

**Before the Arbiter for Financial Services**

**Case No. 028 /2017**

**UC (the complainant)**

**vs**

**Bank of Valletta p.l.c. (C 2833)**

**(the service provider)**

**Hearing of the 6 February 2018**

**The Arbiter,**

**Having seen the complaint whereby the complainant states that:**

He sought the opening of an account in the name of his company namely, XXX Trading Ltd., in accordance with the right to a basic Bank Account as per EU Directive 2014/92/EU.

BOV should grant XXX Trading Ltd. a basic account as per the above-mentioned EU Directive (access to basic bank accounts to ensure all consumers legally resident in the EU have access to basic banking services, whatever their financial situation, to reduce financial and social exclusion);

BOV should provide a written apology about the way it treated him and judged him on fake news published on the internet without checking these facts with the relevant authorities.

He also complains that if Bank of Valletta knew that they were going to reject his company's application, they should not have asked him to come from Africa to Malta causing him unnecessary expense to the tune of €1,559.44.

**Having seen the reply of the service provider which reads as follows:**

1. Preliminary, the complainant *de proprio*, that is to say, in his personal capacity in which this complaint was filed does not have the necessary juridical interest to file this complaint, since this complaint relates solely to the claim that the bank did not open a basic bank account for the company XXX Trading Limited (CXXXXX) and therefore, if anything, it was that company and not the complainant in his personal capacity that had any juridical interest to file such a complaint. Thus, it is respectfully submitted that the Plaintiff should be non suited and all his claims rejected.
2. Subordinately and without prejudice to the above, it is not true that the company XXX Trading Limited according to the Directive of the European Union 2014/92/EU, as than incorporated with the Legal Notice 411 of the year two thousand and sixteen (2016) of the Law of Malta, has a right to the opening of a basic bank account in her name with the bank. It is clear and manifest, that this directive applies only to physical persons and does not apply to commercial companies as relates in the case and therefore, also from the onset, the complaint of complainant is juridical and factually unfounded and is to be rejected with costs against said complainant.
3. That, subordinately and without prejudice to the above, the bank followed the right banking practice and carried out the necessary exercise of due diligence as legally bound by law after which exercise, it resulted it could not open an account to the company XXX Trading Limited. It is sufficient to mention that the complainant who is the sole director and shareholder of this company XXX Trading Limited (CXXXXX) registered in Malta a few months ago, (i) holds a Dutch passport, (ii) resides permanently in Italy, (iii) alleges that he will have his operations in South Africa and (iv) in some manner pretends that the company XXX Trading Limited operate from Malta, when this company does not have the minimum organisational setup of any nature. Furthermore, when references were demanded by the bank,

the only reference that was offered to the bank was that of XXXX Marble and Granite South Africa and nothing else. Similarly, complainant seemed very defence, reticent and abrupt when asked certain questions. Complainant, for example, when asked how he operates his business finally admits that he does not have a personal account and operates his business through his wife's bank account. Complainant does not give any explanation why neither Holland which is the country of his nationality nor Italy which is the country of his permanent residence, did he manage to open a bank account in his personal name when these were the two state members of the European Union, which were the most connected to the complainant - a connection which is definitely much closer than that with the Republic of Malta.

4. That, subordinately, without prejudice to the above, then, the complainant did not even deem it necessary to inform the bank that his company was in the international media and there were allegations that Interpol has issued an international arrest warrant against said company. To be clear, the bank is not saying that, as a matter of fact, this issue of said warrant actually happened because when the bank made its searches, nothing results concretely to this effect; but the fact that the complainant chooses to hide this information from the bank, from whom he was asking to commence a commercial relationship to operate his business, is another indicator which the bank cannot ignore. Similarly, there are other indicators, as the fact that this company, is proposing to operate with companies from countries which will be forwarding payments, like India, South Africa and Ukraine. According to the directives given to banks, these are considered as high risk jurisdictions and the banks are in due to carry out an enhanced due diligence in the processing of such requests. Additionally, it should also be stated, that for example, whilst the complainant mentioned to the bank that the turnover should be in the region of seventy-five thousand Euros (€75,000) by month, no financial statements were tabled of the holding company to attest the provenance of one million Euro annually (€1,000.000). The above factors and other factors lead the bank to the

conclusions that it will not be acting correctly if it were to open an account for the company of complainant.

