

Switzerland

Applicable Trust Laws

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 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.

Hague Convention

The Hague Convention on Trusts (1985) 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. Trusts have been recognized by Swiss courts since the *Harrison* case in 1970.

The Convention does not prevent the application of provisions of Swiss 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 forced heirship;
- the transfer of title to property; 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. The provisions of the Convention may be disregarded by Swiss courts if application would be “manifestly incompatible” with public policy.

Swiss Taxation of Trusts

In general, Switzerland does not consider trusts to be tax subjects as they are not legal entities. The trustee is treated as a fiduciary and is not subject to tax on the income or the trust assets, with the exception of trusts holding Swiss real estate. In respect of settlors and beneficiaries, these would not be subject to tax unless resident in Switzerland, and depending on the nature of the trust, distributions, etc. There is an established Federal and Cantonal tax regime for foreign trusts. See Tax Circulaire No. 30, Conférence Suisse des Impôts, (2007).

Licensing and Supervision

Under the new 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.