether in the event of their death who should be the beneficiary of the balances in the account as also the beneficiary for their fixed deposit and any pipeline credits received after their death. (Please see Chapter 4)
18.	Statement of Accounts / Pass Book	Circular BC 105 dt. 21May, 2002.	Statement of accounts pass books should be written accurately, legibly and neatly. Statement of accounts must be sent every month. Pass book should be updated promptly as and when received.	------	The Committee notes with satisfaction that with computerised passbook the entries are legible (apart from occasional blips of over-printing). The passbook, however, tend to economise on meaningful identification of entries; the Committee recommends that the entries should give information to enable the depositor to identify the transaction, particularly inflows. The Committee notes with distress that banks which send statements do **not** adhere to the monthly periodicity.

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(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
					The Committee recommends that the RBI must insist on total compliance and the *Ad hoc* Committees must report to RBI on appropriate remedial action.
19.	Unclaimed deposits Continued…….	Circular BC 45 dt. 15 November1989	Banks should ensure that their branches follow-up accounts which remained inoperative for a year or so by sending suitable advices to the customers / legal heirs.	This procedure needs to be adopted as it is also a step against possible frauds.	--
20.	Guidance to customers	Circular BC 74 dt. 28 January, 1992	All branches, except very small branches should have "Enquiry" or "May I Help You" counters either exclusively or combined with other duties, located near the entry point of the banking hall.	Not being implemented by all the branches. In certain cases though arrangements have been made to provide counters for such purposes, they are not manned.	The Committee deplores the fact that in most cases even in large metropolitan branches the Enquiry Counters are in operative or non-existence and in some cases even hostile. The Committee recommends that the RBI should take serious objection to this state of affairs and the *Ad hoc* Committees should be asked to report on remedial action.
21.	Operation of Accounts by Old & Incapacitated Persons Continued…….	Circular BC. 100 dt.12 October 1998	(a) An account holder who is too ill to sign a cheque / cannot be physically present in the bank can put his thumb impression on the cheque / with-drawal form, which should be identified by two independent witnesses known to the bank one of whom should be a responsible bank official. (b) In the case of an account holder who cannot put a thump impression and also would not be able to physically present in the bank, a mark can be obtained on the cheque / withdrawal form which should be identified by two independent witnesses known to the bank, one of whom should be a responsible bank official.	---	--

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(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
22.	Payment of balance in accounts to survivors / claimants Continued….	Circulars BC. 148 dt. 14. March 2000 & BC 56 dt. 6 December 2000.	(a) The banks may call for succession certificates from legal heirs of deceased depositors only in cases where there are disputes and all legal heirs do not join in indemnifying the bank or in certain other exceptional cases where the bank has a reasonable doubt, about the genuineness of the claimants being the only legal heir/s of the depositor. (b) Delegation of powers to branches may be given to dispose of claims of deceased account holders without production of legal representation but on the basis of due local enquiry and adequate indemnity.	Please see Annex IV.	The Committee has made detailed recommendations in Chapter 4.
23.	Nomination facility for lockers Continued….	Circular BC. 58 dt. 14 May 1986.	(a) On the death of any of the joint hirers, the contents of the locker are only allowed to be removed jointly by the nominees and the survivor(s) after an inventory is taken in the prescribed manner. In such a case, after such removal preceded by an inventory, the nominee and surviving hirer(s) may still keep the entire contents with the same bank, if they so desire, by entering into a fresh contract of hiring a locker. (b) Section 45 ZE of the B.R Act, 1949 does not preclude a minor from being a nominee for obtaining delivery of the contents of a locker. The responsibility of the banks in such cases is to ensure that when the contents of a locker are sought to be removed on behalf of the minor nominee, the articles are handed over to a person who, in law, is competent to receive the articles on behalf of the minor.	Please see Annex IV.	The Committee has made detailed recommendations in Chapter 4.
	Continued				

ISSUES RELATING TO SURVIVORS/HEIRS OF DECEASED BANK ACCOUNT HOLDERS/LOCKERS

4.1 At present, the DBOD regulatory instructions on matters relating to deceased bank account holders and the operating instructions for survivors/nominees are perfunctory and unclear (Annex III). As part of the deregulation process, the DBOD has claimed that there are no operating instructions other than these two circulars, issued in the year 2000, wherein the requirement of insisting on a succession certificate was totally withdrawn irrespective of the amount but banks were to consider suitable safeguards in settling claims including taking of an indemnity bond. It was subsequently clarified that succession certificates may be called for from the legal heirs of deceased depositors where there are disputes and all legal heirs do not join in indemnifying the bank or where the bank has some doubts.

4.2 When families are hit by the trauma of death of any of their family members, the procedures required to be followed in the banking system should be such that they work as a balm and not as an additive to the pain. Currently, the moment a bank is informed of a death of a depositor, banks are required to freeze the account in case of a single account or delete the name of the deceased account holder in case of a joint account and as such no money receivable by the deceased account holder can be credited to the account after the bank is informed of the death of the account holder. Furthermore, the family members of the deceased are not allowed to operate the account. The argument put forth in favour of the extant practice of the banks is that after the death, the property of the deceased vests in the legal heir/s who alone should be allowed access to the funds belonging to the deceased account holder. The consequences being that the family members, who are already hit by tragedy, face the danger of being starved of money because of the extant procedures. The Committee understands that by and large banks use reasonable commercial judgement to soften the problems faced by the family of deceased depositors. In a number of banks there are comprehensive internal guidelines as to how to handle these matter. The major problem, nonetheless, remains that the strict adherence to the legal requirements results in severe hardships to the family of the deceased depositors. The Committee has observed that there is a widespread practice wherein banks informally advise the survivors of the deceased account holders to inform the bank of the death after all other formalities are completed such as change in name for other investments which generate flows into the account. The Committee appreciates the helping hand extended by bankers in the times of need of their customers but the Committee is concerned that salutary 'practical banking advice' is not quite in sync with the law. It is, therefore, desirable to adopt such procedures and practices as would alleviate the problems faced by the family of the deceased and also be in conformity with the law.

