

Business

BANKING - Deposits - Debtor-creditor relationship - Deposit accounts - Payment cards

(December 1, 2017, 9:02 AM EST) -- Appeals by All Trans Financial Services Credit Union Limited (All Trans) from orders made by the Financial Institutions Commission (Commission). The orders required All Trans to cease the sale of certain prepaid Visa cards and MasterCard cards issued to British Columbia consumers. The cards, once purchased and activated, allowed the cardholder to use the card at retail locations to purchase goods and services anywhere where Visa or MasterCard was accepted. Cardholders could also register cards to activate additional features, including the ability to reload funds onto the cards or, importantly, to withdraw funds loaded on the cards at point of sale terminals or from automated teller machines (ATMs). The Commission determined that All Trans' prepaid Visa/MasterCard business constituted an unauthorized deposit business, contrary to s. 81 of the Financial Institutions Act (FIA). That determination was based upon the conclusion that a cardholders' card with a balance on account, which balance could be accessed or repaid by way of cash withdrawal at an ATM, constituted "deposit business" within the meaning of the FIA. All Trans maintained that it did not engage in a deposit business. Thus, the Commission had no jurisdiction to regulate its activities and no jurisdiction to make the orders.

HELD: Appeals allowed. "Deposit business" meant the business of receiving on deposit or soliciting for deposit money that was repayable. A deposit was limited to monies that a customer placed in a specific account with a bank or financial institution giving rise to a relationship, of debtor and creditor, between the institution and the person who deposited funds. The various components of All Trans' prepaid Visa/MasterCard business were not consistent with the meaning of "deposit". Persons who loaded funds on the cards were not members of All Trans and did not hold accounts at All Trans. Funds loaded on the cards were not covered by deposit insurance and did not receive interest. The funds were held in a trust account and were never transferred to All Trans. It was not open to the Commission, in the interest of protecting the public, to deviate from the contemporary and well established meaning of "deposit" or, more importantly, to deviate from the meaning of the word that was consistent with the FIA, its structure and its object. The Commission's decision was unreasonable and the orders were set aside.

All Trans Financial Services Credit Union Ltd. v. Financial Institutions Commission, [2017] B.C.J. No. 2213, British Columbia Supreme Court, P.G. Voith J., November 2, 2017. Digest No. TLD-November272017010