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THE ORIGINS AND EVOLUTION OF DEPOSIT BANKING ACTIVITIES – ANALYSIS OF THE LITERATURE

Abstract

The current norms governing deposit banking activities are the result of a centuries-old evolution of the construct of bank account, the legal nature of bank account, the subject of deposit, and banking institutions themselves. Different civilizations and cultures have contributed to the shaping of deposit activities. The aim of the article is to present and discuss, from a historical-legal point of view, the origin and unfolding of deposit banking activities over time: from antiquity, through the Middle Ages, the early modern period, to modern times. The deliberations are set against a broader financial and legal backdrop to include the transformation of economic power that accompanies deposit activities, expressed in the form of: commodity money, bullion, paper money, and funds. The picture of evolution is completed by the emerging institutions of supervision, capital requirements or deposit guarantee schemes, constituting a series of normative solutions adopted due to the need to provide a framework for deposit activities that would prioritize the security of the depositor. The study, due to its historical-legal character within the scope of detailed sciences, does not aim at applying the conclusions in legal practice or in the theoretical-legal dimension. It serves to collect and show the already acquired historical-legal knowledge about the foundations of contemporary normative solutions of bank deposit activities. In order to achieve the research goal, the study uses the research method of critical literature review. Thus, a reference was made to scientific historical-

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legal and historical studies, from the point of view of a selected research problem, which has not been elaborated in a cross-sectional manner so far.

Key words: banking history, bank deposit, money.

JEL Classification: K19

1. Introduction

The acceptance of funds by modern banks, within the framework of the legal relationship of a bank account, is part of the historically known forms of banking deposit activities. Benefits provided by the so-called banking entities point to an evolutionary nature and a strong correlation with the level of economic and civilizational development of each epoch. Contemporary legal constructs of bank account, cash or deposit banking activities are derived from a wealth of solutions designed in the past. The search for the protection of accumulated property value, its multiplication, financing of business ventures or certainty of settlements has a long history which is reflected in various juridical constructions. The study has a historical-legal character in terms of specific sciences. Its aim is to show the knowledge already acquired about the foundations of modern normative solutions of bank deposit activities. It was considered valuable to show not only the transformations in deposit banking activities, but also to distinguish their historically constant and changeable features. In order to achieve the research goal, the study uses the research method of critical literature review. Therefore, reference was made to scientific historical-legal and historical studies, from the angle of the selected research problem, which has not yet been dealt with in a cross-sectional manner.

2. Antiquity

Knowledge of banking activities, including deposits, is as old as the oldest sources of legal knowledge altogether. In the doctrine, statements can be found that the basis for the development of banking enterprises were, essentially, deposit activities and money trading, followed by the instruments of granting loans and cash lodgment [Żabiński 1967: 9]. Meanwhile, entities engaged in primary forms of banking performed their services, including receiving and entrusting capital with compulsory return, regardless of the form of the capital. Banking activity, however, emerged centuries before the institution of money first appeared. Its traces can be found already in the ancient Egyptian civilization [Morawski 2002: 16], going, within the compact state, as far as back 4000 B.C. [Sójka-

Zielińska 1989: 14]. Commodity money, which could be something as simple as metal bars – including silver and bronze, weighed in various units, the basis of which was the *deben* (91 grams) [Morawski 2002: 16; Kemp 2009: 368] – was used to facilitate trade and was at the center of banking activities at the time [Białas, Mazur, 2013: 11]. The advancement of trade exchange stimulated the growth of the then financial market, giving rise to interest as a form of payment for the use of capital, which could not exceed twice its value [Morawski 2002: 16].

