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"Banker- Customer Relationship in the Era of Internet Banking"

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INTRODUCTION

In the business market, the proliferation of new technology and updated technologies creates new business strategies that enable companies to implement hi-tech methods of communication with their customers. The banking industry is one of the business domains mostly influenced by the emergence of new technologies, particularly the web. Not only have these developments had an impact on internal organizational practices, but they have influenced the way monetary organizations interconnect with their clients. All banks are adjusting to manage their business operations across the internet, as this new medium is bringing tremendous profit to all interested parties.[1] Specifically, the web has accomplished improvements, moving away from physical questions as the business substance to details.[2]

The web-accessible banking service opens up enormous opportunities for customers but also opens up new dangers for the management of the banking-customer relationship. Wiegand[3] states that the relationship between bank and customer is complicated and worrying, and that this issue is eased when the partnership is joined with online innovation. Such procedures have been taken up by a large number of areas to the exceptional needs of banking and financial practice. Statutes, legislative instruments and regulatory directives also superimpose restrictions, rights and responsibilities at all stages of the contract, primarily on grounds of investor, contributor and speculator protection, transparency and reasonableness in banking, financial and monetary policy.[4]

BANKER-CUSTOMER RELATIONSHIP

The partnership between banker and customer is the main and central connection in the banking arena. Contract law deals with the relationship. The bank account is the basis of totally separate contracts which emerge during the lifetime of the banker-customer relationship. The bank account is legally a financial book in which the incoming and outgoing of funds is reported in sequential order as monetary-value credits and debits and ultimately fuses into a net balance that

[1] Carlos Flavian, Miguel Guinaliu, Eduardo Torres, (2006) "How bricks-and-mortar attributes affect online banking adoption", International Journal of Bank Marketing, Vol. 24, pg.406 – 423.
[2] ABU BAKAR MUNIR INTERNET BANKING, Law and Practice, Lexis Nexis, (2004), p. 2.
[3] Horn N, "Legal Aspects of Bank-Customer Relationship in Electronic banking‖, (ed.) Legal Issues in Electronic Banking, (2002) Kluwer Law International, pp.163-186
[4] Apostolos Ath. Gkoutzinis, Internet Banking and the Law in Europe: Regulation, Financial Integration and Electronic commerce, Cambridge University Press, (2010), p. 29.

constitutes a net balance against the bank. In **Foley v. Hill**[5] it was founded that the current account establishes a pure relationship between the bank and the client. The connection between internet banking and client is contract based.

LEGAL ASPECTS OF BANKER-CUSTOMER RELATIONSHIP IN INDIA

The partnership between banker and customer proceeds from a contract. Essentially it's the debtor-creditor relationship. The risk factor associated with the banks issuing loans and advances inevitably gives rise to legal aspects and implications. Legal implications arising from loans and advances are diffused across different statutory agreements and RBI guidelines. Therefore, the visible lawful steps in India concerning loans and advances are addressed as they are followed:

1. BANKING REGULATION ACT, 1949: In so far as Section 20(1) of the Banking Regulation Act[6] is concerned, a bank cannot allow any loans and advances to guarantee its shares. In addition, Section 20(1)[7] sets out the restrictions on loans to directors and companies in which they hold a huge interest. Whereby the loan granted by a banking company is in the context of an undertaking for the grant of the loan, care shall be taken to recover the amount owed to the banking company on the basis of the loan and advance, together with interest owed, if any. No loan or advance payment or part whatsoever shall be made without RBI's prior approval and any recovery without such approval stands invalid. Where such loan has not been repaid to the banking company within the prescribed period, the person who is a director of such a banking company shall be deemed to have vacated his office on that date on the date of expiry of that period. If the Reserve Bank is convinced that it is necessary for the public's best interest or of the depositors, it may decide the policy in relation to the advances to be pursued by the banking companies or by any specific banking business.
2. RESERVE BANK GUIDELINES: Under RBI law, 72 banking companies may give advances to customers against the protection of debentures or securities subject to the underlying conditions.
    a. Purpose of loan: Customers may be given loans against debentures and securities to meet incentives and individual needs, or to subscribe to new or rights issues of stock, debentures, bonds or secondary market transactions, against the protection of the lenders' shares, debentures or bonds.
    b. Amount of advance: Loans against protection of shares , debentures and bonds do not exceed the cap of ten lakhs for each individual if the securities are kept in a physical setting and twenty lakhs for each individual if the securities are kept in a dematerialized form.

[5] (1848) 2 HLC 28, 9 ER 1002
[6] S. 21, Banking Regulation Act, 1949
[7] Id.

3. LIEN: The Indian Contract Act[8] imposes Lien to the Banker. A lien is the right to keep the property of an indebted person until it is released because of the property's retention. A lien is merely a right to possess and is lost when property is lost. Under Section 171 of the Indian Contract Act[9], financiers can in fact keep, without permission, any goods and securities entrusted to them as security for a general equalization of records. This reaches out to all securities held in their hold by the clients as financiers. **Brandao v. Barnett**[10] is the leading case regarding this matter.

