



Improving legal mechanisms for regulating banking services

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ARTICLE INFO

Article history:

Received 10 august 2020
Received in revised form 20
august 2020
Accepted 25 august 2020
Available online
August 2020

Keywords:

banking sector
commercial bank
client
availability of services
Central Bank
banking agreements.

ABSTRACT

This article is devoted to the analysis of problems of banking legislation, regulation of banking services. Based on the study of foreign experience and scientific and theoretical views, ways to improve legislation in the field of regulation of banking services were investigated. Based on the results of the analysis, relevant conclusions were drawn and proposals were developed for the current legislation.

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Банк хизматларини тартибга солишнинг ҳуқуқий механизмларини такомиллаштириш

АННОТАЦИЯ

Ключевые слова:

Банк сектори
Тижорат банки
Мижоз
Хизматлар оммабоплиги
Марказий банк
Банк шартномалари.

Мазкур мақола банк қонунчилиги муаммолари, банк хизматларини тартибга солишнинг таҳлилига бағишланган. Хорижий тажриба ва илмий-назарий қарашларни ўрганиш асосида банк хизматларини тартибга солиш соҳасида қонунчиликни такомиллаштириш йўллари тадқиқи қилинган. Таҳлил асосида тегишли хулосалар қилинган ва амалдаги қонунчиликка таклифлар ишлаб чиқилган.

Совершенствование правовых механизмов регулирования банковских услуг

АННОТАЦИЯ

Ключевые слова:

Банковский сектор
Коммерческий банк
Клиент
Доступность услуг

Настоящая статья посвящена анализу проблем банковского законодательства, регулированию банковских услуг. На основе изучения зарубежного опыта и научно-теоретических взглядов были исследованы пути

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Центральный банк
Банковские договора.

совершенствования законодательства в области
регламентации банковских услуг. По итогам анализа были
сделаны соответствующие выводы и разработаны
предложения в действующее законодательство.

INTRODUCTION

Banks play an important role in developing the country's economy and creating favorable conditions for doing business. It is the quality of banking services that determines the confidence of business entities in banks, which is the most important indicator of the effectiveness of relationships.

In the Republic of Uzbekistan, the development of the banking system also took place systematically and has always been under the close attention of the state. President of the Republic of Uzbekistan Sh.M.Mirziyoyev points out that it is necessary to continue reforms in the banking and financial system at an accelerated pace and widely introduce modern market mechanisms in the sphere. The most important problem in the banking system today is that 83 percent of the capital of banks belongs to the state. This hinders healthy competition in the banking sector and negatively affects the quality of services provided. Therefore, the President stressed the need to further expand the range of modern banking services by introducing new financial instruments and issuing bonds, as well as developing the sphere based on advanced information technologies [1].

In addition, we should take into account the fact that the problem of low availability of banking services is not only socio-economic, but also legal, since the legislator has not developed a regulatory framework that would solve this problem in the legal field and would take into account the interests of both the recipient of banking services and the credit institution providing these services. The lack of a balance of interests between the subjects of banking relations on the issue of providing banking services makes it necessary to consider this issue in more detail.

METHODOLOGY

General scientific and special methods of scientific knowledge were used to solve the set tasks: historical, systematic, specific-sociological, comparative-legal, analytical, content analysis, logical-legal, etc. Together, all these methods made it possible to ensure the reliability and validity of the research results in a scientific article to a certain extent.

The analysis of the norms of the legislation of the Republic of Uzbekistan and practice of a number of foreign countries, doctrinal works, scientific articles in the field of banking law was used as an empirical basis.

The research also included a sociological survey among 85 employees of 7 banks in the Republic of Uzbekistan. The results of the study showed that 96 % of respondents pointed to the importance of ensuring the availability of banking services, 48 % pointed to the excessive authority of the Central Bank of the Republic of Uzbekistan, 79 % supported the proposals regarding the legislative consolidation of the properties of the information provided by commercial banks.

RESULTS OF THE STUDY

Banking activity, from the position of the legislator, is a set of operations carried out by a credit institution, stipulated by banking legislation. Banking is closely related to the concept of banking services. Services are defined as performing certain actions or

performing certain activities. In turn, the legislator under the banking service, together with other types of services, means an integral element of the financial service and a direct embodiment of banking activities, which are traditionally included in the subject of financial law and are mediated to financial activities. At the same time, the concept of a service has, in our opinion, not financial and legal, but civil and legal significance.