5. Subordinately and without prejudice, the bank respectfully submits that he has no apology to make to complainant, or to his company, since at no point did it ever accuse complainant or his company of anything, nor did it take any decisions on the basis of the media news relating to the allegation of the international arrest warrant. The only point that the bank is making in this respect, is that the fact, that the complainant shows to hide these allegations from the bank is an indicator which the bank cannot ignore, even if such allegations are not well founded. With due respect, on the principle of *uberrimae fides*, complainant was expected to inform the bank of such allegations and to give his version of facts to the bank with whom complainant or rather his company was proposing to commence a healthy business relationship.
6. That, in this scenario, it is respectfully submitted that the bank acted in the correct manners according to the banking and financial legislation of the country as a state member of the European Union and followed commercial practice.

The bank respectfully reserves the right to produce further oral and documentary proof and to make additional submissions both oral and also in writing during the sittings before His Honour, The Arbitrator, to substantiate its position as above indicated.

For the above reasons, the bank humbly submits that all complainant's demands are to be rejected with costs to be borne by said complainant.

**Having heard the parties,**

**Having seen all the documents filed,**

**Considers:**

The first plea raised by the service provider is that the complainant *de proprio* does not have juridical interest because the complaint relates to the refusal by Bank of Valletta to open an account to the company XXX Trading Ltd (CXXXXX) and, consequently, it is the company which may have a juridical interest and not the complainant.

The Arbiter notes that on the complaint's form, Mr UC, appears both in his name personally (Section A 1 of the complaint form) and, also, as per Section A2 ('*If you are complaining on behalf of a business*') on behalf of his company, XXX Trading Ltd.

Under Maltese law, a limited liability company has a separate legal personality from its owners but, in reality, it can only be represented by a physical person. It is true that the complaint could have been better articulated but, in these proceedings, it was the intention of the legislator not to place too much emphasis on formalities, and the Arbiter was tasked to deal with each case in an informal manner and seek to deal with the substantial merits of the case.

The complaint or the complaint form should not be considered in isolation but in the context of the whole proceedings. In his testimony,<sup>1</sup> the complainant makes it clear that he has a personal grievance because he alleges that the bank dealt with him in a very rude manner and, also, the grievance that his company was irregularly not granted the opening of a basic bank account in accordance with the Directive.

In this context, the complainant has a juridical interest because his interest is juridical and can lead to a final result, which in this case, can also have a pecuniary element. The fact that a complainant may have a juridical interest does not necessarily mean that he has an automatic favourable decision because the final decision of the Arbiter follows a thorough examination of all the acts of the case and after the conclusion of the proceedings.

For the above-stated reasons the first plea is being rejected.

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<sup>1</sup> A fol 74 et seq

## THE MERITS OF THE CASE

In his testimony,<sup>2</sup> the complainant states that he has a mining company in South Africa which exports blocks all over the world, especially to the euro currency market. Since Malta offers advantages to foreign investors and, also, due to the fact that they have problems to take out money out of South Africa, he decided to set up a company in Malta.

They contracted Aegis (a Corporate Service Provider) which set up the company for them and introduced them to Bank of Valletta.

Through Aegis, the company profile was passed to Bank of Valletta in November 2016. (Doc. SU)

On the 6 December 2016, Bank of Valletta confirmed a meeting to be held with the complainant and his representatives for 19 December 2016. He states that Bank of Valletta had 13 days to go through all the profile documents and due diligence and had all the time to cancel the meeting.

He reiterates that during the meeting of the 19 December 2016, the Bank employees were rude and unprofessional and the meeting lasted only ten minutes. He got '*a barrage of questions from Mr Christopher Vella about why he did not have a personal account anywhere in the world*'. He responded that he did not need one because for private needs he used his wife's bank account, because if he used a personal account for his company, all transactions into that account might appear as income for the company which would be taxed as such.

The Bank representatives looked at the company's profile hurriedly and in ten minutes the meeting was brought to an end by the Bank.

On 22 December 2016, he was informed by Aegis that BOV had refused to grant XXX Trading Ltd a bank account and no specific reasons were given.

He contacted Claudia Rausi of BOV by email and asked through e-mail why his company was not granted a bank account.

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<sup>2</sup> Ibid

The only reason given to him for the refusal was that they found an article on the internet about his person called '*Interpol on the trail of UC*'. That was the only reason cited for the refusal of the bank account.

After filing the complaint with the Arbiter for Financial Services, he received the Bank's reply for his complaint to which he objects on the following grounds, namely that:

BOV are judging him as a person and not his company. The article found on the internet about him personally is not true and libellous, false and baseless and criminal proceedings have been taken against the publisher in the Netherlands.

He was judged by BOV on libellous content.

He contests the allegation by BOV that he will be forwarding payments from India, South Africa and the Ukraine. According to BOV, they are considered as high-risk jurisdictions. He states that they buy from countries like India and South Africa, meaning the money goes from Malta to them.

He explains that the turnover of €75,000 monthly was explained in the company's profile sent to the Bank at the beginning of December 2016. He objects to the fact that the Bank's employees were rude with him and mentions Article 12 of the Universal Declaration of Human Rights.