IMPACT OF INTERNET BANKING ON BANKER CUSTOMER RELATIONSHIP

The study of Ramsay J. And Smith M[11] focuses on the consequences of internet banking for banking customer relationships. Rising virtualization is one of the challenges of the conventional banking partnership. Baldock R.[12] defines virtualization to mean the elimination of all time, location and process constraints, made possible by the integration of computing, telecommunications and visual media. Naude P. and Holland[13] find that the positive impact of internet banking on the stabilization of the relationship between banks and their clients is due, in essence, to an improvement in the quality of communication that allows for a reciprocal flow of information.

Banks are offering internet banking in two main ways. An established bank with traditional offices can set up a website and provide online banking to its customers as an alternative to its conventional distribution channels. The second option is to establish up a digital, branchless Internet bank. Digital banks may offer their customers the opportunity to make deposits and withdraw funds from ATMs or other remote distribution systems operated by other institutions. Digital banks may give their customers the opportunity to make deposits and withdraw funds from ATMs or other remote distribution networks operated by other institutions. In Lee's words, "there has never been a forum for the distribution of information that requires so little and still provides such unlimited reach with no time or space restrictions."[14] According to Gkoutzinis[15], many of the most apparent aspects of internet financial services is that it involves the use of

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8 S. 171, Indian Contract Act, 1872
9 id.
10 4 (1846) 12 Cl & Fin 787 HL
11 Ramsay J. and Smith M., ―Managing customer channel usage in the Australian banking sector‖, Managerial Auditing Journal, vol. 14, No. 7, (1999), pp. 329-338.
12 Baldock R., ―The virtual bank: four marketing scenarios for the future‖, Journal of Financial Services Marketing, vol. 1, No. 3, (1997), pp. 260-268.
13 Harden G, ―E-banking comes to town: Exploring how traditional UK high street banks are meeting the challenge of technology and virtual relationships‖, Journal of Financial Services Marketing, vol. 6, No.4, June (2002), pp. 323-332.
14 John Jin Lee, "Internet Banking: Some Recent Legal Developments, Current Developments in Monetary and Financial Law,Vol. 2, International Monetary Fund, October 2003, p.29.
15 Apostolos Ath. Gkoutzinis, ―Internet Banking and the Law in Europe: Regulation, Financial Integration and Electronic commerce‖, Cambridge University Press, (2010), P. 29.

internet and technology for the transfer of the customer's mandate and the share of legally meaningful data on transactions in electronic form between the bank and the client. The initiator bank then would transfer the money to the recipient via a Giro Transfer which would act as the originator's agent.[16] The justification, as set out in **Royal Products Ltd v Midland Bank Ltd**[17] is that it does so digitally; the transfer of an authorization to the bank of the original creator shall become the authority and direction of the consumer to the bank, in the sense of a banker-customer arrangement, to move the funds to savings accounts with same bank and other bank.[18]
Internet banking doesn't really mean a significant change in finance and related business, costs and benefits. Since it is a publically available and a highly cost-effective delivery device, it has an impact on the scale and nature of traditional banking risks. In addition, this introduces new types of risk to banks. Identification ('Know Your Customer' Principle) is a crucial feature of the law on money laundering and control of banking services in general. In the context of online banking, the first question arises when a new account is created. Current procedures rely on traditional hard copy content to demonstrate recognition.[19] The challenge will be to ensure that the new methods of authentication are still capable of meeting both the business need for identification and the regulatory need for identification.[20]

'KNOW YOUR CUSTOMER' IN INTERNET BANKING

'Know Your Customer' relates to the necessity for banks and financial institutions to track, inspect, collect and evaluate relevant information about clients (or prospective customers) prior to starting into financial activities with them.[21] These policies are primarily structured not only to deter identity theft, fraud, money laundering and terrorist financing, but also to help control business risks related to lending and investment activities between banks and their customers.[22]
Digital signature innovation is highly improbable to be available to businesses and individuals as a means of verifying identity[23]. Indeed, the notion that banking contracts would be formed over the Internet by relying on digital signature certificates provided by trusted third parties as a

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[16]id.
[17][1981] 2 Lloyd's Rep. 194
[18] Apostolos Ath. Gkoutzinis, ―Internet Banking and the Law in Europe: Regulation, Financial Integration and Electronic commerce, Cambridge University Press, (2010), p.33
[19] Know Your Customer In Banking, Thales, available at, https://www.thalesgroup.com/en/markets/digital-identity-and-security/banking-payment/issuance/id-verification/know-your-customer, last visited, April 25, 2020 at 5:30 PM.
[20] Know Your Customer - Or Not‖, University of Toledo Law Review, Vol. 43, Issue 2 (Winter 2012), Bilali, Genci 43 U. Tol. L. Rev. 319 (2011-2012), pp. 319-366.
[21] Report On Existing Remote On-Boarding Solutions In The Banking Sector: Assessment Of Risks And Associated Mitigating Controls, Including Interoperability Of The Remote Solutions, European Commission's Expert Sub Working Group 1, Electronic Identification And Remote Know Your Customer Processes, available at, https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/report-on-existing-remote-on-boarding-solutions-in-the-banking-sector-december2019_en.pdf, last visited, April 25,2020 at 8:00 PM.
[22] John J. Byrne, Douglas W. Densmore & Jeffery M. Sharp, Examining the Increase in Federal Regulatory Requirements and Penalties: Is Banking Facing Another Troubled Decade?‖, 24 CAP. U. L. REv. 1 (1995).
[23] id.

