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Contractual-Legal Regulation Of Foreign Banks ' Activities

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ABSTRACT

The article analyzes the issues of contractual and legal regulation of foreign banks under the banking legislation of the Republic of Uzbekistan. On the basis of the specifics of the activities of foreign banks, the features of the applicable contracts were studied. Based on the results of the article, conclusions were drawn.

KEYWORDS

Treaty, foreign bank, banking law, loans, deposits and payments.

INTRODUCTION

Contractual and legal regulation of the activities of foreign banks, including in the territory of the Republic of Uzbekistan, is a set of private law regulators that determine the procedure and conditions for the implementation of activities.

The generally accepted model of civil law regulation follows from the fact that the Civil Code refers to the following provisions as one of the main principles of civil law: "citizens (individuals) and legal entities acquire and exercise their civil rights by their own will and in their own interest. They are free to establish their rights and obligations on the basis of a contract...". The contract is the legal basis for relations between subjects of civil law. At the same time, it is the contract that is also the main regulator of activity

The Civil Code of the Republic of Uzbekistan separately provides for rules governing credit agreements, bank deposits and bank accounts, and settlements, which are also applied to the activities of foreign banks[1]. The

[1] Юлдашов А., Чориев М. Договорно-правовые отношения в области авторского права и

Published: February 19, 2021 | **Pages:** 30-33

Civil Code of the Republic of Uzbekistan provides the following definitions of these concepts:

under the loan agreement, one party - a bank or other credit institution (lender) - undertakes to provide funds (credit) to the other party (borrower) in the amount and on the terms stipulated in the agreement, and the borrower undertakes to return the received amount of money and pay interest on it (Article 744);

according to the Deposit agreement, one party (the Bank) has received from the other party (the investor) or received for the cash amount (contribution), undertakes to refund the Deposit amount and pay interest on it on the terms and in the manner stipulated in the contract (article 759);

the Bank account agreement by one party — the Bank or other credit institution (hereinafter — the Bank) agrees to accept and to credit the expense of the other party — customer (account holder), cash, carry out the orders of the client on the transfer and issuing the appropriate amounts from the account and other account transactions (article 771) [2];

cashless payments are made through banks, other credit institutions (further providing for payments to the budget and extra-budgetary funds — banks), which have opened accounts involved in the calculations of persons, unless otherwise follows from the law and not connected with the form of payment (article 790).

Conventionally, all the above-mentioned agreements can be considered banking agreements. In general, the contractual and legal regulation of relations directly arising from the activities of foreign banks is characterized by the following features:

1. The existence of a special subject of contractual legal relations – commercial banks, namely foreign banks.

An analysis of the articles of the Civil Code of the Republic of Uzbekistan, in particular articles 744, 759, 771, 790, allows us to conclude that one of the main features of the legal regulation of contracts in the banking sector is the presence of special entities, namely banks. In particular, credit, bank deposit, and bank account agreements and settlements explicitly define banks as the subject of the agreement[3].

Consequently, it can be noted that the contractual legal regulation of relations between foreign banks, without any doubt, provides for the direct participation of foreign banks themselves in contractual relations.

2. The combination of a public-law and private-law regulator in the regulation of relations.

Banking is the result of a combination of imperative and dispositive methods, which also affect the contractual relationships of foreign banks[4].

Thus, there are transactions that are imperatively mandatory for banks, without which the latter cannot engage in banking activities. An example is the agreement on mandatory audit of banks ' activities. Thus, article 43 of the Law of the Republic of Uzbekistan" On Banks and Banking Activities " states that the activities of banks are subject to annual audits by auditors licensed to carry out such audits in accordance with the law. This contract audit being tested, which includes, in particular, the assessment of capital adequacy, classification of loans,

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Published: February 19, 2021 | **Pages:** 30-33

provision for loan losses, measurement of risk and liquidity. Banks are also required to develop and implement internal audit programs in accordance with the legislation.

Imperative also means that in relation to the activities of foreign banks, there are certain requirements and restrictions that must be observed when fulfilling certain contractual obligations. This can be attributed to the obligation to maintain bank secrecy under concluded contracts. Thus, the Law of the Republic of Uzbekistan "On Bank Secrecy" states that bank secrecy is information protected by the bank:

about the operations, accounts and deposits of its clients (correspondents);

about its client (correspondent), received by the bank in connection with the provision of banking services to it[5];

on the availability, nature and value of the client's (correspondent's) property stored in the bank's vaults and premises;

about interbank transactions and transactions made on behalf of the client (correspondent) or in his favor;

about the client (correspondent) of another bank, which became known as a result of the circulation of information constituting a bank secret between the banks;

about participants of the accumulative pension system, the amount and movement of amounts of pension contributions, pension savings on individual accumulative pension accounts of citizens[6].

This information must also be protected by foreign banks as a banking secret.

Dispositivity can be observed when concluding contracts that serve banking operations and other transactions established by law for banks[7]. These agreements are an integral part of the activities of any credit institution. One can cite as an example the contracts related to credit transactions, the conclusion of which the banks are required to enter into a contractual relationship with the insurance, valuation, financial and other organizations. This does not mean a commercial loan agreement, since it is not an independent transaction of the borrowed type, but is a concomitant obligation that accompanies such basic contracts as purchase and sale, contract, lease, and paid provision of services. Also, dispositive contracts can include contracts that ensure the functioning of any legal entity , such as rent, contract for the construction of a building, supply of equipment, security services, etc.

Therefore, along with the dispositivity of the contractual and legal regulation of the activities of foreign banks, it is also necessary to indicate the existence of mandatory requirements for the conclusion of a contract (for example, an audit contract)[8] .

3. The diversity of the content of contracts of foreign banks.

Almost any civil law contract generates a binding legal relationship. The division of contracts into consensual and real ones is based on the criterion of the moment when such an obligation arises[9]. Under consensual contracts, the obligation arises at the moment when the parties have agreed on all the

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Published: February 19, 2021 | **Pages:** 30-33

essential conditions, under real contracts — at the moment when the transfer of the thing occurred. At the same time, without the transfer of the thing, the obligation in the first case cannot be fulfilled, at least properly, and, in the second case, it will not arise. If we proceed from the category of contractual relationships, it can be noted that contracts in the activities of foreign banks can be of both types: a

real contract – a bank deposit, purchase and sale.

consensual agreement – a credit agreement for the provision of banking services.

Thus, it can be noted that the contractual and legal regulation of foreign banks is carried out at two stages – in the process of creating and registering the organizational and legal status and at the time of direct implementation of the activity.

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