4.3 In response to the Committee's request for the procedures in the case of deceased depositors, with different mode of holding such as single, joint, either or survivor etc., and all these with or without nominations, the DBOD, on the basis of material available with it, was not able to clarify the position (Annex IV). This is a serious lacuna and the Committee recommends early rectification. The two DBOD circulars on this subject of March and December 2000 appear inadequate and ambiguous and should be, therefore, rescinded. The RBI should issue a comprehensive circular on the subject. The comprehensive RBI circular should reiterate that banks should not insist on Succession Certificate, Letters of Administration or Probated Will in cases where there are no disputes and the bank has no doubts as

already stated in the aforesaid RBI circulars of March and December 2000. The new circular should set out the basic framework for dealing with these cases, and outline the extant position and the amended framework for various accounts, i.e., single, joint, either or survivor, anyone or survivor and all these with or without nomination. The banks could be advised to simplify their internal procedures and develop such system as would enable banks to obtain a satisfactory discharge from the survivors/nominees. The Committee has also recommended later in the Report some procedures which could alleviate the problems faced by the survivor deposit account holders/nominees.

4.4 The circular by the IBA, as far back as 1980, on deceased depositors is comprehensive (Annex V). Since the IBA and banks appear to be better placed, the Committee suggests that the IBA may be asked to quickly examine the matter and issue a comprehensive model for operational procedures which could be considered by banks. The objective of the IBA model should be to simplify procedures and set out issues clearly for banks as well as for depositors.

4.5 The Committee has also perused the literature issued by the British Bankers' Association. **You and Your Joint Account - A guide for personal customers** and finds it customer friendly (Annex VI). The IBA may consider issuing a similar document suitably adapted to Indian conditions as a part of customer education.

4.6 The Committee recommends that the IBA should launch a countrywide customer education campaign informing customers of difficulties arising out of single accounts, accounts without nomination, and jointly operated accounts. The customers may be advised about the benefits of accounts held on "Either or Survivor' or 'Anyone or Survivor/s' basis. Depositors would then be able to make an informed choice based on the material provided and tailor their decisions based on their own particular circumstances.

4.7 The Committee recognises that most banks have instructions on how to handle the account of deceased depositors. There is, however, a need to simplify procedures. The Committee recommends that each *Ad hoc* Committee should review the extant instructions in their bank *vis-à-vis* the practice actually followed with a view to minimising formalities and documentation in this area. All out efforts need to be made to ensure that all genuine problems of the families of the deceased customers are resolved with the least time consuming formalities.

4.8 The Committee recognises that on the death of a deposit account holder **stock** (**balance outstanding**) in the account on the date of intimation of death is separated from money received, i.e., **flows** after the death of the account holder. To the extent there are either or survivor or anyone or survivor accounts there appears to be general agreement that banks would not have difficulty in transferring the **stock** in the account of the deceased to a new account of the surviving account holders and this would provide an appropriate discharge for the bank.

4.9 The second issue relates to pipeline **flows** coming in the name of the deceased account holder. In regard to **flows**, the Committee recommends a two-pronged approach. The Committee recognises that

with increasing use of ECS and Electronic Fund Transfers (EFT) funds could flow rapidly into the account of the deceased and given the legal constraints banks would find it difficult to alleviate the problem of customers.

4.10 First, an account could be opened styled as 'Estate of ---------- the Deceased' where all pipeline flows in the name of the deceased account holder may be allowed to be credited provided no withdrawals are made. This matter may be examined. This approach meets the objective to a very limited extent as it only allows collection of flows but denies access to these funds to the family of the deceased and extensive procedures are required before the survivors/heirs can receive the money.

4.11 The second approach could be for the bank to return the inflows to the remitter with the remark "Account holder deceased" and intimate the survivor account holders accordingly. The survivors/heirs can then approach the remitter to issue a cheque/ECS transfer in the name of the appropriate beneficiary.

4.12 The Committee recognises the diverse nature of inflows into the account of the deceased depositor as also locational problems and, therefore, recommends that while adopting either of the procedures set out in paragraphs 4.10 and 4.11, it should be done in consultation with the survivors in the account/nominees as appropriate.

4.13 The Committee recommends that banks should be advised to simplify their procedures in relation to the death of an account holder and use their discretion with a tilt in favour of the deceased account holder's survivors/heirs and progressively expedite settlement of cases. In cases where there are no disputes banks should be urged not to call for Succession Certificate/Letters of Administration or Probate of Will and follow simplified procedures to release the money expeditiously and in any case not exceeding six months. Banks should be required to report to their Boards an annual return with size-wise details of the number of cases pending beyond six months with separation of data where there are disputes and where there are no disputes. As part of the involvement of the bank Boards in the area of customer service to depositors, bank Boards should closely monitor the disposal of cases relating to deceased depositors and the Boards should ensure that the procedures followed are effective and not unduly onerous.

4.14 The Committee, within its limited timeframe, also attempted to explore various possibilities, within the existing legal framework, to ensure that the family of the deceased account holder is **not** deprived of money kept as deposits in the banking system. The Committee had the benefit of the views of the RBI Principal Legal Adviser, Shri N.V. Deshpande and Legal Adviser, Shri S.R. Kolarkar (Annex VIIA), Shri Y.H. Malegam (Annex VIIB). Shri M.R. Umarji (Annex VIIC) and Smt. K.S. Shere (Annex VIID).

4.15 The provisions contained in Section 45 ZA of the Banking Regulation Act, 1949, form the basis for Nomination Rules for Deposit Accounts with banks. Accordingly, the nominee on death of the sole depositor or as the case may be, on the death of all the depositors, become entitled to all rights of the sole depositor or, as the case may be, of the depositors, and payment made by a banking company in accordance with the provisions of this section constitute a full discharge to the banking company. In

addition, this does not affect the rights or claims which any person may have against the person to whom any payment is made under this section. This would imply that the heirs of the deceased can settle their claim with the nominee but the bank is discharged of its liability by making payment to nominees.

4.16 The Committee would urge the RBI to consider incorporating into its comprehensive circular the suggestion that in the Account Opening Form itself (and in existing accounts) the account holders could be given the option to indicate the disposal of the balances in the account upto the date of death and the flows into the account upto a period of say six months. Similarly, in the case of term deposits, the account holders can stipulate that in the event of a death of a depositor, premature termination of term deposit should be allowed and the depositor could stipulate as to who could be the beneficiary for the term deposit. This would then amount to a proper discharging of the bank's liability (Item 17 in the tabular material at the end of Chapter 3).

