



BANKING & FINANCE | SUPREME COURT OF JUSTICE CASE LAW (Case no. 29371/03.5TJLSB.S1) GENERAL CONTRACT CLAUSES FOR THE USE OF CREDIT CARDS

A Supreme Court of Justice (“SCJ”) decision has been recently published regarding a lawsuit under which DECO (the Portuguese consumer protection association) has argued for the invalidity of several clauses included in pre-formulated standard contracts regarding the use of credit cards.

Among other matters, the SCJ ruled on the validity of the clause that excludes the issuing bank’s liability for any incident occurred between the card holder and the commercial establishment or for any ATMs technical fault considering that such liability would exceed what would be the bank’s usual liability.

The validity of a clause on the card holder’s liability for the card’s theft or loss has also been sustained in cases where it is confirmed that he has acted in bad faith or with gross negligence, assuming that there is “gross negligence” in case the card was used with the PIN on the basis that it is the card holder’s liability to keep the PIN secret.

The clause that allows the issuing bank to assign its contractual position to another entity of its economic group was declared valid, provided a reference “*to another entity of the bank’s economic group*” is included therein.

SCJ has also ruled on the validity of the clause with reference to rates in force, without mentioning the specific rates applicable:

- (i) when they are not determined by the bank, such as the rate applicable to fuel supply; and
- (ii) when they refer to costs and charges that cannot be foreseen *ab initio*, a mere reference thereto sufficing.

At last, the court further sustained the validity of those clauses:

- (i) that allow the issuing bank, for justified reasons, concerning the card holder’s or the payments system safety, to authorize or prevent certain card transactions;
- (ii) that allow the offset of credits in bank accounts of the card holder, even if the bank account has not only his name on it;
- (iii) that refer to legal frameworks applicable;
- (iv) that clarify that the risk concerning the use of the card, after the termination of a contract, is assumed by the card holder (the user) and not by its owner (the bank).

The decision is available for consultation [here](#) (contents available only in Portuguese).

