

Customary business practice regarding the form of deposit contract in favor of the third party



Article 14 (3) of the Republic of Armenia Law on Financial System Mediator establishes that in making a decision Mediator shall be based not only on the requirements of the Armenian legislation but also on the rules of business conduct and ethics, and customary business rules.

While reviewing a claim filed against one of the banks operating in Armenia, the Office of Mediator identified a customary business practice. The description of the claim read as follows: person A handed money to person B, asking him to open an account on his behalf with the bank, without a letter of attorney given to person B. Person B signed a demand deposits contract with the bank, with person A mentioned as depositor but who had no signature as depositor in the contract. In other words, the bank and person A are mentioned as signatories yet the contract has not been signed by person A. Only a signature section in the contract had a mention of person B having paid the sum and signed the contract. The bank has not signed an account contract either, and the deposit account was established on behalf of person A on a basis of the said deposit contract. Person A filed a claim against the bank which, he believed, handed the money to person B without his consent. The bank noted that they signed a deposit contract with person B in favor of the third party and gave the money to person B upon his request, since person A failed to voice his intention to use his rights as depositor.

As provided by Article 446 (1) of the Civil Code, a contract is in favor of the third party whereby the signatories have established that the debtor must fulfill his obligation not in favor of the creditor but rather in favor of the third party, whether or not mentioned in the contract, who has the right to require the debtor to fulfill his obligation in favor of him. By virtue of this article, in this particular case the contract concluded in favor of the third party should have been signed by the bank and person B, with person A mentioned as the third party. However, where the money is invested with the bank by person B, and the deposit contract mentions person B as having invested the money and put signature, the conventional wisdom sees that a deposit contract concluded in favor of the third party, regardless of person A mentioned in the contract as depositor, argued the bank.

Taking the above said into account, Mediator requested banks to provide their own opinion and approach on the following considerations:

1. Has there been a contract concluded between the bank and person B in favor of the third party? If not, what kind of contract has been concluded in this particular case?

2. Do banks conclude a deposit contract in favor of a third party in a similar way? Mediator asked banks to provide what procedure they normally use to conclude a deposit contract in favor of the third party, in particular:

a) Who are the signatories of the contract?

b) Is there always a mention in the deposit contract in favor of the third party that it is a deposit contract in favor of the third party, and whether the name of the third party is indicated?

c) Can person B open a demand deposit/banking account and invest with that account without a letter of attorney available in the name of person A, and then withdraw that amount without consent from person A?

Opinion received from banks generated a customary business practice as most banks had a similar approach. In particular, Article 446 (1) of the Civil Code provides that a contract shall be in favor of the third party whereby the signatories have established that the debtor must fulfill his obligation not in favor of the creditor but rather in favor of the third party, whether or not mentioned in the contract, who has the right to require the debtor to fulfill his obligation in favor of him. Article 910 (1) of the Civil Code provides that a deposit amount can be invested with the bank in favor of third party. Such third party will acquire depositor rights as soon as he delivers a claim before the bank based on such rights or when the bank is advised in any other manner of his intention to use such rights, unless otherwise provided for in the deposit contract. As an essential term in the deposit contract is the specification of the name of natural person or the title of legal person, on which behalf the deposit amount is invested. According to part 3 of the same Article, terms on third party contract (Article 446) shall be applied in respect of the deposit contract signed in favor of the third party, provided that it does not contradict provisions of the Article and the definition of bank deposit. This infers that provisions of Article 446 pertinent to third party contract have to be applied to the deposit contract signed in favor of the third party. So, a deposit contract in favor of third party shall incorporate as signatory the person who has paid the amount of deposit to the bank (who is considered as depositor), whereas provisions on

the third party taking action in favor of the bank must be mentioned in the contract, except when the person who pays the amount of deposit to the bank acts as representative of another person based on a statutory document (power of attorney, contract, and so on); in this case the one who is being represented can only be a signatory to the contract or depositor.

As regards opening of an account by a person on behalf of another person, most banks noted that the account is only established on behalf of the person who has invested the amount, even in case of a deposits contract in favor of the third party, or only on a basis of the letter of attorney in the name of another person