

## Modification of applicable fees

# Special pricing conditions set aside in light of negligent passivity on the part of the client

Par Benjamin Vignieu le 9 May 2025

In its judgment [ACJC/141/2025](#) of 28 January 2025, the Geneva Court of Justice ruled that a bank's communication of its new pricing conditions in accordance with its general terms and conditions, which provided for tacit acceptance, validly derogated from special conditions agreed with the customer on fees, in the absence of timely opposition by the latter. An appeal against this ruling has been lodged with the Federal Court.

At the beginning of 2019, a client opened an account with a Geneva bank for the deposit of a large number of shares in a foreign company. The general terms and conditions and the deposit regulations (hereinafter collectively referred to as the '**General Terms and Conditions**') provide, in particular, that the bank has the right to amend its fees with immediate effect and that, in the absence of written objection by the customer, validly notified documents are deemed to have been accepted. During the account opening process, the parties negotiated, orally, the fee applicable to the banking relationship, namely an annual flat fee of CHF 70,000.

In June 2020, the bank informed the client of its decision to close the account due to a reorientation of its business strategy and asked the client to provide the bank with the bank details of another institution for the transfer of the deposited assets. In November 2020, it indicated that it was cancelling the agreement with the client on the negotiated fee and that it intended to apply its standard fees after a period of several months, to give the client time to find another banking institution. The brochure detailing the bank's fees was attached to this communication. Approximately five months later, the client informed the bank that it objected to the application of the new fees while its assets were being transferred. All of the assets were transferred at the end of 2021 and the bank reported fees for the last two quarters of 2021, calculated according to its standard rates, of approximately EUR 679,000, which it offset against the balance of the client's account.

Following a request for payment from the client, the Court of First Instance ordered the bank to reimburse the fees in the amount of more than USD 700,000. The bank appealed, arguing in particular that its General Terms and Conditions allowed it to unilaterally change its fees, notwithstanding the conclusion of the fee negotiated with the client.

The Court of Justice first held that the parties had not agreed, either expressly or tacitly, that the clauses in the General Terms and Conditions reserving the bank's right to change its fees did not apply to their contractual relationship or that the fees negotiated between them could not be

changed under any circumstances. Thus, the parties' agreement on the rates did not derogate from the General Terms and Conditions, but only from the bank's brochure on fees.

The Court then considers that the bank acted appropriately and complied with banking practice in relation to price changes by communicating the change to the customer through the usual channels, with a reasonable period of time to object or transfer their assets to another bank. Therefore, the unilateral change in the applicable fees cannot be considered abusive in this case. The extent of the increase is irrelevant in this regard because the customer could calculate the new fees using the brochure provided. In any event, the customer tacitly accepted the change in fees in accordance with the deemed approval clause in the General Terms and Conditions. By failing to object to the application of the new fees in good time, the customer, who was not inexperienced in business matters, demonstrated 'negligent passivity'. The Court therefore considered that the bank was entitled to apply its standard rates, as duly announced in advance to the customer and accepted by the latter, in the absence of any objection in good time.

This ruling illustrates the importance of formalising the applicable special conditions in writing and coordinating their application with the general terms and conditions. In practice, two contractual clauses would have enabled the customer to protect himself against a unilateral change in rates by the bank, namely (i) a modification clause stipulating that the special conditions may only be modified by written agreement signed by the parties, and (ii) a completeness clause stipulating that the pricing conditions are governed exclusively by the special conditions, which prevail over any other agreement, general terms and conditions or brochure.

Finally, in the presence of a tacit approval clause, the customer is required to respond in good time to any changes that they intend to contest. Failing this, their tacit acceptance will be used against them.