Another geographic region that propelled banking (including deposit activity) and spawned a great state organism was Mesopotamia. Although the local population dealt mainly with agriculture and animal husbandry [Jursa 2002: 17], commercial activity soon became widely embraced and companies were often established to that end [Jursa 2002: 33]. The content and application of trade laws gained prominence along with the discovery of clay tablets for writing in cuneiform [Sójka-Zielińska 1989: 14][1]. During the reign of Hammurabi (1792-1750 BC), known as the Old Babylonian period, it was not just trade that flourished but also the institution of the merchant-banker called *tamkarum* [Niczyporuk, Talecka 2004: 15]. The first mention of *tamkarum* dates back to the Code of Eszunna [Niczyporuk, Talecka 2006: 339][2] and the subject of their activity, after the lapse of the initial period when the monopoly on trade was held by temples [Niczyporuk, Talecka 2006: 340], was accepting contributions in the form of commodity. Aside from that, *tamkarum* granted interest-bearing loans, organized trade, traded slaves, sold on credit, redeemed captives [Niczyporuk, Talecka 2004: 16; Jursa 2002: 35]. The prices were determined by the measuring units of silver[3] [Contenau 1963: 78], whereas barley, bronze and copper were used for low-value transactions [Jursa 2002: 34]. Commodity money in Mesopotamia served its basic purpose relatively well, enabling not only efficient payment and release from liabilities, but also stimulating trade, banking activities, long-distance trade expeditions [Saggs 1973: 243]. The normative meaning of commodity money is alluded to in the Code of Hammurabi, where remedy is defined as payable in an appropriate measure of e.g. grain[4] or silver[5] [Skeczkowski 1995: 33].

[1] The author names the following codes: Code of King Urukagina, ruler of Lagash, composed c. 2360 BC, Code of ruler of Ur-Nammu composed c. 2050 BC, Code of Lipit-Ishtar, ruler of Isin, composed c. 19th century BC, and the best preserved to this day, Code of Hammurabi composed c. 1728-1686 BC.

[2] The authors also emphasize that the earlier codes, i.e. the Code of Ur-Nammu and the Code of Lipit-Ishtar, lack information about banking activities or merchants.

[3] The units of measurement in Babylonia were: *še* (grain) - 0.0467 g, shekel - 8.416 g, *mana* (mine) - 60 shekel, or 505 g, *biltu* (talent) - 60 *manu*, or 30.5 kg.

[4] Code of Hammurabi §56 states: "If a man open up the water and the water carry away the improvements of an adjacent field, he shall measure out ten GUR of grain per GAN".

The then deposit banking operations relied on a number of remarkably sophisticated private-law mechanisms. From today's perspective, they could be classified as reducing counterparty risk and organizational risk, including the legal risk arising from banking activity. The first such mechanism was the written form of contracts, reinforced by the institution of witnesses. The essential element of the validity of the transaction was a contract drawn up on a clay tablet in the presence of witnesses. The tablets stipulated deadlines for repayment of installments and interest and were sealed with cylindrical seals, and later also with fingerprints [Niczyporuk, Talecka 2004: 18]. The plate was then placed in a clay envelope containing a copy of the contract visible also on the outside, which made forgery very difficult. In the event of a dispute, the envelope was opened and the content inside testified to the binding will of the parties [Niczyporuk, Talecka 2004: 18]. Another element making deposits safer and more secure, and therefore increasing the certainty of undisrupted turnover, was the practice of bankers obtaining collateral and the debtor's personal liability including the totality of their property, themselves and their family members. Bondage for debts could run up to 3 years [Code of Hammurabi: § 117]. It meant introducing mechanisms that, from today's perspective, should be classified as counterparty risk mitigation. As regards cash-register instruments, balance sheet entries with three basic items were known and used: debit (goods entrusted by the institution), credit (which lends), and the balance (surplus or deficit) [Jursa 2002: 51].

As far as cross-border transactions, the ruler would overlook the safety of such trade. International trade is evidenced by the correspondence between Babylonian king Burna-Buriash and Egyptian pharaoh Amenhotep IV concerning the plunder of a Babylonian caravan, in which compensation and punishment of the culprits are demanded under the threat of breaking diplomatic relations [Niczyporuk, Talecka 2004: 16]. It remains debatable whether the merchants at the time acted as representatives of a state organization or individual entrepreneurs; the prevailing view, however, is that it was both [Jursa 2002: 67]. Also, falling into captivity during a royal expedition meant that the *tamkarum* was supposed to buy the captive's freedom with family funds, excluding however property and by extension real estate. If a family did not have the funds, those were covered by the temple, and if the temple did not have the funds, those were paid by the ruler. In other words, *tamkarum* had a guaranteed return of the ransom paid [Niczyporuk, Talecka 2004: 16]. The ruler also took care of the stabilization and security of the financial system, outlining among others: the consequences of the entrepreneur's

[5] Code of Hammurabi §59 states: "If a man cut down a tree in a man's orchard, without the consent of the owner of the orchard, he shall pay one-half mana of silver".