4.17 If the implementation of the recommendations in paragraph 4.16 above is not feasible, to ameliorate the suffering of **common persons** the Committee recommends that an amendment could be made in the Banking Regulation Act similar to what already exists in Section 45 ZA of the Banking Regulation Act regarding Nomination which could provide that the account holder may designate or name a person/persons to whom the **flows** due to him for a period uptil say six months after the death of the account holder, may be paid. Such provisions could have the same effect as nomination has with respect of **stock**. Since the latest instructions by the depositor would be available in the bank's records this should not require the intervention of the Courts. This matter may be examined.

4.18 Banks are also extending **safe deposit locker facilities** in their select branches. The issue relating to access to the lockers arises in the case of safe deposit lockers on death of one of the joint hirers. DBOD has issued instructions in 1986 by way of clarification of Nomination Rules 1985 which have limited application to the case of **jointly held** and **jointly operated** safe deposit lockers (Annex IV). The DBOD and the Legal Department of RBI are unable to unequivocally establish the position in regard to lockers held on 'either or survivor' basis with or without nomination. On the basis of limited anecdotal experience, however, the Committee observes that banks are permitting access to the surviving joint hirer/s of lockers where the operating instructions are "either or survivor" or "anyone or survivor/s" provided there is no nominee. To avoid harassment to the **common person** due to ignorance of staff or different interpretation at some bank branches, the Committee recommends that the RBI should expeditiously issue a clear circular on various types of operations of Lockers in the event of death of a Locker hirer. IBA should subsequently prepare a document for uniform guidance of banks regarding Locker facilities and the document should be given wide publicity and placed in the public domain.

4.19 The Committee notes with agony and anguish that procurement of documents like Succession Certificate, Letters of Administration, or Probated Will are time consuming and disproportionately costly to the survivors/heirs of the deceased. While the Committee recognises that this involves amendments to Acts other than the Banking Regulation Act, the Committee recommends that the RBI may draw attention of the government to the need for quick disposal of requests for obtention of Succession Certificate, Letters of Administration and Probate of Will within the present legal framework.

5. SUMMARY OF OBSERVATIONS/ RECOMMENDATIONS

The Committee's observations /recommendations are as follows:

1. The Committee's examination of issues has been largely focused on deposit and related facilities for individuals (non-business). The interests of the mass of depositors are, however, just not taken into account when formulating the complex regulatory framework. The Committee would wish to stress that it is no fault of the DBOD that the bulk of depositors are untouched by the regulatory system. This is merely a reflection that in the Indian firmament the sophistication of the entire regulatory framework is virtually irrelevant for the mass of depositors. This is not merely an issue of fault finding with the RBI but a general national issue of the mismatch between the complex regulatory framework – both banking and general - and the capacity of the mass of deposit account holders to comprehend the system. To the extent the mandate of the Committee is the **common person** the DBOD regulatory framework just does not reach out to the **common person**. The Committee is of the view that in the process of deregulation of the banking regulatory system the sequencing of deregulation has not received due attention resulting in haphazard regulation. There are various vital areas wherein the RBI, and a self-regulatory body like the Indian Banks Association (IBA) and the banks are silent and hence there is a vacuum when it comes to providing authentic information to the depositor. The Committee has made a myriad of self-contained comments/ recommendations on which the RBI could consider appropriate decisions (Paragraphs 1.1, 1.3 and 1.4).

2. There has been a **total disenfranchisement** of the depositor. The depositor, the key stakeholder in the banking system, has been shorn off his rights. Reflecting the sorry state of affairs, as a frontline Department the DBOD has not deemed it fit to set out a **Citizen's Charter** which should have had the depositor as the centre piece; the Committee recommends that this should be rectified forthwith. The RBI and banks have taken depositor loyalty for granted and the depositors have reposed this loyalty to banks to the point of flagellation. The depositor can legitimately claim a **bill of rights** but everywhere he is in chains. How that came about is a matter of historical tragedy and years of neglect and the government, RBI and the banks all stand indicted. Lip service to the depositor customer has gone on for too long and if Governor Dr. Y.V. Reddy's directive to banks on the **Common Person** is to be given true meaning there must be a time bound roadmap to reverse the **disenfranchisement** of the depositor and the start of a process of **empowering** of the depositor (Paragraph 2.5).

3. The banks' offerings are generally opaque - what is not charged is mentioned but what is charged is not mentioned - high hidden costs appear rampant and unjustified, thus banks enjoy **undue enrichment**. If a small customer goes to a bank and has a technical problem, anecdotal evidence suggests that he runs into enormous difficulties. The Committee notes with some sadness that there is substance in the widespread impression among the small depositor community that one needs to know someone higher-up for getting his/her job done. Intense depositor loyalty is the only plank on which the Indian banking systems is surviving. The banks have to understand that depositors are at the end of their tether and banks providing poor customer service will be punished by switching loyalty. The Committee recommends that the authorities should ensure that depositors dissatisfied with customer service have the facility to switch banks and banks should be cautioned that thwarting depositors from such switches would invite serious adverse action (Paragraphs 2.6 and 2.7).

4. Another aspect of banking services which reinforces the process of disenfranchisement, is the fact that the customer is in near-total, if not total, darkness about his entitlements. An appreciation of its ill effects on the customer and his eventual dis-enfranchisement should be of fundamental concern to the RBI and the banking system. The banks, therefore, need to be proactive and develop a social conscience. The Committee appreciates the role of market forces in rewarding an efficient player and penalising an inefficient one. But it does not accept that the market forces can be the only protector of customer interest. The banks and the regulator have responsibility to act proactively (Paragraph 2.8).

5. The Committee has made a number of recommendations to enable a reversal of the disenfranchisement of the depositor and his eventual empowerment and these recommendations set out in paragraph 2.10(i) to (x) (Paragraph 2.10).

6. The Committee recommends that the process of undertaking the long journey from the existing **disenfranchisement** of the depositor to the eventual **empowering** of the depositor should be a systematic effort by the RBI and the banking system. The RBI and banks must emphasise that frontline staff must be the cream of the banking system and counter service should reflect the intelligent and sensitive application of rules and regulations. The Committee recommends that both RBI and banks should appoint **Quality Assurance Officers** who will ensure that the intent of policy is translated into the content and its eventual translation into proper procedures. The RBI and banks must work to fix the system and not punish the errant officials. Such a system would also give confidence to dealing staff to improve services (Paragraph 2.11).

