National Banking Laws Governing the Rights and Responsibilities of Non-resident Depositors

I. Introduction

Innovation within the financial services industry has not been limited to the highly-publicized banking law changes in recent years in the United States. Throughout the world, important developments are occurring in the banking industry that will prove significant to international business. Some of these changes take the form of fine-tuning already well-developed banking systems and others represent wholesale restructuring of national banking systems. Lying between the technical and the dramatic are national government decisions to authorize the creation of new banks to be owned for the first time by foreign interests, and the creation of dispute settlement committees to assist in the resolution of disagreements between depositors and banking institutions. Although the developments vary, in each case these changes will affect the rights and responsibilities of the nation’s non-resident bank depositors.

This article is intended to remove some of the mystique that may be associated with banking in foreign countries by providing a basic guide for the non-resident depositor to the structure and workings of the banking systems of eight countries. The countries chosen for analysis represent both
developed and developing countries, and include countries with civil law, common law, and socialist legal systems: the Netherlands, the Federal Republic of Germany, Australia, Egypt, Saudi Arabia, Pakistan, India, and the Soviet Union. Analysis of the banking laws in these particular countries reveals some of the fundamental differences in the banking industry between those countries where it has been established for centuries and those where large-scale banking is a recent development. In addition, discussion of several of these countries is especially timely due to recent changes in the banking laws that will affect the way non-residents do business there.

This article provides a broad overview of the banking industry in each of the eight countries, describes the various types of accounts that are available to non-residents, explains generally the most important or unusual rights and responsibilities of depositors in each system, reviews the impact of each country's foreign exchange controls on depositors' rights, and sets forth the methods, where applicable, for resolving disputes between banks and their depositors. In addition, the footnotes include excerpts from some of the most important statutes and regulations of interest to the non-resident depositor, and provide reference sources for banking information in each nation. While the authors do not intend the analysis of any single country's banking laws to be exhaustive, a framework is presented, which, it is hoped, will sensitize non-resident business interests to potential issues relating to each banking system and help focus inquiries to achieve their timely resolution.

II. The Netherlands

A. General Banking Structure

The Netherlands has been an international commercial and financial center for centuries. It tends, therefore, to have very few regulations or limitations on foreign participation in its banking system. The central bank of the Netherlands, De Nederlandsche Bank, N.V., was established by the Bank Act of 1948. Nederlandsche Bank is roughly comparable to the Federal Reserve Bank in the United States. Although Nederlandsche Bank does not itself exercise direct control over the relationship of a bank with its customers/depositors, it does indirectly safeguard the latters' interests by supervising the financial operation of private banks, e.g., through solvency and liquidity control.

The banking business in the country is regulated generally by the Act on the Supervision of the Credit System (Credit System Act), enacted on April 13, 1978. Pursuant to the provisions of that Act, Nederlandsche Bank may

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2. Act on the Supervision of the Credit System (Wet op de Kredietbescherming), Staatsblad No. 225 (1978) [hereinafter Credit System Act]. An English translation of the Credit System
regulate and stabilize the value of the guilder, supply money for circulation, facilitate the money transfer system within the Netherlands and with foreign countries, and otherwise supervise the credit system. The Credit System Act also gives Nederlandsche Bank general responsibility for banking and grants it authority to issue regulations governing the organization and operation of Dutch banking institutions, including such subjects as required equity ratios, liquidity minimums, and permissible forms of credit.

There are seventy general commercial or "universal" banks in the Netherlands. Thirty of those are branches or subsidiaries of foreign banks. The Credit System Act deals with these traditional commercial banks under the rubric "credit institutions." It defines this term as companies which are engaged in the business of accepting moneys for deposit, repayable on demand or within two years, whether or not in the form of savings, and which grant credits and make investments for their own account.

In order to operate in the Netherlands, a bank or other credit institution must obtain a license from Nederlandsche Bank. To obtain a license, the bank must meet Nederlandsche Bank's strict requirements, including those relating to experienced managing directors, experienced supervisory directors, and minimum equity (at least 5 million guilders).

Banking business is defined broadly in the Netherlands, and banks engage in a wider variety of activities, and provide more diverse services, than is usual in the United States. Not only do Dutch banks accept deposits and credits, issue notes, and arrange loans, but they also act as securities brokers, make and sell travel arrangements, and provide private life insurance.

In addition to the commercial or universal banks, there are other specialized banks in the Netherlands, such as mortgage banks, agricultural cooperative banks, securities credit banks (which act as intermediaries in stock exchange transactions), and general savings banks. Further, the Postal Savings Bank and the Post Office Giro Services are very significant; nearly all businesses and individuals pay their regular bills by means of giro accounts.


4. Foreign banks with a presence in the Netherlands include American Express International, Mid-American Credit Corporation, Bank of America, National Trust & Savings Association, Bank Morgan Labouchre (which is fifty percent owned by J. P. Morgan Overseas Capital Corporation) and Citibank.

5. Credit System Act § 1.

B. RIGHTS AND DUTIES OF DEPOSITORS

The General Terms and Conditions of March 15, 1971, drawn up by the Dutch Bankers’ Association (Nederlandse Bankiersvereniging), govern the rights and responsibilities of depositors and the bank. By establishing a relationship with a Dutch bank, the customer accepts these conditions as part of his banking contract. In a recent decision, the Amsterdam District Court held that these general conditions will, at least in business circles, form part of the contract between a bank and its client, even if these conditions have not been formally presented to the client.\(^7\) The court concluded that it is common knowledge in business circles that Dutch banks always apply these conditions to customer accounts. Therefore, it is unnecessary for the parties to agree expressly to be bound by these conditions. The decision is presently on appeal. It remains unclear whether this Amsterdam District Court decision would apply to foreign businesses, since the application of the general conditions by Dutch banks may not be considered common knowledge abroad. Until the matter is resolved, however, it is no doubt wiser to consider the conditions to be applicable.

In 1980, the Dutch government promulgated the Act on External Financial Relations.\(^8\) This Act formalized the general freedom enjoyed by non-residents in banking relationships. Hence, there are no special limitations applicable to foreign entities with respect to establishing bank accounts. They receive the same interest on deposits as Dutch citizens. They can transfer to other countries without restrictions whatever funds they have on deposit in Dutch banks.

C. FOREIGN EXCHANGE CONTROLS

There are no general regulations restricting deposits or repatriation of foreign exchange. The government does not impose minimum reserve requirements to offset a bank’s foreign exchange holdings. Nor are there interest rate controls or withholding taxes levied on interest payments for foreign currency deposits. Interbank deposit operations in foreign currencies and the taking of foreign currency deposits from non-resident nonbanks are not regulated in any burdensome way. There are no limitations on the holding of foreign currency deposits by residents or non-residents in domestic banks.\(^9\) Dutch citizens, however, must receive permission to transfer

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\(^7\) No. 83.6068 (Amsterdam District Court, Aug. 29, 1984). See also Netherlands—Bank Conditions Upheld Int’l Fin. L. Rev. 44 (Apr. 1985).

\(^8\) Act on External Financial Relations (Wet financiële betrekkingen buitenland), Staatsblad No. 321 (1980).

amounts on deposit in Dutch banks to foreign countries or receive funds from abroad, to the extent these transactions exceed about $1,000.

From March 1972 to 1975, the Dutch Government perceived that foreign demand for guilders was inflating unduly the currency exchange rate and interfering with the government's monetary policy. In response, Nederlandsche Bank officially discouraged the taking of guilder deposits from non-residents by prohibiting the remuneration of sight deposits, and by prohibiting banks from accepting guilder time deposits from non-residents. Those restrictions, however, are no longer applicable.10

D. DEPOSIT INSURANCE

Before 1979, deposit insurance was generally unavailable in the Netherlands. Up to that time, the members of the Rabo Bank, an organization of various cooperative banks, participated in a mutual guarantee, or self-insurance, program. The plan, however, protected only the depositors of these particular banks, which accounted for a very small percentage of the total market.