He further states that he spent €1,559.44 unnecessarily because if he had known that BOV had already decided before the meeting of the 19 December 2016, not to open the account for his company he would not have come to Malta from abroad.

On its part, Bank of Valletta reiterates that they did not grant Mr UC's Company an account on various grounds which were not capricious, namely that:<sup>3</sup>

The meeting of the 19 December 2016, was not taken on the initiative of the Bank, but on the request of Aegis Malta who was acting on behalf of the complainant. At the time of the request, XXX Trading Company was still not registered.

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<sup>3</sup> A fol 94-97 Affidavit by Claudia Rausi

On the 1 December 2016, the Bank requested that the company profile be duly filled and the Bank asked for an explanation how the €9,000K turnover had been calculated. On the 19 December 2016, a meeting was held with the complainant and representatives of Aegis Malta, who were assisting him. Ahead of the meeting, a second company profile was updated in respect of source of funds section. This section illustrates the process per cubic metres. The account turnover with BOV and how the estimate was determined was not advised to the Bank by the complainant.

The complainant's company was registered on the 15 December 2016, and it could be noted that the Company's registered office is that of Aegis at Melita Street, Valletta. The company is organised as a single veil company with Mr UC as sole Director, sole shareholder, sole legal representative, sole judicial representative and secretary.

From his passport, the Bank established that Mr UC is a Dutch citizen and is in possession of an Italian Identity Card and the utility bill and his address on the registrar of companies is in Italy; meaning that he resides in Italy. Therefore, the customer's risk spans across four jurisdictions, with no personal bank account being held in any such jurisdiction where he is a national, resides or effectively manages a company.

The article dated 19.12.2016, which Mr UC considers as libellous, relates to a creditor tracking down Mr UC '*to recover N\$ 80,000 paid to the cunning Dutch national for granite blocks that were never delivered.*' He states that on 16 June 2012, he wired 50% deposit to UC in the South African ABSA Bank who reportedly severed all contacts and vanished.

According to the article, Interpol is said to have issued a warrant of arrest. But when the Bank carried a Worldcheck screening, it was negative and, hence, the article was deemed by the Bank as negative media which it ignored in its considerations since it was not proven.

As per handbook procedures that transpose the 3<sup>rd</sup> EU Money Laundering Directive, directors and qualifying shareholders must provide personal information and a banker's reference is also required as per banking procedures shown in Appendix H attached to the affidavit.

The only Bank reference that the complainant produced to the Bank was that of ABSA Bank issued in the name of XXX Marble and Granite South Africa CC stating that the company has been a client of the Bank for a minimum of 2 years. This reference is not deemed satisfactory by BOV because it does not refer to the *natural beneficial owner* namely, Mr UC, but pertains to a corporate undertaking not known to the Bank and in respect of which no KYC was done. During the meeting of the 19 December 2016, Mr UC stated that he trades with his wife's bank account and he does not need to have one.

Subsequent unsatisfactory KYC by the client and following review of the documents submitted in relation to the corporate request, the Bank resolved not to accede to the corporate request to open a bank account.

Accordingly, an email dated 20 December 2016, was issued by Ms Jennifer Minuti stating that with reference to the request for the account opening in the name of XXX Trading Limited, the Bank will not be able to proceed with the account relationship because the request fails outside the Bank's Risk Profile.

The account requested is not a basic account but relates to cross-border payments that are deemed as higher risk by the Bank.

A copy of the Bank's Customer Acceptance Policy was circulated to all of the Corporate Service Providers (Appendix M) and the policy of the Bank is that: '*Apart from the above, on a case by case basis, the Bank has the right to refuse any applicant for business which does not fall within the Bank's risk appetite*'.

*In summary, the Bank did not accede to the corporate's account opening in view of the fact that:*

- (i) The client failed to provide the Bank with a personal Bank reference as required by the Bank's procedures communicated to the Corporate Service Provider and the client alike;
- (ii) The Company in question was higher in risk than that the Bank could be prepared to engage.

**The Arbiter has to decide the case by reference to what in his opinion is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.<sup>4</sup>**

The complainant is basing his grievance on EU Directive 2014/92/EU ‘which grants each European citizen the right to open a bank account.’<sup>5</sup>

This Directive entitled the *Payments Account Directive* was transposed into Maltese Law by means of Legal Notice 411 of 2016 and the regulations in question are termed the *Credit Institutions and Financial Institutions (Payment Accounts) Regulations, 2016*.

