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SWITZERLAND: An Introduction to Trust Companies

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**Chambers High Net Worth 2022: Practice Area Overview –
Swiss trust industry**



Switzerland has historically enjoyed political and economic stability, factors that have allowed the country to retain its position as the world's top wealth management centre and navigate steadily through periods of global uncertainty.

With the expansion of the global HNWl population and the increased use of trusts, Switzerland's lawmakers acknowledged the relevance of the trust industry within the Swiss private wealth sector, laying out a series of regulatory developments.

The major innovations have been brought about by:

- i. a new regulation concerning portfolio managers and trustees, whose activities from 2020 are subject to a licensing process by the Swiss Financial Markets Supervisory Authority (FINMA). The licensing process is coming towards the end of its three years transitional period in January 2023;
- ii. a project for the introduction of a Swiss substantive trust law.

As anticipated by FINMA in its 2019 Annual Report, the reason behind the introduction of such measures was to further protect users of financial services and ensure the proper functioning of the Swiss financial market.

With the increased use of trusts, lawmakers have hence sought to ensure the competitiveness and future sustainability of the Swiss financial centre through higher specialisation and monitoring.

Risk management and internal controls are in fact becoming the heart of the business and they are increasingly directed at ensuring the protection of clients' interests.

This has been pursued also through the introduction in 2020 of the New Federal Act on Data Protection (nFADP), entering into force in September 2023 with the aim to better protect private clients' sensitive data.

Regulatory developments

Regulation of professional portfolio managers and trustees



2020, Switzerland introduced strict requirements for both professional portfolio managers and trustees to harmonise rules relating to financial service providers' activities, granting their integrity and professionalism.

Trustees that fall within the scope are those that pursue their activities on a commercial basis and hence:

- i. generate more than CHF 50,000 in gross earnings per calendar year; or
- ii. have business relationships with more than 20 partners per calendar year;
- iii. in cases where the trustee does not become the owner of the assets of the trust, if the trustee has unlimited power of disposal over assets belonging to others that exceed CHF 5 million at any given time.

If such entities wish to carry on their business they must firstly receive the confirmation of affiliation to a Supervisory Organisation (SO), and then submit an application to FINMA by the end of 2022.

By 1 January 2023, portfolio managers and professional trustees must receive a licensing confirmation by FINMA to be allowed to practice.

The licensing requirements can be summarised as follows:

- i. to be legally classified as a corporate entity;
- ii. having a suitable organisation, with strong risk management and internal controls aimed at preventing credit, liquidity and market risks, as well as legal, operational, reputational and cyber-security risks;
- iii. demonstrating financial solidity;
- iv. having clearly defined structures, operations, geographic layout and internal regulations and policies;
- v. the employment in adequate number of skilled managers and personnel;
- vi. providing proof of affiliation to a Supervisory Organisation



approach. Instead, every licence is granted according to the specific features of each trustee company, applying a risk-based review of each business model.

Depending on the business model and scope as well as the type of risks, FINMA expects to see evidence of the required expertise and any necessary adjustments to the organisation in order to ensure uniform quality standards on substance and risk management.

Introduction of a substantive Swiss trust law

With the draft bill of January 12, 2022, the Swiss Federal Council initiated a consultation aimed at introducing the trust law into the Swiss legal system through the amendment of its Code of Obligations and other relevant legislative texts. The consultation closed on April 30, 2022.

Switzerland already recognises trusts established abroad under the terms of the Hague Convention on the Law Applicable to Trusts and on their Recognition (the 2007 Hague Trust Convention), and has regulated the use of trusts under a fiscal point of view thanks to a Circular issued in 2007.

The introduction of a Swiss trust law was hence justified by an impact analysis carried out by the Confederation, which showed the familiarity of private clients with trusts in Switzerland, as well as the great wealth administered through them by specialised domestic professionals.

The draft bill, comprising just 1 article divided into 23 paragraphs, stands out for clearness and conciseness. Specifically, Swiss lawmakers proposed introducing a trust law transposing the structure and the critical elements of Anglo-Saxon governing laws, merging them with the principles of civil law institutes.

The draft focuses on ensuring legal protection for the parties through a personal liability of the trustee in case of breach of his duties causing damage to the trust assets or the beneficiaries, also emphasising the rights of the beneficiaries through the provision of extensive rights of information.



the administration of the trust, such as official interpretations of the rights and duties arising from both the trust deed and the law.

The trust deed can also include an arbitration clause with binding effect for the settlor, trustee, allowing for quick and easy resolution of conflicts, as well as ensuring greater confidentiality for the clients.

Finally, the draft law also expressly manifests its compatibility with international principles on tax transparency and exchange of information on financial accounts, as well as with international regulation regarding the fight against money laundering and terrorist financing, which have strongly been furthered by Switzerland.

Overcoming challenges

The framework of global uncertainty, together with a series of trends affecting the private wealth sector, among which generational wealth transfer and protection of private clients' interests, have spurred the need for more specialised services in the Swiss trust industry.

In this context, Switzerland is aiming to confirm its role of leading financial centre through a series of regulatory innovations. These will challenge the country's ability to maintain its attractiveness, but will also provide opportunities for the trust industry to further develop and evolve.

In particular, Swiss lawmakers focused on creating a system with common standards of service shared by financial market players, such as banks, trustees and portfolio managers.

The major adjustments to business models and the high specialisation required by the new regulation have also proved to be challenging for many trustees.

As a result of the changes in course, a process of consolidation of the market is already in place, and it will most likely accelerate in the future. In fact, following the introduction of trustees and portfolio managers' regulation, nearly 40% of players who originally planned to apply for the licence are possibly not



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