

Conference proceedings

ICSNS VII - 2020

**SEVENTH INTERNATIONAL CONFERENCE ON:
"SOCIAL AND NATURAL SCIENCES – GLOBAL CHALLENGE 2020"**

9 March, 2020

Vienna

Organized by

International Institute for Private- Commercial- and Competition Law (Austria)

in Partnership with

**Institute of History and Political Science of the University of Białystok (Poland)
and School of American Law (Greece)**

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Edited by: Dr. Lena Hoffman

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Banking contracts, legal nature, and their elements

Andrea Gjoka

Abstract

This article aims to provide an overview of banking contracts, their legal nature and the elements that these contracts contain.

Subjects, facilities, and the Terms and Conditions that enable the implementation of these contracts are treated, the unfair conditions that banks and various financial institutions provide in their contracts, etc.

Following them, this paper focuses on the treatment of some of the contracts provided for in Albanian legislation and the Civil Code of the Republic of Albania.

Also, in conclusion, this paper considers the establishment and development of Forwarding Contracts, which are one of the newest contracts in Albanian legislation and the extent to which the market for these contracts is to be further developed in Albania.

Keywords: Bank Contracts, Terms, and Conditions, Bank Accounts, Bank Deposits, Bank Advances, Forward Contracts.

Introduction

Banks provide a service to a client and like any service, some conditions are consistent with the bank and the client. Banking contracts are set up so that the client and the bank are aware of each other's requirements, expectations, and obligations. The characteristic of these contracts lies in the fact that they are legally binding.

Banking contracts are the legal tool that puts the gears of a bank into operation and gives life to their business. In itself, a bank contract is no more than an obligation agreed between the parties, whereby the bank offers sums of money in favor of the claimant (the debtor) against a reward consisting in the settlement of the given value plus interest.

Banking contracts are usually set out in a standard format, and the terms and conditions apply to all parties. There may be differences in some contracts such as differences between a mortgage agreement or a basic bank account. But each of these contracts will have certain terms and conditions within them that will apply to all customers.

A banking contract is a two-way legal action, where the rights and obligations are set by the parties themselves and encompassing all the valid elements of a contract.¹ The relationship between the bank and the client is contractual, mainly the debtor-creditor (bank/client) and creditor-debtor (bank/client) relationship, depending on the type of deposit or loan contract signature that distinguishes the bank's relationship with the client.

Banking contract entities

Banking entities are the key actors that play the most important role in a contract,

¹ Kodi Civil, ligji nr.7858. (1994, Korrik 29). *Kodi Civil i Republikës së Shqipërisë*, neni 663

where on one hand there is always the financial institution, the bank and the client on the other. But in everyday practice, the term banker is also used, so it is important to distinguish "bank" from "banker", especially when discussing the rights and obligations between the parties to the banking contract.²

The banker is the person who acts on behalf of the bank.

So with the banker we mean the person who performs banking activity on behalf of the bank ie its employees but also the person who manages and manages the bank, or even the owner of the bank's shares, eg the influential shareholder. Finally, we must state that the bank is a subject party to the banking contract which is represented by the "banker" who provides the bank with the banking service to the client.

The other entity in a bank contract is the customer, who is the user of the services provided by the bank, which may include the customer who, being a user of banking and financial services, enjoys the status of a banking client, but who it is protected by law no. 9902, dated 17.04.2008 as amended by Law no. 10444, dated 14.07.2011 "On Consumer Protection", which does not end here but is reinforced by the Regulation "On consumer credit and mortgage lending to households", approved by Decision No. 05, dated 11.02.2009 of the Bank's Supervisory Council. of Albania.³

For a person to be eligible to enter into a bank contract, he must have reached the legal age of the relevant legal entity where Rep. of Albania is 18 years old, but there are places where the age can be 16, the subject must have full ability to act.

In our case section, 7 of the CC stipulates that a minor who has attained the age of 14 may only perform legal action with the prior consent of his legal representative. The minor may deposit his savings and is entitled to dispose of such deposits himself, may open a bank account under the Civil Code it may be a deposit bank account, subject to the approval of his legal representatives, eg parents.

The property of a minor under 14 years of age shall be administered by the parents in his interest and shall be involved in the unusual management of the property of the minor and any movement of its benefits will require the consent of both spouses or in the absence of one's will. , will be the court which will then determine always based on the best interests of the minor.