means of identity authentication seems somewhat premature to the parties without prior communication.[24]

Banks have now developed mechanisms to verify and confirm the identity of the consumer, some of which are largely based on data provided by reliable private entities, such as credit agencies and utility services. The third method of identifying the customer needs the help of another financial institution that has checked the identity of the customer in the past. However, the use of digital signatures in this sense is not a standard practice in banking. It is standard practice in online banking to classify clients via the postal delivery of documents to the bank.[25] The era of the Internet also has had a significant effect on the way customers interact with banks. It is beneficial for banks to be able to attract clients without operating through branch locations.[26]

CONCLUSIONS & RECOMMENDATIONS

Nevertheless, Internet banking also faces new theoretical and regulatory challenges, in particularly the ability of the bank to protect customer information and to protect electronic transactions. If, mostly on one hand, we evaluate the partnership between conventional financial practices and Internet banking, it is clear that Internet banking (and, in general, online banking) and banking services are two alternative methods of financial transactions. These two systems can, please, provide an alternative view as compensating to the availability of sufficient facilities. The first solution eventually leads to the view that modern internet banking is the second best approach compared to traditional banking: personal contact among banks and end-users is removed and the non-verbal dimension of interaction cannot be impeccably reproduced around the Internet and therefore it is more consistent to take a view that stresses the interdependence between conventional banking activities and modern Internet banking approaches and finds them to be separate, though not incompatible, mechanisms for offering financial accommodation.

Indeed Internet banking dramatically changed the way financial services are distributed across boundaries. At first glance, the distribution of internet services doesn't really materialize as a conventional opportunity to arouse controversy. At present, courts and legislators are presented with problems relevant to businesses in the cyber world. Attempting to keep up-to - date reforms, old legislation leaves open ongoing disputes and requires judges and lawyers to explore uncharted waters of legal denervation. Although perpetuating the enforcement of traditional laws that are not responsive to underlying culture alterations that encourage immorality, judicial interference that unintentionally establishes a "new rule" to fix inadequacies is equally inadequate.

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[24] Abuga Mogiti Lilian,An Assessment Of The Banker-Customer Relationship In Internet Banking, May 2014, Published LLB Dissertation, School of Law, University Of Nairobi, on file with Academia.edu
[25] id.
[26] Robert Unikel. 'Bridging the "Trade Secret" Gap: Protecting "Confidential Information" Not Rising to the Level of Trade Secrets, Loyola University Chicago Law Journal. (1998) Vol.29, p 844.

This study suggests that a prompt action to take is to modify existing legislation to address the novel challenges raised by e-commerce. Permissible timelines arising from e-commerce may be analogized with problems already resolved within the current regulatory framework. However, impactful changes to the legislative structure will be required to ensure that perhaps the legislation identifies e-commerce's authenticity while remaining rooted in the co - established judicial and legislative sense.

RECOMMENDATIONS

ENHANCING INTERNET BANKING SECURITY

Possible results, albeit costly, include the use of specialized encryption. The biggest problem with internet banking is that suspicious schemes are used by consumers to obtain access to internet banking facilities. Trojan horse key loggers will skull on a customer's own device gathering sensitive information that can be used for illegal activities later. In recognition of its operating system offerings and its Generation Secure Computing Base (NGSCB) software, Microsoft Corporation has again recognized this problem.

The project's home website limpidly identifies this dilemma and states that the NGSCB project will provide "the ability to bulwark data through the computer with a secure path from the keyboard". If the banks could efficiently and cost-effectively deploy a clever engineering system across their respective customers that does not depend on the key board and was designed to prevent the sudden lodging of Trojan horse key logger technology, then secure internet banking could be achieved, as outlined in the proposals of Microsoft Corporation (NGSCB).

CUSTOMER AUTHENTICATION

It proposed a two-pronged strategy. In the first instance, by establishing self-regulation in industry as guidance for banks, regulators won't have to force banks to cooperate with information requests. More clear guidelines to track or determine cyber-laundering transactions would come from the industry itself. Secondly, regulators may deal with these self-regulatory rules through their power to establish conditions for the approval of product expansion banking applications. The banks could take a number of actions that could significantly manage the current exposure. Banks should apply mutual authentication practices. With any modern technology, there are several dangers, whether a commercial customer with a remote deposit has individual access or solely a retail customer who uses the accommodation for a business place of residence. Institutions that offer internet banking need a solid customer contract and a comprehensive activity monitoring system and useful − Know Your Customer Program are good bedrocks against noticeable abuse. One good rule to apply is to not offer this product to an incipient customer. Education is very significant part of the aim of any bank to bulwark its customers better. Training is one aspect of a multi-faceted solution to better customer service and to safer internet banking. Anyways, it should be to those customers' history and experience. The educational factor must consider all strata within society and one remedy does not necessarily fit all structure within society.