

Customary business practice on applicability of the Republic of Armenia Law on Funds Transfer by Payment Order



According to Article 14 (3) of the Republic of Armenia Law on Financial System Mediator, in making decision, the Mediator shall not only refer to the requirements of the Armenian legislation but also take into account the rules of business conduct and ethics, and customary business practices. This gives the Mediator enough flexibility for decision-making and allows for each case taking as streamlined an approach as possible to protect consumer interests. As the Mediator works on investigating claims, the need to identify a customary business practice arises not only when a particular legal relationship is not regulated by any act but especially when it requires one and the same application of the provision or there is need to find out whether that practice is acceptable in any given situation or circumstance. Below is a customary business practice we came to find out in the year under review.

When investigating a claim submitted to the Office of FSM, the Mediator had to clarify a customary business practice at banks as they deal with the transfer of funds by a payment order.

According to the claim, the Client and the Bank signed a loan, firm pledge and bank account contract, under which the Client had received a consumer loan. The repayment of the loan amount and accrued interest was to be performed on an annuity basis, according to the contract. The contract set a condition whereby the Client had instructed the Bank to channel all funds, so credited on to the Client's bank account, to fulfill the obligations of the Client in respect of the Bank under the contract. The Client used another bank to make a money transfer on to his bank account, stating the 'full repayment of the loan' as purpose of the transaction. The transfer order indicated the Bank as a recipient bank from which the Client had received the loan amount. The bank, in implementation of the payment order by the Client, sent a memorial order to the Client's Bank where the 'full repayment of the loan' had also been stated as purpose of the transfer. The Bank serving the Client's account (i.e. the Bank from which the Client had received the loan amount) has all the funds available on the account of the Client credited on to the Client's bank account yet it failed to channel the funds to the loan repayment but rather used it on an annuity basis. The Bank serving the Client's account stated that the Client's instruction was aimed to the Payer's Bank and the Beneficiary's Bank had no right to use all funds, so credited on to the Client's bank account, for the full repayment of the loan.

Nor has the Bank serving the Client's account followed the requirement laid down in Article 27 (2) of the Republic of Armenia Law on Funds Transfer by Payment Order, which says that the beneficiary's bank must

inform (whether verbally, in writing or electronically) the beneficiary of the fact that it has received a payment order, until the beginning of the next calendar day following the receipt of the payment order.

For investigation of the claim, the Mediator had to figure out if there is a practice with banks regarding applicability of the Republic of Armenia Law on Funds Transfer by Payment Order:

- Does the bank (if acting as the beneficiary's bank) fulfill the purpose of a payment order issued by the sender's bank to the payer's bank OR whether the field 'purpose of payment order' is mandatory to the beneficiary's bank). For example, if a person gives a payment order to bank A for the transfer of money on to his account at bank B and notes that the purpose of the transfer is full repayment of the loan received from bank B, shall bank B be obliged to channel the amount, which had been credited on to his account, to the full repayment of the loan?
- Does the bank (if acting as the beneficiary's bank) inform (whether verbally, in writing or electronically) the beneficiary of the fact that it has received a payment order, until the beginning of the next calendar day following the receipt of the payment order?

To shed light on the issue the Mediator sought explanations and clarifications provided by 10 commercial banks operating in Armenia. So, the banking practice regarding the applicability of the Republic of Armenia Law on Funds Transfer by Payment Order is as follows:

1. Five banks out of 10 mentioned above do fulfill the purpose of a payment order issued by the sender's bank to the payer's bank; the other five do not.
2. Two banks out of 10 mentioned above do inform the beneficiary of the fact that they have received a payment order, until the beginning of the next calendar day following the receipt of the payment order; the other eight do not.