To remedy this lack of protection, the 1978 Credit System Act provided that unless a voluntary insurance program for all banks were established, the government would impose such a system.11 Accordingly, in 1979, the various bankers' associations and Nederlandsche Bank reached agreement on a deposit guarantee program, which has been given general binding force by royal decree.12 This collective guarantee arrangement now protects deposits up to a maximum of 35,000 guilders for each depositor. The limit on coverage is revised every three years to reflect movements in the general wage index, most recently on January 1, 1983.13 Only deposits of individuals and non-profit societies and foundations are covered—no protection is provided for commercial depositors. In addition, claims related to bearer

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11. Art. 44 of the Credit System Act.
12. Royal Decree of December 21, 1978, Staatsblad No. 674 (1978). The terms of the Netherlands' Collective Guarantee Scheme are included in an Appendix to the Decree. Section 4 provides:
   a. . . . [A]ll non-subordinated claims registered in the name of creditors, in respect of funds, either in guilders or in any other currency . . . in the accounts kept in this country of the establishments in the Netherlands of the participating institutions, shall be covered by the guarantee scheme up to the amount stated in section 5. To the extent that such claims bear interest, the interest accrued until the date referred to in section 6 shall also be covered by the scheme. . . .
   b. Claims arising because securities deposited for safekeeping cannot, on account of irregularities, be returned by the participating institution(s) shall also be covered by the scheme.
instruments (stocks and bonds) are not covered unless the bank is guilty of irregular behavior in safekeeping such instruments accepted for deposit.\textsuperscript{14}

In case of bank failure, the collective guarantee arrangement operates as follows. Nederlandsche Bank advances the deposited amount—up to the current limit of 35,000 guilders—to the depositor. The Bank then prorates the distributed payments among all the participating banking institutions. At the same time, the Bank will, on behalf of the participating institutions, submit a claim with the estate of the bankrupt bank, in order to recover as much of the deposited amount as possible.\textsuperscript{15} The deposit guarantee provisions have been utilized twice, following the failure of two Dutch banks, the Amsterdam-American Bank (1981) and the Tilburgse Hypotheekbank (1982).

E. Secrecy

The professional secrecy privilege that is granted to doctors and lawyers by the Netherlands Penal Code is generally considered not to apply to bankers.\textsuperscript{16} Therefore, in the case of investigation by governmental authorities, a bank generally would be obligated to disclose information concerning an account. Reportedly, however, the authorities very seldom exercise their right to examine accounts.\textsuperscript{17}

F. Dispute Resolution

Dutch courts have jurisdiction to resolve disputes between depositors and banking institutions.\textsuperscript{18} No case law has been reported dealing explicitly with depositor rights and responsibilities. There may exist unreported cases, however, and one should not underestimate the importance of informal claims settlements which in the Netherlands may set precedents in delineating depositor rights and responsibilities. Dutch banking lawyers typically keep a running file on these unreported decisions and claims settlements.

Additionally, in January 1985 several Dutch banking institutions announced a plan to establish a Dispute Settlement Committee, to which depositors can refer their dispute if the matter is not resolved to their satisfaction by the bank. This Committee should be formally appointed

\textsuperscript{14} See id. § 4(b), supra note 12; see also Banking in the Netherlands, supra note 3, at 37–38.

\textsuperscript{15} See Collective Guarantee Scheme § 6.

\textsuperscript{16} Art. 272, Netherlands Penal Code.

\textsuperscript{17} E. Chambost, Bank Accounts—A World Guide to Confidentiality 143 (1983).

\textsuperscript{18} Article 28 of the General Terms and Conditions states that “[d]isputes between the Customer and the Bank shall be adjudicated by the competent Netherlands Court of Jurisdiction, unless the Bank as plaintiff should give preference to the foreign court having jurisdiction with respect to the Customer.”
during the next few months. Present plans are that resort to the Committee will be entirely at the option of the individual depositor; an aggrieved depositor would not have to exhaust the Settlement Committee remedy before suing directly in a Dutch court.

III. Federal Republic of Germany

A. General Banking Structure

Banking in the Federal Republic of Germany is governed by the German Banking Act of 1961,\textsuperscript{19} which has now been amended twice. The first amendment, which took effect in 1976, was aimed at strengthening the banking system following the collapse of the I.D. Herstatt Bank, and included such provisions as limits on large-scale loans, increased investigation, reporting, and management requirements, and a prohibition on new sole-proprietorship banks.\textsuperscript{20} The second amendment, which took effect on January 1, 1985, further strengthened the government’s supervisory authority.\textsuperscript{21}

The Banking Act subjects to supervision all institutions engaged in the banking business. “Banking business” as defined in Germany is somewhat broader than banking in the United States, and includes not only the acceptance of deposits and the granting of credits and loans, but also investment advice and the purchase and sale of securities.

Because of the broad nature of the banking business in Germany, the separation of functions between commercial banks and investment or merchant banks, and between banking and securities practice as in the United States, do not exist in Germany. The commercial banks provide the full range of banking services.

The Banking Act established the Federal Banking Supervisory Authority, which is headquartered in Berlin. The Supervisory Authority has the responsibility for the supervision and operation of all banking institutions in the country and is required particularly to “prevent abuses in the banking

\begin{itemize}
  \item \textsuperscript{19} German Banking Act (Gesetzes über das Kreditwesen), July 10, 1961, BGB1. 1961 I 881.
  \item \textsuperscript{20} See generally H. Schneider, H. Hellwig & D. Kingsman, The German Banking System 14–15 (2d ed. 1982). This work, which is written in both English and German, contains the text of the Banking Act in translation. The leading German source for information on German banking is C. Canaris, Handelsgesetzbuch, Grosskommentar (Berlin, 1981). Other English language reference books include investment and business guides published by Peat, Marwick, Mitchell & Co., Price Waterhouse, and Touche-Ross International.
  \item \textsuperscript{21} See Waldeck, Die Novellierung des Kreditwesengesetzes, Neue Juristische Wochenschrift (Apr. 17, 1985).
\end{itemize}
system which might endanger the security of the assets entrusted to banking institutions."

The central bank of the Federal Republic of Germany is called the German Federal Bank or Deutsche Bundesbank. Headquartered in Frankfurt, its principal duties are to "regulate . . . the circulation of money and the supply of credit to the economy with the aim of safeguarding the currency, and to provide for normal banking clearance of payment transactions within the Federal Republic of Germany and with foreign countries." The Bundesbank is technically autonomous and independent of the government and is not subject to directives of the federal government. It is, however, under an obligation to support the general economic policy of the government.

Self-regulation is also a significant aspect of the commercial banking system in Germany. Most commercial banks belong to the Federal Association of German Banks, which is a voluntary association that represents members' interests, prescribes various standards for membership, and, as discussed more fully below, administers the German deposit insurance program.

In Germany, there are both privately owned and publicly owned commercial banks. Among the private banks, most prominent are the Deutsche Bank, Dresdner Bank, and Commerzbank. Each of these banks has traditionally operated throughout the country. However, smaller banks, originally regional in nature, are increasingly important and have now tended to spread throughout the country. These regional banks operate as either limited stock corporations or limited partnerships. There are also small private banks that are organized and operated as partnerships or as sole proprietorships, although the establishment of new banks in the form of sole proprietorships was prohibited by the 1976 Amendments to the Banking Act.

The commercial banks owned by the government include savings banks and central clearing institutions (Landesbanken-Girozentralen), which are incorporated under the laws of each federal state. Despite their name, the government-owned savings banks carry on more or less the same general banking services as the private commercial banks, although the savings banks tend to emphasize individual savings deposits and real estate lending. The central clearing institutions not only function as regional clearing houses, but also provide banking services to cities and federal states.

In addition to the commercial banks, there are also commercial credit

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22. Banking Act § 6(2).
23. Banking Act § 3.
associations and rural credit associations, which are organized as cooperatives. These institutions formerly limited their services to members (much like credit unions), but now offer savings and short- to medium-term loan facilities to the general public. Certain specialist banks also exist, such as mortgage, export finance, and consumer credit banks.

