



The Use of a Swiss Trustee: How and Why?

Trusts originated in England in the 12th century and developed across many Common Law jurisdictions. Trusts are now also used by many Civil Law jurisdictions.

Carey Zurich and its trustee license

Carey Zurich, established 2003, is a owner-managed Multi-Family Office and FINMA licensed trustee company providing tailor-made functional structures to private clients, wealthy international families and corporates.

We were the 12th company in Switzerland to have been granted in August 2022 a Swiss license as a professional trustee license in accordance with the Financial Institution Act (FINIG by the Swiss Market Supervisory Authority FINMA).

Switzerland and the Use of Trusts

Switzerland does not have specific Trust Law, but recognised trusts with the ratification of “The Hague Convention” on the Law Applicable to Trusts (1985) on 1 July 2007.

Whilst there is no domestic law governing trusts in Switzerland, trusts from other jurisdictions, and their specific rules, are recognised and can be administered in Switzerland. This means, that the Settlor (the individual who settles assets into the trust for the benefit of the Beneficiaries) can choose the law of any specified trust jurisdiction to govern the trust. For example, a UK or Guernsey trust can be established and managed with a Swiss Trustee. The Trustee holds and manages the assets in the trust on behalf of the Beneficiaries.

As professional Trustee Carey Zurich can establish and manage such trust structures irrespectively of the underlying trust law.

Why Use a Trust?

A trust is a very flexible instrument and is particularly useful for estate planning, wealth management and asset protection.

At a basic level, the concept of a trust is relatively simple: the Settlor places assets in the legal custody of another (Trustee), who holds the assets for the benefit of a third party (Beneficiary). The trust is not a separate legal entity, but more of a legal obligation agreed between two parties: the Settlor and the Trustee.

Trustees owe a fiduciary duty to both the Settlor and the Beneficiaries, as well as to the trust itself. Depending on the jurisdiction under whose laws the trust is constituted, the trust can either have a pre-determined life span or be indefinite. Trusts are intrinsically very flexible.

Why use a Swiss Trustee?

There are a number of reasons why use of a Swiss Trustee can be advantageous:

- Swiss economic, political and legal stability provides a solid base for the provision of local administration services.
- Switzerland has a number of favourable and well-developed banking laws, and has been a popular international private banking centre for many years. It is a jurisdiction with a good



reputation and offers a high quality of knowledgeable professionals working within asset management, tax planning and private banking.

- Switzerland has a well-deserved reputation for discreet professional support when managing the affairs of wealthy private individuals.
- Switzerland is located in the centre of Europe where many affluent individuals are based. Swiss Trustees therefore offer the advantage of being able to provide frequent and high-quality support as they can regularly meet appropriate clients in Switzerland.

Taxation of Trusts in Switzerland

The Hague Convention (Article. 19) stipulates that the Convention does not prejudice the powers of sovereign states in fiscal matters. Consequently, Switzerland has maintained its sovereignty in relation to the tax treatment of trusts.

The tax advantages available in using a trust with a Swiss Trustee essentially depend on the tax residence of the Settlor and the Beneficiaries.

In terms of Swiss Law:

- A Swiss resident Trustee is not liable to Swiss income tax or capital gains tax on the assets held under management in a trust.
- Settlers and Beneficiaries are exempt from Swiss taxation as long as they are not considered to be Swiss residents.
- The Swiss Circular Resolution No 20 provides clear guidance about taxation.

Circular No 20: Taxation of Trusts in Switzerland

4.1 Swiss tax treatment of the trust

Foreign law does not grant legal personality to the trust. With reference to international private law (IPRG, incorporation theory), Swiss tax law cannot provide for this either.

A trust is also not a "foreign legal entity" within the meaning of Art. 49 para. 3 DBG and Art. 20 para. 2 StHG, as this legal provision only covers entities to which Swiss private law confers legal personality. However, Swiss private law does not confer legal personality on a trust.

According to the prevailing doctrine, a trust also does not fall within the scope of application of Articles 11 DBG and 20 para. 2 StHG. The autonomous tax qualification provided for in these provisions is intended to cover only entities whose members are in a "personal relationship" with each other. These are, for example, communities of heirs or "partnerships" under Anglo-Saxon law. The common characteristic typical of these institutions does not exist in a trust.

Accordingly, there is no legal basis in the current Swiss tax law which would allow a foreign trust to be equated with a legal entity for tax purposes. Consequently, it must be assumed that the question of the limited or unlimited tax liability of the trust (e.g. on the grounds that one or more trustees reside in Switzerland) does not even arise.

5.1 Swiss principles of tax treatment

The assets and income of the trust (capital, capital gains, current income) are attributed for taxation purposes either to the beneficiaries or to the settlor (principle of transparency). This results from the fact that under current Swiss tax law the corresponding assets can be attributed neither to the trust nor to the trustee.



Regulation of Swiss Trustees

Since January 1, 2023 Swiss Trustees must be licensed as professional trustees. Carey Zurich was only the 12th company in Switzerland who received its licenses in 2022.

Protection

Under Common Law the Trustee is the owner of the assets and is required to administer the trust assets separately from his own assets. In the event of death or bankruptcy of the Trustee, the assets are not considered as belonging to the Trustee but are submitted to the trust's protection and held separately for the Beneficiaries. The trust's assets are therefore segregated from the Trustee's estate.

Confidentiality in Switzerland

Switzerland is well known for its commitment to banking services, professional confidentiality and commercial competence.

A breach of confidentiality, whether professional or commercial, would only be permitted by law in the event of criminal liability.

Summary

An English, Guernsey, Isle of Man, Maltese or New Zealand Law based trust with Swiss Trustees can offer a number of tax efficiencies as well as advantages in terms of wealth preservation and confidentiality. Carey Zurich can establish and manage such trust structures in close coordination with its client requirements and wishes.

Additional Information

If you would like more information on this subject, please contact Beat Haering (beat.haering@carey.ch), CEO and Owner of Carey Zurich, AG.

CAREY ZURICH

Founded in 2003, the company is an owner-managed multi-family office and a FINMA-approved trust company offering tailor-made functional structures for private clients, international families and companies. Our clients can rely on Swiss quality, high ethical standards, efficiency and trust - *because we care(y)*.

As the holder of a professional Swiss trustee licence, the company is supervised by the Swiss Financial Market Supervisory Authority FINMA

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