Content and object of the banking contract

The rights and obligations between the client and the bank begin with the client signing the contract for the opening of a bank account, which may be a deposit or loan, stating his monetary income which is subsequently processed and administered by the bank under conditions specified in the contract.

Terms and Conditions

The terms and conditions of each bank contract will represent the legal basis for how these contracts will be implemented on the ground. Usually, if a client opens an account, they will sign a contract and a bank representative will read through the contract with the client.⁴

² Adam J.H. (1985). *Longman Concise Dictionary of Business English*, Yourk Press, page 34.

³ Ligji nr.9662, Për Bankat në Republikën e Shqipërisë. (2006, Dhjetor 18). *Neni 24 i ligjit nr.9662*.

⁴ Commercial Bank. (2016). Terms and Conditions for Retail Accounts. Retrieved from http://www.cbq.qa/EN/Advice-and-information/Information-library/Terms-and-Conditions/Documents/toc_retail_tc_english_09042016.pdf

Problems can be encountered by not fully read the terms and conditions of the contract. For a contract to be legally enforceable, the terms and conditions must be read and understood by the client. But even if the contract is not fully read and most customers will not waste time doing so, it may be the terms and conditions of the contract that may be considered unfair and unenforceable.⁵

The terms and conditions identify the rights and responsibilities of each party. This may include general and special conditions. A general condition is one that is common and is included in most contracts. Specific conditions are those that are specific to that contract, ie payments, price changes, penalties, etc.⁶

When referring to terms and conditions, we do not refer to the general contractor. Instead, it refers to certain legal terms within the contract or any type of contract document that is non-negotiable.

When referring to an actual contract, it does not refer to the terms and conditions identified therein. It rather refers to the general contract or legal relationship between the parties entering into a binding legal agreement.

Bank account

A bank account is a financial instrument issued by the bank to serve and answer a client's interests. A bank account is an account through which the client and the bank establish their legal relationship. This relationship comes to life by signing a contract, which is fluid and changes on a case-by-case basis, where the parties determine whether they are debtors or creditors of each other. such as current account, credit, deposit, the budget account, etc. To open a bank account, the bank identifies the customer, by completing the standard forms prepared by the bank itself, and for identifying the customer, the bank requires identification documents. The bank account consists of several elements, with the most important role being IBAN.

Otherwise known as the International Bank Account Number (IBAN) is an internationally agreed system for identifying bank accounts across national borders to facilitate the communication and processing of cross-border transactions with a reduced risk of transcription errors. Initially, IBAN was approved by the European Committee on Banking Standards (ECBS), and later as an international standard according to ISO 13616: 1997.⁷ The current standard is ISO 13616: 2007, which indicates SWIFT as a formal recorder. Originally developed to facilitate payments within the European Union, it has been implemented by most European countries and numerous countries in other parts of the world, mainly in the Middle East and the Caribbean. As of February 2016, 69 countries used the IBAN numbering system.⁸ IBAN contains up to 34 alphanumeric characters that include:

a.) a country code;

b.) two control digits; and a number that includes the country's bank account number,

⁵ Crystal, Garry. (2010 December 18). Banking Contracts. Retrieved from <http://www.contractsandagreemnts.co.uk/banking.html>

⁶ What are Terms and Conditions of a Contract: <https://www.upcounsel.com/what-are-terms-and-conditions-of-a-contract>

⁷ Sunell, John. (2018, July 29). Structuring Swift Code. Retrieved from <https://www.swiftbysundell.com/articles/structuring-swift-code/>

⁸ The Society for Worldwide Interbank Financial Telecommunication SCRL. (2016, May). IBAN Registry, [PDF file]. Retrieved from https://www.swift.com/sites/default/files/resources/swift_standards_ibanregistry.pdf

c.) Branch identifier and possible course information.