Another notable feature in German banking, as in much of Europe, is the Girobank System—a system by which funds can be shifted directly between accounts by means of non-interest-bearing sight deposits, widely used for routine payment of bills. Giro transactions may be made through the post office.26

In addition to these domestic banks, numerous foreign banks are present in Germany. More than fifty foreign banks maintain branches in Germany, and nearly two hundred banks and other foreign financial institutions have representative offices. Foreign branch banks tend to emphasize interbank business and international finance. Indeed, as of 1980, foreign branches obtained eighty-three percent of their deposits from other banks. In addition to branches of foreign banks, there are at least fifty German banks which are owned fifty percent or more by foreign enterprises. These banks tend to operate as domestic German banks.27

B. RIGHTS AND DUTIES OF DEPOSITORS

The German deposit relationship is contractual in nature. Normally, when a deposit account is opened, the bank requires that the customer enter into a contract called the Uniform General Terms of Business. The depositor must complete the contract by providing personal and financial information required by the bank. All accounts must be listed in the true name of the depositor; numbered accounts are not legal.28

There are three general kinds of accounts available in German banks. The first is the current account or giro account on which the customer may draw at sight. The credit balance of such accounts usually carries either no interest or interest at a very low rate. The second type of account is the deposit or fixed-term account in which relatively large amounts are deposited for a specified period of time and on which interest is paid at the market rate.

27. Id. at 28–35.
28. Business Transactions in Germany § 39.10[2] (B. Rüster, ed., 1983). A depositor must also apply due diligence to avoid the loss of check forms or other papers through which third parties could embezzle funds from the accounts of the depositor by forging a signature. Similarly, a depositor has a duty to examine returned checks and statements and point out any errors or objections in order to avoid damage to the bank. Banks are required to be able to identify the person entitled to the balance on deposits or access to accounts at all times. Id.

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Finally, there are savings accounts, which typically are used for smaller amounts than depositor fixed-term accounts. Withdrawal of more than 2,000 deutschmarks per month from a savings account requires at least three months' notice (or longer if specified by the particular bank). The credit balances on these accounts bear interest at a rate which is quite a bit lower than the rate for deposits in fixed-term accounts. Deposits which are intended for investments and accumulation of savings, and funds destined for commercial purposes or for regular payments should not be deposited in a savings account. 29

There are no restrictions on the opening of accounts by foreigners or non-residents, and non-residents may open accounts with German banks in any currency. If a resident wishes to establish a foreign currency account with a bank in Germany, the approval of the Bundesbank is required. However, the Bundesbank gave blanket approval of such deposits in 1961. Therefore, residents as well as non-residents may now establish foreign currency accounts without restriction. 30

The German government has in the past, in order to prevent large and undesirable capital inflows into the country, restricted or prohibited the payment of interest on non-resident bank deposits. However, such restrictions have now been removed. 31 There are at present no exchange controls, interest controls or tax prepayments inhibiting commercial banks from accepting foreign currency deposits. 32

C. DUTY OF SECRECY

Although Germany does not have any specific statutory law governing bank secrecy, a duty of secrecy derives from the contractual relationship between the banker and customer. Banks cannot normally release information about an account without the owner's consent. Even government officials must, in most instances, request any information about accounts from the depositor himself. The Federal Court of Justice has broadly defined the scope of bank secrecy, concluding that "[t]he obligation to maintain secrecy, comprises all factual information which the customer wishes to be kept secret." 33 Accordingly, in normal civil litigation, a banker may refuse to give evidence about the accounts of his customers if that information was entrusted to him by virtue of his position. Therefore, banks cannot

29. Id.
30. Id. at § 39.10[3].
31. OECD, BANKING REGULATIONS, supra note 10, at 47-48.
32. Id. at 51.
33. BGH—Decision of May 12, 1958, BGHZ 27, at 241-46.
be required to give evidence with respect to their customer's affairs unless the customer has expressly waived the secrecy obligation.\textsuperscript{34}

There are, of course, some exceptions to this general rule of secrecy. For example, in investigations concerning tax evasion, the German government may demand and obtain from banks information concerning customer accounts. Similarly, in criminal cases brought by a public prosecutor, a banker called as a witness will be required to divulge information concerning customer accounts. Another exception to the secrecy duty relates to the garnishment of an account as part of enforcing a judgment. In this situation, the bank as garnishee is required to supply any information the judgment creditor may require in order to execute the judgment. Finally, bank secrecy may be breached when the information is required to permit the bank to comply with foreign tax treaties providing for mutual assistance by treaty partners in collecting taxes.\textsuperscript{35} Other than those contexts, however, the right of a depositor to consider his account records secret is well recognized and protected.\textsuperscript{36}

D. Deposit Insurance

Germany does not require by statute that banks have insurance to protect their depositors' accounts. In 1976, however, the Federal Association of German Banks established the voluntary Deposit Protection Fund. Most private commercial banks in Germany, including many branches of foreign banks, are members of the fund.\textsuperscript{37} The Deposit Protection Fund superseded an earlier joint fund, introduced in 1966, that was limited to accounts of individual banking customers. The Deposit Protection Fund, by contrast, covers nearly all depositors, whether individual or institutional, except for deposits of other banks. The voluntary funds were created in an attempt to forestall legislative action in the aftermath of the failure of the Herstatt Bank. The fund operates to assist banks and the interests of their depositors, in the event of imminent or actual financial difficulties. The fund protects virtually all deposits up to a limit, per depositor, of thirty percent of the equity capital of the bank.

E. Foreign Exchange

There are no exchange control restrictions on the repatriation of either capital or earnings. All banks in Germany are permitted to carry out foreign exchange transactions. There are no restrictions on either banks or non-

\textsuperscript{34} Id.
\textsuperscript{35} Business Transactions in Germany, supra note 28, at § 39.10[1].
\textsuperscript{36} See generally E. Chambost, supra note 17.
\textsuperscript{37} The German Banking System, supra note 20, at 26–28.
banks concerning holdings of foreign exchange within the country. While there are no restrictions on remittances abroad, most transfers to and from foreign countries in excess of 2,000 deutschmarks must be reported to the Bundesbank. These reports are submitted by the bank processing the transfer, and thus there is in practice no need for the party in Germany to take any specific steps to meet this reporting obligation.  

F. DISPUTE RESOLUTION

Disputes arising out of a depositor’s relationship with a bank may be referred to one of two courts in Germany, depending on the nature of the claim. Most contractual questions, e.g., all questions regarding a depositor’s rights vis-a-vis the bank, are referable to the general civil court system, with ultimate resort to the Supreme Court for Civil Matters, the “Bundesgerichtshof.” For most matters involving the Banking Act itself, however, the Federal Supreme Court for Administrative Matters, the “Verwaltungsgerichtshof,” will have ultimate jurisdiction.  

IV. Australia

A. GENERAL BANKING STRUCTURE

The Australian banking system is governed by the Banking Act of 1959, as amended. Pursuant to that Act, the Federal Treasurer has the authority to license banks, and the Reserve Bank of Australia has the responsibility for controlling the currency supply, as well as regulating and supervising banking throughout the country.

Until 1985, commercial banking in Australia was carried on by a very small number of companies; essentially, there was an oligopoly consisting of only four banking groups, one government-controlled and three privately owned. No new banks had been created since the early part of this century, and virtually no foreign banking was allowed.

During the past several years, however, the Australian financial system has undergone a deregulatory trend, following the issuance in 1981 of a government study called the Campbell Committee Report. As a result, in early 1985 the Australian government authorized the creation of nineteen new general commercial banks, seventeen of which are held largely or entirely by foreign interests. These new banks include representatives of many of the major American, European and Asian banks.

