LALIVE

Insight

# Banking and Finance - Liability of a bank for failure to execute instructions

**Delayed execution of instructions by Swiss banks – client rights and remedies**

Delayed execution of client instructions is a recurring issue with Swiss banks, exposing clients to market risks with possible financial losses or loss of profits. Such delays occur for a variety of reasons such as retention efforts, compliance checks, or administrative inefficiencies, so understanding the legal framework – and how to respond – is crucial to protect clients' interests.

**Bank's obligations and client's rights**

Under Swiss law, the legal relationship between a bank and a client will regularly qualify as an agency agreement (Articles 394 et seq. of the Swiss Code of Obligations (SCO)).

- The bank, as agent, has a duty of care (Art. 398(2) SCO) and an obligation to properly execute client instructions without undue delay (Art. 397(1) SCO).
- When instructions are clear and final, any unjustified delay may constitute a breach of contract, triggering liability.

If a bank's failure to execute instructions in a timely manner results in financial harm to the client, the client has the right to seek damages if they can demonstrate that:

- the instructions were clear and final;
- the bank's delay was unjustified; and
- they suffered a concrete damage as a result.

**Recent case law confirms bank liability for delayed execution of instructions**

The Geneva Court of Justice (ACJC/1189/2024 of 27 September 2024) recently held a Swiss bank liable for client losses resulting from delayed execution of instructions.

In this case, the client instructed her bank in writing to liquidate her investments and transfer the proceeds to another bank that her relationship manager had joined. The following day, after the bank had contacted her, the client confirmed by email that her decision to follow her relationship manager was "*carefully considered*" and made after several months of reflection.

Rather than executing the instructions, the bank attempted to retain the client through two subsequent phone calls, documenting in its internal notes the client's purported intent to reconsider and keep the bank informed. Nearly three weeks after the initial instructions – at the onset of the COVID-19 market crash – the bank followed up by email. The client immediately called to re-


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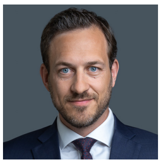

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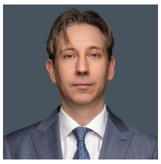

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affirm her initial instructions. However, her positions were only liquidated several days later, when the markets had dropped. This was more than one month after her original request.

The Geneva Court of Justice found that the bank had breached its duty of care by failing to execute promptly the client’s clear and final instructions. It noted that “client retention” strategies must not interfere with the timely execution of binding instructions and do not justify delays. Neither can a bank justify inaction by alleging client hesitation, unless it provides clear and objective proof (internal notes and employee statements have only limited evidentiary value). The bank was, therefore, held liable for the financial harm suffered by the client due to the delay.

**Best practice for safeguarding client rights**

To safeguard their rights, clients should adopt the following best practice:

- Issue and confirm instructions in writing (by letter or email);
- Ensure that instructions are clear, and expressly state that they are final and must be immediately executed (do not use conditional tense or conditions, such as “if”);
- Request immediate confirmation of receipt and execution of the instructions, and follow up promptly;
- Secure evidence (e.g. emails, letters and call logs) of all interactions with the bank;
- Challenge unwarranted delays and, if the bank invokes compliance or internal procedures as reasons for postponement, request a written justification and insist on immediate execution. Clients should seek legal guidance swiftly if any unwarranted delays occur;
- Where a delay results in a loss, immediately send a written complaint to the bank, challenging the execution date and claiming compensation.