Check figures enable a bank account number check to confirm its integrity before submitting a transaction.⁹

Before the launch of IBAN, various national standards for bank account identification (banks, branches, routing codes and account numbers) were unclear about the activity of some of their users. This resulted in a lack of necessary payment management information. Direction information as defined by ISO 9362 (otherwise known as Business Identification Codes (BIC Code), SWIFT ID or SWIFT Code and SWIFT-BIC) does not require a specific transaction format so identifying accounts and transaction types left to the transaction partner agreements. Control numbers were not always contained, so transcription errors were not visible and this led to an inability for one to verify the information before sending payment. and receiving and often to intermediate management banks.¹⁰

IBAN imposes a flexible, orderly format to enable account identification and contains validation information avoiding transcription errors. It carries all the information needed to get a payment from one bank to another wherever it is, contains key bank account details such as country codes, branch codes (known as the UK and Irish listing codes) and account numbers, and contains control figures which can be validated at source by a single standard procedure. Where used, IBAN reduced trans-national money transfer errors to below 0.1% of total payments.¹¹

Some of the types of bank accounts

1. Check or checking account

Checks or checking accounts are transactional bank accounts that provide more services and functions than a normal savings account. These accounts are characterized by higher monthly fees, but they include electronic transactions, internet, and mobile access, and some even have free cash withdrawals and deposits included each month.

Except for Capitec's Global One account, none of the other accounts / current accounts pay any interest on the positive balances. Most of these accounts offer overdrafts and even credit cards. The current account you can apply for is based on your income, but you can also apply for products in the lower-income categories.

2. Credit Card

A credit card is a credit line created to allow the card used to make payments. The money received to make payments is not taken from his bank account but is paid directly by the bank and must then be repaid by the user. If payment is not made after 30 days, the user must pay interest.¹²

⁹ Joseph, Kirtland. (2001). *Identification Numbers and Check Digit Schemes, Classroom Resource Materials. Mathematical Association of America.* page 4–6. Retrieved from https://books.google.al/books?id=npTxORxmLosC&pg=PA4&redir_esc=y

¹⁰ Central Bank of Cyprus. (2003, September). *Handbook for the Standardisation and Application of Basic Bank Account Number (BBAN) in Cyprus, [PDF file].* Retrieved from http://www.centralbank.gov.cy/media/pdf/IBANMANUAL_EN.pdf

¹¹ European Committee for Banking Standards. (2003, August). *IBAN: International Bank Account Number.* Retrieved from <https://www.cnb.cz/cs/platebni-styk/iban/iban-mezinarodni-format-cisla-uctu/>

¹² Martin, Andrew. (2010, January 4). *How Visa, Using Card Fees, Dominates a Market.* Retrieved from <https://www.nytimes.com/2010/01/05/your-money/credit-and-debit-cards/05visa.html?em=&pagewanted=all&mtref=undefined&gwh=81853BB65EADE0545DC26582083C053F&gwt=pay&>

There are several types of credit cards:

- Standard cards simply extend a line of credit to their users.
- Reward cards offer cash, travel points or other benefits to customers.
- Secured credit cards require an initial deposit of money held by the issuer as collateral.
- Charging cards have no predetermined spending limits, provided they do not allow unpaid balances to go from month to month.¹³

3. Savings Account

A savings account is a deposit account held in a retail bank that pays interest but cannot be used directly as money in the strict sense of currency (for example, writing a check). The savings account allows the client to set aside one part of their liquid assets, earning a monetary return on the percentage.

Their types are transaction accounts (commonly known as "checking" (US) or "current" (UK) accounts, money market accounts, and time deposits.

In the U.S., the term "savings deposit" includes a deposit or an account that meets the requirements of Sec. 204.2 (d), (1) of Regulation D (FRB). The depositor is allowed to make up to 6 pre-authorized transfers or withdrawals (except for withdrawals via an automatic machine) per month or a declaration cycle of at least four weeks.

There is no regulation limiting the number of deposits in the account. Rule D violations often include a service charge, usually \$ 10 per transaction, or even an account downgrading to a checking account. A savings account linked to a checking account at the same financial institution can help prevent overdraft fees and reduce bank costs.¹⁴

4. Mzansi account

This type of account is created for clients who deposit or withdraw money on an irregular basis and have no regular income. Bank fees, interest rates and qualifying criteria are usually low. Withdrawals and deposits can be made with your debit card and your funds can be easily accessed.