7. While it is in no way even remotely suggested by the Committee that the RBI should intervene on overall service charges, the Committee would wish to enunciate the principle that these charges should not be regressive. The Committee has deliberated on the tabular material setting out the DBOD regulatory instructions relating to Deposit Accounts and Other Facilities to individuals (Non-Business) and the Committee's Comments/ Recommendations are set out at the end of this Chapter. For a comprehensive view of the Committee's comments/recommendations it is suggested that the paragraphs 3.4 (i) to (x) should be seen in conjunction with the tabular material (Paragraph 3.1 and 3.4).

8. The Committee recommends that the DBOD Master Circular of April 14, 2003 should be amended to clarify that in NRO Accounts a non-resident can hold an account jointly with a non-resident (Paragraph 3.5).

9. The Department of Banking Supervision (DBS) in an endeavour to prevent frauds has rendered infructuous the granting loans to third parties. Again the use of Power of Attorney facilities has been restricted. The Committee urges that the Foreign Exchange Department and the DBS should revisit these issues with a view to facilitating legitimate transactions (Paragraph 3.6 and 3.7).

10. When banks insist on despatching cheque books to the depositor by courier, the depositor is forced to sign a declaration that the despatch is at the risk of the depositor. The Committee feels that this is an unfair practice and should be prohibited forthwith (Paragraph 3.8).

11. The *Ad hoc* Committees should examine the problem of inadequate details regarding ECS/RBIEFTR remittances into statements on depositors account should be made comprehensible (Paragraph 3.9).

12. Information should not be gathered in the name of KYC with the intention of using it for cross-selling of services. The banks should obtain the information required for opening an account independent of any other information that they may seek for cross-selling purposes. The forms containing this information

must not be a part of the account opening form. While obtaining the other forms, permission of the customer for sharing information furnished to entities within the organisation for cross-selling purposes must be obtained specifically. In case the information is to be shared with an external agency while obtaining permission from the customer the name of the external agency should also be disclosed upfront by the bank. The *Ad hoc* Committees should examine the practices in their respective banks (Paragraph 3.10).

13. The two DBOD circulars of March and December 2000, on deceased depositors appear inadequate and ambiguous and should be, therefore, rescinded. The RBI should issue a comprehensive circular on the subject. The comprehensive RBI circular should reiterate that banks should not insist on Succession Certificate, Letters of Administration or Probated Will in cases where there are no disputes and the bank has no doubts as already stated in the aforesaid RBI circulars of March and December 2000. The new circular should set out the basic framework for dealing with these cases, and outline the extant position and the amended framework for various accounts, i.e., single, joint, either or survivor, anyone or survivor and all these with or without nomination. The banks could be advised to simplify their internal procedures and develop such system as would enable banks to obtain a satisfactory discharge from the survivors/nominees. The Committee recommends that each *Ad hoc* Committee should review the extant instructions in their bank *vis-à-vis* the practice actually followed with a view to minimising formalities and documentation in this area. All out efforts need to be made to ensure that all genuine problems of the families of the deceased customers are resolved with the least time consuming formalities The Committee suggests that the IBA may be asked to issue a comprehensive model operational procedures which could be considered by banks (Paragraphs 4.3, 4.4 and 4.7).
14. The Committee recommends that the IBA should launch a countrywide customer education campaign informing customers of difficulties arising out of single accounts, accounts without nomination, and jointly operated accounts. The customers may be advised about the benefits of accounts held on "Either or Survivor' or 'Anyone or Survivor/s' basis. Depositors would then be able to make an informed choice based on the material provided and tailor their decisions based on their own particular circumstances (Paragraph 4.6).
15. To the extent there are either or survivor or anyone or survivor accounts there appears to be general agreement that banks would not have difficulty in transferring the **stock** in the account of the deceased to a new account of the surviving account holders and this would provide an appropriate discharge for the bank (Paragraph 4.8).
16. In regard to **flows**, the Committee recommends a two-pronged approach. First, an account could be opened styled as 'Estate of ---------- the Deceased' where all pipeline flows in the name of the deceased account holder may be allowed to be credited provided no withdrawals are made. This matter may be examined. This approach meets the objective to a very limited extent as it only allows collection of flows but denies access to these funds to the family of the deceased and extensive procedures are required before the survivors/heirs can receive the money. The second approach could be for the bank to return the inflows to the remitter with the remark "Account holder deceased" and intimate the survivor account holders accordingly. The survivors/heirs can then approach the remitter to issue a cheque/ECS transfer in the name of the appropriate beneficiary. The Committee recognises the diverse nature of inflows into the account of the deceased depositor as also locational problems

and, therefore, recommends that it should be done in consultation with the survivors in the account/nominees as appropriate (Paragraphs 4.9, 4.10, 4.11 and 4.12).

17. In cases where there are no disputes banks should be urged not to call for Succession Certificate/Letters of Administration or Probate of Will and follow simplified procedures to release the money expeditiously and any case not exceeding six months. Banks should be required to report to their Boards an annual return with size-wise details of the number of cases pending beyond six months with separation of data where there are disputes and where there are no disputes (Paragraph 4.13).
18. The Committee would urge the RBI to consider incorporating into its comprehensive circular the suggestion that in the Account Opening Form itself (and in existing accounts) the account holders could be given the option to indicate the disposal of the balances in the account upto the date of death and the flows into the account upto a period of say six months. Similarly, in the case of term deposits, the account holders can stipulate that in the event of a death of a depositor, premature termination of term deposit should be allowed and the depositor could stipulate as to who could be the beneficiary for the term deposit. This would then amount to a proper discharging of the bank's liability (Paragraph 4.16).
19. If the implementation of the recommendations in paragraph 18 above it is not feasible, to ameliorate the suffering of **common persons** the Committee recommends that an amendment could be made in the Banking Regulation Act similar to what already exists in Section 45 ZA of the Banking Regulation Act regarding Nomination which could provide that the account holder may designate or name a person/persons to whom the **flows** due to him for a period uptil say six months after the death of the account holder, may be paid. Such provisions could have the same effect as nomination has with respect of **stock**. Since the latest instructions by the depositor would be available in the bank's records this should not require the intervention of the Courts. This matter is examined (Paragraph 4.17).
20. The Committee recommends that the RBI should expeditiously issue a clear circular on various types of operations of Lockers in the event of death of a Locker hirer. IBA should subsequently prepare a document for uniform guidance of banks regarding Locker facilities and the document should be given wide publicity and placed in the public domain (Paragraph 4.18).
21. The Committee recommends that the RBI may draw attention of the government to the need for quick disposal of requests for obtention of succession certificate, letters of Administration and Probate of Will within the present legal framework (Paragraph 4.19).