The Strategy of actions for the further development of the Republic of Uzbekistan as a priority direction for the development and liberalization of the economy indicates the deepening of reform and ensuring the stability of the banking system, the level of capitalization and deposit base of banks, strengthening their financial stability and reliability, further expansion of lending to promising investment projects, as well as small businesses and private businesses [2].

Based on this, the Republic of Uzbekistan has created a corresponding regulatory framework in the field of banking services regulation. The Law of the Republic of Uzbekistan “On banks and banking activities” determines that the provision of banking consulting and information services refers to the operation of banks [3]. At the same time, the very concept of banking services is not specified in the Law.

Particularly noteworthy is the adoption of the Resolution of the President of the Republic of Uzbekistan “On additional measures to increase the availability of banking services” from 23rd March 2018 the year number RP-3620. According to this resolution, one of the main tasks of the Central Bank of the Republic of Uzbekistan is to improve the availability of banking services and protect the rights of consumers of banking services [4].

It was noted that the Central Bank of the Republic of Uzbekistan was instructed to pay attention to:

- identification of systemic shortcomings of the banking system and violations of the rights of consumers of banking services, as well as their prevention;

- ensuring that liability measures are taken against credit institutions that violate the rights of consumers of banking services;

- advising and assisting in the restoration of violated rights of consumers of banking services;

- increasing the level of financial accessibility and literacy of consumers of banking services.

In turn, the Central Bank of the Republic of Uzbekistan was instructed by the decree of the President of the Republic of Uzbekistan to develop and approve a Regulation on the minimum requirements for the activities of commercial banks in the implementation of relations with consumers of banking services. Resolution of the Board of the Central Bank of the Republic of Uzbekistan “On approval of the regulation on minimum requirements for the activities of commercial banks in the implementation of relations with consumers of banking services” was adopted on April 28th, 2018. Although this document regulated the Bank’s relations with customers, however, the issues of regulation of banking services themselves were not regulated in detail.

In our opinion, the conceptual framework of the of the Board of the Central Bank of the Republic of Uzbekistan “On approval of the regulation on minimum requirements for the activities of commercial banks in the implementation of relations with consumers of banking services” should include the following aspects.

1. Many scientists generically define banking services as services provided by commercial banks. At the same time, the specified definition is not sufficiently effective

and unclear. As you know, banking services are based on the specifics of banking activities. The law of the Republic of Uzbekistan «on banks and banking activities» defines banking activity as accepting deposits from legal entities and individuals and using the accepted funds for lending or investing at their own risk, as well as making payments. Article 4 of the Law provides for a list of banking operations. Consequently, banking services are services related to banking operations carried out within the framework of banking activities. Banking code of the Republic of Belarus, the Federal Law of the Russian Federation «On banks and banking activity», Law of Poland «On banks», Law of the Republic of Kazakhstan «On banks and banking activities in the Republic of Kazakhstan» define banking services through banking operations and banking.

The above allows us to conclude that banking operations can be identified with transactions. However, when conducting a normative analysis of the concept of «operation», it becomes obvious that there are two types of transactions: unilateral and two - multilateral (contracts). Therefore, the concept of «banking service» cannot fully include all banking operations and other transactions, since banking services are performed only on the basis of a contract. Thus, unilateral transactions (consulting, creating comfortable conditions for Bank clients, etc.) are not an integral part of the banking service.

In this regard, the following definition of banking services is proposed:

*«**banking services** – services provided by commercial banks related to conducting banking operations within the framework of banking activities in accordance with the law;».*

2. Of particular importance are the requirements for contracts for the provision of banking services. General requirements indicate that contracts comply with the Civil code, laws of the Republic of Uzbekistan, and regulations of the Central Bank of the Republic of Uzbekistan. Taking into account the rules of legal technique, it seems appropriate to note that contracts must comply with the current legislation of the Republic of Uzbekistan.

Also, the main problem of contracts in the banking sector is their semantic content. Consequently, it is also necessary to point out the rule according to which contracts must have a clear and non-divergent meaning. Ensuring a common understanding depends on the possibility of avoiding different interpretations. In this regard, the texts of treaties should not have a double meaning and should be subject to broad interpretation.