The Mzansi Account is a low-income transitional bank account developed following the commitments of the South African Financial Sector Card. The Financial Sector enables banks to develop and make the banking services of the nation more accessible and, specifically, to increase the availability of banking services for all communities.¹⁵

The Mzansi Account is the result of South Africa's leading banks collectively working to provide a standard for new bank accounts that are affordable, available and tailored to the specific needs of previously unregistered communities. Each bank has set its competitive prices. Collaboration between banks has made it possible for users of these accounts to use them at any of the participating ATMs at no additional cost, effectively establishing a network of over ten thousand ATMs across the country and

[assetType=REGIWALL](#)

¹³ Loftsgordon, Amy and O'Neill, Cara. (2019, July). Solve Your Money Troubles. Different types of Credit & Debit Cards. Retrieved from <https://store.nolo.com/products/solve-your-money-troubles-mt.html>

¹⁴ Kenton, Will. (2019, April 20). Banking and Security Industry Committee (Basic). Retrieved from <https://www.investopedia.com/terms/b/banking-and-securities-industry-committee-basic.asp>

¹⁵ The Banking Association South Africa. (2004, October 15). Mzansi will put Full Service Banking with 15km of the Vast Majority of South Africans. Retrieved from <https://www.banking.org.za/documents/2004/OCTOBER/MzansiAccount.asp>

expanding the banking platform to the community bigger. This has been augmented by the sales-to-sales functionality in the market.

The Mzansi account is issued by the following South African banks:

- Absa Group Limited
- FNB
- Nedcor
- Standard Bank
- Postbank

Types of banking contracts in the Republic of Albania

Bank Deposit Contract

A bank deposit is a contract whereby the entity deposits "a sum of money with a bank, which subsequently acquires ownership thereof, being obliged to convert to the same type of currency upon the expiry of the prescribed period or at the request of the bank. depositors, having regard to the notice period specified by the parties or by banking practice ". Article 1024 of our Civil Code does not explicitly define bank deposits but presents and identifies its features.

The legal nature of the bank deposit contract and its elements

Bank deposit is the most important passive activity that the bank offers, as it is the main means through which the bank carries out its activity.

The object of this contract may be money (money) or securities in administration, as defined in Article 1027 of the Civil Code "Bank receiving and accepting deposits of securities in administration".¹⁶

Subject to a deposit contract are two or more parties, on the one hand there is always the financial institution, the bank, which is a legal entity that conducts banking activities under a license granted by the Bank of Albania in the form of an anonymous trading company and by on the other hand any natural or legal entity with full legal capacity to act or its representative, as well as the legal representative of the natural person with limited legal capacity to act or not.

The number of participating entities is not always limited, so if in one party such as a bank, the law does not allow the same deposit to be opened in several banks, in the other contracting party we may have two or more parties, in which case to form what is otherwise called a joint bank deposit, which we will deal more broadly with the types of bank deposits.

Content of the bank deposit contract:

- ⊙ The depositor is granted the right to provide the bank with money or management securities, transferring ownership thereof,
- ⊙ The depositor must sign a contract with the bank, respecting the respective rights and obligations of the parties,
- ⊙ If the contract is time-bound, the depositor must adhere to the terms outlined in the contract,
- ⊙ The bank is obliged to accept the amount of money thus opening the bank deposit account,
- ⊙ At the end of the term of the contract, the bank is obliged to return the money to the depositor,

¹⁶ Kodi Civil, *KREU XVIII, KONTRATAT BANKARE, Neni 1027*

© The bank is obliged to pay the depositor bank interest if the parties have agreed to do so.

Bank deposit contract features, their classifications

1. A bank deposit is, on the whole, a two-way legal relationship.
2. A bank deposit contract is a real contract, so it is considered to be concluded at the time of depositing the money in the bank.
3. A deposit contract is a formal contract because even in cases where the bank does not issue a savings deposit book, the bank must provide the depositor with a letter confirming the deposit made by the depositor with the bank on behalf of the bank deposit.

Bank deposit classifications:

- a) We divide bank deposit contracts into *term and non-term deposits as required*.
- b) A time deposit is a bank deposit contract where the parties have clearly defined the terms that this contract will extend.
- c) The term deposit is classified into two subdivisions:
- d) Indefinite and unannounced deposits, in this case, the depositor has the right to request from the bank at any time the amount of money deposited therein and the latter is obliged to immediately fulfill this request.
- e) Indefinite-term deposit, with the notice, the depositor is obliged at any time to request the withdrawal of money placed in the deposit, against the observance of a warning term, which is usually sent within 10-15 days.
- f) Depending on the *number of depositors*, we divide the deposit contracts into deposits with one depositor or with several depositors.
- g) A multi-person bank deposit can be simple or solid, it is simple in cases where the monetary amount is proportionally shared with the depositors and the operations on such deposits are made only if they are all persons.
- h) A solid deposit is in the case where each depositor can perform its operations.
- i) The deposit in the interest of a third party may be in the name of the third party itself or the name of the person depositing them, but in favor of a third party.
- j) By the *form of deposit*, we have *simple deposits* and *savings deposits*.
- k) Simple deposits consist of the deposit of a sum of money, which is returned to the depositor upon the latter's submission to the bank of the bank document issued at the time of deposit of the money.
- l) The savings deposit is documented by the savings deposit booklet and is often accompanied by the benefit of bank interest for the duration of the deposit.
- m) By *interest*, we divide bank deposits into *interest-free* and *interest-bearing deposits*.
- n) An interest-bearing deposit is mainly a fixed-term deposit, where the parties determine the interest rate that the depositor will receive for the time he/she will deposit the money specified in the contract.
- o) Interest-free deposits, indefinite-term deposits, but may also be fixed-term, except that it is characteristic that the bank does not pay interest-bearing depositors for the cash holding period.

Documenting bank deposits.

If the bank issues a savings deposit book, the deposits and withdrawals must be

recorded in the booklet. Notes on the booklet signed by the bank clerk assigned to it service, constitute complete proof between the bank and the depositor. The deposit card serves to prove the existence of a bank deposit contract and to certify all the transactions performed in the bank deposit.

Article 1026 of the Criminal Code stipulates that if the savings card is payable to the bearer the bank that willfully and without grave fault performs the service in front of the possessor, shall not be liable if this is not the depositor. The same provision shall apply where the deposit card payable to the holder has been issued on behalf of a particular person. The provisions of special laws are excluded.

Termination of the bank deposit contract.

The deposit contract shall, where the depositor withdraws the entire amount deposited, order the transfer of the deposit to another account within the same bank, or to another bank, provided that he submits the current bank card.

In the event of the death of the depositor, the right of restitution is transferred to the heirs, where provided by the Civil Code in more detail.

Banking service and insurance tapes

The activity of lending institutions, banks, in addition to other banking activities, is also oriented towards "providing services in favor of the clientele". In this activity, it does not perform its primary role but assists the clients in carrying out certain operations, through which it generates profits in the form of mediation and commission rates, thereby favoring its clients.

Security tape

Among the classic functions of banks is the provision of security tapes. Physical and material security tape is a safe place within the bank premises that is presented in the form of a double insured safe deposit box; firstly, secured because it is inside the bank being stored locally and secondly, secured because of the nature of the tape itself.

Their object is to take over the obligation of the bank to keep these tapes in a safe place, enabling the client to deposit any type of individually defined item which is not dangerous for the security of the bank.

Article 1028 of the CC provides that the Bank, for the service of insurance cassettes, is liable to the user for the solvency, safeguarding of the premises and for the inviolability of the cassette, except in any case of loss. It is only natural that with the verification of any fatal case, the bank will not be responsible for the items left in the insurance tape. This constitutes one of the cases of extinguishing the contractual obligation, such as the occurrence of a severe earthquake that destroys the bank building, or the eruption of a volcano, etc.

Insurance tapes are remuneration contracts, as they relate to the obligation of the customer to pay a premium for the service provided. When the tape is in the name of several persons, its opening is known to each of them, unless otherwise agreed.

In the event of the death of the sole holder or one of these holders, the receiving bank may allow the tape to be opened with the agreement of all those entitled or in the manner prescribed by the court (Article 1029).

When the contract has expired, after notifying all the cassette holders or six months after the expiry date, it may request the court to authorize the cassette to open. Notification can also be made via confirmed confirmation mail. The opening shall take place in the presence of a notary public, taking into account any measures the court deems necessary.

Bank Advance

Another important contract is that provided for in Articles 1035-1040 of the Civil Code, which refers to "Bank Advance". We can say that bank advance is a type of credit opening, which is precisely the type of guarantee offered, which is the pledge over securities or goods. Thus in practice, for example, the producer of goods awaiting the finding of buyers may give the goods or securities representing them (such as evidence of a warehouse deposit), at the bank's discretion and receive bank advance payments. As a general rule, it is accepted that the bank makes an advance, giving the person a document in which the goods or securities pledged are individualized.¹⁷

Rights and obligations arising from a bank advance contract.