39. The Act, with current amendments incorporated, is available in pamphlet form.
40. AUSTRALIAN FINANCIAL SYSTEM, FINAL REPORT OF THE COMMITTEE OF INQUIRY (September 1981) [hereinafter cited as Campbell Report].
In addition to the general commercial or trading banks, Australia also has special-purpose banks, such as merchant banks (which serve as general investment brokers), savings banks (similar to U.S. savings & loan associations and traditionally limited to deposits from individuals), and credit unions. The differences among these types of institutions are being reduced, however, as the restrictions on the banking activities of the non-traditional banks are gradually being eliminated.\textsuperscript{42}

B. Kinds of Deposit Accounts Available

There are two general kinds of deposit accounts available in Australia: non-interest-bearing current accounts (checking accounts) and interest-bearing deposit accounts. Both types of accounts may be opened by residents and non-residents, and they can be maintained in foreign as well as domestic currency. Although the ownership of such accounts is relatively unrestricted, foreign exchange regulations may be relevant, as discussed below.

Originally, only individuals were allowed to make deposits in the category of banks known as savings banks. In April 1984, however, the government gave savings banks greatly increased banking authority. They may now accept deposits from profit-making enterprises and offer checking facilities to all customers. Moreover, savings banks are no longer restricted as to the size and maturity date of the deposits.

C. Depositors’ Rights and Responsibilities

Section 12 of the Banking Act requires the Reserve Bank “to exercise its powers and functions . . . for the protection of the depositors of the several banks.” Further provisions specify that in order to protect depositors, the Reserve Bank may require information concerning the financial stability of banks\textsuperscript{43} and may take over the operation and control of any bank that threatens to become unable to meet obligations or payments to depositors.\textsuperscript{44} A bank’s deposit liabilities have priority over all other liabilities in case of

\textsuperscript{42} Several reference works generally discussing Australian banking are available, including \textsc{Practicing Law Institute, Legal Aspects of Doing Business with Australia} (1982), and investment guides published by Peat, Marwick, Mitchell & Co., and Touche Ross International. \textit{See also} \textit{Banking Structures and Sources of Finance in the Far East} (P. Thorne, ed., 1977), which includes a discussion of Australian banking.

\textsuperscript{43} The Banking Act § 13.

\textsuperscript{44} Section 14 of the Banking Act provides, in part:
bank failure. In addition, banks must hold assets equal to their deposits at all times, unless exempted by the Reserve Bank.45

Australia is a common law country, and the banking business is also subject to common law principles derived from Australian and English cases. A depositor's rights derive from his status as a "customer" of the bank, which status is a creation of English common law. The relationship between banker and depositor is contractual and is essentially that of a debtor and creditor. That is, in Australia the deposit is a loan to the bank and the bank is not an agent or a fiduciary, in most cases. The bank has a contractual duty to carry out the depositor's instructions; failure to do so constitutes a breach of contract.46

D. FOREIGN EXCHANGE CONTROL

The Australian foreign exchange control system was formerly extremely complex and burdensome. However, in December 1983 the government ceased establishing official exchange rates, allowing the Australian dollar to float freely. In addition, since that time controls on the import and export of foreign exchange have been quite limited. There are no restrictions on the amount of currency that may be exchanged. There are, however, certain reporting requirements. For example, where the currency to be exchanged

(2) Where
(a) a bank informs the Reserve Bank—(i) that it considers that it is likely to become unable to meet its obligations; or (ii) that it is about to suspend payment;
(b) a bank becomes unable to meet its obligations or suspends payment; or
(c) the Reserve Bank . . . is of opinion that that bank is likely to become unable to meet its obligations or is about to suspend payment, the Reserve Bank may—
(d) appoint an officer of the Reserve Bank Service to investigate the affairs of the bank concerned; and
(e) assume control of and carry on the business of that bank.

(5) Where the Reserve Bank has, in pursuance of subsection (2), assumed control of the business of a bank, the Reserve Bank shall . . . remain in control of, and continued to carry on, the business of that bank until such time as
(a) the deposits with the bank have been repaid or the Reserve Bank is satisfied that suitable provision has been made for their repayment; and
(b) in the opinion of the Reserve Bank, it is no longer necessary for the Reserve Bank to remain in control of the business of the bank.

Section 16 states:

(1) In the event of a bank becoming unable to meet its obligations or suspending payment, the assets of the bank in Australia shall be available to meet that bank's deposit liabilities in Australia in priority to all other liabilities of the bank.

(2) Unless otherwise authorized by the Reserve Bank, a bank shall hold assets (other than goodwill) in Australia of a value of not less than the total amount of its deposit liabilities in Australia.

is to be transferred to certain "tax haven" countries, certification that all necessary income tax has been paid in Australia must be made before the exchange and export of the currency is permitted.\textsuperscript{47}

Certain other foreign exchange transactions—generally for loans, gifts, or investment abroad—require a declaration form to be filed with the Reserve Bank before the exchange is made. The Bank may then require tax certification, but typically it does not. In cases of currency exchange for the purpose of paying foreign interest, dividends, royalties, or travel expenses abroad, a declaration must be filed when the exchange is made. This declaration is merely informational, however, and no special permission from the federal banking authority is required. Also, except for transfers to "tax havens," there is a threshold amount of 50,000 Australian dollars, below which currency may be exchanged for any of the above purposes without the necessity of filing a declaration.

Thus, for most exchange transactions involving deposits, no restrictions will be imposed by Australian law. Capital that has been deposited by non-residents may be repatriated freely. However, although foreign currency accounts may be maintained unrestricted in Australia, the Reserve Bank may require information about the accounts at any time. The only restrictions on interest-bearing accounts or investments by non-residents are that foreign governments and foreign central banks are not permitted to maintain such accounts.\textsuperscript{48}

E. Deposit Insurance

There is no deposit insurance in Australia. Rather, the protection of deposits is carried out through the government's prudential control of capitalization requirements and liquidity ratios. The government's Campbell Report—which was the catalyst for many of the recent changes in the Australian financial system—considered various proposals for a deposit insurance program, including a cooperative interbank insurance system (such as is used in Germany) and a government-sponsored guarantee program (as in the U.S.). However, the Commission opted for neither of these possibilities and instead chose to continue to rely on government supervision of the banks' organization and operations, on the theory that it is preferable to prevent banking disasters rather than insure against them.\textsuperscript{49}

\textsuperscript{47} The "tax haven" countries to which such restrictions apply include the Bahamas, Bermuda, the British Channel Islands, the British Virgin Islands, the Cayman Islands, Gibraltar, Grenada, Hong Kong, The Isle of Man, Liberia, Liechtenstein, Luxembourg, Nauru, the Netherlands Antilles, Panama, Switzerland, Tonga, and Vanuatu (New Hebrides).

\textsuperscript{48} For a complete discussion of the foreign exchange requirements, see Reserve Bank of Australia, Explanatory Note Concerning Foreign Exchange Regulations 1-5 (Jan. 1985).

\textsuperscript{49} See Campbell Report, supra note 40, at 310-12.
F. Interest Rate Regulation

The Reserve Bank has the authority to make regulations relating to rates of interest payable to or by the banks, but has not yet formally promulgated any such regulations. Instead, it has adopted the procedure of informing the banks by informal letter of the controls on rates of interest which it has established with the Treasurer. Since August 1, 1984, however, the Reserve Bank has not restricted the interest rates that banks may offer on deposits or the maturity or source of deposits which may be accepted by banks.50

V. Egypt

A. General Banking Structure

Egypt has had a relatively long history of international banking. For years its economy was under Anglo-French control, and most of the banks in the country were foreign-owned (generally British or French). The revolution in 1957, however, greatly changed the nature of the banking system. As part of the general policy of the country, the foreign banks were “Egyptianized,” that is, ownership was transferred to named Egyptians, and the bank operated thereafter with Egyptian directors.

In 1961, all the banks in the country were nationalized and consolidated into four large state-owned banks, namely, the National Bank of Egypt, the Misr Bank, the Bank of Alexandria, and the Bank of Cairo. In addition, the National Bank of Egypt, which had been functioning as a de facto central bank, was divided into two banks. One, the Central Bank of Egypt, took on the quasi-governmental functions of a reserve bank for the government, while the other bank, retaining the National Bank of Egypt name, continued as one of four government-owned commercial banks. The Central Bank was assigned the responsibility for maintaining a stable currency, regulating the volume of credit, acting as a lender of last resort, and issuing regulations governing the control of the other banks. The National Bank of Egypt was entrusted with responsibility for foreign trade, and undertook control over all banking operations relating to export and import matters, as well as over agricultural products marked for export.51

50. The reasoning behind this action is set forth in the Campbell Report, supra note 40. Balancing the potential harmful effects of interest rate competition with the potential benefits, the committee concluded that “there is insufficient justification for retaining interest rate controls as an instrument of prudential policy.” Id. at 309. See also Reserve Bank of Australia, Functions & Operations 22 (1984).