losses in the event of granting them an interest-free loan [Code of Hammurabi: § 102], the loss of goods by the entrepreneur during a commercial expedition [Code of Hammurabi: § 103], or the conditions of deferred debt repayment when, due to force majeure, the debtor becomes unable pay off the debt [Code of Hammurabi: § 48]. This was all very conducive to engaging in banking activity and taking risks, at the same time contributing to economic, legal and civilizational development. The extent and complexity of these transactions was shed more light on when the Egibi archive and the well-preserved traces of the Murashu brothers' banking activity were discovered in Hillach, Iraq in 1872 [Niczyporuk, Talecka 2006: 346]. Such developed constructs went on to lay the foundation for banking systems championed respectively by the Greeks and the Romans. In the Mesopotamia of the 3rd millennium BC, that is in the kingdoms of Akkadu and Ur III, the construct of deposit was already known, and so were request deposit payments and later also interest-bearing deposits [Mrozek 1978: 8]. Apart from the banker-*tamkarum*, banking activities in the form of accepting deposits were performed by churches, storehouses and treasuries [Żabiński 1967: 12]. Depositing funds with the temple was also linked to the belief that deposits protected by the gods were essentially safe [Niczyporuk, Talecka 2006: 343]. And so came to notice the choice of a banking entity, its reputation, trustworthiness and risk of loss.

Significant progress in the area of banking activities occurred in ancient Greece, where rich economic life and a strong emphasis on cognition combined with curiosity of the surrounding world fostered the advancement of not only philosophy, medicine and architecture, but also legal and financial structures. First, by means of sheer evolution, money in the form of stamped coinage appeared [Mrozek 1978: 12]. This was around the 7th century BC, when coins were being minted in Asia Minor from electrum, a naturally occurring alloy of silver and gold [Merkelbach 1996: 15]. In the early days of producing money, the rulers of Lydia standardized the size and by definition also the ore which was a warrant of value [Mrozek 1978: 10; Morawski 2002: 18]. And so the stamp, size and shape of the coin standardized the ore which was previously a commonly accepted form of payment. Money issued by rulers became a means of release from obligations and a source of tax revenue. Not only that, it generated interest which was used to make offerings. Over the years and with the experience of devaluation, conviction became apparent that, for it to fulfill its function, money must carry an intrinsic value, a specific connection with the commonly accepted unique means[6]. With time, therefore, money replaced bulky

[6] Metals were not always this unique means. In the areas inhabited by the Slavs around 1000 AD, trade also took place with the use of commodity money, including leather and linen handkerchiefs [An Account by Ibrahim Ibn Jacob of his travels to Slavic Countries: 49].

commodities, becoming a standardized, compact, robust, exchangeable, portable means of exchange markedly facilitating increasingly complex economic and social relations, and it was the state that overlooked its issuance [Mrozek 1978: 12]. From the legal standpoint, the issuer was the initial guarantor of the quality and quantity of the ore, and as such, reduced transaction risk for bankers which used to consist in falsified coin weight or commodity composition. With the advent of money, therefore, the object of bank deposit changed.

Money became not only a measure of value, but due to its nature, began to generate income by itself. This led to a number of further implications for rulers, who, on the one hand, seized control over the economic and tax sphere, but on the other hand, were obliged to provide a sufficient amount of coins and thus liquidity.

In the classical period, the Greek banking system consisted essentially of three segments: temples, private banks, and local public banks [Morawski 2002: 21]. Temples specialized in deposit operations [Mrozek 1978: 23], which was due to the primary need to ensure security accompanying in particular the accumulation of money. Temples with physical means of protection offered the safety of deposited funds much more effectively than an individual could. This apparent trustworthiness, in both the subject and the protection mechanisms, meant that people voluntarily entrusted the care of their valuables to the temples. However, this protection was not always effective [Mrozek 1978: 23][7]. Another drawback was the lack of interest on the property so entrusted to the temples. And so a dilemma emerged – and it has yet to be resolved – whether it is better to deposit money with a banker who will burden it with risk but pay interest, or secure capital burdening it with less risk but gaining nothing in the process. According to the present state of knowledge, the services of these private bankers enjoyed considerable success [Mrozek 1978: 24], which shows how much trust was conferred in those de facto private bankers.