ANNEX VII-A

Banking regulations dealing with individuals –
Payment of balance in accounts of the deceased customers

Deposits and other accounts with banks have their origin in the contract between the bank and the customer. The respective rights and liabilities and the performance of the contract are governed by the provisions of the Contract Act, 1872. Section 45 thereof deals with devolution of joint rights. It reads as under:

> **"When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly."**

Therefore, as a general rule, in a **purely joint contract** the joint contractors are jointly entitled to the performance of the contract. On the death of one of the joint contractors, the survivor together with the legal heirs of the deceased, is entitled to claim the performance jointly. For the purpose, the legal heirs have to obtain the proper legal representation, i.e., probate or letters of administration or succession certificate, from a competent court.

It is permissible for the legal heirs to give an authority in favour of the survivor to receive performance from the bank. On the basis of such authority, the survivor can receive the amounts due from the bank and give a valid discharge therefor on behalf of the legal heirs who are otherwise entitled to receive the amount.

The above general rule is subject to a contract to the contrary. The deposit contract with a mandate of 'either or survivor' or similar other clauses, are instances of a contract to the contrary.

Legal position as emerging from Court judgments may be stated as under:

a) on the death of one of the joint holders, there is a resulting trust in favour of his heirs, unless there are special facts and circumstances to show a contrary intention;

b) bank is discharged by payment to the survivor unless an order issued by a competent court, restraining payment to the surviving depositor, has been submitted to the bank.

The main concern for the bank is to get a valid discharge, which it can get only by performing the contract according to its terms. Significance of clause like 'either or survivor' needs to be appreciated from that angle.

Deposits in the name of "Either or Survivor"

Exact scope of this clause would depend on the nature of the contract. For example, in a current/SB account, the clause may amount to an 'operating instruction', with the result that the account may be operated on that basis during its currency. But in an account like a fixed deposit, where no operations are contemplated, the clause would operate as a 'mandate' for payment of proceeds on maturity. It may be noted in this connection that an FD is basically in the nature of an executed contract so

far as the depositors are concerned, as they have only to receive the performance of contract. Therefore, in a contract of FD, the clause operates as a 'mandate' for payment on maturity.

Premature withdrawal being generally not a term of deposit contract, the mandate would not enable the survivor to claim the deposit prematurely. In fact, it may amount to a variation of contract by reducing the term of deposit, and not the performance of contract. In order to entitle the survivor to claim the deposit prematurely, it is necessary that it is expressly incorporated as a term in the deposit contract.

According to DBOD instructions, banks may call for succession certificate from legal heirs of deceased depositors in cases where there are disputes and all legal heirs do not join in indemnifying the bank. The question of calling for succession certificate can arise only in a purely joint contract. Further, these instructions are applicable only in case of disputes. The instructions indicate that where there is no dispute, the bank may dispense with the succession certificate and pay the money to the survivor, even to the exclusion of the legal heirs of the deceased joint depositor and without their express authority in favour of the survivor. In the case of purely joint contract, this does not seem to accord with Section 45 of the Contract Act.

Nomination is not necessarily an alternative to 'either or survivor' clause. The difference between the two is that the nomination becomes operative only on the death of the depositor. There is no scope for the nominee to conduct any operations in the account as is permissible in the current/savings bank accounts with an 'either or survivor' clause.

In the case of joint deposits, Section 45ZA provides that all depositors together may nominate one person to whom the amount of deposit may be returned by the bank. Further, under sub-section (2), the nominee's right arises on the death of all the depositors. There is nothing in the Act/ Nomination Rules to indicate that nomination cannot be made in an account with 'either or survivor' clause. Further, the nominee's right under sub-section (2) can be defeated by varying or canceling the nomination in the prescribed manner. In terms of Rule 8(b) of the Nomination Rules, cancellation or variation of a nomination shall not be valid unless it is made by all the depositors surviving at the time of cancellation or variation. Since cancellation or variation of a nomination does not amount to 'variation' of the deposit contract, it would appear that the sole surviving depositor can cancel or vary the nomination though it was made jointly by all the depositors.

The FD contract may sometimes provide for 'automatic renewal' on maturity. Since this clause comes into operation only on maturity, the surviving depositor having full authority to receive the maturity proceeds, may claim payment of proceeds, in which case the 'automatic renewal clause' would become inoperative.

The surviving depositor may ask for deleting the name of the deceased depositor, to which there may be no objection. At times, the survivor may also ask for adding the name of another person to the deposit account. The fixed deposit having run its full term and as payment to the survivor in performance of the contract gives a discharge to the bank, redepositing the proceeds may amount to opening a fresh account. On that basis, there may be no objection to add new names to the account, but not during its currency as it amounts to 'alteration' of contract..

Safe Deposit Locker

Providing safety locker facility is not an essential ingredient of banking business. As a matter of law, relationship between a bank and a holder of locker is that of a lessor and lessee. Rights and liabilities of the parties to the locker hire are governed by the provisions of the Transfer of the Property Act and the Contract Act.

Section 45ZE(2) of BR Act deals with hiring of locker to two or more individuals jointly. It provides for nomination where under the contract of hire, the locker is to be operated under the joint signature of two or more of such hirers. It, therefore, deals with a purely joint contract, without a contract to the contrary.

Operations under the contract of hire may be on “either or survivor” basis. Such a contract being governed by Section 45 of Contract Act, right to claim performance would vest in ‘either or survivor’ as in the case of a bank account. As regards nomination, this type of contract does not seem to fall under Section 45ZE (2), since in the contract with ‘either or survivor’ clause, the locker may be operated not under the joint signature of the hirers but under the signature of either of them. It is, therefore, not clear as to whether nomination with respect to locker under the contract of hire with either or survivor clause, is provided by law. There is, however, a banking practice to permit nomination even in such a case. No court case seems to have arisen on this issue.

Where under the contract of hire, the locker is to be operated under the joint signature of two or more hirers, they may nominate one or more persons to whom the bank may give access. As provided therein, in the event of death of one of the joint hirers, the nominee can have access jointly with the surviving joint hirer/hirers. In the event of death of all the hirers, the nominee alone will be entitled to have access to the locker.