For almost two decades following the revolution, the government exerted strict control over banking, and prohibited all foreign, and indeed all private, ownership of banks. In 1974, however, with the passage of "Law 43," the Egyptian government permitted the establishment of foreign banks as joint ventures where fifty-one percent of the capital belonged to Egyptians. In addition, under the provisions of Law 43, wholly-owned foreign banks may be established in special investment zones exempt from the Egyptian ownership and control regulations if they are limited to investment in industrialization, mining, energy, tourism, transportation, and housing. At least thirty-eight new banks of various types have been established under that law. American participants in some of those joint ventures include Chase Manhattan Bank, Bank of America, First National Bank of Chicago, and American Express. In addition, several locally-owned banks have been established since the enactment of Law 43.

B. TYPES OF ACCOUNTS

The three types of deposit accounts generally available to depositors—current, deposit, and savings—are available in Egypt. In addition, there exist several special purpose accounts. Foreign exchange transferred into Egypt by foreigners may be kept in "free foreign exchange accounts" in authorized banks. The funds in these 'free' accounts may be freely utilized by the account holders. If a non-resident individual or company sells any capital assets, the proceeds must be placed in a "nonconvertible capital account," which is a blocked foreign currency account. The funds in such accounts may be used up to a limit of 2,000 Egyptian pounds per year to cover local expenses. The foreign exchange proceeds of exports (as well as tourism) must be kept in "retention accounts" where they may be utilized only to pay for authorized expenses within six months; otherwise, they must be sold on the official market. Special provisions apply to enterprises operating in Free Trade Zones pursuant to Law 43.

C. INTEREST RATES

The Central Bank of Egypt sets interest rates for deposits. Interest does not accrue on current accounts. Time deposits earn interest at a rate ranging from 4 percent to 8.5 percent, depending upon the length of the term.

52. Law No. 43 of 1974, Concerning the Investment of Arab and Foreign Funds and the Free Zones, as amended by Law No. 32 of 1977. Many relevant banking laws may be found in A. Keesee, Commercial Laws of the Middle East—the Arab Republic of Egypt (1981).

53. Banking Structures and Sources of Finance in the Middle East 152–61 (P. Thorn & F. Mazhar, 2d ed. 1980); see also Mackie, The Egyptian Banking System, supra note 51, at 133–35.

Savings deposits earn a constant rate of 6 percent. The National Bank of Egypt also issues both interest-bearing and non-interest-bearing savings certificates. Holders of non-interest-bearing savings certificates are entitled to participate in lottery drawings. Various banks also make available certificates of deposit at commercial rates.\(^5\)

D. FOREIGN EXCHANGE CONTROL

There are virtually no restrictions on the trade or movement of foreign exchange into and out of Egypt. However, the government does set official exchange rates which vary depending upon the identity of the parties to the transaction and the types of goods to be purchased with the exchange. There is an active black market, or "own-exchange" market, which accounts for a large amount of the money exchanged in Egypt. The government is attempting to narrow the gap between the black market rates and the official rate and therefore, in early 1985, devalued the Egyptian pound and allowed it to float on a limited basis. The new regulations also make it possible to deposit foreign currency in cash into a free foreign currency account.\(^6\)

For profits earned in Egypt, however, the problem in Egypt is not so much exchanging currency as repatriating it. Certain foreign companies organized and operating pursuant to the requirements of Law 43 are permitted to repatriate their profits without restriction. Such companies are generally involved in development projects in certain special investment zones. Non-Law 43 companies do not have the right to repatriate profits. Although they may seek approval from the Central Bank to make such transfers, as a practical matter approval is often denied. Therefore, rather than seek Central Bank approval to repatriate, many companies will use their Egyptian pound profits within Egypt, either for reinvestment or for distribution to shareholders in Egypt. There are no regulatory restrictions on direct investment from abroad and no registration is required. Further, no restrictions exist on borrowing from local sources by foreign investors.\(^7\)

VI. Saudi Arabia

A. GENERAL BANKING STRUCTURE

Banking is a relatively new phenomenon in Saudi Arabia. Commercial banks did not even exist in the country until the early 1960s. Before that

\(^5\) See Banking Structures & Sources of Finance, supra note 53, at 169-78.


time, banking services were provided by money changers (the traditional mideastern financial establishment), a group of private bankers, and after 1952, the Saudi Arabian Monetary Agency (SAMA). SAMA was created by Royal Decree on April 20, 1952 to provide commercial banking via branches throughout the country. SAMA's responsibilities are now outlined in the Banking Control Law of 1966, and include issuing bank notes, acting as the government's banker, regulating the commercial banking and credit policy in the country, and licensing the establishment of local and foreign banks.58

There are now thirteen commercial banks in Saudi Arabia. Two are local banks, that is, banks owned entirely by Saudi Arabians: National Commercial Bank and Riyadh Bank. There are ten other banks which were originally branches of foreign banks, but which, since 1975, have become "Saudized;" that is, only forty percent of the capital is now held by the former foreign owners, while sixty percent has been acquired by Saudi citizens. Although majority control is now in Saudi hands, the foreign owners continue to operate the banks through management contracts. These management contracts originally had eight-year terms, and they are now beginning to expire. It remains uncertain whether those contracts will be renewed, but observers within Saudi Arabia suggest that the contracts most likely will be allowed to expire, and the foreign shareholders will sell out their shares, leaving the banks wholly under Saudi ownership.

There is one other bank, the Saudi Investment Banking Corporation, which was established in 1977 to provide long-term financing. It is twenty percent owned by Chase Manhattan; several European, Japanese, and Saudi entities are also shareholders.59 In addition, many foreign banks have unofficial representatives in Saudi Arabia, often working out of Bahrain. These bankers have no offices in Saudi Arabia, but pick up a great deal of the day-to-day banking business while living out of suitcases in hotels. Hence, they have become known as "suitcase bankers." It is anticipated, however, that as the Saudi financial system becomes better able to provide the needed financial services, the influence and importance of the suitcase bankers will diminish.60


60. Id. at 5.
Private deposits constitute the principal source of funds to the commercial banks. Banks generally do not pay interest on current account credit balances. Interest-bearing savings accounts are encouraged by local banks, and they represent a significant part of the deposits of Saudi banks. There are no limitations on the opening of bank accounts by foreign individuals or companies. There is, however, no deposit insurance provided on accounts in Saudi Arabia.

B. INTEREST RATES

Because Saudi Arabia officially adheres to Islamic law, interest on deposit accounts technically does not exist. However, banks pay depositors "service charges" or "commissions," which are pegged at a rate that more or less reflects commercial interest rates.

In an attempt to follow more closely the requirements of Islamic law, there has been a revival in recent years of Islamic banking in Saudi Arabia. Under Islamic banking practices, depositors do not earn interest at a predetermined rate, but instead receive a payment based on the year-end profits of the banking institution. Although this tendency toward stricter adherence to Islamic banking practices probably will not affect most foreigners' deposit practices, increasing numbers of Saudis are seeking methods of investment which conform to the prohibition on interest contained in the Koran.61

C. EXCHANGE CONTROL

The Saudi Arabian Monetary Agency has the authority to control exchange rates and to restrict the import and export of Saudi Arabian and foreign currency. However, at present there are no restrictions on the inward or outward flow of either capital or income in any currency. Neither are there any restrictions on the repatriation or remittance of profits, capital, or earned income.

D. SETTLEMENT OF DISPUTES

Settlement of commercial disputes is regulated by Royal Decree No. 32.62 Under that decree, all commercial disputes (except those related to the insurance business) are settled by a Committee for Commercial Disputes consisting of two Islamic Law Judges and one Legal Adviser. The decisions of the Committee for Commercial Disputes are binding, although appeal to the King is technically possible.

