

Arbitration and mediation clauses in trusts and family structures

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Wealthy families often prefer to resolve disputes privately. Arbitration and mediation clauses in trust deeds, foundation documents and wills promise confidentiality and expertise, although their enforceability is not always certain.

1 Why families consider arbitration

Court proceedings over trusts and estates can be public, slow and conducted in a language unfamiliar to the parties. Arbitration allows the choice of experienced arbitrators, a neutral seat and a confidential procedure. Switzerland is a well-established seat, and its law on international arbitration, contained in Chapter 12 of the Federal Act on Private International Law, provides that any claim involving an economic interest may be the subject of arbitration (Art. 177 para. 1 PILA).

2 The problem of consent

Arbitration is based on agreement, while a trust deed or a will is typically a unilateral instrument that beneficiaries never signed. Following the revision of the Swiss law on international arbitration that came into force in 2021, the rules on arbitration agreements apply by analogy to arbitration clauses in unilateral legal acts or articles of association (Art. 178 para. 4 PILA). How far this binds beneficiaries, minors or unborn persons is still debated, and the answer may depend on the law governing the trust or the estate.

3 Arbitrability of trust and estate disputes

Whether trust disputes are arbitrable at all is debated and depends largely on the governing law of the trust. Some offshore jurisdictions have enacted

legislation supporting trust arbitration, while elsewhere courts may regard certain matters, such as supervisory jurisdiction over trustees, as reserved to the state courts. In succession matters, a clause in a will may be unable to deprive heirs of their compulsory portions, and its effect in Swiss proceedings remains a matter of discussion. A clause that cannot be enforced against all relevant parties risks parallel proceedings.

4 Institutional rules and mediation

Families may refer to the Swiss Rules of International Arbitration, which offer an established institutional framework with a seat in Switzerland. Mediation, for example under the Swiss Rules of Mediation, raises fewer questions of enforceability because it relies on voluntary participation and can be combined with a later arbitration or court procedure. A staged clause providing for mediation first is often a practical compromise.

5 What pays off in practice

- **Align the clause with the governing law** so that the chosen jurisdiction supports trust arbitration.
- **Provide for representation** of minor and unborn beneficiaries in the procedure.
- **Use a staged approach** with mediation before arbitration to keep family relations intact.

6 How Ressos Legal helps

I advise families, trustees and beneficiaries on drafting and enforcing dispute resolution clauses in trusts and estates connected with Switzerland. [Contact me](#) for a first conversation.

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/arbitration-mediation-clauses-trusts-family-structures