Since the nominee is vested with a right under law to access the locker jointly with the surviving joint hirer, it does not seem permissible for the surviving joint hirer to vary or cancel the nomination and thereby divest the nominee of his right of access. Similarly, it would not be permissible for the surviving joint hirer to remove contents of the locker without involving the nominee. Pursuant to this scheme, sub-section (4) of Section 45ZE provides for preparation of inventory to be signed jointly by the nominee and surviving joint hirer(s). Neither nominee alone nor surviving joint hirer alone has a right of access to the locker and liberty to remove the contents.

Where there is no nomination made, the right under the contract of hire shall devolve, in terms of Section 45 of the Contract Act, on the surviving hirer jointly with the legal heirs of the deceased joint hirer, unless there is a contract to the contrary within the meaning of Section 45 ibid.

ANNEX VII-B

N O T E

1. The legal position may be summarised as under:-
   (a) The instructions given when opening a bank account represent the terms of a contract between the depositors and the bank which are binding on both parties.
   (b) This contract covers the terms on which the account can be operated during the lifetime of the depositors and for the disposal of the balance in the account on the death of one or more of the depositors.
   (c) The contract cannot cover the operation of the account after the death of one or more of the depositors since the contract comes to an end with the death of any depositor.
   (d) The nominee is the person who steps into the shoes of the depositor for the limited purpose of receiving the balance in the account on the death of the depositor. In the case of a joint account, the nominee can step into the shoes of the depositor only when both the depositors have died.
   (e) It is, however, possible to argue that when in a joint account, a nominee has been specified, the nominee steps in when any one of the depositors has died. However, the form of nomination would need to specifically provide for this.
2. The instructions given when opening an account can specify that the account is in any of the following forms:-
   (a) sole
   (b) joint
   (c) either or survivor
   (d) joint or survivor
3. (a) In a sole account, the balance in the account can be paid only to a nominee or to the legal representative of the deceased depositor.
   (b) In a joint account, if only one of the depositors has died and unless the form of nomination specifically says that payment has to be made to the nominee in such an event, the balance in the account can only be paid on a discharge by the legal representatives of the deceased depositor and the surviving depositor/depositors.
   (c) In a "either or survivor" account or a "joint or survivor" account, the balance in the account can be paid to the survivor.
4. A strict adherence to the legal position outlined above, creates practical difficulties as under:-
   (a) On the death of the depositor, the balance in the account gets frozen until the legal formalities are completed, causing hardship to the family which is unable to draw money from the account when it is actually needed.
   (b) Cheques are received in the name of the deceased but they cannot be deposited in the bank account.
5. Having regard to the legal position and also appreciating the difficulties explained above, the following suggestions are made:-
   (a) <u>Withdrawal of the balance on the account</u>

(i) In the case of a sole account, where there is no nominee, payment may be made upto a limited amount to be determined by each bank on the basis of the instructions given and indemnity obtained from both the executors named in the will (if a will is produced) and heirs on intestacy and the balance should be paid only after proper letters of representation are produced.

(ii) In the case of joint account, each joint holder should be allowed to nominate a nominee instead of the present practice of having a single nominee. In such a case payment should be made on the joint discharge of the nominee of the deceased and the surviving depositor/depositors.

In the alternative, the form of nomination should be amended to provide that in the event of the death of any depositor, the payment should be made to the nominee only. In that case payment should be made to the nominee, notwithstanding that other joint depositors may be a live.

Where in a joint account, there is no nominee, or where there is a single nominee without a stipulation that the payment is to be made on the death of a single nominee, payment upto a limited amount to be determined by each bank can be made to the joint account holders provided there is consent from the executors of the will of the deceased (if a will is produced) and from the heirs in intestacy and an indemnity from the joint account holders. The purpose obtaining the consent in this case is to ensure that there is no dispute regarding the persons who are entitled to receive the balance in the account. The purpose of obtaining an indemnity and restricting the payment is to cover the contingency that some disputes may surface in the future or a will may be disputed or a later will produced. The balance in the account after the initial payment as above, should be paid only after proper letters of representation are produced.

(iii) In the case of a "joint or survivor" account or a "either or survivor" account payment should be made to the survivor of the full balance on the account.

(b) Operation of the Account after the death of a depositor

(i) The account has to be closed on the death of a depositor.

(ii) The bank can however open a new account either in

- the name of the executors where a will exists, on the declaration of the executors named in the will or
- the name of heirs of the deceased on a declaration of all the heirs in intestacy.

(iii) These accounts should be used only for deposit of cheques in the name of the deceased.

(iv) Withdrawals from the account should be permitted only for such limited amounts as may be determined by the bank on the basis of an indemnity to be provided by the executors or the legal heirs as the case may be.

ANNEX VII-C

Reg. Procedure for Settlement of Claims in Deceased Depositor Accounts

The Banks have a practice of opening deposit accounts in single name of the depositor or in joint names, over and above specific accounts in the name of partnership firms, Hindu Undivided Families, Charitable Trusts, Clubs, Other Associations and Corporate Entities. In the event of death of depositor, the issue of payment of the balance amount lying to the credit of individual depositor or the term deposit in favour of the depositor poses a problem for the banks on account of complex legal formalities in our various laws. For the purpose of facilitating early settlement of claims in such deceased depositor accounts various steps have been taken as under:

- The banks in India have developed the practice of opening joint accounts with mandate of operation of the account by either or survivor, or former or survivor.
- The provisions of the Banking Regulation Act, 1949 have been amended for the purpose of providing nomination facilities and forms of nomination have been prescribed by the rules framed under the Act.

In view of the above facilities available to the depositors any difficulty faced by the legal heirs of the deceased depositor normally arises in cases where the account is in a single name of the depositor who has not made any nomination. In such a case, the bank has no option but to ask for valid proof about the right of the legal heirs to receive the money lying in the account of the deceased depositor which may be in the form of a succession certificate, a probate of a Will or any other legal representation. Considering the difficulties the legal heirs face in obtaining such legal representation from the court and other authorities the banks have also developed the practice of settling claims in such deceased depositor accounts by obtaining an indemnity from the legal heirs along with an affidavit from such legal heirs declaring that they are the persons entitled to the deposit.

If there is a joint account in the name of two or more persons without the mandate of either or survivor similar difficulties will be encountered in the event of death of one of the depositors. In such cases as stated above, banks have already developed a practice of settling the claims against indemnity and it is not possible to suggest any other system for early settlement of such claims. The only solution to the problem of delays in the settlement of such claims, would be to reform the judicial system and ensure that the legal representation is granted to the legal heirs expeditiously. This action is a complex problem on account of lack of uniformity in the system and succession being dependent on the personal law of the deceased person. Simplification of the system of succession and grant of succession certificates or probates of Wills is therefore a larger issue which will have to be addressed specifically and separately.