Bank Rights:

1. Pawn pledging throughout the loan period.
2. Sale of pledged items, in case the debtor is unable to fulfill the obligation.
3. To take precedence over other creditors from the proceeds of the foreclosed sale until repayment of the loan and other remuneration.

Bank liabilities:

1. Security of pledged items on behalf of the client.¹⁸
2. To return the pledged item to the debtor at the moment of extinguishing the debt.

Customer Obligations:

1. Payment of expenses for securing and storing pledged items.
2. Repayment of borrowed amounts and remuneration belonging to the bank.
3. Fulfillment of guarantees when the value of the pledge, compared to its initial value, decreases beyond the specified limit.

Forms of down payment :

a) Advance payment with a fixed term is also called simple advance which contains: The obligation of the bank to pay the client the entire amount at the moment of entering into the contract.

The obligation of the credited customer to return partially or completely within the specified term.

b) Fixed expiration down payment assumes the fact that the customer has special and immediate financial needs. In most cases, this type of advance is made by agricultural enterprises and private owners who leave their goods or securities

¹⁷ Kodi Civil, Neni 1035 ↘ Në paradhënien bankare me pengun mbi titujt ose mbi mallrat, banka nuk mund të disponojë mbi sendet për të cilat është vënë pengun, në qoftë se ka lëshuar një dokument në të cilin këto sende janë individualizuar. Marrëveshja e kundërt duhet të provohet me shkresë ↘.

¹⁸ Kodi Civil, Neni 1036 ↘ Banka duhet të kujdeset për llogari të kontraktuesit për siguriminë mallrave të lëna peng nëqoftëse, për nga vetë natyra, vlera dhe vendndodhja e tyre siguri i përgjigjet përkujdesjeve të zakonshme ↘.

pledged pending sale.

c) The second type of advance refers respectively to an advance with an indefinite expiration date or as otherwise called a current account advance.

It is characterized by the commitment of the bank to make available to the client the amount of the advance, while the creditor can withdraw it according to his own needs, but also to make the appropriate repayments, thus enabling the use of the established facilities.

Current Account

A current account is a contract whereby the bank, under its terms and limits, makes debit or credit payments on behalf of the client on its direct or indirect orders.¹⁹

Article 1041 of the Civil Code states that: When the deposit, credit repayment or other banking transactions are arranged in the Current Account, the client may at any time dispose of the amounts resulting from his credit, except when the term reserve is provided in the agreement. By analyzing this article we can say how banking transactions with current accounts can be deposits, credit opening, bank advances. These are all characterized by the fact that the bank commits itself to the availability of funds and the provision of cashier service on behalf of the client.

On the other hand, Article 1042 provides that: If there are some relationships or accounts between the bank and the client, even in different currencies, the active and passive balances are mutually compensated, unless otherwise agreed. The current account is regarded as the arrangement whereby the mutual rights and obligations created between the parties are converted into credit or debit items. The mutual liabilities of the parties are settled through compensation, while the temporary balance of the current account represents an accounting situation at a given moment. So it is an indicator that points out which of the parties is a creditor to the other.

Bank discount

The Civil Code states: "Bank discount is the contract whereby the bank, applying the interest, gives the client the value of a loan to third parties, which has not yet expired, by ceding".²⁰ The bank's participation in the cash flow is also realized through contracts that, in the broadest sense, perform the function of credit.

The discount differs from the down payment on the loan, from the fact that the client's loan instead of being mortgaged to the bank as a guarantee of the obligation to repay the loan amount is sold to the client, which gives the client the quality of the loan price. sales, a lot less than the face value of the loan.

The bank discount is aimed at transferring credit.

The bank, for its part, may use the discounted loan to discount it with another bank, thereby causing a so-called "reconversion".

Bills discount

Article 1048 of the Civil Code refers to discounts on bills of exchange: "If the discount is made before the bill of exchange or the bank check, the bank, in case of non-payment, besides the rights deriving from the title, enjoys the right to repay the advance".

¹⁹ Av. Neritan I. Kallfa. (2002). Aspekte juridike të veprimtarisë bankare, Studio Legale Tonucci, Faqe,100.