The local nature of the currencies of individual Greek city-states spawned *trapezites* (canters) who engaged in currency exchange based on their current rates [Mrozek 1978: 22]. The coins differed in weight, alloy and stamp [Żabiński 1967; 12]. A subsequent expansion of the range of services by *trapezites* to include granting credits and loans turned them into close equivalents of today's bankers [Mrozek 1978: 23]. And so bankers became not only the keepers of the funds entrusted to them but also active participants of the financial market at large. By means of the lender's property, they contributed to the economic and civilizational development. Over time, their services became even more

[7] The author points to organized robberies carried out on a large scale by Sulla and the Phocians.

specialized, giving rise to: *kollubistai*, dealing with money exchange and charging a commission called *katalage*; *danneistai*, dealing with granting small loans against collateral, as well as *trapezitai* dealing with deposits [Morawski 2002: 21]. The scale of operation of these de facto banks was considerable. In Athens alone, including Piraeus, one in every fifty inhabitants was either a bank's debtor or creditor following the Peloponnesian War [Mrozek 1978: 24]. Let us note that, over time, the sheer scale of banking activity necessitated the keeping of trade books and brought with it a prototype of today's bank account [Żabiński 1967; 14]. Here, too, public regulation of banking activity appeared in the form of paid concession [Morawski 2002: 23].

An important driver of actual and legal changes with respect to deposit activity was Roman law, shaped by subsequent political and economic changes in the Mediterranean. The Roman banking system was fashioned after that of Greece and Egypt [Zarzycki 2014: 15]. A deposit for the banker was minted coinage which could be deposited in two ways: as *pecunia obsignata*, that is, individually marked coins (closed, for example, in a purse), or as *pecunia non obsignata*, a cash deposit marked in amounts [Zarzycki 2014: 16]. In *pecunia obsignata*, the depositary was required to return the same coins and was not allowed to use the money being deposited, whereas in *pecunia non obsignata*, the money could be traded but the depositary ran the risk of loss, having the obligation to return its value [Zarzycki 2014: 16]. The scope of economic activity, including financial, in ancient Rome has for years been argued [Wyrwińska 2014: 31]. This is partly due to both the formation of *depositum irregulare* as a contract separate from loan and safekeeping [Zarzycki 2014: 18] and the use of credit-money understood as a debt which could be used to purchase specific goods [Wyrwińska 2014: 31]. Instances of hefty payments for property are currently being debated, such as that of Cicero reportedly paying 3.5 million sesterces for a real estate (which was about half a ton of silver). This begs the question, among others, as to how this value was transferred [Negro, Tao 2013]. It is pointed out, albeit with great caution, that some receivables (*nomina*) could be used to settle accounts [Wyrwińska 2014: 33]. Not only did it give rise to the complex institution of netting (*compensatio*), both voluntary and compulsory, which itself fell under procedural law [Kuryłowicz, Żołnierczuk, Kosiorkiewicz 1980: 190], [Kolańczyk 1986: 460], but it was also accounting that developed markedly. The Roman *argentarius* was obliged to keep an *adversarium*, that is a day book, in which operations were recorded in chronological order and then transferred to *codex rationum mensae*, that is a general ledger [Morawski 2002: 29] that was the equivalent of today's personal account [Żabiński 1967: 15]. In the general ledger, each client had an account consisting of *expensum ferre*, the debit side, and *acceptum ferre*, the credit side. Entry into the ledger was considered evidence in court [Morawski 2002: 29]. As a consequence, settlements began to be made via bank accounts, without the use of money, and the term *transcribere* (‘transcribe’) became a synonym for payment [Morawski 2002: 29]. Also expanded was the specificity of banking activities, as was the number of people involved in banking activities. Apart from banking professionals, called trapezitae in Greek and *argentarii* in Latin, there were: *mensarii*, *mensularii*, *nummularii*, *coactores*, *coactores argentarii*, *stipulatores argentarii*, *collectarii* [Niczyporuk 2013: 27]. The multitude of terms, the meaning of which would evolve over the years, testify to banking activity becoming increasingly more diverse and specialized. As far as our deliberations, the figure of *mensularus* seems particularly noteworthy, as it was a banker with whom clients kept accounts. All operations concerning the account were performed at the request of the account holder, who could also use a letter of credit, *chirographum* in Latin, replacing payment in cash [Niczyporuk 2013: 48]. The deposit activity of Roman bankers, including accepting irregular deposits, became one of the banking pivots at the time [Niczyporuk 2013: 86]. For regular deposits, bankers were responsible for the *dolus*, and in the Justinian period for *culpa lata*, whereas for irregular deposits, the responsibility concerned *omnis culpa* [Zarzycki 2014: 19]. Risks borne by depositors were related not only to the banker but to the state as well. Cases are known of rulers ‘spoiling’ and adding worthless components to coinage, resulting in its devaluation [Mrozek 1978: 63]. This, in turn, caused unrest, including a bankers’ strike in the Egyptian city of Oxyrhynchus where local bankers refused to accept and exchange the depreciated Roman coin [Zarzycki 2014: 17]. The return of such depreciated coin to depositors also brought reluctance to irregular deposits [Zarzycki 2014: 17]. Supervisory mechanisms over banking activities, banking companies, different forms of financial intermediation and loans followed shortly after, where risk mitigation with respect to financial activities was boosted via specialization of bankers and proper organization of banking activities. In addition to that, proven normative solutions – and people’s trust in them – enabled the development and use of accepted abstract constructs instead of the physical transfer of bullion. It became a characteristic feature of Roman culture to include risk in legal constructs. An example is the sea loan, which provided for transferring the risk from the borrower to the lender, as goods that were lost during a sea trip were not subject to repayment by the debtor [Blicharz 2013a: 338]. And so, while in the ordinary loan (mutuum) the risk of losing the borrowed amount was borne by the borrower, the sea loan provided for amendment clauses that shifted the burden of risk, including loss of goods, onto the lender, while allowing higher interest to be charged.

