



## CHARGES ON CUSTOMERS' CREDIT BALANCES

By: Nicole Wright, Contributor

The nature of the banker-customer relationship is such that when customers lodge money into their accounts, this deposit is considered a loan to the bank and their account is then credited for the sum lodged. This creates the relationship of creditor and debtor with the customer being the former and the bank being the latter.

Customers may question whether banks can place a charge on their credit balances. A charge arises where in a transaction parties have an intention that property shall be made available as security for the payment of a debt. For example, where a bank has loaned money to a customer under the terms of a loan agreement, the principal sum of which is to be secured by a credit balance of the customer with the bank. The bank may thus be authorised to charge payments against the customer's credit balance.

The issue therefore arises whether it is legally possible for a bank to use this charge on the customer's credit balance as a means of securing payment from the customer for the loan.

This very question has been the subject of a strong division of legal opinion. In the English case of ***Re Charge Card Services Ltd*** (1996) it was observed that a charge by the bank over the bank's debt to the customer was conceptually impossible. That is, that a creditor (the customer) cannot create in favour of a debtor (the bank) a charge over the debtor's (the bank's) own indebtedness to

the chargor. A charge of this nature is sometimes called a 'charge back', because it is a charge by a creditor in favour of a debtor.

The House of Lords in the 1997 decision of ***Re Bank of Credit and Commerce International SA (No. 8)***, commented favourably on the possibility of banks placing a charge on their customer's credit balances though it was not laying down a rule of law. It was recognised by the court, that this placing of charges was, and still is, a practice of the commercial community and the courts should be very slow to declare it to be "conceptually impossible". The law lords thought that though rules of law should be consistent and not self-contradictory, the law has to be however fashioned to suit the practicalities of life.

Those comments would be applicable to Jamaica where the practice by our local commercial banks of placing charges on customer's credit balances is common.

Banks when dealing with their customers may expressly include clauses in their instruments allowing for charges on customer's account. Customers should read these instruments with great care and where they do not understand the same they should seek advice from an attorney-at-law.

One such example of clauses that commercial banks often use is:

*"In consideration of the Bank making available or continuing to make available banking facilities or any other banking accommodation whatever to the Customer, the Customer, with full title guarantee, hereby charges in favour of the Bank as a continuing security all its right, title and interest in the Charged Account and the Charged Balance with the repayment and satisfaction on demand of all Indebtedness."*

Despite what pronouncements there are about the impossibility or possibility of charges being placed on the credit balances of banks customers, the reality of

commercial activities in Jamaica illustrates that its existence and use are extremely prevalent. What is of greater importance is the ambit and structure of these clauses in contracts used by commercial banks and the impact this has on banker-customer relationships.

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