62. Commercial Court Regulations, Royal Decree No. 32 (1930).
Special procedures apply to disputes pertaining to negotiable instruments, which are governed by regulations established by the Council of Ministers.63 Commercial disputes relating to negotiable instruments are referred to a special committee for a non-binding decision. Any party can appeal the decisions of the committee to the chairman of the committee or to the Ministry of Commerce within fifteen days of their issuance.64

VII. India

A. General Banking Structure

India inherited from the British an established, developed banking community. Banking in India is regulated jointly by the Ministry of Finance and the Reserve Bank of India. The Ministry of Finance has overall supervisory authority over the banking and credit system. The Reserve Bank of India is the central bank. Under the general oversight of the Finance Ministry, the Reserve Bank exercises supervision and control over all commercial banks, and administers the government's monetary policy and exchange control regulations.65

India's banks are largely government-owned. During the 1970s and 1980s, at least twenty of India's largest commercial banks were nationalized by the government, although some private banks still exist.66 The largest bank is the State Bank of India, which may also be the largest bank in the world in terms of number of offices (6,000) and number of employees (160,000).67

In 1973, the Government of India enacted the Foreign Exchange Regulation Act,68 which required that virtually all companies operating in India have at least sixty percent Indian ownership. In addition, all branches or subsidiaries of foreign companies doing business in India at the time the Act was passed were required to incorporate under Indian law, and to adjust their equity shares to the maximum forty percent foreign ownership. Any exception to these rules must be approved by the Reserve Bank.

These domestic ownership requirements mean that most foreign companies conducting extensive business within India will do so as joint venturers with Indian shareholders, and the entities actually doing business in India will be domestic companies. Therefore, these businesses will be sub-

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ject to laws generally applicable to Indian depositors as far as their relationships with banks are concerned.\textsuperscript{69}

The profits of such companies may be deposited in any Indian bank in any amount. The profit attributable to the foreign shareholders may be repatriated without restriction, provided income taxes are paid first. Special provisions are made for companies operating in certain free trade zones within India. Corporations which are organized under the free trade zone provisions are granted the right to maintain 100 percent foreign ownership and receive certain regulatory and tax benefits.

B. RIGHTS AND DUTIES OF DEPOSITORS IN INDIA

India inherited the English legal system, therefore, the common law rules governing banking relationships still prevail in India. This is particularly true with respect to the law of negotiable instruments, which is practically the same as that of the United States, and governs the issuance of checks and other bearer notes by a bank. Any person capable of contracting may bind himself and be bound by the making, drawing, or endorsing of such a negotiable instrument. As in other common law countries, the relationship between the bank and the customer is that of debtor and creditor. Although ordinarily there is no actual written contract drawn up between the depositor and bank when an account is opened, the common law obligations and duties attach automatically. Unless special provisions are made, the banker is not considered to be the trustee of the assets of the depositor.

An Indian treatise writer has adopted as a succinct statement of the rights and responsibilities of depositors in India the following statement of English law:

I think that there is only one contract made between the bank and its customer. The terms of that contract involve obligations on both sides and require careful statement. They appear upon consideration to include the following provisions. The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except on reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his

\textsuperscript{69}. Indian Investment Centre, Exchange Control 9 (1982).
balance until he demands payment from the bank at the branch at which the current account is kept.  

Current accounts, that is, checking accounts, generally do not draw interest except in a few large cities where banks allow interest at a very low rate on the running balance. In the case of fixed deposits or time deposits, interest is allowed on the theory that the bank is certain that the money deposited will not be demanded for a specified time.

The types of bank deposits available are those typical of most countries, and are relatively unrestricted. The difficulties presented to depositors in India arise in the application of India's foreign exchange regulations. Accounts by foreigners must be maintained only with "authorized dealers" of foreign exchange; but in fact nearly all commercial banks in the country have been designated authorized dealers.

C. BANK ACCOUNTS BY FOREIGN-OWNED FIRMS

In general, firms and companies with foreign equity ownership that are organized in India, as well as branches of foreign companies doing business in India, are permitted to maintain and operate bank accounts in India in the same manner as Indian firms and companies. However, there are certain regulations designed to ensure that no foreign exchange is provided by the non-resident owners of such companies to residents without governmental approval. Accordingly, such firms or companies must file Form QA-22(c), in which they promise not to make any foreign currency available to anyone in India without approval. This undertaking is required to be renewed every twelve months. The account holder must also declare the nature of the activity and principal sources of credit to the account. Credits are freely permitted only from the sources declared on the form.

D. BANK ACCOUNTS BY FOREIGN NATIONALS

Foreign nationals temporarily residing in India are permitted to maintain and operate bank accounts in India in the same manner as other residents of India, so long as they first complete and submit Form QA-22, which contains substantially the same undertakings required of foreign firms. The banks themselves are normally able to approve the forms. Non-resident foreign nationals can open both ordinary and foreign currency accounts with any bank in India which is an authorized dealer of foreign exchange, with the approval of the Reserve Bank.

71. Id. at 322-25.
73. Id. at 17.
E. Bank Accounts by Non-Residents

Firms, companies, and other corporate bodies that reside outside India can open rupee accounts in India with the prior permission of the Reserve Bank. Similarly, non-resident individuals may open accounts—called “non-resident (external) accounts”—with the Reserve Bank’s permission. A request for opening non-resident accounts is submitted to the Reserve Bank through a commercial bank. The non-resident must provide the necessary information such as name, address, nationality and country of residence, purpose of opening the account, source of funds, etc. The Reserve Bank may fix certain conditions upon the operation of the account. Investment of funds held in ordinary non-resident accounts by firms or companies—including fixed deposits with the bank—requires the prior permission of the Reserve Bank.\(^7\)

Remittance of interest on bank deposits held in India to individuals permanently residing outside India can be made by the banks without prior approval by the Reserve Bank provided taxes have been paid. However, if remittance of such interest is to be made to a firm, company, or other organizations abroad, prior approval of the Reserve Bank is necessary.\(^5\)

F. Remittance of Income by Foreign Nationals

Foreign nationals temporarily residing in India may make recurring remittances of up to fifty percent of their net income to their respective countries for family maintenance, subject to a maximum of 2500 rupees per month. Remittances in excess of the prescribed limit require specific approval of the Reserve Bank.

G. Capital Repatriation

The entire amount of capital invested in an Indian enterprise by a foreign firm, plus appreciation, may be repatriated, provided the Indian government has approved the disinvestment. If the amount exceeds 2.5 million rupees, however, the government may require that repatriation be spread over as many as four annual installments.\(^6\)

Foreign nationals not permanently resident in India are permitted to transfer their current assets to their own countries at the time of retirement. These current assets may include savings from salary, dividends, commissions, insurance balances, and proceeds from the sale of personal effects.

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74. *Id.* at 15.
75. *Id.* at 11.
76. *Id.* at 12.
However, assets in excess of 100,000 rupees must be repatriated in annual installments of 50,000 rupees per annum.\(^7\)

H. Deposit Insurance

In 1961, the Indian Parliament enacted the Deposit Insurance Corporation Act which established a corporation to insure deposits of banks in India.\(^7\) All banks are required to participate. Insured banks are required to pay a premium to the corporation based on the amount of the deposits they hold. Under this Act, all deposits held by banks in India are fully insured by the corporation. The amount of insurance available was originally limited by statute, but that limit was removed when India began nationalizing the banking industry.

VIII. Pakistan

A. General Banking Structure

Commercial banking in Pakistan is governed by the Banking Companies Ordinance of 1962.\(^7\) This ordinance establishes the minimum paid-up capital in reserves required for banks in Pakistan, the cash reserves required, and other organizational requirements. In addition, it sets forth the standards required for a banking company to receive a license from the State Bank of Pakistan, which is necessary in order for a bank to do business in the country. The State Bank was established by the State Bank of Pakistan Act.\(^8\) The State Bank supervises the activities of all commercial banks in the country and also regulates foreign exchange.

