



CAPITAL TRUSTEES

Ahead of the game

Trust Guide

Features | Uses | Regulatory Framework

June 2020

Introduction to trust.

What is a trust?

The term trust typically refers to the legal relationships created by a person (settlor) when assets (trust fund) have been placed under the control of another person (trustee) in order for the latter to administer them for the benefit of one or more parties (beneficiaries) or for a specified purpose worthy of protection.

Nowadays the trust, which originated in common law jurisdictions, is widely used internationally as an estate planning vehicle for individuals and families, but it can also serve commercial purposes.

Why creating a trust?

Trusts are extremely flexible instruments which allow for proper and long-term execution of the settlor's wishes, as they are able to adapt through time according to the changing needs of the individuals involved in the relationship.

Thanks to their adaptability, they can serve almost any purpose and they can allow in their fund any asset class subject to economic valuation.

As a result, both corporate goals and family's financial affairs can be attained through the settlement of a trust.

Asset Segregation



Trusts allow to separate from the personal sphere of the settlor any goods or set of goods, to which it gives a certain destination.

The assets in a trust constitute a separate estate distinct from that of:

The trustee

The settlor

The beneficiary

Future personal creditors of the above will have no claim against the trust fund.

Subjects of a trust.

The Settlor

The settlor is the person who sets up the trust and transfers assets into it. This can be done with a trust instrument either during his lifetime (with a *Declaration of Trust, or Trust Deed*), or through a will. The terms of the trust can confer various powers on the settlor, including the identification of beneficiaries of the trust and their rights on the assets conferred.

The Trustee

The trustee can be an individual or a legal entity and it is the legal owner of the assets forming the trust fund. The assets forming the trust fund are segregated from the personal assets of the trustee. In administering such fund, the trustee is bound by the trust instrument and the governing law.

The Protector

The protector, although not mandatory, is typically identified by the settlor, and he has a supervisory role on trustee's activities. It's possible, for example, to confer upon the protector a joint voting right with the Trustee, or a veto power on Trustee's decisions regarding specific matters.



The Beneficiaries

The beneficiaries are those individuals who may benefit from the trust. They can be identified in the trust instrument as individuals or class of beneficiaries. Their interests in the trust fund may be vested or contingent.

Key concepts.

Trust instrument

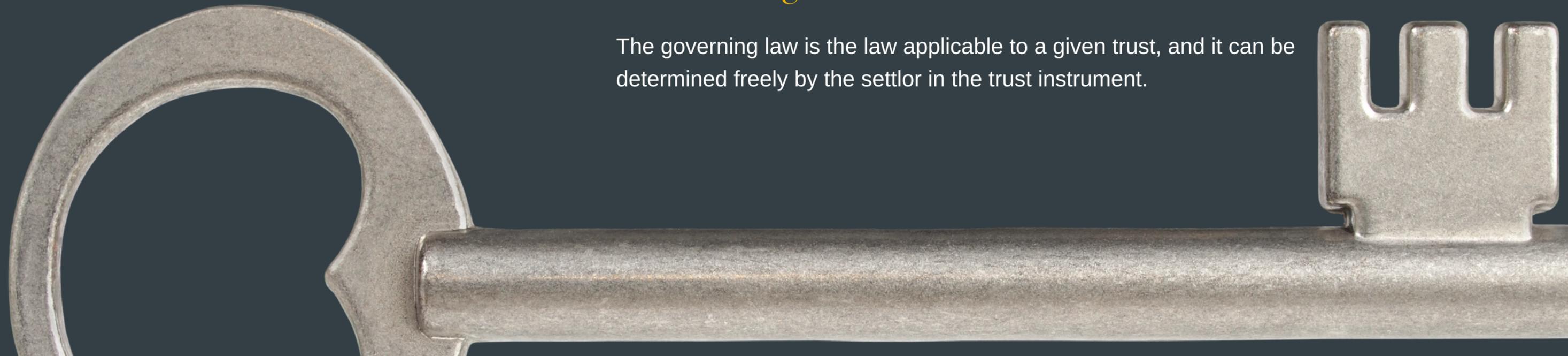
It is a document that formalizes the desires of the settlor and defines the framework in which the trustee and the protector, if any, must operate. In particular, it sets out powers and limitations of the trustee's discretion and the beneficiaries' rights.

