

## **Standard Contract Terms and Conditions**

The Supreme Court of Justice (STJ) in its capacity to uniformize jurisprudence previously issued by STJ itself or by lower courts on the same points of law, adjudicated a judgment on 13 November 2015 that relates to the interpretation of some provisions of Decree-Law No. 446/85, dated 25 October. This statute comprises the legal regime in Portugal regarding so-called standard contract terms and conditions.

In sum, the highest court was asked to pronounce on the question of whether a bank may, or may not, set off its claim against a client with the balance of a client's account existing in the bank.

The STJ said that a set-off operation like this goes against good faith and is thus illegal under section 15 of Decree-Law No. 446/85.\*

Another point that the STJ dealt with in the same judgement was whether a bank (in cases concerning the same bank) may, or may not, transfer in full, or in part, a contract with a client to another financial institution owned by that bank's group.

The STJ said that the bank, although authorised on the basis of a clause in the contract entered into with its client to proceed in that way, is not authorised to undertake such a transfer of contract because such a clause is illegal under section 18 (a) of the same statute.

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\* Section 15 of Decree-Law No. 446/85 states that the standard contract terms and conditions that go against good faith are illegal. Good faith in this sense means any bank's conduct which does not infringe the trust of a bank's client that it will keep the client's values in custody and return them back under the contract's conditions as expected by the bank's client.

It is a known fact that in good faith in Portuguese law refers to the attitude of several parties (to a contract), and concerns fair dealing, diligence, reasonableness and care during the formation, performance and post-termination contract. The one in question is this judgment relates to the duty of preserving the client's trust that the contract is performed under the expected terms.