In practice, the text of the agreement is drawn up in the state or Russian language. Taking into account the increased number of foreign investors and other economic entities operating in the territory of the Republic of Uzbekistan, the level of banking services for these entities will increase. This makes it necessary to draw up contracts for the provision of banking services with foreign consumers (foreign investors). Therefore, it is necessary to indicate the possibility of drafting the text of contracts in two languages, including in a foreign language, if necessary. In turn, this will ensure that commercial banks are accessible to foreign consumers.

In our opinion, the following rule should be introduced:

«Contracts concluded with consumers must comply with the current legislation of the Republic of Uzbekistan. The texts of treaties should be set out very clearly and is available for perception and understanding by consumers. The texts of the treaties should be clear and not subject to differing interpretations of the meaning. We recommend using

the Microsoft Word text editor with the «Times New Roman» font of at least size 12 or similar.

At the consumer's choice, the contract text is drawn up in the state or Russian language. If necessary, the text of the agreement can be drawn up in two languages, including a foreign language.»

3. When providing banking services, it is important to take into account a number of requirements dictated by the legislator. In theory, a number of suggestions are made about this.

According to Dragomir Larisa, such a service should be: prompt; timely; guaranteed; adapted [5]. It seems that only if all these properties are present, the banking service will be considered accessible to the public.

In turn, if the concept of «banking service» has a private legal character, then the availability of banking services is a kind of public legal instrument aimed at protecting the interests of creditors and depositors.

As already mentioned, the concept of availability of banking services in the scientific literature has not yet been developed, although the need for this is obvious for all legal science, and especially for the science of financial law.

Taking into account the above, consideration of the availability of banking services on a subjective basis is seen as follows: for the client, the availability of banking services is obtaining a service with the desired characteristics, acceptable risks and an acceptable level of service; for a credit institution – ensuring competitiveness in the future by retaining and increasing the customer base, which ensures revenue growth while reducing costs; for the state – harmonization of legislation in the field of banking, which will take into account the interests of society and the state.

When trying to make scientific understanding and normative consolidation of the principle of accessibility of banking services, it is necessary to take into account the interests of all subjects of relations. When providing services, it is necessary to take into account the triad of interests-the protection of rights, the stability of the banking system and accessibility-the combined implementation of all elements forms an integral and quite intense unity.

Since the banking service is a socio-cultural type of service and does not have a direct material expression, it is difficult to develop financial and legal criteria for providing banking services in a number of circumstances. Such circumstances should include the following: the quality of service provided by the credit institution, are difficult to quantify; the user of the service is parallel to and participant in the process of its provision; preliminary certification of the quality of services, unreliable service is implemented quickly, not stored, have a continual pattern of consumption; services do not have a material form; it is impossible to «draft» the service.

In turn, American scientists and economists have identified five criteria by which consumers evaluate the functional and technical aspects of the availability of banking services:

1) the obvious. This criterion implies the physical aspects of the service: facilities, equipment of the Bank, interior of the premises, appearance of the staff, information materials, and the presence of other clients;

2) reliability. It is defined as the ability to perform a promised service on time, i.e. the service is performed correctly the first time and is completed in the specified time;

3) responsiveness. Employees ' desire or willingness to provide a service;

4) confidence in safety. It concerns the values of competence and courtesy of the staff, their ability to inspire confidence and earn trust, that is, to be perfectly honest;

5) empathy. It consists in personalized attention given to clients. Employees should make every effort to understand customers and their needs [6].

In banking legislation, it is necessary to specify the qualitative characteristics of the disclosed information. In particular, the US Law «law on consumer credit protection» the French Law «on banking and supervision of credit organizations», the Rules for providing banking services and reviewing by banks and organizations engaged in certain types of banking operations, customer requests arising in the process of providing banking services, approved by the Board of the National Bank of the Republic of Kazakhstan, the Regulations on the procedure for disclosure of information about their activities by banks of the Republic of Moldova, approved by the Administrative Council of the National Bank of Moldova, the main feature of the information provided by banks is their availability, timeliness, comprehensiveness, reliability and comparability. Therefore, the Regulation must specify the properties of the information provided by commercial banks. Based on this, the following rule should be introduced:

«The information provided by banks must meet the following characteristics:

accessibility of information – providing information in ways and methods that allow equal and timely access to information;

completeness and diversity of information – providing information that includes all necessary information and excludes omission of data that may lead to changes in the assessment and consumer solutions;

materiality and timeliness of information – provision of information containing essential data necessary for adequate and prompt decision - making by consumers in a reasonable time;

reliability of information – providing real, verifiable, relevant information;

comparability of information - providing information that allows you to determine trends in the dynamics of information.»