Letter of wishes

It is a letter addressed to the trustees, written by the settlor or the beneficiaries, aiming to provide the former with non-binding indications on the administration of the trust.

Governing law

The governing law is the law applicable to a given trust, and it can be determined freely by the settlor in the trust instrument.



Trust in wealth planning.

Versatility, as the main feature of trusts, makes them particularly suitable tools for estate planning, being them able to adapt to multiple different purposes relating to both the private and business spheres. For instance, they are valuable instruments in managing assets during settlor's lifetime or after his death, ensuring protection, unity and continuity of his wealth through generations. In particular, they can play an important role in protecting vulnerable members of a family (e.g minors, incapables, elderly).

Goals achievable with trusts



Compatibility with other tools



In order to increase its effectiveness, the trust can also be combined with other legal instruments both in the private and business spheres

- ✓ Wills
 - ✓ Holding companies
 - ✓ Insurance policies
 - ✓ Bare ownership
 - ✓ Inter vivos gifts
-

Uses of a trust.

Family needs

These trusts are established to protect family members (especially the vulnerable ones) and properties in order to preserve the integrity of an estate. They can regulate relationships of unmarried couples and achieve maintenance of natural children. If a family crisis occurs, a trust can be useful to ensure overtime the fulfillment of obligations assumed by one spouse towards the other as well as their children.

Relocation

Trusts can also be set-up as pre-immigration tools. They can help in organizing relocation from one country to another, with regards in particular to fiscal optimization and selection of optional taxation regimes.

Succession & generational transfer

Trusts in succession schemes ensure adequate financial coverage for the heirs, optimizing tax burdens, easing the transition for family businesses, and regulating the purpose, modalities and timing of the transfer for the best assignment of assets and preservation of family governance.

Corporate needs

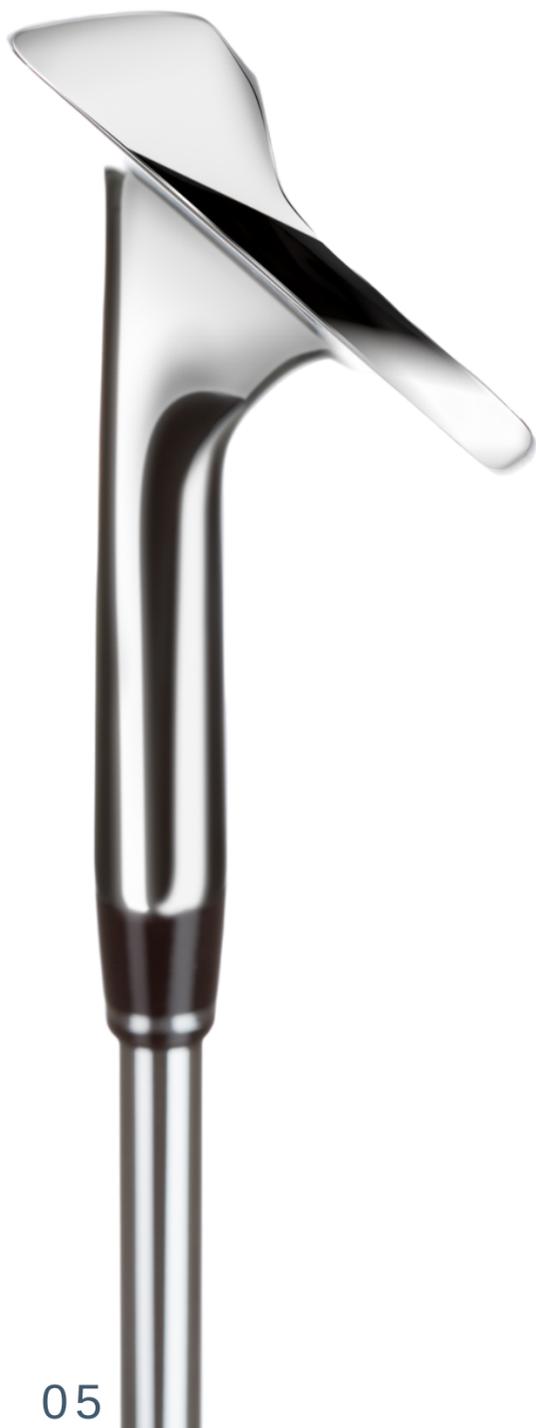
Different corporate structures can be dedicated to the administration and monitoring of financial investments (e.g. investment portfolios) or used as a holding vehicle for shares. Furthermore, corporate trusts can be helpful in managing business crises and negotiating debts structuring agreements in addition to providing guarantees and better access to credit. Firms can also use trusts as governing tools (voting trusts) or as welfare schemes (employees' benefit trusts).

