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BANK LENDER'S LIABILITY TO ITS CLIENTS

A Difficult case?

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Grounds for client compensation claims:

- A) Contract Liability:** Client may claim damages for loss suffered. No moral prejudice. No punitive damages.
- B) Tortious Liability:** Client may claim damages for loss suffered and moral prejudice. No punitive damages.



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CONTRACT LIABILITY

- ▶ Clients may claim compensation invoking the relevant agreement between the Bank and the Client.
- ▶ Contract content crucial.
- ▶ Widespread use of standard terms and conditions by Banks, incl. waivers and other bank friendly terms.
- ▶ Courts' control of standard Terms and Conditions in Greece in three aspects:
 - Have they been accepted by the Client?
 - Vague standard Terms interpreted in favor of Clients (interpretatio contra proferentem).
 - Are they unfair (significant imbalance in the parties' rights and obligations arising under the contract)?



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CONSUMER PROTECTION LAW (Art. 2 of law 2251/1994): Stricter Standard Terms & Conditions Control

- ▶ Do bank clients fall under the legal notion of consumers?
Conflicting case law. (Criteria: Client's main occupation, Client's experience regarding relevant bank transactions etc).
- ▶ Secondary Bank obligation towards the Client, pursuant to the General principle of good faith (bona fides): Duty to properly inform client.



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MiFID DIRECTIVE (Markets in Financial Instruments Directive)

- ▶ Transposed into Greek national law by Law 3606/2007
- ▶ Bank obligations towards Clients.
 - A bank must act honestly, fairly and professionally.
 - Appropriate information about the financial instruments and the proposed investment strategies, so that the Clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument.
- ▶ MiFID Bank obligations are construed as elaborations of the principle of good faith.
- ▶ Assessment: Client claims on contract liability grounds have limited success chances, because contract content is controlled by the Bank.



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TORTIOUS LIABILITY

Three ways to substantiate a tort claim:

- ▶ Behavior of the bank personnel constitutes a criminal act e.g. Fraud
- ▶ Bank has violated legal provisions which aim specifically at the Clients protection (e.g. not at the general Market Organization)
- ▶ Bank has violated the general duty to take care. Criteria for the latter are market standards. MiFID provisions as guidelines for defining the Bank's general duty to take care.



CLASS ACTION TYPES

- ▶ Mass Action: The claims of many Clients are joined in one complaint. Each Client must be separately signed up and separately represented for a mass action. No uniform settlement for all Clients necessary.
- ▶ Class Action: Only Consumer associations, which meet certain criteria, can file claims seeking damages on behalf **only** of consumers that are its members. Uniform settlement necessary. (Art. 10 of Law 2251/1994).

Assessment: Legal framework for Class actions in Greece not practical. Low probability for class actions. Mass actions more probable.



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