Interest on sea loans thus took a special form of the so-called price of peril (*periculi pretium*) [Blicharz 2013b: 31].

3. Middle Ages

Banking activities have shared the fate of societies, ceasing with the fall of individual civilizations that made them. With the collapse of trade and geopolitical changes, the legal structures developed over the centuries – also those pertaining to banking – were destined to go into oblivion for years to come. Only later in Europe a reprise of complex banking mechanisms occurred thanks, among others, to Italian traders and bankers who used their strategic geographic location to gradually revive trade. It was in the Middle Ages, in particular, that the old Roman accounting was improved with the introduction of a double-entry bookkeeping system. Compensation was also popularized, the concept of account (Italian *conto*) was introduced, and current accounts (Italian *conto corrente*) began to be kept [Żabiński 1967: 18]. Furthermore, banks appeared that were close to the contemporary understanding of this institution. The first such bank was a Venetian bank established in 1156, which, despite changes, including of the name to "Banco del Giro" and a series of transformations, survived until 1797, or until the dissolution of the Republic of Venice by Napoleon [Żabiński 1967: 19]. The invention of printing facilitated the dissemination of knowledge about legal institutions developed by Italian bankers. The use of bank accounts became increasingly common also owing to the economic development and the use of promissory notes as a way to manage funds accumulated on bank accounts. Over the years, more early banks were established, such as the bank of St. Ambrose in Milan, the deposit-exchange Bank of Amsterdam (1609), or Die Hamburger Giro-Bank (1619).

Against this background, Polish experience seems rather modest, although the early *Monumenta Poloniae historica* testify to the growing importance of trade in Poland [An Account by Ibrahim Ibn Jacob of his travels to Slavic Countries: 49]. This is confirmed by large amounts of foreign, including Arab, coins found during excavations. Polish coinage, drawing on ready-made patterns, began with the adoption of Christianity by Mieszko I [Grodecki 2009: 3]. In Poland, in terms of broadly understood banking activities, usury, mainly conducted by merchants, was predominant [Żabiński 1988: 41]. The institution of *depositum*, known in Old Polish as *pokład* (lit. 'laydown') or *wierna ręka* (lit. 'faithful hand'), was known in Poland as early as in the 14th century [Zarzycki 2014: 23, cited after Dąbkowski 1909: 20]. Pokład could also be *usable* – that was when the receiver of pokład became the owner of the money and was obliged to return it [Zarzycki 2014: 25]. It differed from a loan in terms of in whose interest it was granted. Moreover, the request for return could be made at any time [Zarzycki 2014: 23]. As the years passed, the number of merchants and townspeople granting loans grew steadily. Boner's Company, founded in Krakow, operated as a commercial and banking house powerful enough to grant loans even to the king himself [Rutkowski 1947: 104]. The same goes for Jewish-owned kehillah banks [Rutkowski 1947: 341] that were able to attract noblemen's and church capital, and pious banks (Latin *montes pietatis*) opposing usury. The latter were advocated for by Polish Jesuit preacher Piotr Skarga, founder of the first Mons Pietatis in the Corpus Christi chapel at the Church of St. John in Vilnius [Szczygielski 2006: 776].