Philanthropy

Trust structures allow for the correct implementation of long-term charitable purposes, combining them, if required, with the settlor's personal needs.

Asset protection

This type of irrevocable trust is designed to reduce the risk of successful claims on the settlor's assets by future creditors. It is particularly suitable for professionals, executives and entrepreneurs, potentially liable for damages' claims in case of litigations.



Assets in trust.

To create a trust, the settlor transfers legal ownership of assets and rights to the trustee. Any asset or legal right that is subject to economic evaluation may be contributed from time to time during the life of the trust by the settlor to the trust fund. Here are some examples of assets that can be segregated:



Real estate



Liquidity



Financial assets



Credits



Art & collectibles



Companies



Registered movable assets



Property rights



Types of trusts.

Revocable trust

A type of trust in which the settlor reserves the right to revoke the trust after its establishment, obtaining the restitution of the assets contributed.

Irrevocable trust

In irrevocable trusts, the settlor permanently deprives himself of the assets transferred to the trust in favour of beneficiaries -determined or determinable- or of an identified objective. In principle, the settlor has no rights or obligations in relation to the trust assets.

Fixed interest trust

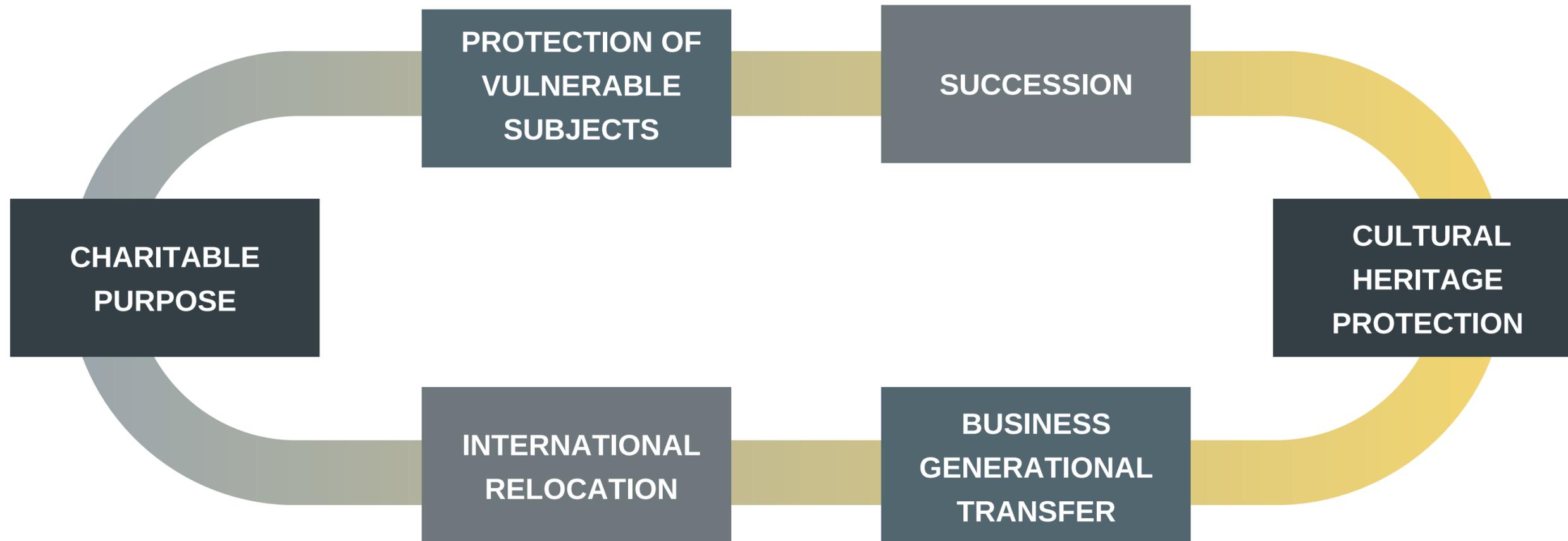
This is a type of trust in which the share of income and/or capital to which each beneficiary is entitled is established in advance. The trustee must therefore respect this attribution when distributing the assets.

Discretionary trust

This form of trust requires the trustee to administer the assets in the interest of one or more beneficiaries not previously identified but only identifiable on the basis of criteria indicated by the settlor, or in the interest of fully identified beneficiaries but in respect of which the trustee may choose at its discretion whether, when and how much to distribute.

Trusts & Taxes.

