Investment in long-term private equity for an elderly person

Topic: **Investment advice** Case number: **2017/06**

A lawyer representing a client now aged 90 criticised the bank for having advised his client, in 2005, to invest in a private equity product that was incompatible with the client's risk profile. The lawyer claims that the client was not aware of the risks associated with this type of investment and did not, at the time, have an adequate investment horizon given his advanced age. He therefore accused the bank of committing a blatant error in its advice and claimed redemption of the shares at their current value. The bank rejected the lawyer's claim. The Ombudsman reached the conclusion that the bank could not be accused of any wrongful behaviour.

In 2005, aged about 80 at the time, during the course of their regular contact, the client asked the bank for advice regarding new investment opportunities. His lawyer, apparently commissioned on the recommendation of the client's son, explained that the bank advised his client to invest in a private-equity product. Having great faith in his bank advisor, the client purchased shares in the total amount of approximately 250,000 USD. The client's lawyer further stated that, in 2016, the client instructed the bank to sell the shares in question. To his great surprise, the bank then informed the client that the shares could not be sold before maturity of the financial instrument in 2023. The lawyer put to the bank that this investment was not compatible with the client's risk profile. In fact, according to the bank's prospectus, the investment was only suitable for experienced investors with the necessary financial resources and a higher risk appetite which, in his opinion, was not the case with his client. Moreover, the latter had not been informed in detail about the fact that this investment would be such a long-term investment. Indeed, the investment horizon was, in theory, excessive given the age of the client who also did not expressly consent to this investment at any time. The lawyer therefore demanded that the bank redeem the shares at their book value at the end of 2016 (below the 2005 issue price). Since the bank refused this claim, the lawyer turned to the Ombudsman.
Since the bank's response given to the client directly did not enable the Ombudsman to form a definitive opinion regarding the claims made by the lawyer, he requested a statement of position from the bank. The latter, stating that the business relationship with the client had been in existence since the nineties, emphasised the fact that the client was a former CEO. In the bank's opinion, he therefore had a wealth of experience in financial matters and was familiar with almost all financial instruments. His assets held with the bank amounted to over 3 million EUR at the time of the investment in question and his risk profile could be classified as rather "aggressive" given the investments he made over the years. In addition, the client had always shown a preference for instruments offering significant return prospects and for years had been actively engaged in discussions with his banking advisors on the subject of high-yield investments. In so doing, he was particularly interested in private equity investments. The bank even stated that these facts were documented. Nor could it be said that the disputed investment was incompatible with the client's risk profile. The bank further maintained that the argument that the client's advanced age was incompatible with the investment horizon was also untenable. There are in fact plenty of clients who, although of an advanced age, choose to invest their family wealth in long-term investments depending on their circumstances. In the case in point, the specific risks associated with the investment, in particular its long duration, were expressly described in detail in the offering memorandum. Indeed, the client confirmed receipt and awareness of this document with his signature. Finally, the bank stated that no actual damage could be

established since the investment had generated a yield of approximately 7.4% since subscription if the distributions paid are taken into account. For all of these reasons, the bank was not willing to submit to the lawyer's demand and categorically rejected the possibility of an amicable settlement.
In this case, the issue raised for the Ombudsman was whether or not, ten years earlier, the bank had duly complied with the obligations incumbent upon it as an investment advisor. Given that the Ombudsman is often faced with contradictory statements in cases of this nature, the documents provided by the parties are frequently of the utmost importance.
Based on the documents submitted, the Ombudsman first noticed that the client's lawyer was unable to confirm that his client had not expressly consented to the investment. In fact, the bank informed the client about the subscription and then, on a regular basis, about changes in the value of the investment by means of statements agreed upon (extracts, account statements and deposit account statements). Had he not consented to this investment, he should have taken action without delay after the subscription. Moreover, the Ombudsman found the bank's statements and arguments to be well documented, detailed and understandable, such that the lawyer's explanations could not convincingly refute them. With regard to the documents signed by the client, the Ombudsman was unable to accept the lawyer's allegations, particularly that the client, a former CEO, had been inadequately informed about the nature and risks of the investment. In addition, given his wealth, there was no question of whether or not the client had sufficient ability to bear the risks of this investment. His risk appetite was also confirmed by the other investments made. On balance, in light of all the facts, the Ombudsman was unable to find any fault which would incur the bank's liability. He informed the client's lawyer of this.