4. The banking legislation of the Republic of Uzbekistan specifies the obligation of banks to use the necessary funds to provide consumers with relevant information. However, contracts for the provision of banking services are related to property issues, so they require careful review by consumers. Thus, in order to ensure the rights of consumers to receive information about banking services should be a right of consumers to receive reasonable time to review the information. In this regard, you should fix the following rule:

«If necessary, consumers may be given a reasonable time to review the information provided regarding the banking service.»

The implementation of these measures is important in improving the institution of banking services and contributes to improving the relationship between banks and business entities.

Based on the above, one of the key tasks of banks and the banking system as a whole is to provide high-quality banking services to meet the needs of individuals and legal entities in the banking sector. Thus, banking services are directly implemented in the relationship between two entities – commercial banks and customers (consumers of banking services). The degree of quality of banking services provided depends on the proper legal regulation of relations between commercial banks and consumers of banking

services. Since the legal mechanism is a strong guarantee of effective regulation of certain relations, including in the banking sector.

Since the first days of independence, the legislation of the Republic of Uzbekistan has generally defined the perspective of relations between banks and consumers of banking services. Thus, the Law of the Republic of Uzbekistan «On banks and banking activities» from February 15th, 1991 defined that banks enter into trust relations with clients on a contractual basis. As we can see, the legislator drew attention to the trusting nature of relations back in 1991.

In 2019, a new version of the Law of the Republic of Uzbekistan «On banks and banking activities» was adopted, which also indicated the contractual nature of relations between banks and customers. At the same time, a separate section was introduced that provides for the protection of the bank's clients' interests – compliance with bank secrecy, responsibility to customers and antitrust rules. However, it should be noted that the responsibility of the bank was aimed at protecting the interests of customers only in part of the deposits. Thus, the Law stated that banks are responsible to their customers and depositors for the safety of funds and the fulfillment of obligations assumed to depositors, including the timely passage of payments from one bank to another and the crediting of funds to the current accounts of enterprises and organizations.

The adoption of the action Strategy for five priority areas of development of the Republic of Uzbekistan has given a new impetus to the development of the banking system, in particular, improving the quality of banking services provided. Thus, one of the important directions of The strategy of actions is to deepen the reform and ensure the stability of the banking system, the level of capitalization and Deposit base of banks, and strengthen their financial stability and reliability. In order to fulfil the tasks stipulated in the Strategy of actions for further development of the Republic of Uzbekistan, as well as to improve the quality of relations between banks and customers, on March 23, 2018, the President of the Republic of Uzbekistan adopted Resolution «On additional measures to increase the availability of banking services». This decree determined that commercial banks create conditions for:

- unhindered access to the area of direct customer service, without prior permission and presentation of identity documents;

- getting a preliminary consultation about the banking services provided from the administrators of the initial customer reception;

- transparent registration and consideration of credit applications with an indication of the step-by-step decision-making procedure and the order of notification of the issuance or reasoned refusal to issue a loan (microloan).

The main difference between the standards set out in this resolution is that it paid particular attention to identifying systemic weaknesses of the banking system and violations of the rights of consumers of banking services, as well as their prevention; the adoption of liability measures against credit institutions violating the rights of consumers of banking services; advice and assistance in restoration of violated rights of consumers of banking services; improving financial inclusion and literacy of consumers of banking services. The resolution also determined that ensuring increased availability of banking services and protecting the rights of consumers of banking services is one of the main tasks of the Central Bank of the Republic of Uzbekistan.

Important in the legal regulation of relations between commercial banks and customers played a resolution of the Board of the Central Bank of the Republic of Uzbekistan «On approval of the regulations on minimum requirements to activities of commercial banks in the implementation of relations with consumers of banking services» dated April 28, 2018 No. 16/18, registered in the Ministry of justice of the Republic of Uzbekistan from July 2, 2018 No. 3030. This resolution introduced a number of legal innovations aimed at improving and improving the relationship between banks and consumers of banking services, in particular:

first, the relationship between banks and consumers of banking services is based on a contract, which must be set out in a specific and simple language;

secondly, there should be broad access to banking services for consumers (placing information on the website, information stands of banks, obligation of Bank employees to explain the essence of services);

third, the Bank's information regarding banking services must contain all necessary information, including Bank details, the procedure, conditions and percentages for providing the service, the terms of consideration of customer requests, and the procedure for appealing actions;

fourth, when dealing with consumers of banking services, banks should provide the necessary advice and prevent the practice of unfair provision of banking services [7].

