

# Incoming payment with conflicting information

Topic: **Payment transactions** Case number: **2017/13**

The client, holder of an account with a bank situated in Asia, instructed said bank to pay a large sum in USD from that account to a CHF account she held with a bank in Switzerland. Because the client herself was stated as the beneficiary, but the account in question was in fact held by her company, the Swiss bank was obliged to seek clarification from the bank issuing the instruction through the correspondent bank. As a result, it was only possible to credit the payment to the account with a delay of eleven days. The client then criticised the bank for not having contacted her immediately. According to her, it would have enabled the amount to be credited to the right account without any delay and without any need to seek additional clarification. Since the fluctuation in exchange rates during the eleven days in question caused a foreign exchange loss of 2000 CHF, the client asked the bank to pay this sum. The bank declared itself unwilling to do so however. The Ombudsman followed the bank's detailed and documented reasoning and told the client he had no choice but to close the mediation proceedings as no wrongful conduct could be established on the part of the bank.

The client was engaged in business activities in Asia and travelled regularly within a country in that region. She held a USD account with a local bank. One day, she instructed said bank to transfer approximately 130,000 USD to a CHF account held by her with a Swiss bank account. This instruction was processed immediately and the transfer was done, as usual, through an American correspondent bank commissioned by the Asian bank. Upon receiving the payment information however, the bank in Switzerland noticed that the beneficiary of the account matching the specified IBAN was not the client, who was however named as beneficiary, but a company also holding a business relationship with the bank. In light of this discrepancy, the bank contacted the Asian bank immediately upon receipt of the information, to inform it of the problem and to request correct information. This request was submitted through the American correspondent bank involved as is standard practice. In spite of reminders from the Swiss bank, eleven days passed before correct payment instructions were provided by the Asian bank and before the amount could be credited to the client's correct account. During that period of time, the USD/CHF exchange rate did in fact fluctuate to the client's disadvantage and the amount credited to her account was 2000 CHF less than the amount that would have been received with the exchange rate applicable eleven days previously. The client therefore strongly insisted that the Swiss bank pay this difference. She justified this request by claiming that this matter could have been clarified if the bank had contacted her immediately. By doing so the foreign exchange loss would have been avoided. Moreover, her adviser should have known that the company in question belonged to her without requiring the Asian bank's intervention. Since the bank refused to fulfil her request, the client contacted the Ombudsman.

The bank told the Ombudsman that the procedure it had followed was the standard procedure employed in this type of situation for international payment transactions. It stated that executing payment transactions is a mass processing activity and that such payments are handled by a specific department within the bank. This department had not in fact been informed that the company in question belonged to the client. The bank also explained that, in this type of situation, small amounts were returned immediately but it was normal to seek clarification with the instructing bank for larger amounts, as in this case. This clarification procedure, like the payment itself, took place through the

correspondent bank involved. The bank requested the clarification immediately upon receipt of the payment instructions and, having not received any response, repeated the request a few days later. In addition, the investigations it conducted afterwards revealed that the correspondent bank had also contacted the Asian bank that issued the instructions immediately after receiving the various requests for information from the Swiss bank. It also pointed out that the payment information was ultimately corrected eleven days following receipt of the initial incorrect information and that the amount was credited to the correct account instantly. The bank was unaware of why it took the client's bank in Asia so long to provide the correct payment information. Finally, it also stated that contacting the client itself directly would not have made the process faster since it would not have been able to change the payment information itself without the issuing bank's consent. The bank therefore believed that it acted appropriately and was unwilling to fulfil the client's request. Since the beneficiary was not the holder of the account specified in the instruction in question, the Ombudsman reached the conclusion that the bank was not entitled to change the payment information itself without consulting the bank issuing the instruction. This principle applies even if the bank knew that the holder of the IBAN in question was a company belonging to the client who issued the instruction. In such a situation, the recipient bank remains dependent upon the bank issuing the instruction and must abide by the latter's instructions. In fact, in addition to the recipient bank not being permitted to interpret unclear instructions using its own discretion, these must be clarified with the bank issuing the instruction and not with the presumed beneficiary. Furthermore, in the case in point, the beneficiary could not be clearly identified due to the lack of clarity in the instructions given. In the Ombudsman's opinion, proceeding in any other way would open the door to inconsistencies and possible liability on the part of the bank. Finally, given the delay in responding from the Asian bank, the Ombudsman found it very unlikely that an immediate return of the payment instead of the clarifications opted for by the bank would have lessened the loss to the client. In light of all these elements, he ultimately found that the bank could not be accused of any wrongful behaviour which would incur its liability. The issue of whether or not the incorrect payment instruction was attributable to the client herself or to the bank in Asia remained open however.