²⁰ Kodi Civil. Neni 1047 i Kodit Civil

The provisions of the special laws relating to the check and the bill of exchange are maintained. Article 1049 further states that "The bank having discounted the documented bills of exchange shall enjoy the same privilege over the goods as the principal has while the representative title is in his possession".

A bill of exchange is security by which its issuer is obliged to pay a person the amount of money that has been issued in the bill or to order another person to do so.

A check is security by which its issuer orders the bank holding its funds and has a prior agreement that it may dispose of the check to make payment to the person whose name is indicated. in Czech, at his discretion or his behest.

For the bank, discounting represents one of the most liked actions because:

1. The investment period for funds is quite short.
2. The risk is broken due to the separation of credit, trusted debtors and the one who guarantees them.
3. The bank holds an executive title.
4. There are facilities for the demobilization of blocked vehicles.

Transfer characteristics and effects

The most summarized qualities of billboards are the boundaries, transfer characteristics and transfer effects.

1- As signatories of the bills are its signatories. These may be major liabilities as they have direct payment orientation and background liabilities.

2- Shooting or transfer is the conveyance of ownership and title ownership. He may be in white and this case only has the signature of the shooter without indicating the latter and complete which means that in addition to the signature of the shooter there is some information about him.

3-The three effects of the shooting are:

- Displacement effects.
- Guarantee effect.
- Legitimate effects

The most important element of the bill is the payment of the bill. Payment of the bill of lading may not be required in any case, it is required on the day and time of its arrival for payment. The payment of the bill of exchange must first be made by the principal debtor of the bill. Payment shall be made to the authorized holder of the bill of exchange at the time of its receipt for payment. If the principal debtor refuses to make the payment of the bill of exchange, the holder of the bill of exchange is obliged to file an objection for non-payment.

The second paragraph of Article 1048 of the Civil Code stipulates that the provisions of the special laws relating to the check and the bill of exchange are maintained. Referring to the meaning of this article, it is of particular importance to determine the moment of maturity of the bill. It is only at this point that the bank is given the right to demand payment and with actions such as the objection and the subsequent judicial action.²¹ The technical norms for determining the maturity of the bill of exchange are set out in the law "On the bill of exchange and pledge", which in its Article 33 provides as follows:

A bill of exchange may be designated as payable:

²¹ Ligji nr 8077, Për Kambialin dhe Premtim-Pagesën. 1996, February 2), KREU 1, EMËRTIMI DHE FORMA E PREMTIM PAGESËS, Neni 80, [PDF file]. Retrieved from <https://aab.al/wp-content/uploads/2017/06/LigjiperKambialin.pdf>

1. At first glance,
2. At a fixed time after sight,
3. At a fixed time after the date,
4. On a fixed date.

Forward Contracts

"Forward contract" is the private agreement between two parties that gives the buyer the obligation to buy an asset and the seller an obligation to sell an asset, at a fixed price at a future moment.

Assets reflected in forwarding contracts include agricultural commodities, precious metals, electricity, oil, and natural gas, but foreign currencies and financial instruments are also part of today's future markets including, exchange rates, interest rates. etc.²²

Forward Contracts in Albania

The contracts commonly used in the financial market of our country are exchange rate contracts. Despite the existence of this market, this market is still young and non-liquid and the demand for such products has been low.

Relying on the fact that we are an importing country, these contracts would serve as a scoop for importers who have scheduled payment of foreign currency invoices for a later date.²³

Looking at it from the banks' point of view, there is a risk that a forward contract will not be executed at the maturity date, where we would face losses that would result from the forward exchange rate difference agreed at the exchange rate at the moment of performing the transaction. This risk can be avoided by requiring a guarantee that will serve as collateral to protect the bank in the event of default.²⁴

Conclusions

Unfair Terms

There is a common assumption that, in the business world, contracts must be respected and that consumers are bound and have no say in the terms of a contract. But the law can override the terms and conditions of a contract if the contract itself eliminates client rights and banking contracts are no different concerning this rule.