4. Early Modern Period

Just like banking was initially revolutionized by departure from commodity money in favor of standardized money minted by rulers, a similarly important change consisted in the gradual departure from bullion towards paper money. Factors such as geographical discoveries, economic development, the influx of precious metals into Europe, and overall progress in banking, have not only led to an increase in the amount of bullion in circulation, but, perhaps paradoxically, prompted the appearance of paper money. Paper money, first introduced into circulation in Europe by the Swedes, was not a European but a Chinese invention [Morawski 2002: 55]. The reason for the emergence of paper money in Europe was related to the lack of access by the Swedes to the necessary amounts of silver and gold. In the 17th century, having access to another metal which was copper, the Swedes started minting copper coins called *platmynts*, or plate money. To make them resistant to value loss, the coins – or in fact the copper plates – were very heavy, with a 10 Thaler weighing as much as 20 kg [Morawski 2002: 61]. A solution facilitating the handling of such money was found by introducing a copper token, which was replaced in 1661 by a paper-bearer document issued first by *Stockholms Banco*, and later after its collapse, by *Sveriges Riksbank*. This document attested the rights to a *platmynt* of specific value. Similar paper-bearer documents, called bank notes, were issued by banks in exchange for depositing, for example, gold. The use of bank notes made it possible to transport and hand over to the contractor as payment only the paper-bearer document, which in turn minimized the risk during a trade expedition of losing bullion stored in the treasury of a bank.

This is, in broad brushstrokes, how bank deposits came into existence, along with the accompanying effects of the legal nature of bank account. Issuing banks were soon established, issuing notes and therefore paper-bearer bank obligations on the basis of bullion deposits placed with the bank, payable upon presentation in bullion [Żabiński 1967: 22]. Banks, using this mechanism, started to grant loans by issuing banknotes not covered in the gold owned, counting on the fact that the likelihood of simultaneous collection of the gold by all depositors was low and the depositors benefited from interest [Morawski 2002: 78]. The practice of issuing banknotes not fully covered in real value was increasingly used by both small banks and emerging central banks. Issued banknotes, supported by the trustworthiness of the state and taking advantage of release from liabilities[8], thus became a popular form of accounts settlement, with full and then partial convertibility into gold, and in some countries also into silver, ensured over decades to come. Societies quickly became accustomed to paper money and the new function of banks. Importantly, paper money did not replace bullion coins right away, as those also remained in circulation. Bullion coins, including gold and silver, remained an effective means of exchange, an example of which is the conclusion in 1865 of the Latin Monetary Union between France, Belgium, Switzerland, and Italy. Exchange parity of those countries' currencies was equal, and the mutual validity of payments with gold and silver coins, whether in francs or liras, was assumed [Żabiński 1988: 45]. Although the weight and alloy of the respective coins were the same, a number of issues cropped up and the union can now hardly be considered a success story [Kee-Hong Bae, Bailey 2003: 7].

The 18th century in Poland brought a series of initiatives to found a central public bank [Konarski 1923: 301] and develop normative foundations for the bill-of-exchange law. This essentially sprang from the need to provide cheap credit to the state and the public [Grodek 1936: 19]. The bank's mission was seen as lending after collecting funds for that purpose, with purposes other than issuance and credit being rarely mentioned [Grodek 1936: 41]. Private banking in Poland, often run by foreigners, took off mainly in Warsaw in the 18th century, and to a lesser extent in Poznań, Kraków and Lublin. Bankers not only used their own capital, but also accepted cash deposits, offering interest rates of 6-10% [Rutkowski 1947: 342]. The essence of banking as the art of ensuring the security of depositors' contributions in spite of risks was bitterly reminded of by the Partitions of Poland. Those conducting banking activity against the aggression of the partitioning powers announced the suspension of payments of deposits, having at their disposal a total amount of liabilities of 250 million Polish zlotys [Rutkowski 1947: 342].

[8] It should be emphasized that this law was temporarily suspended, e.g. the Bank of England restored the convertibility of banknotes into gold in 1816 and then suspended it again in 1818. Cf. [Morawski 2002: 113].