*‘(2) The purpose of these regulations is to implement the Payment Accounts Directive.*

*(3) These regulations lay down rules concerning the transparency and comparability of fees charged to consumers on their payment accounts held in Malta, rules concerning the switching of payment accounts within Malta and other Member States and rules to facilitate cross-border payment account-opening for consumers.*

*(4) These regulations also define a framework for the rules and conditions to which Malta is required to guarantee a right for consumers to open and use payment accounts with basic features in Malta.’<sup>6</sup>*

‘Consumer’ is defined as ‘**any natural person** who is acting for purposes which are outside his trade, business, craft or profession’.<sup>7</sup>

Part 4 of the Regulations deal with ‘Access to Payment Accounts’, and the general principle laid down is that consumers have a right to open a basic account in Malta without any form of discrimination.

There is no doubt that the Directive and the Regulations wanted to offer a basic payment account to individuals and not to corporate entities. As a matter

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<sup>4</sup> CAP. 555, Art.19(3)(b)

<sup>5</sup> Final submissions by complainant a fol 159

<sup>6</sup> Bold by Arbiter

<sup>7</sup> Bold by Arbiter

of fact, when the Regulations make reference to the '*eligibility criteria*',<sup>8</sup> they refer to consumers. The same applies to the conditions where a refusal is contemplated.<sup>9</sup>

Since these Regulations make reference to consumers, and a '*consumer*' is defined '*as a natural person*', it is amply clear that the EU Directive wanted to cover individuals and grant them a right to have a basic payment bank account within the EU without facing unnecessary hurdles. The Directive and Regulations do not cover corporate entities.

There is no contention between the parties that Mr UC and his representatives asked for the opening of an account for his company namely XXX Trading Limited.

Consequently, the complainant's argument that he had the right to open the account for his company in accordance with the Directive is not justified.

The Arbiter takes further cognizance of the facts of the case and the reasons given by the Bank for refusing the request *inter alia* that the complainant failed to produce a personal reference from a reputable bank. This is recognised basic banking practice because the Bank has a right to know its client before establishing a banking relationship. Moreover, banks are rightly burdened with regulatory and legal obligations to guarantee that banking transactions are in conformity with anti-money laundering legislation and other norms to safeguard the legal transfer of money.

In order to establish such certainty, the Bank is obliged to conduct the necessary due diligence of its clients which has to be reasonable and not capricious.

The Arbiter is of the opinion that the request for a bank's reference of the ultimate beneficial owner of the company in question is reasonable and necessary. There should have been no valid reason for Mr UC to refuse to provide this reference.

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<sup>8</sup> Regulation (Reg) 19

<sup>9</sup> Reg. 19(4)

The only reason given by Mr UC for not having a personal bank account in Malta, or in any EU jurisdiction, is that he did not need one because for private needs he used his wife's bank account, and if he used a personal account for his company, all transactions into that account might appear as income for the company which would be taxed as such.

In the Arbiter's opinion, this argument does not seem very much convincing and justified. The Bank did not ask the complainant to open '*a personal account for his company*', but questioned the fact that the complainant is a Dutch national, resides in Italy and operates from South Africa and, in spite of the fact that he has a closer connection with these jurisdictions, he did not manage to attain the opening of a personal bank account in any of these countries. The Bank's query is justified in these circumstances.

The Bank also considered that on the basis of the documents produced, the opening of the bank account for XXX Trading Limited which traded in South Africa and income coming from jurisdictions such as India, South Africa and the Ukraine, would expose it to higher risks than its considered risk appetite.

When the Arbiter considers the fact that the company has been *recently* registered in Malta and has no past history known to the Bank, and the fact that it operates in markets which may not be well known to the Bank, justifies the conclusion of the Bank that it could not expose itself to a higher risk than its risk appetite permits.

For the above-stated reasons, the Arbiter concludes that the Bank's refusal to open a bank account in the name of XXX Trading Limited is reasonable and justified and the complaint cannot be upheld.

With regards to the personal complaint, namely, that the complainant was rudely treated by the Bank and based its conclusion on a slanderous article published on the internet, the Arbiter concludes the following:

As to the manner in which Mr UC was treated by the Bank, the complainant did not provide enough evidence except his statement to enable the Arbiter to be morally convinced of such allegation. The Arbiter has conflicting versions on this aspect of the complaint and the complainant could have produced further evidence such as the testimony of the Corporate Service Provider, who was

also present for the meeting, to attest to his version of events, something which the complainant failed to do.

The fact that the Bank was insistent on the production of a personal bank reference by a reputable bank, and the Bank's query why the complainant did not have a personal bank account in his personal name in the various jurisdictions to which he was connected, do not amount to high handedness.

For these reasons, this part of the complaint is also rejected.

The legal costs of the case are to be borne by the complainant.

Dr Reno Borg  
Arbiter for Financial Services