

Fraudulent bank orders

Applicability of the general terms and conditions to the opening of a „Rubrik-konto”

Par Adrien Pasquarello le 16 December 2025

The Federal Court confirms the applicability of the general terms and conditions to the opening of a sub-account and denies that the bank committed gross negligence in failing to detect fraudulent orders ([4A 76/2025](#) of 21 August 2025).

The client, a wealthy businessman, has had numerous business dealings with the bank since 2005. The bank's general terms and conditions contain a complaint clause, requiring the client to contest orders or instructions immediately after notification, but no later than within the specified time limit. A risk transfer clause also stipulates that any damage resulting from failure to recognise identification errors or forgeries is borne by the customer, unless the bank is guilty of gross negligence. The terms and conditions also stipulate that correspondence must be kept on file at the bank.

The client entrusted the management of his accounts to an external manager. The latter is accused of having opened a sub-account ('Rubrik-Konto') with the bank using a forged signature. He then allegedly ordered two overdraft payments from this account to the client's nephew. This arrangement prevented the client from detecting the outflows of funds. The sub-account then had a negative balance. The bank offset this with the available funds in the main account, causing the client a loss of nearly USD 2 million. For these acts, the manager was found guilty on various counts and ordered, in civil proceedings, to pay the said damages. This judgment is not yet final. At the same time, the client brought a civil action against the bank, seeking payment of the same amount.

In its [judgment](#) of 7 January 2025, the Zurich *Obergericht* (High Court) ruled, on the basis of the risk transfer and claim clauses, that the loss was borne by the client and that there was no serious fault on the part of the bank. The client appealed to the Federal Court.

The first question was whether the process of opening a sub-account fell within the scope of the general terms and conditions agreed for the main relationship. The Federal Court answered in the affirmative, based on three factors.

Firstly, it considered that, based on their title ('Allgemeine Geschäftsbedingungen'), the general terms and conditions must apply to all relationships for which nothing else had been agreed.

Secondly, it held that the complaint clause refers to orders or instructions of any kind ('aller Art'). This broad wording argues against a restrictive interpretation. Consequently, the request to open a new account falls within the scope of the instructions referred to in this clause.

Finally, the Federal Court adds that the form for opening the sub-account (allegedly forged) referred to the basic account number. It must therefore be considered that the sub-account was opened within the framework of the basic banking relationship, which also argues in favour of the application of the clauses.

As the opening of the sub-account was covered by the general terms and conditions of the basic account, the damage resulting from the bank's failure to detect the falsification is attributed to the client, unless the bank is guilty of gross negligence. The same applies to the complaint clause (which creates a fiction of ratification). Indeed, a bank that opposes its customer with a complaint clause may abuse its right ([Art. 2 para. 2 CC](#)) if it has committed serious misconduct, in particular if it also invokes a remaining bank clause (fiction of receipt).

The account opening form stipulates that fraudulent orders placed after the opening of the account are also covered by the general terms and conditions applicable to the basic account. Although the customer claims that the signature on this form is forged, the Federal Court confirms the findings of the cantonal court and attributes the consequences to the customer.

Secondly, the Federal Court examined the allegations made against the bank. If the bank had committed a serious fault, neither the risk transfer clause nor the complaint clause would apply.

The client argued that the bank should have made callbacks both under an agreement and in accordance with industry practice. However, the Federal Court considered that the existence of an agreement had not been sufficiently established. As for industry practice, it was held that the customer's argument would have been convincing if it had been established that this was the first transfer of at least a six-figure amount or if all transfers of this type had previously given rise to a call-back. However, this was not the case in this instance.

Furthermore, the client claims that the bank should have detected certain irregularities, in particular the incongruity of opening a sub-account and then making overdraft transfers when these could have been made from the main account. The Federal Court ruled that the client had not sufficiently demonstrated why the points raised – although essential to the commission of the offence – should have appeared suspicious in the overall context.

The Federal Court, like the lower court, concluded that the bank had not committed any serious misconduct. Consequently, the client bore the consequences of the failure to detect any (possible) falsification.

In short, this decision shows that, in this particular case, the Federal Court gave particularly broad scope to the general terms and conditions by considering that they applied to the account opening process. It is interesting to note that the arguments on which this reasoning is based are likely to be applicable to many banking relationships. It should also be noted that the Federal Court points out that the complaint clause, when accompanied by a remaining bank clause, is not enforceable against the customer in the event of serious misconduct on the part of the bank. From a methodological point of view, it can be observed that the question of serious misconduct was examined simultaneously for the risk transfer clause and the complaint clause.

Finally, many of the appellant's complaints were rejected on the grounds that they were merely appellatory in nature. This ruling thus highlights that allegations of serious misconduct on the part of the bank must be particularly well substantiated.

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