In 1974, an act of the Pakistani Parliament provided for the nationalization of the entire banking business within the country.\(^8\) Since that time, all of the banks in the country have been owned by the government of Pakistan, although they continue to act as independent legal entities.

B. Kinds of Accounts Available

The types of accounts available under the Pakistani banking system include the current account, demand deposit account, and time deposit account options which are generally available in most countries.\(^8\) Special

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\(^7\) Id. at 18.
\(^7\) Deposit Insurance Corporation Act (Act No. 47 of 1961).
\(^7\) Banking Companies Ordinance (Ordinance No. LVII of 1962). The most important Pakistani banking laws can be found in K. Saeed-Uz-Zafar, Banking Laws Manual (Lahore, 1985).
\(^8\) State Bank of Pakistan Act (Act No. XXXII of 1956).
\(^8\) As discussed below, however, the Pakistani government ordered all banks to change their domestic currency deposits to a non-interest "Islamic" banking system as of July 1985.
provisions apply to accounts of individuals, firms or companies that are resident outside Pakistan. These non-resident accounts may be opened only in banks authorized to deal in foreign currency. Authorized banks may open non-resident rupee accounts without the prior approval of the State Bank, so long as the funds to be deposited in the account are received by the bank to be sent abroad.

Foreign nationals, whether residing abroad or in Pakistan (and Pakistani citizens living abroad), may open foreign currency accounts at banks in Pakistan without restriction. Such accounts may be held in any currency. The funds contained in those deposits may be transferred abroad, and any interest payable on such accounts is exempt from income tax. However, if the depositor wishes to make payments from his account in Pakistan, he must first convert the foreign exchange into Pakistani currency.  

C. RIGHTS AND RESPONSIBILITIES OF DEPOSITORS

Under Pakistani law, the fundamental rights and obligations of bank depositors are not very different from those prevailing in the United States. Pakistan inherited its legal system from the British, and its substantive laws still bear the imprint of English common law. A depositor has the right to draw checks on his account up to the extent of his credit balance or sanctioned overdraft limit, to receive correct statements of accounts at periodical intervals, to sue the bank for loss or damages in case of wrongful dishonor of his check, thereby resulting in his loss of credit or injury to his reputation and to sue if the banker has failed to maintain the secrecy of his account. Depositors, for their part, are obligated to present all checks and other negotiable instruments during business hours and within a reasonable time after their date of issue, to guard against loss of blank checks, and to exercise reasonable care so the chances of fraud by altering a check may be minimized. If a customer discovers that checks purported to have been signed by him have been forged, he must inform the bank.

Under the Banking Ordinance if any bank wrongfully withholds payment on a check, the government may investigate the situation, order payment, and, if necessary, seize bank assets to satisfy the liability.

D. FOREIGN EXCHANGE CONTROL

Pakistan's British government inaugurated a system of foreign exchange control...
controls to respond to the financial crisis associated with the outbreak of World War II. When Pakistan achieved independence from Great Britain, it codified the wartime exchange controls in the Foreign Exchange Regulation Act.\(^{87}\) Though the original wartime necessity for control has long since ended, the structure of exchange control remains largely unchanged. Now exchange controls are intended to help the government structure the economy to fulfill its development and industrialization goals.\(^{88}\)

The Exchange Regulation Act prohibits all dealings in foreign exchange by persons other than authorized dealers such as certain commercial banks. Regulations controlling foreign exchange are promulgated by the State Bank of Pakistan and administered by the Bank’s Exchange Control Department. Official exchange rates are established in consultation with the State Bank. Authorized dealers may sell foreign currency to the public only for certain approved purposes after an application has been made.

Remittances outside the country may be made either in the currency of the country concerned or by transfer of sterling or rupees to the account of the resident of the country. In some cases, such transactions are governed by payment or monetary agreements between the particular countries. Remittances to foreign countries are permitted with respect of payments arising from imports, travel, business trade and capital transfers.\(^{89}\)

E. Interest

Because Pakistan is an Islamic country, the provision of interest on deposit accounts has presented a theoretical dilemma. Other Islamic countries have dealt with the problem by having banks pay “commissions” or “service charges” which are actually pegged to prevailing interest rates. However, Pakistan, in 1979, began a program to establish true interest-free Islamic banking. As part of this program, since July 1, 1985 banks have been prohibited from paying interest on domestic currency accounts, and may accept such deposits only on the basis of profit and loss-sharing. Predetermined interest-bearing accounts in domestic currency are no longer available, and any payment to depositors at the end of the year is based on the profit or loss experienced by the bank during the year. (Similarly, domestic currency loans to companies are possible only on a quasi-equity ownership basis.)\(^{90}\)

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\(^{87}\) See The Foreign Exchange Regulation Act (Act No. VII of 1947), adapted to Pakistan by the Pakistan (Adaptation of Existing Pakistan Laws) (State Bank of Pakistan) Order (G.G.O. No. 18 of 1948).

\(^{88}\) Mohan Lol Tannan, Banking Law & Practice in Pakistan 62 (1978).

\(^{89}\) Id. at 425-26.

\(^{90}\) The regulations governing interest free banking were issued by the State Bank in a circular entitled “Elimination of ‘Riba’ [interest] from the Banking System” (June 20, 1984), and in subsequent “Circulars.”
These provisions apply, however, only to deposits in Pakistani currency. The provisions will not apply either to foreign currency deposits held by banks in Pakistan or to foreign currency loans made by banks to Pakistani borrowers. Interest will continue to be payable on such loans and deposits. The move to an interest-free loans system may prevent U.S. banks from participating in the domestic credit market of Pakistan, since the U.S. Glass-Steagall Act prohibits commercial banks from investing in the securities of companies. Apparently, however, U.S. banks should still be able to participate in profit/loss deposits in Pakistani currency, if they wish, by maintaining separate accounting systems for their local currency and foreign currency operations. Trade-based financing in foreign currency, and letters of credit and guarantees which do not involve an interest payment should not be affected by the new regulations.

IX. The U.S.S.R.

A. General Banking Structure

Because of the controlled socialist economic structure of the Soviet Union, foreign investment is not permitted in the same manner as in capitalist economies. Trade between East and West is increasingly important, however, and various types of joint projects, long-term contracts, and other quasi-investment ventures are being developed, resulting in an increased foreign business presence in Moscow. The banking services essential to such entities, are, for the most part, available in the U.S.S.R., although such services are provided in a somewhat different form than in the West.

The central bank of the U.S.S.R., Gosbank, is both the government’s central reserve bank and the major commercial bank in the country. It supplies loans and accepts deposits for most individuals and industrial entities in the country.

The branch of Gosbank most widely involved in domestic deposits is the Savings Bank, which has as its principal role encouraging savings and investment by private persons. There are five different kinds of accounts available to depositors of the Savings Bank—demand deposits, time deposits, conditional accounts, lottery accounts, and current accounts. The demand deposit, a passbook savings account, is the one most frequently

93. Id. at 25.
used. The current account is a checking account. Conditional accounts are established for minors. Holders of lottery accounts (a type of savings account) participate in a biannual drawing for a lottery payment, but the account does not otherwise earn interest. Time deposits earn interest at a set rate depending on the length of the term.95

The general facilities of Gosbank and the Savings Bank are limited to deposits by Soviet institutions and citizens. Banking services for foreign trade, foreign businesses, and tourists are provided by another bank (owned by Gosbank and by other public entities in the Soviet Union) called the Bank for Foreign Trade, or "Vneshtorgbank." Vneshtorgbank accepts deposits in rubles and foreign currencies on behalf of foreign firms and enterprises, and maintains accounts in foreign exchange on behalf of domestic clients. In addition, the bank makes settlements resulting from imports and exports, extends credit to importers and exporters, and supervises certain of their activities, such as foreign currency exchange.96

Because the Soviet banking system is a state monopoly, foreign banks are not permitted to maintain branches or subsidiaries within the Soviet Union. Therefore, all banking transactions involving foreign businesses or individuals within the Soviet Union must be carried on with Vneshtorgbank. Foreign banks may have "representation offices" in the Soviet Union, and several American banks do have such offices in Moscow. However, the American banks with representation offices in the Soviet Union are not able to perform any local banking functions, even on behalf of foreign customers. They are able to give advice and assistance to foreign customers, however, in conjunction with their banking relations of Vneshtorgbank.97 In general, therefore, a foreign company with a presence in the Soviet Union will carry out its banking business with the Vneshtorgbank.

