

Right of information for heir of an economic beneficiary

Topic: **Proof of identity** Case number: **2018/23**

The heir, represented by a lawyer, requested information about an account in the name of a company with its registered office abroad since the deceased party was an economic beneficiary of the assets held in said account. The bank refused to give her the information and referred her to the company's governing bodies. The heir did not agree with this and claimed she had a direct right in respect of the bank to information about the account. Since the parties were unable to reach an agreement, the heir referred the matter to the Ombudsman. The Ombudsman had to inform her that this dispute could not be resolved within Ombudsman proceedings.

The lawyer stated that he was representing the second wife and sole heir of a wealthy entrepreneur and his daughter from his first marriage. During his lifetime, the entrepreneur distributed his assets across multiple trust structures, clearly for estate planning purposes given the complex family relationships. A company that is part of one of these trust structures had an account with the bank. According to the lawyer, one of the family members was director, and subsequently liquidator, of the company and liquidated the company on the basis of falsified documents, whereupon he managed to transfer the money to a third-party bank. During his lifetime, the deceased filed a criminal complaint in respect of this. The lawyer requested detailed information from the bank regarding the disputed company liquidation and the final transfer. The bank refused to provide the information and maintained that such information could only be provided by the company's governing bodies or their legally appointed representatives. The bank referred the lawyer to the company's liquidator and told him, in detail, which documents he would need to submit for it to be able to give him the requested information if the customer relationship he claimed did in fact actually exist. The lawyer did not agree with this and argued that the heir had a direct right to information in respect of the bank.

In the Ombudsman's view, the problem was first and foremost that the situation was clearly still the subject of ongoing criminal proceedings initiated by the deceased. It was not clear whether these proceedings had also been initiated against the bank or its employees. He therefore decided to decline his jurisdiction based on Art. 2.2 of his rules of procedure. In cases which are already the subject of official proceedings, or are transformed into such proceedings prior to conclusion of the Ombudsman proceedings, this article permits him to decline jurisdiction.

In the subsequent notice to the lawyer, he did however provide the following information:

The economic beneficiary is generally not party to the agreement between the bank and its customer. Consequently, the economic beneficiary's heirs could also not be party to this contract after his death. They cannot inherit more than there is in the deceased's estate. If the latter was not party to the contract with the bank, the rights under that contract will also not pass to his heirs. The bank must therefore comply with the confidentiality obligations it had under the contractual relationship with the customer in respect of the deceased's heirs. In the Ombudsman's view therefore, the bank's refusal to provide the heir with the requested information about the account relationship with the company is not inappropriate.

The Ombudsman is aware of individual cases in which cantonal courts have acknowledged the right of heirs to information in such situations based on inheritance law considerations. Before the judges addressing the issue reached this decision, they carefully weighed up the interests of all parties, in other words the interests of the economic beneficiary's heirs to receive information about the assets which could form part of the estate, and the interests of the account holder to maintain confidentiality. Given the consequences that a breach of confidentiality obligations could have for the bank and its staff, it is not possible for him to weigh up these interests himself or to accept the associated risk within the Ombudsman proceedings. A weighing up of interests of this nature is the responsibility of the relevant judges. Furthermore, the bank is bound by confidentiality even in respect of the Ombudsman if the banking customer in question has not released the bank from its banking secrecy obligations towards him. This requirement is also expressly stipulated in Art. 3.2 of the Swiss Banking Ombudsman's rules of procedure. It is therefore generally not possible to resolve such a dispute within the framework of Ombudsman proceedings.

In light of these considerations and the stance emphatically taken and explained in detail by the bank, the Ombudsman had no choice but to declare mediation proceedings futile from the outset in this case. The Ombudsman also recommended that the lawyer check for any inheritance law means available to the heir in this case for taking direct action against the family member who, according to the lawyer, has allegedly appropriated assets belonging to the estate as liquidator of the company.