

## Trusts in Switzerland

### Constitution and Legal System

Switzerland is a federation of states composed of 26 Cantons, which exercise a high degree of autonomy from the federal government. Switzerland has a civil law legal system, derived in large part from Roman law, where laws are established in legally binding written codes.

### Applicable Trust Law

Switzerland does not have a body of domestic trust law. As a result, CISA Trust will designate the laws of a suitable common law trust jurisdiction as the governing law of the trust, such as the Bahamas, the Cayman Islands, or the laws of England and Wales.

### Hague Convention

The Hague Convention on Trusts (1985)<sup>1</sup> was ratified by Switzerland and entered into effect on July 1, 2007, resulting in the recognition of foreign trusts by Swiss courts. Prior to this, Swiss courts dealt with trust matters by applying a mixture of contractual, corporate, and foundation law.<sup>2</sup> Trusts have been effectively recognized by the Swiss courts since the *Harrison* case in 1970.<sup>3</sup>

The Convention does not prevent the application of provisions of Swiss law the law, which cannot be derogated from by voluntary act, relating to:

- the protection of minors and incapacitated persons;
- the personal and proprietary effects of marriage;
- succession rights and the indefeasible rights of spouses and relatives (forced heirship);
- the transfer of title to property and security interests; and,
- the protection of creditors in insolvency.

Thus, under the Convention, Swiss courts will apply the governing law of the trust, except with respect to the above matters.<sup>4</sup> The provisions of the Convention may be disregarded by Switzerland if application would be “manifestly incompatible” with public policy.<sup>5</sup>

### Licensing and Supervision

Under the new Swiss Financial Institutions Act (FinIA), trust companies are classified as Financial Institutions, and are subject to licensing and prudential supervision by OSIF (Organisme de Surveillance des Instituts Financiers) under authority of FINMA.

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<sup>1</sup> Hague Convention on the Law Applicable to Trusts and on their Recognition (1985)

<sup>2</sup> *Private International Law Act* (1989)

<sup>3</sup> *Harrison vs. Credit Suisse* (1970)

<sup>4</sup> *Hague Convention*, Article 15

<sup>5</sup> *Hague Convention*, Article 18