B. Kinds of Accounts Available

A foreign company may maintain an account at Vneshtorgbank in rubles if the firm has an accredited (i.e., officially approved) Moscow office, if the Soviet Ministry of Finance approves the account, and if the business that the foreign company conducts in the Soviet Union requires that the firm have access to local currency for payment of local expenses and payroll. Funds in a ruble account may not be transferred abroad.98

95. Kuschpeta, supra note 94, at 58.
98. Relevant sections of Rules for Rouble [sic] Current Account of Foreign Organizations and Individuals, published by Vneshtorgbank, read as follows:

1. Rouble current accounts may be credited with soviet currency:
Foreign companies and individuals may also open convertible—i.e., western—currency accounts at the Vneshtorgbank. There are two kinds of convertible currency accounts available, the current account and the interest-bearing deposit account. The current account may be opened by any kind of firm (accredited or not) or by an individual. However, current accounts do not bear interest. If such an account is opened, the funds may be transferred freely between the Vneshtorgbank account, and an account of the holder at any other bank in the world which has correspondence status with the Vneshtorgbank. The current account has checking privileges, and the checks are payable by any correspondent bank. Withdrawals may be made in either the convertible currency deposited or in rubles, exchanged at the official conversion rate. Funds may also be transferred to the account of Soviet trade organizations or vendors where payment is to be made in foreign currency. One disadvantage of this kind of account is that a substantial commission, as much as 1.5 percent, is charged for each withdrawal. Therefore, firms often try to avoid keeping funds in a bank account, and prefer instead to have firm employees bring foreign currency into the country as needed.

A second type of foreign currency account is an interest-bearing deposit account. Such accounts, however, are available only to individuals, and a minimum deposit of the equivalent of 10,000 rubles is required to open it. The interest rate ranges from 4.5 to 10 percent depending on the period of

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Vneshtorgbank's "Rules for Foreign Exchange Accounts of Foreign Organizations and Individuals" state, in part:

1. Current accounts type "A" may be credited with:
   a) foreign currency remitted from abroad through the Bank for Foreign Trade of the U.S.S.R. in the name of the holder [of] the account;
   b) foreign currency under payment instruments in foreign currency received from abroad in the name of the holder of the account at the address of the Bank for Foreign Trade of the U.S.S.R.;
If funds from either current or deposit foreign currency accounts are paid to a Soviet citizen, payment may be made only in rubles, and only after deducting a 30 percent transfer tax.

C. Interest

Although there is no specific statutory limitation on interest paid to foreign currency sums deposited in Vneshtorgbank accounts, the bank's rates of interest are set by the Ministry of Finance.\textsuperscript{100} Interest may be

\textbf{c) foreign currency under payment instruments brought from abroad by the holder of the account and registered at the Soviet Custom House;}

\textbf{d) cash foreign currency \textsuperscript{nalichnaya inostrannaya valyuta} brought to the U.S.S.R. from abroad by the holder of the account and registered at the Soviet Custom House or received by valuable parcel addressed to the State Bank of the U.S.S.R. or the Bank for Foreign Trade of the U.S.S.R. in the name of the holder of the account.}

In case of lack of contrary instructions of the holder of the account all funds received from abroad in his name are credited to the account opened by him.

2. The amounts available on current accounts type “A” may as per instructions of the holder of the account or his proxy:
   \textbf{a) be remitted abroad in the currency of the account in usual Banking form (remittance, cheque, etc.);}
   \textbf{b) be paid in cash foreign currency for taking abroad within the norms for import of currency stipulated by the Exchange Regulations of the corresponding country, the Bank having the right to limit in certain cases, at their discretion, the amount of cash foreign currency for taking abroad. Payment of cash foreign currency is effected by the Bank against presentation by the holder of the account of his passport with visa for leaving the U.S.S.R.；}
   \textbf{When paying cash currency the Bank may, by the holder's consent, substitute the currency of the account by other foreign currency of equal value.}
   \textbf{c) be paid or transferred in the territory of the U.S.S.R. in Roubles at the rate as on the day of payment;}
   \textbf{d) be transferred in foreign currency to the accounts of Foreign Trade Organizations and other Soviet organizations in accordance with the Exchange Regulations effective for settlements in foreign currency.}

3. Creditings of funds and payments from accounts opened in freely convertible currency may be effected not in the currency of the account subject to authorization of the Bank for Foreign Trade of the U.S.S.R.


100. Vneshtorgbank Statute § 23 provides:

\textit{Vneshtorgbank of the U.S.S.R. may compute and pay interest in accounts and deposits with the Bank.}

\textit{The ranks of interest rates for accounts and deposits in Soviet currency of Societ organizations and private individuals are established by the Council of Ministers of the U.S.S.R. The ranks of interest rates for accounts and deposits in foreign currencies as well as on accounts and deposits in Soviet currency of foreign or international banks and other organizations and foreign private individuals are established by Vneshtorgbank of the U.S.S.R.}

\textit{The procedure of computation and payment of interest on the above accounts and deposits is determined by Vneshtorgbank of the U.S.S.R.}
exported freely, and the interest accruing on those funds is free of any Soviet tax charges.\textsuperscript{101}

D. FOREIGN EXCHANGE CONTROL

The state has a monopoly on foreign exchange. Only the state banks—Gosbank and Vneshtorgbank—can deal in foreign exchange. Soviet citizens must sell all foreign exchange that they may obtain to the bank, just as all Soviet enterprises and organizations must remit their earnings in foreign currency to Vneshtorgbank. Exchange of currency into rubles for needs of a company or person in the U.S.S.R. is subject to an official exchange rate. Because the ruble is not freely convertible into other currencies outside the Soviet bloc, there are no exchange control provisions in the sense of regulating investment in rubles.

Foreign currency may be exported only with the approval of the Ministry of Foreign Trade in Moscow, with the exception of holdings on the special accounts of Vneshtorgbank. All sums imported into the country in foreign currencies may likewise be taken out of the country provided the currency was declared at customs. The import and export of rubles, however, is forbidden.\textsuperscript{102}

E. SECRECY AND DEPOSIT INSURANCE

The funds held in Vneshtorgbank accounts may be held in anonymous numbered accounts. The bank purports to guarantee the secrecy of the status of the account, of any transactions carried out through the account, and of the identity of the holder of the account.\textsuperscript{103} There is no formal deposit insurance program in the Soviet Union, but the security of deposits of both individuals and organizations is guaranteed by the Soviet government.

X. CONCLUSION

Foreign banks and foreign banking laws are becoming increasingly important in the conduct of international business. Foreign banks may serve as both a source of funds to finance international transactions and also as depository institutions for the foreign parties involved. Therefore, it is crucial that foreign businesses be aware of national laws governing their deposits, including laws regulating the transferability and expatriation of funds, convertibility of currency, availability of deposit insurance, and other characteristics of foreign banking systems.

\textsuperscript{101}. E. CHAMBOST, BANK ACCOUNTS—A WORLD GUIDE TO CONFIDENTIALITY 187 (1983).
\textsuperscript{102}. Id. at 186, 190–91.
\textsuperscript{103}. Id. at 187. See Rules for Foreign Exchange Accounts, supra note 98, ¶ 10 ("The Bank observe privacy in respect of accounts opened with them [sic].")
Although this article deals directly with the banking laws of only eight countries, it provides a framework for analyzing the banking laws of other nations. Moreover, it demonstrates that foreign banking laws often do not track or even resemble those banking laws with which U.S. investors may be familiar. It is hoped, therefore, that this article will familiarize the reader with the variety of laws, regulations, and practices that a firm may encounter in its international transactions with foreign banking institutions.