Trusts have often been depicted as tax avoidance tools but, in reality, nowadays they tend not to provide for tax advantages in most jurisdictions. In any case it seems to be advisable for the settlor, in establishing a trust, to mainly focus on goals other than tax mitigation. Schemes for tax optimization and special tax regimes vary across jurisdictions, but they are generally available in the following circumstances:



Confidentiality.

Trusts are personal arrangements that often involve the allocation of family wealth. As such, confidentiality is one of the top priorities for settlors, to the point that in some cases even beneficiaries wouldn't know about the trust until the occurrence of certain events (for example until they have reached a certain age or until closer relatives have predeceased them).

The rules on public disclosure on trusts' information vary from country to country, although nowadays registers of beneficial owners (UBO registers) have become widely implemented.

On the other side, trustees may have to file the tax return providing financial information on trust's activities. Trustees might be required to disclose with tax authorities certain information regarding settlors, beneficiaries and protectors. Furthermore, with the implementation of Anti Money Laundering regulations and international agreements on automatic exchange of information (e.g CRS or FATCA), the informations provided to the local tax authorities might be exchanged with tax authorities of different jurisdictions.



UBO Registers

They record information of those subjects who exercise some form of control over trusts and other legal entities. In particular for trusts the UBO are typically identified in:

- ✓ **The settlor**
- ✓ **The protector**
- ✓ **The trustee**
- ✓ **The beneficiaries and other natural persons controlling the entity**

In many jurisdictions, such registers are publicly accessible, although a legitimate interest tends to be required to access information. In contrast to this international trend, there are currently no plans to introduce a central UBO register in Switzerland.

Reserving rights.