As far as the accounts with mandate of either or survivor are concerned, the banks get a discharge by payment to the survivor. But there are difficulties in the matter of obtaining premature payment of the term deposit or obtaining a loan against the deposit by the survivor. In order to solve such difficulties faced by the legal heirs of the depositors certain banks have modified the account opening form by incorporating specific terms relating to making premature payment of the deposit or grant of a loan against the deposit to the survivor. It is advisable that the banks include such specific clauses in the terms of the contract for acceptance of deposits.

It is possible that after the notice of death is given to the bank, there may be certain credits in the account which are in the name of the deceased depositors. Such credits will also have to be dealt with in the same manner as stated above. The banks have a practice of permitting the legal heirs to withdraw part of the amount lying to the credit of the deceased depositor in case where the amount is solely in the name of the deceased depositor or in other cases where there is delay in obtaining legal representation, but the real solution is to create an awareness in the public to make nominations in respect of deposits with the banks.

The Reserve Bank of India has issued certain circulars to the banks as under:

- DBOD circulars dated 14th March 2000 and 6th December 2000 regarding payment of balances in the account of the deceased customers to survivors/claimants. Over and above the DBOD circulators, there is a master circular dated 1st March 2004 issued by the Urban Banks Department of the RBI, regarding maintenance of deposit accounts.

In my view, the circular of the Urban Banks Department of the RBI explains the position regarding settlement of claims of deceased depositor accounts very clearly and if possible, the said circular needs to be issued to all the banks.

If any further clarifications on the above subject are required, I shall be glad to furnish the same.

Sd/-
(M.R. UMARJI)
CONSULTANT - IBA

15th March 2004

ANNEX VII-D

SMT. K.S. SHERE
B.A., LL.B.
Advocate High Court

FLAT 901, BLDG. 35, SEAWOODS ESTATE,
(NRI COMPLLEX) PALM BEACH ROAD,
NERUL - NAVI MUMBAI-400 706
PHONE-2756 0424 (022)

Date: 19-3-2004

N O T E

Committee on Procedures and Performance Audit on Public Services

Banking Regulations Dealing with Individuals

Issues relating to payment of amounts lying in a Joint Account, on the date of the death of one of the joint holders, continuation of such account for a specified period even after the death of one of the joint holders and access to deposit lockers, to survivor(s), in case of death of one of the joint hirers of locker *vis-à-vis* providing relief to such joint holder/joint hirer survivor(s) were discussed with Shri S.S. Tarapore, Chairman of the Committee. The need for continuation of a joint account in the same form, even after the death of one of the joint holders, was felt so as to enable the survivor(s) to credit the amounts payable to all joint holders, even separately, such as interest on Bonds, Dividends, etc. which may be in the pipeline, till the requisite alterations/changes are made with the Authorities/Companies making those payments.

2. The legal position may be summed up as under:

(a) Opening of a bank account and operations thereof by account holders is a matter of contract governed by Section 45 of the Contract Act, 1872;

(b) In the case of joint account holders, depending on whether it is, 'either or survivor', or 'anyone or survivor' etc., that is subject to the mandate given to the banker, a contract contrary to the provisions of Section 45 *ibid*, can be entered into;

(c) On the death of one of the joint holders, the survivor(s) cannot continue the same account, as the contract/mandate given comes to an end.

(d) As regards payment of the amount lying in that account on the date of the death of one of the joint holders, to the survivor(s) joint holder(s), if the account opening form, i.e., the contract, provided for such payment, a banker may make such payments; but to avoid any future risks, a banker would take indemnity from the survivor(s) joint account holders, to whom the payment is made; (in practice, where payments are of large or substantial amounts). Here, a uniform practice to be followed by bankers, can be laid down;

(e) But a banker would get proper, valid discharge for such payment {at (d) above}, only if it is,

(i) against the production of a probated will or Succession Certificate or Letters of Administration or other proper, legal order from a competent Court; or

(ii) in accordance with the provisions of Section 45 ZA of the Banking Regulation Act (various circulars have been issued by DBOD/IBA in this regard, but these cannot give the bankers valid, legal discharge).

(f) Insertion of Section 45 ZA in the Banking Regulation Act, providing for nomination and payment to a nominee, in case of Joint Accounts, was precisely to get over the aforesaid legal provisions {at (e)(i) above) - Section Sub-Sec.(2) and (4) of Section 45 ZA.

At the same time, the Proviso to Sub-Section (4) preserves the right of the heirs of the deceased joint depositor to proceed against the nominee to whom payment is made by a banker.

3. It, however, was pointed out that nomination may not be made in all cases and even if made, nominee may not be accessible and to avoid hardship to survivors and to enable them to defray expenses etc. relating to deceased, it was necessary to allow the survivor(s) joint holder in that account, to receive the amounts, which otherwise are not allowed to be withdrawn by the banks. Practice by banks to advise orally to survivors to operate the joint account even after the death of the one joint holder, without informing the bank, is well known.

For the purpose, a new provision (Sec) would have to be introduced in the Banking Regulation Act, Part III B and even Section 45 ZA may have to be amended/overriden. Simultaneously, the banks would have to be advised to amend format of the account opening form - a proforma can be given to banks for uniformity sake.

4. The <u>exact wording</u> of the Draft Amendment would, however, depend upon the decisions on following questions: <u>whether</u>,

(i) it is necessary to provide for 'survivor' or 'survivors' getting the amount, even when nomination under Section 45 ZA is made and is subsisting;

(ii) in case of more than one survivor, amounts should be paid jointly to them;

(iii) in case of the joint account is allowed to continue (as discussed in para 5 below), the survivor(s) should still be allowed to withdraw the amount (in full or in part) lying in the account as on the date of the death of one of the joint holders;

(iv) In case (iii) is permitted, the subsequent amounts credited to that account, should also be allowed to be withdrawn by the survivor(s) joint holder(s);

(v) Provisions similar to Sub-Sections (B) and (4) of Section 45 ZA should be included.