DISCUSSION OF CONCLUSIONS AND PROPOSALS

Despite the fact that the current banking legislation provides important guarantees for the protection of the rights and interests of customers, in the future it is possible to make some changes in terms of improving the quality of banking services provided:

1. The current banking legislation of the Republic of Uzbekistan does not provide for the concept of banking services. As we know, banking services are based on the specifics of banking activities and are aimed at meeting the needs of customers. According to many experts it is the customers' needs are the cornerstones around which is formed a relationship about banking services. As we can see, it is the interests of the client that are the object of implementation of banking services.

The prerequisites for a similar approach can be traced in the legislation of the Republic of Uzbekistan. The law of the Republic of Uzbekistan «On banks and banking activities» defines banking activity as accepting deposits from legal entities and individuals and using the accepted funds for lending or investing at their own risk, as well as making payments. Article 4 of the Law provides for a list of banking operations. Consequently, banking services are services related to banking operations carried out within the framework of banking activities. Banking code of the Republic of Belarus, the Federal Law of the Russian Federation «On banks and banking activity», Law of Poland «On banks», Law of the Republic of Kazakhstan «On banks and banking activities in the Republic of Kazakhstan» define banking services through banking operations and banking. In this regard, the legislation of the Republic of Uzbekistan should introduce the concept of banking services, which refers to the **operations of banks provided to meet the needs of customers in the framework of banking activities in accordance with the law.**

2. Part three of paragraph 3 of the Regulation on minimum requirements for the activities of commercial banks in the implementation of relations with consumers of banking services indicates the drafting of the contract text in the state or Russian language.

Taking into account the increased number of foreign investors and other economic entities operating in the territory of the Republic of Uzbekistan, the level of banking services for these entities will undoubtedly increase. This makes it necessary to draw up contracts for the provision of banking services with foreign consumers (foreign investors). Therefore, the paragraph should indicate the possibility of drafting the text of contracts in two languages, including in a foreign language, if necessary. In turn, this will ensure that commercial banks are accessible to foreign clients. In this regard, the third part of paragraph 3 should be supplemented with the words:

«If necessary, the text of the agreement can be drawn up in two languages, including a foreign language».

3. Paragraph 6 of the Regulation on minimum requirements for commercial banks' activities in the course of relations with consumers of banking services provides for full disclosure of information to the client prior to the conclusion of the contract. However, it does not indicate the qualitative characteristics of the disclosed information. At the same time, the presence of such characteristics is an important guarantee of the interests of customers. The banking legislation of foreign countries provides for such guarantees. In particular, the US Law «On the protection of consumer credit» [8], French Law «On banking activity and supervision of credit institutions» [9], the Rules of provision of banking services and consideration by banks, organizations conducting separate types of banking operations, customer cases arising in the provision of banking services approved by the Board of the National Bank of the Republic of Kazakhstan, the Regulations on the procedure for disclosure by banks of the Republic of Moldova of information about its activities, approved by the Administrative Council of the National Bank of Moldova, the main feature of the information provided by banks is their availability, timeliness, comprehensiveness, reliability and comparability.

The American Association of banks notes that banks' relations with customers should be open and transparent, which ensures greater trust of customers than other entities [10].

Therefore, the law should specify the properties of the information provided by commercial banks. Based on this, in our view, fifth paragraph should be supplemented with part two as follows:

«The information provided by banks must meet the following characteristics:

accessibility of information – providing information in ways and methods that allow equal and timely access to information;

completeness and diversity of information – providing information that includes all necessary information and excludes omission of data that may lead to changes in the assessment and consumer solutions;

materiality and timeliness of information – provision of information containing essential data necessary for adequate and prompt decision - making by consumers in a reasonable time;

reliability of information – providing real, verifiable, relevant information;

comparability of information - providing information that allows you to determine trends in the dynamics of information.».

Based on the above, it can be noted that the legislation of the Republic of Uzbekistan should be improved in terms of securing important guarantees for protecting the rights of consumers of banking services, establishing specific requirements for commercial banks

in the provision of banking services, which contributes to increasing customer confidence in the banking system of the Republic of Uzbekistan.

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