During the Partitions, banking activity remained largely unaffected, although its legal basis for obtaining deposits was not uniform. The then-applicable Napoleonic Code regulated the deposit contract from art. 1915 onwards. According to some researchers, it alludes to irregular deposit, incorrectly treated as a loan agreement under the guise of a deposit, and it was used in banking relations [Zarzycki 2014: 28]. In the Austrian Partition meanwhile, §959 ABGB of 1811 reads that, with the consent of the depositor, it was allowed to utilize the deposit but which fact transformed the contract into a loan contract (when the deposit was of insignificant value) or otherwise into a remuneration contract or letter of attorney[9]. In the Russian Partition, the regular deposit was governed by art. 2100-2124 [Rymowicz-Święcicki 1933] and irregular deposit is hard to come by; whenever the deposited item was money, the contract was treated as a loan [Zarzycki 2014: 33]. In the Prussian Partition, in turn, BGB of 1896 regulated the irregular deposit contract. According to §700 BGB, if the items were deposited in such a way that the ownership was transferred to the depositee, then the loan provisions should apply [Zarzycki 2014: 37].

Late 19th and early 20th century brought further development of banking in Poland, and consequently also the legal relations of bank accounts. Banks in the form of joint-stock companies began to emerge. The role of banks' capitals was emphasized as the basis of trust, which in turn was understood to mean the belief that the money entrusted to the bank would not only not be lost but also returned at every request [Szarski 1918: 6]. In view of the different legal systems of the partitioning states, the normative regulation of banking activity in this legal form was different. Joint-stock company was an instrument known in Poland as early as in the 18th century. The first Polish joint-stock company was founded upon the initative of King Stanisław August Poniatowski in 1766, literally dubbed “A Company of 120 Shares to Establish Wool Factories in the Country” and later called the Wool Manufactories Company [Suski 2013: 142], [Franczak 2015: 47]. The first Polish bank operating as a joint-stock company was established in the Prussian partition in Poznań. It was Bank Bniński, Chłapowski and Plater "Tellus" SA. In 1867, Akcyjny Bank Hipoteczny was founded in Lviv under the Austrian partition, while in the Russian partition this was, in 1870, Bank Handlowy w Warszawie SA [Morawski 1996: 15]. In the Russian partition, the operation of banks as joint-stock companies was based on the licensing

[9] §959 ABGB provided: “If the depositee, at his request or upon the voluntary declaration of the depositor, is allowed to utilize the deposited item, then in the former case, he shall have the right to do so immediately after obtaining such authorization, whereas in the latter case, he shall have that right from the moment when the declaration has been accepted or when the deposited item has actually begun being utilized, and in which case the contract shall cease to be a storehouse contract and become: a loan contract for insignificant items, a remuneration contract for non-insignificant items, with rights and obligations arising from such contracts, or letter of attorney”.

system and the oversight of the Minister of Finance. It was required to comply with a number of normative requirements securing the bank's stability and deposit safety, including: minimum (0.5 million rubles) and maximum (5 million rubles) share capital, equity to external capital ratio of approximately 1:5, cash emergency funds in the amount of 10% of the share capital, and loans per customer not exceeding 10% of the share capital [Morawski 1996: 16]. The concession system was also in force in the Austrian partition, although the authorities took a rather kind view with banking [Morawski 1996: 17]. But it was in the Prussian partition where banking laws were the most liberal. There, a bank license was not required at all and it was enough to simply register the activity. Banks were required to comply with their own statutes and the provisions of the commercial code [Morawski 1996: 17]. Additionally, there were no restrictions on banking activities there [Morawski 1996: 17].

Risk affecting funds deposited in bank accounts, including risk of loss, has always existed due to the specific character of banks as an intermediary between those who have excess cash and those who need extra cash. As can be seen from the above examples, the approach to the normative shape of banking activity was different for individual partitioners. Where the legal regulations were the strictest, the security of deposits turned out to be the highest. In the Russian partition lasting until 1915, no bank, run as a joint stock company, collapsed [Morawski 1996: 16].

During this period, the Bank of Poland (1828) was also founded as a state bank that performed not only issuing functions, servicing public debt, servicing foreign exchange operations, but also kept deposit accounts for individuals and business entities [Leszczyńska 2010: 10].

The 19th century also marked the onset of deposit guarantee schemes to further increase the security of banks and depositors. The first legal regulations aimed at increasing the security of the funds entrusted to banks appeared in the United States. Due to the submission of banking regulations to state authorities, the banking system was significantly fragmented and properly managed banks began to perceive the need for market supervision themselves [Morawski 1996: 20]. Around 1820 in New England, a private scheme named “Suffolk”, securing the liquidity of commercial banks, was established, made up of contributions from its individual participants in which the Suffolk Bank of Boston acted as the lender of last resort [Obal 2005: 189]. But it not the only attempt to seek security mechanisms and a number of other nineteenth-century deposit guarantee schemes were created and ceased along the path towards the optimal security formula.

