

How Swiss is your trust?



Philippe De Salis of the Swiss Association of Trust Companies (SATC) and Stonehage Group gives an update on the state of the Swiss trust market.

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Since the Hague Convention on the law applicable to trusts and on their recognition (Hague Convention) entered into force for Switzerland in July 2007, the trust industry has been growing rapidly in this country. This positive development should continue in light of the strategic importance of this segment for the renewal and the future success of Swiss private wealth management.

One of the challenges for this trust industry is the absence of business regulation in Switzerland, trustees being controlled only under the limited scope of anti-money laundering legislation. It has been recognized at an early stage that this lack of regulation was not in the interest of Switzerland as a trust jurisdiction. This has prompted trust professionals to create the Swiss Association of Trust Companies (SATC) in July 2007, which aims at developing a recognized system based on the quality and integrity of its members and on their adhering to the principles



and rules set by the SATC. In the absence of an immediate intention to regulate the industry, the regulatory gap should therefore be filled by the initiatives of the SATC.

Another challenge for professional trustees is the absence of Swiss substantive trust law and the fact that legal professionals, administrations and in particular judges may be less familiar with the concept of trust and the rules applicable to it in Switzerland than in a traditional trust jurisdiction.

To the contrary of other civil law jurisdictions such as Liechtenstein, Switzerland has not introduced a substantive trust law, which means that a “Swiss trust”, i.e. a trust with a Swiss-based trustee, will necessarily be governed by the laws of another jurisdiction. However, this was by no means an oversight or neglect on the part of the Swiss legislator, but the result of a conscious decision not to codify trust law at this stage.

Article 6 of Hague Convention

Under article 6 of the Hague Convention, the settlor can freely choose the law governing the trust. This choice will of course have to take into account the requirements of each particular case, relating, for example, to the place of residence of the settlor and/or of the beneficiaries, or to the situs of the trust assets. Apart from these specific requirements, the law to be chosen should be that of a recognized trust jurisdiction having a modern trust law and a highly regarded corpus of jurisprudence. In the event of litigation before a Swiss court, it might be an advantage if the jurisdiction has also ratified the Hague Convention. Finally, more practical considerations are also of importance, such as the access to qualified legal professionals or the costs and practicalities of a potential litigation in that foreign jurisdiction.

The risk of having to litigate before a Swiss judge, who might not be familiar with the concept of trust and would have to apply a foreign law, can be of concern to the settlor of a “Swiss trust”. This concern is legitimate, but should be considered factually. Even if not frequently, Swiss judges have been confronted with cases involving trusts over a long period of time, the first trust case in Switzerland (heard in Geneva) dates back to 1874. Importantly, Swiss judges at all levels are used to applying foreign law, as they have to do this regularly under the internal rules on conflicts of laws. In such cases, the Swiss judges can rely on the expertise of the Swiss Institute of Comparative Law in Lausanne in order to assist them

establishing the content of the foreign law. They may also have recourse to opinions from foreign state agencies or private legal experts. The choice of the governing law and the drafting of the trust deed can be made so as to ensure that the courts in the jurisdiction of the governing law will also be competent. This competence could even be designed as an exclusive one (exclusivity applies by default under article 149b paragraph 1 of the Swiss Private International Law), in which case the Swiss courts would in principle deny their competence should they be seized of a matter. However, the exclusivity would not be upheld if the case does not constitute a “trust matter” but rather a matrimonial or an inheritance matter. Also, this exclusivity is not binding on persons who are not parties to the trust relationship and it is uncertain whether it would be considered as binding on beneficiaries. While measures can be taken to mitigate this “risk”, the settlor of a “Swiss trust” should therefore accept that if the trustee is based in Switzerland and the trust effectively administered in this country, a potential litigation before a Swiss court cannot be completely excluded. In certain cases, the jurisdiction of the Swiss courts, potentially even to the exclusion of any other courts, is considered as an advantage.

With the growing importance of the trust industry in Switzerland, exposure to trust matters will continue to increase and the pragmatic approach of Swiss judges and their experience in applying foreign law will allow them to respond positively to this new challenge. 



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In a bid to encourage the professional and ethical development of an industry in full expansion in Switzerland The Swiss Association of Trust Companies (SATC) was formally launched in Zurich and in Geneva in September 2007.

The primary objective of this association is to encourage the growth of the trust industry while upholding a high standard of quality, integrity, and professionalism. It also aims to bring together entities active in the trust industry with operative offices in Switzerland for the exchange of know-how, information and ideas on trust related matters.

It is by enhancing the reputation of trustee activities and by increasing the acceptance of the services of those engaged in the trust business that the SATC will strengthen the standing of the trust industry in Switzerland.



Swiss Association
of Trust Companies

Founding Members are:

Barclaytrust (Suisse) SA, Geneva
Bonhôte Trust SA, Neuchâtel
Close Summit Trust Company
SA, Geneva
Experta AG, Basle, Zurich &
Geneva
Investec Trust (Switzerland) SA,
Geneva
Julius Baer Family Office & Trust
Ltd, Zurich
KENDRIS private AG, Zurich
L & S Trust Services SA,
Zurich & Geneva
Paicolex Trust Management AG,
Küsnacht – Zurich
Quiltrust Ltd., Zurich
Rothschild Trust (Schweiz) AG,
Zurich & Geneva
VALUEworks AG, Zurich

**Since its founding, the
association has welcomed
ten new members:**

ACE International SA, Geneva
ATC (Switzerland) Sàrl, Geneva
CISA Trust Company
(Switzerland) SA, Geneva
Fiduciaire Equity Trust AG,
Geneva
HSBC Guyerzeller Trust
Company AG, Zurich & Geneva
Maitland Switzerland SA,
Geneva
Rawlinson & Hunter Trustees SA,
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