B. In my view, so as not to disturb the existing legal provisions and to avoid conflict with the provisions of Section 45 ZA, the proposed new Section can provide for payment of amounts lying in the joint account as on the date of death, to survivor(s) joint holders, if,

(i) no nomination is made; or

(ii) where a nomination is made and is subsisting, if the nominee executes a power of attorney in favour of the survivor(s), empowering him/them to receive the amount (conditions of such power of attorney can be prescribed in Rules, e.g., when it is to be executed, after or before the death of the joint holder and in what manner etc. e.g. notarised).

Also the new provision would have to be, "Notwithstanding anything to the contrary contained in Section 45 ZA----------".

If the Committee accepts the above proposals or modifies these proposals and in the light of the decisions taken, draft amendment can be drafted quickly and it will be more or less similar to Section 45 ZA).

5. <u>Continuing the joint accounts as it is, after the death of a joint holder of the account, for a specified period of say 3/6 months.</u>

It was discussed that the need for this is great and has arisen mainly in view of the electronic credits to accounts of joint holders (where account No. is specified in Interest Warrant/Dividend Warrant Cheques. Also, in view of the provisions of Depositories Act where specific account No. is given to DP (elaboration of this problem is necessary to be included in the Preamble and Note on clause in the Amendment Law).

This is a revolutionary idea inasmuch as, by artificial provisions of law, a contract is kept alive on the same terms and conditions, even after death of one of the parties to the contract.

Since accruals in such an account after the death vest in the heirs unless shares, bonds, etc. have been bequeathed by the will of the Testator (deceased account holder) to any other person, or in case of intestate succession, to avoid any complications, no withdrawals at all should be permitted for such amounts credited after the death of one of the joints holders of the account. The legal provision, at best can provide for continuation of the account only for purpose of crediting the amounts to that account, either of the deceased account holder or survivor(s).

Whether in practice it will be feasible and possible for the banks to implement such a legal provision is to be considered by the Committee. But I can answer the question whether such a law could be provided, in the affirmative provided that no withdrawals at all are to be permitted.

It is, however, necessary to check whether such provision would be contrary to any existing law. Such a provision would definitely be contrary to prevailing practice and in case there are any judgements on the subject, it is necessary to check these to avoid any successful challenge to the new provision.

One more complication I can think of is, (if withdrawals are permitted), where heirs of all the joint account holders are not same, e.g., where a joint account is in the names of father, mother and married daughter and after the death of either the father or mother, unfortunately, if during the period, such account is continued and the daughter dies and she has brother/sister as also husband and children, conflicting claims would arise of different heirs.

It may, therefore, be considered whether this remedy will prove beneficial or create further complications.

<u>An alternative suggestion for consideration</u>

Is it not possible to advise DP's, bankers that in case of joint accounts in the name of more than 1 person, only amounts payable to 1st joint account holder should be credited to that account. Similarly, only amounts payable by 1st joint account holder should be debited to that account. In other words, a joint account can be opened, operated by more than one account but credits/debits to that account should be in respect of 1st joint account holder only. Since this will change the existing practice, a provision in law may be necessary for this change.

Even the provision for continuation of joint accounts should be applicable only to such accounts (above).

In other words, accounts can be joint for the purpose of operation of that account and payment to survivor(s) joint account holders of amounts as on the date of the death of the 1st account holder. But after the date of the death, credits (and debits) to such account can only be those payable to or by 1st joint account holder. Whether and how far this will be feasible in practice has to be considered.

6. <u>The 3rd important issue relates</u> to access to safe deposit lockers, to the survivor joint hirer(s) on the death of one of the joint hirers.

Sub-section (4) of Section 45 ZE of Banking Regulation Act provides for only one eventuality, namely, "where locker is hired by two or more persons jointly and under the contract of hire, the locker is to be operated under the joint signatures of two or more of such hirers, such hirers may nominate ----------".

A. In other words, the requirement for applicability of that Section and facility to nominee is only if, the locker is operated under the joint signatures of two or more hirers.

Section 45 ZE has no application to locker hired jointly but operated under 'either' signature of joint hirers.

B. Unlike in the case of 'Joint Deposit Account', the agreement of 'hiring' a locker is governed by the provisions of Transfer of Property Act and Contract Act. The locker is only hired and that is why the relationship of lessor and "lessee".

(I cannot remember the reasons why Section 45 ZE has been worded in this particular manner. Possibly, in practice, there may not be any difficulty where there are only two joint hirers and the agreement provides for 'either' of them to sign and operate that locker. Also such agreement may also be providing for access to 'survivor' joint hirer in case of death of one of the joint hirer. This requires to be checked from agreement forms of different banks).

C. Subject to above comments, prima-facie, I do not find any difficulty in providing by law, that, "on the death of one of the joint hirers of a safe deposit locker, in case where the locker is operated under the signature of any of the hirers, the survivor joint hirer shall be entitled to have access thereto. (The wording of the Draft can be altered/amended and made proper/better). However, such access to the locker after death as above, should be restricted to,

(i) opening it in the presence of the Bank Representative and 2 independent members of the public; (panchas); and

(ii) removing documents only, e.g., share certificates, F.D. Receipts, Title Deeds to the property, will of the deceased or any other documents as may be specified by the Reserve Bank from time to time.

and no jewellery, cash etc. should be allowed to be removed from the locker.

D. The idea behind enactment of such a law being only to enable the survivor joint hirer(s) (where no nomination is made or nominee is not accessible etc.), to do the follow-up work. The above restrictions and also provisions relating to power of attorney where C(ii) above is applicable, should be included in the new provision.

These are necessary to pass the tests of 'reasonable and not arbitrary law'.

7. To sum up, to avoid difficulties being faced by survivor(s) in a joint deposit account, in receiving the amounts in joint accounts, on the death of one of the joint account holders (no provision should be made for single account holder), and also in collection of further amounts due to death of one of the joint account holder as also amounts due to survivor joint account holder(s), because specific account No. has been given to bankers, DP's and others; as also to provide access to survivor joint hirer of locker in case of 2 joint hirers, reasonable law can be enacted. At the same time, rights of the heirs of the deceased joint account holder/hirer have to be preserved. Otherwise such law can be struck down as unreasonable and arbitrary and for extinguishing certain rights, without compensation.

The enactment of any law or any new provision in law has to be tested on the touchstone of its constitutionality and validity.

I am sorry, due to short time being available, I am unable to examine all issues in depth (which is absolutely essential). As such, my suggestion would be to further examine the issues as raised/stated above.

Sd/-
(Smt. K. S. Shere)
19-3-2004

Shri S.S. Tarapore