The resulting mosaic of solutions was, however, territorially limited and it was not until the early 20th century that common legal solutions emerged.

5. Modern Times

The 20th century brought Poland as many as four central-bank entities: Polska Krajowa Kasa Pożyczkowa, Bank Polski SA, Bank Emisyjny w Polsce, and Narodowy Bank Polski – the National Bank of Poland. In the first period after regaining independence, the laws of the partitioning states remained effective in Poland. The law of the former Russian partition still licensed banking activities, determined the amount of share capital and the ratio of equity to foreign capital, and distinguished between commercial and mortgage banking [Gliniecka, Harasimowicz, Krasnodębski 1996: 9]. In the former Austrian partition, banking activities were also licensed, but the operation of mixed banks, that is those dealing with granting short-term and mortgage loans, was allowed [Gliniecka, Harasimowicz, Krasnodębski 1996: 10]. Last but not least, the legal solutions of the former Prussian partition were based both on the registration system and the authorizations for banking activities introduced in 1917 for joint-stock companies, limited joint-stock partnerships and limited liability companies, as long as their capital exceeded 300,000 marks [Gliniecka, Harasimowicz, Krasnodębski 1996: 10]. Interestingly, after the annexation of a part of Upper Silesia to Poland and the repeal of the aforementioned regulation, the registration system remained effective in those areas and the Polish authorities had no control over the founding and operation of banks there, thus allowing for the transfer of capital to Germany, which was referred to as the "Silesian currency loophole”.

The first Polish banking act of 23 March 1920 on the supervision of banking enterprises and exchange offices comprised just 13 articles. The scope of its regulation was very modest, not only due to the fact that it did not generally apply to banks in the form of joint-stock companies, cooperatives and credit institutions which, as it stipulated, were governed by statutes approved by the state authority , but also due to the narrow scope of normative regulation. In spite of this however, it was a legal act regulating the broadly understood banking activity that provided for the need of state interference in exceptionally important and at the same time risk-burdened activity. It outlined the legal nature of bank account by licensing the founding and running of bank houses and exchange offices . The powers of the Minister of the Treasury were legally shaped not only to grant concessions but also to determine the minimum amount of share capital, to establish government supervision over banking operations, and to issue orders regulating this supervision and its costs. Attention is therefore drawn to the right to control the state of deposits as a normatively defined element of supervision. The Act uses the expression "banking interests", stipulating in art. 1 that the scope of activity of banking houses should cover all banking interests. However, these interests are not elaborated on, meaning there is no explicit mention of bank accounts, the manner of handling deposits, or banking activities for which the collected deposits could be used by the bank. Normative regulations that appeared in Poland's interwar period, the period of command economy and the period of transformation, although undertaken for different reasons and in different directions, began to respond to the need for broad regulation of banking activity as having bearing on an important public interest. These periods, however, due to the complexity of the issues accompanying them, warrant a separate study.

6. Conclusion

Depository banking activities have their origin in customs and commercial practice, with only a certain degree of normative regulation. The analysis of historical-legal and historical studies has helped to achieve the aim of the study. It not only shows the transformations in the field of deposit banking activities, but also distinguishes its historically constant and changeable features. The constancy manifests itself in the activities of accepting a deposit, recording it and the obligation to return it. In terms of historically variable features, the predominant ones are the change in the shape and requirements of banking institutions, the different subject of a bank deposit or the way in which deposit safety is ensured. The march towards modernity therefore means an increase in banks' subjective requirements in terms of capital, organization and risk management. The qualities of a bank, as a party to a deposit contract, started to be subject to strict rationing. The subject of bank deposits has also changed in line with the change in the medium of exchange, ranging from commodity money, gold bullion, paper banknotes to fiat money. The occurrence of bank failures and widespread public expectations about the safety of deposits have led to greater attention being paid to the problem of safe custody of bank deposits. Apart from the introduction of various forms of supervision over banks, external institutions guaranteeing the safety of bank deposits started to appear in the legal system. Legal standards became the vehicle for these changes. Deposit-related banking activities became the subject of a specific civil-legal regulation shaping the bank account relationship. On the other hand, because of the important public interest, undertaking and carrying out banking deposit activities has been subject to extensive regulation by public banking law.

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