

The debate on a Swiss trust

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For the last decade Switzerland has debated whether to introduce a trust into its own law. The motion of Parliament in 2018 instructed the Federal Council to create the legal basis for a Swiss trust. The Federal Council presented a draft in 2022 that would have inserted a trust into the Code of Obligations, with a trustee holding assets as a separate fund for the benefit of beneficiaries, a protector, rules on the duties of trustees and limits on the duration of the trust.¹

The consultation produced mixed responses. Banks, trust companies and some lawyers welcomed the draft as a way to keep trust business in Switzerland and to offer Swiss families a domestic instrument. Cantons, tax experts and part of academia criticised it. They feared tax avoidance, doubted that a Swiss trust would compete with the established common-law jurisdictions and questioned whether the instrument fitted the civil-law system. The Federal Council therefore decided in 2023 not to pursue the project in the proposed form and to examine instead a reform of the family foundation, by relaxing the prohibition of maintenance foundations in Article 335 of the Civil Code.² At the time of writing, neither a Swiss trust nor a liberalised family foundation has been enacted, so the debate continues.

For a wealth planner in Basel, the absence of a domestic instrument is less of an obstacle than it may appear. Families can use a foreign trust administered by a Swiss trustee, a Liechtenstein foundation or a combination of companies and contracts. The trustee in Switzerland is a regulated profession since the entry into force of the Financial Institutions Act in 2020, which requires trustees to obtain a licence from FINMA and to be supervised by a supervisory organisation.³ The regulation of trustees has strengthened the confidence of foreign families in Swiss trust administration. It also reduced the number of small, unregulated trust companies.

1 Notes

1. On motion 18.3383 of the Committee for Legal Affairs of the Council of States (introduction of trusts into Swiss law) and the consultation draft of the Federal Council of 12 January 2022 on the introduction of the trust into the Code of Obligations, see the federal records. To be verified. ↩
2. On the decision of the Federal Council of 2023 not to pursue the trust project for the time being and the parliamentary debate on a revision of Art. 335 ZGB (parliamentary initiative 22.4445 or comparable), see the federal records. Status to be verified. ↩
3. On the licensing obligation for trustees under Art. 17 ff. FinIA and the transitional period until the end of 2022, see SR 954.1. To be verified. ↩

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