The main concerns for a settlor regard the loss of control on the assets settled into trust. It is important to state that:

- ✓ During his monitoring activity, typically the protector has a wide access to the information related to the administration of the trust. He could also be vested with a veto power on trustee's decisions, and the power to revoke the current trustee and appoint a new one.
- ✓ Letters of wishes are a precious tool for settlors and beneficiaries, as they provide them with the opportunity to express concerns and suggestions as to the exercise of the trustees' powers and discretions. Previous letter of wishes can be amended and new ones can be issued at any given time.
- ✓ The reservation by the settlor of certain rights and powers are not necessarily inconsistent with the existence of a trust. Nonetheless, reserving too much wide rights and powers could compromise the validity of the trust. An efficient implementation of the settlor's desires will take place in particular through a carefully drafted trust deed, detailed letters of wishes and a constant monitoring activity carried out by the protector.



The Swiss perspective.

Switzerland ratified the Hague Convention of July 1, 1985 in 2007, thus recognizing the establishment of trusts and its related regulatory laws. The country then identified the essential characteristics regulating the tax treatment for each of the parties involved.

Trust features

- ✓ **no public register of beneficial owners**
- ✓ **the trust is not considered a taxable entity**
- ✓ **mandatory regulation of trustees' activities**
- ✓ **introduction of a Swiss trust law on the pipeline**

Requirements for professional trustees

With the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA), which came into force on January 1, 2020, professional trustees are subject to licensing and operate under the supervision of the Swiss financial Markets Supervisory Authority (FINMA). In order to do so, they must meet requirements such as adequate capitalisation of the company, adoption of internal control and risk management systems, and the presence of qualified managers and staff.

AML Regulation

In Switzerland, trustees must fulfill due diligence obligations in accordance with the Anti-Money Laundering Act (AMLA) and the Anti-Money Laundering Ordinance (AMLO), operating under the supervision of FINMA, which has been monitoring financial operators' activities since 2003. These provisions are in accordance with current European regulations and the FATF recommendations, focusing on the importance of structured internal procedures and codes of conduct, technical training and continuous monitoring.

International tax reporting

Swiss trustees not only need to follow national regulations on tax transparency, but must comply with international provisions concerning the automatic exchange of financial account information between tax authorities, correctly fulfilling their US Foreign Account Tax Compliance Act (FATCA) and OECD Common Reporting Standard (CRS) filing obligations.

Questions & Answers.

Can the Trustee be removed?

Typically, the trust instrument provides the settlor, the beneficiaries and the protector with the power to add or remove trustees. In any case, the governing laws usually grants the Court the above mentioned power.

Is it possible to modify the beneficiaries of the trust?

The beneficiaries of a trust can be individually identified or through classes. The power to add or remove beneficiaries during the trust period can be provided for in the trust instrument.

How does the trust end?

The dissolution of the trust will occur at the expiration of the trust period, at the earlier date identified as per provisions of the trust instrument, or when the trust fund is drained.

Which assets can be part of the trust fund?

Any asset subject to economic evaluation can be part of the trust fund (real estate, movables and chattels, credits, works of art, intellectual property, shares, etc.).

Which is the minimum amount required for the settlement of a trust?

A trust can be established with a minimal amount. Further additions can be performed at any time during the trust period by the settlor.

Can the governing law of the trust determine its residence?

No. The choice of the governing law has not implications on the fiscal residency of the trust which is typically determined by the residence of the trustee.

Capital Trustees AG.

Capital Trustees AG is an independent trust company based in Switzerland and currently regulated by the Swiss Financial Market Supervisory Authority (FINMA). As a ten-year member of the Swiss Association of Trust Companies (SATC), the firm is required to conform its activities to the high standards and best practices demanded by its members.

The affiliation of numerous members of its team to the main local and international professional associations - including the Society of Trust and Estate Practitioners (STEP) - allows Capital Trustee to assure its clients a high standing service.

Independent



Substantial



Regulated



Professional



International



CAPITAL TRUSTEES

Ahead of the game

Zürich

Bleicherweg 50
8002 Zürich
Switzerland
+41 (0) 44 512 5004

Lugano

Via Somaini 10
6900 Lugano
Switzerland
+41 (0) 91 210 5700

info@capitaltrustees.ch

www.capitaltrustees.ch

