

## **Certification of Statement of Account**

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A suit for recovery of finances under section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is filed by a financial institution in a banking court. It is mainly based on statement of account. Correct and complete statement of account, having proper certification, may be a reason of early and favorable disposal. On the contrary, lacking in the statement may cause recording evidence of the parties and the exercise sometimes takes years to years to complete the trial. This paper would highlight relevant laws and rules applicable in certifying a statement of account.

At the time of filing application for leave to defend the suit<sup>1</sup>, a customer most of the times dispute improper certification of accounts and claims that the statement annexed with the plaint does not contain true entries. In a court of law much time is consumed during course of argument to resolve issue of certification. Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001<sup>2</sup> requires certification of Statement of Account. This provision of law makes mandatory for a financial institution to certify the statement of account in a manner as provided under the Bankers Books Evidence, Act 1891 (*the Act*). Section 4 of the Act<sup>3</sup> speaks about the persons who are authorized to certify statement of account. This provision spells out that official with the designation of '**principal accountant**' or '**manager**' has authority to certify the statement. A certificate, which is to be given at the foot of the statement of account, so as to make it certified copy of the statement of account, must state the following facts:

- (i) it is true copy of such entry;
- (ii) such entry is contained in one of the ordinary books of bank;
- (iii) it was made in the usual and ordinary course of business;
- (iv) such book is still in the usual and ordinary course of business; and

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<sup>1</sup> **Section.- 10(2)** The defendant shall file the application for leave to defend within thirty days of the date of first service by any one of the modes laid down in sub-section (5) of section 9

<sup>2</sup>**Section.- 9(2)** The plaint shall be supported by a statement of account which in the case of a financial institution shall be duly certified under the Bankers Books Evidence Act, 1891 (XVII of 1891), and all other relevant documents relating to the grant of finance. Copies of the plaint, statement of account and other relevant documents shall be filed with the Banking Court in sufficient numbers so that there is one set of copies for each defendant and one extra copy.

<sup>3</sup>**Section.- 4. Mode of proof of entries in banker books.-** Subject to the provisions of this Act, a certified copy of any entry in a bankers books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

- (v) subscription by the principal accountant or manager of the bank with his name and official title<sup>4</sup>.

Most of the times, the statement of account which is annexed with the plaint contains signature of one or two persons with the seal of financial institution. Such statements do not reflect designation and/or name of the persons who have signed the statement. To avoid complications and causing dismissal of suit on the grounds of improper statement, it would be appropriate to cater this issue at the very stage of filing the suit. Authorized person, having authority to file a law suit, may look into the matter before presenting plaint in a court of law. In the case of Bankers Equity Limited<sup>5</sup> Honorable Lahore High Court, Lahore has observed that subsection (2) of section 9 of the Ordinance makes it mandatory for a banking institution to support its plaint in a suit against the customer by a Statement of Account duly certified under the Bankers Books Evidence Act, 1891 and also by all other relevant documents relating to grant of finance. Without such a statement of account, a customer will obviously remain totally unaware of the amount advance, mark-up charged, mode of calculation of account, nature of default and actual claim. There would be many decisions of Honorable Apex Courts which may favor to the financial institutions on the issue but it would be more appropriate to avoid controversy and to make compliance the law.

Sometimes application for leave to defend is allowed because of this technical defect. It is suggested to the concerned officials of the financial institutions while certifying statement of account must indicate *name* and *designation* of the official who is/are certifying it and they must have designation of either '*manager*' or '*principal accountant*'. In short as to avoid delay and multiplicity of litigation, statement of accounts may be certified as prescribed in the law i.e. sections 2(8) and 4 of the Act<sup>6</sup>.

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<sup>4</sup>2007 CLD 678

<sup>5</sup> 2003 CLD 931 Lahore [Bankers Equity Limited through Principal Law Officer and 5 others verses MessrsBentonite Pakistan Limited and 7 others]

<sup>6</sup>**2(8) "certified copy"** means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is true copy of such entry that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

***End Notes:***

A few judgments of apex courts are referred to on the subject as to have better understanding and further research. In the first set of cases importance has been given to proper certification whereas in second set of cases some relaxation can be seen.

**First set of cases:**

1. Bankers Equity Limited through Principal Law Officer and 5 others v. Messrs Bentonit Pakistan Limited and 7 others (2003 CLD 931) [Lahore]
2. Bankers Equity Limited and 5 others v. Messrs Bentonite Pakistan Limited through Chief Executive and 7 others (2010 CLD 651) [Lahore]
3. Pakistan Kuwait Investment Company(Pvt.) Limited through Authorized Representative v. Messrs Active Apparels International and 6 others (2012 CLD 1036) [Sindh]
4. Messrs Soneri Bank Limited v. Messrs Compass Trading Corporation (Pvt) Limited through Director/Chief Executive and 3 others (2012 CLD 1302) [Sindh]
5. Messrs Muzamil Brothers and another v. Saudi-Pak Commercial Bank Limited through Manager (2006 CLD 1546) [Lahore]
6. Elbow Room and another v. MCB Bank Limited (2014 CLD 985) [Sindh]
7. Habib Metropolitan Bank Limited v. Abid Nisar (2014 CLD 1367) [Sindh]

**Second set of cases:**

1. Habib Metropolitan Bank Ltd. v. Mian Abdul Jabbar Gihllin and other (2013 CLD 88) [Sindh]
2. NIB Bank Ltd. v. Highnoon Textile Ltd. and 3 others (2014 CLD 763) [Lahore]
3. IGI Investment Bank Limited through Attorney v. Messrs Admore Gas (Pvt) Ltd. and other (2014 CLD 1354) [Sindh]
4. Equity Participation Fund v. Messrs Abbrasive Products Co. Limited and 4 others (2012 CLD 971) [Sindh]
5. Habib Bank Limited through authorized Attorney v. Haidri Homes through Partners and 3 other (2012 CLD 971) [Sindh]
6. The Judgment passed by Lahore High Court C.O.S.No.41 of 2010 titled The Bank of Punjab v. M/s Khan Unique.