

The legal form of the private bank

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The early private banks were organised as partnerships, in which the partners were personally and without limit liable for the debts of the firm. This unlimited liability was a signal of trust. A client who deposited his money with a private bank knew that the partners were liable with their entire personal fortunes for the obligations of the bank, and that they therefore had every incentive to manage it prudently. The unlimited liability of the partners was the guarantee that the private bank offered, in the absence of deposit insurance, capital requirements and public supervision.

The Swiss Code of Obligations, adopted in 1881 and revised in 1911, provided for the general partnership, the *Kollektivgesellschaft*, in which all partners are personally liable without limit, and the limited partnership, the *Kommanditgesellschaft*, in which at least one partner is liable without limit and others only up to their contribution.¹ Once the private banks of Basel, Geneva and Zurich had adopted these forms, the term *private banker*, in the Swiss usage, came to designate a bank whose partners were personally liable without limit.

This tradition persisted into the twenty-first century. Until 2014, several of the most prominent private banks of Geneva, among them Pictet and Lombard Odier, were organised as partnerships with unlimited liability of the partners. In 2014, they converted their operating banks into corporations, citing the need to adapt to the international expansion of their business and the requirements of foreign regulators, while retaining partnership structures at the level of the group.² The Swiss Banking Act still recognises the special status of private bankers who do not seek funds from the public and are organised as sole proprietorships, general partnerships or limited partnerships.³

The history of unlimited liability in private banking is relevant to the modern debate on the governance of banks. After the financial crisis of

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2008, several commentators argued that the shift from partnerships with unlimited liability to corporations with limited liability had encouraged excessive risk-taking, because the managers of corporate banks did not bear the losses of their decisions. The Swiss regulation of the remuneration of bank managers and the rules on the responsibility of senior managers, which Part E examines, are attempts to restore some of the discipline that unlimited liability once provided.

1 Notes

1. Art. 552 ff. CO (general partnership, Kollektivgesellschaft) and Art. 594 ff. CO (limited partnership, Kommanditgesellschaft), SR 220. To be verified. ↩
2. On the conversion of the Geneva private banks Pictet and Lombard Odier into corporate structures in 2014 while retaining partnerships at group level, see the press releases of the banks and the literature on Swiss private banking. To be verified. ↩
3. Art. 1 para. 1 and the provisions on private bankers in the Banking Act (SR 952.0) and the Banking Ordinance; on the status of private bankers not accepting deposits from the public, see the standard commentaries. To be verified. ↩

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