We will be subject to unfair terms if the contracts provide that:

- a.) Exclude or limit the legal liability of a seller or supplier in the event of the death of a customer or personal injury to the latter resulting from the act or omission of that seller or supplier;
- b.) Inappropriately excluding or restricting the consumer's legal rights with respect to the seller or supplier or other party in the event of full or partial failure by the seller or supplier of any contractual obligation, including the possibility of offsetting a debt

²² Adkins, Troy. (2018, June 19). Forward Contracts: The Foundation Of All Derivatives. Retrieved from <https://www.investopedia.com/articles/active-trading/102313/why-forward-contracts-are-foundation-all-derivatives.asp>

²³ Xhajanka, Etleva. (2016, May 27). Kontratat Forward: Pëdorimi i tyre në bankingun shqiptar. Retrieved from <http://arkiva.ata.gov.al:8080/kontrat-at-forward-perdorimi-i-tyre-ne-bankingun-shqiptar/>

²⁴ Shoqata Shqiptare e Bankave. (2016, April). Dixhitalizimi, [PDF file]. Retrieved from https://aab.al/wp-content/uploads/2017/05/Bankieri_19_alb.pdf

owed to the seller or supplier against any claims the customer may have against it. When the terms and conditions unreasonably attempt to exclude or limit a firm's liability for breach of contract or unfairly balance the balance of a consumer contract too far in favor of the firm. Customers would not be bound by a contract if they did not freely agree to enter into it and the firm was notified of this. Examples include situations where the customer lacks the mental capacity to understand the nature of the contract or when it is known that a customer is under pressure or has an undue influence in accepting responsibility for another person's debts.

Terms that are not part of the contract. To apply under the contract, a term must first be incorporated within it. In some cases, such terms or clauses are put in place that attempts to extend deadlines after the contract is completed, or to conclude terms that may not be reasonable to do with what the contract says.

Bank fees

In many cases, clients feel that they have been treated unfairly for bank payments. Payments are one of the most common reasons customer complaints are addressed. Banks, on the other hand, have often said that these charges, given the conditions are set out in the contract. However, there has been a great deal of controversy over these specific conditions to the extent that they have been called unfair. The fact that thousands of bank customers have applied and received penalty reimbursements will, in part, appear to be an acceptance of these unfair terms by the banks themselves. Banks themselves cannot accept that the terms are unfair and will refund certain payments using the term "goodwill payments". The issue of bank payments is now undergoing an ongoing investigation, and the result may see a complete change in some banking terms and conditions regarding penalty charges.

1. Social plan
2. Academic plan
3. Research plan
4. Information plan

For the Forward Contracts market to develop in Albania, several elements of market infrastructure, related to supply factors, need to be improved, and the demand for the following types of products further promoted:

1. Further development of the money market as a necessary condition. This is because, to model, the price of a forward contract, the financial institutions that create this market rely on current exchange rates and interest rates, which must match the maturity of the term contract. To have perfect protection these interest rates should closely represent the reality of borrowing or lending of funds in the interbank market. Current trading in the money market is focused on short terms (up to a week), which makes it difficult to set a fully hedged price on a forward contract. Further development of the collateralized market through Repo agreements, extending beyond the one-week deadline, as well as the creation of a market for exchange rate swaps, which are also derivative products but used for management. of liquidity, are two necessary elements in improving the aforementioned infrastructure. To facilitate the development of the interbank market, the AAB Treasury Committee has prepared a Type-A Contract, reflecting international best practices, which would facilitate not only the development of the time-based, exchange-traded market currency but can also be used for other types of financial derivatives, such as exchange rate swaps, etc.

2. Promoting these products, as well as educating exposed customers about the importance of protecting against various risks, such as exchange rate risk, would be another very important element that would stimulate demand for these products. product type. This would bring benefits to all parties: for banks, it would be an additional opportunity to expand the business and increase profits, while providing an additional opportunity for clients to hedge against unexpected exchange rate movements. exchange. Increasing trading volumes would reduce margins, making these products more attractive to all market participants.

Providing protection clients with a forward contract would counteract the exchange rate effect, thereby giving up any potential gains that could be made if the exchange rate moved in their favor. The decision to defend or not is a decision that requires an in-depth judgment, which includes not only risk analysis, including the ability and willingness to take the risk, but also the desire to profit from exchange rate movements by actors. exposed.

The existence and improvement of a financial market, which would enable all market players to perform financial transactions that help remove uncertainty, would be a step towards further developing the financial market in general.

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lëna peng nëqoftëse, për nga vetë natyra, vlera dhe vendndodhja e tyre sigurimi i përgjigjet përkuqdesjeve të zakonshme”.

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