

## Trusts and the Hague Convention

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Switzerland is a civil-law country without a domestic law of trusts. Swiss banks, trust companies and lawyers have nonetheless administered trusts for decades, because their international clients used trusts established under the laws of England, Jersey, Guernsey, the Cayman Islands or other common-law jurisdictions. Geneva in particular became one of the largest trust administration centres in continental Europe, as the companion volume on Geneva describes. Basel and Zurich followed with smaller but significant trust practices.

Until 2007, the legal treatment of trusts in Switzerland was uncertain. Courts had to characterise a trust in terms of Swiss law, as a contract, a mandate, a fiduciary transfer or a foundation, with uneven results. On 1 July 2007, the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition entered into force for Switzerland, together with new provisions in the Federal Act on Private International Law.<sup>1</sup> The Convention requires Switzerland to recognise trusts created under the law chosen by the settlor, so that trust assets form a separate fund that is not part of the trustee's own estate. The new provisions of the Private International Law Act determine the jurisdiction of Swiss courts in trust matters and allow the registration of trust relationships in the land register and other registers.

The Debt Enforcement and Bankruptcy Act was amended at the same time. In the bankruptcy of a trustee, trust assets are segregated from the trustee's estate and do not serve to satisfy his personal creditors.<sup>2</sup> With these changes, Switzerland gave the trust a secure place in its legal order without creating a domestic trust law.

The recognition of trusts does not settle their treatment for tax purposes, because the Hague Convention does not cover taxation. The Swiss Tax Conference published a circular in 2007 that established the principles. A revocable trust is treated as transparent, so that its assets and income are

attributed to the settlor. An irrevocable discretionary trust is generally treated as a separate fund that is attributed neither to the settlor nor to the beneficiaries until distributions are made. An irrevocable fixed-interest trust is attributed to the beneficiaries, who have enforceable rights to income or capital.<sup>3</sup> The practice that follows these principles has given international families a reasonable degree of certainty, although the cantons apply them with nuances.

## 1 Notes

1. Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition (SR 0.221.371), in force for Switzerland since 1 July 2007; Art. 149a–149e PILA. To be verified. ↩
2. Art. 284a and 284b SchKG on the segregation of trust assets in the bankruptcy of the trustee, in force since 1 July 2007. To be verified. ↩
3. Swiss Tax Conference (Schweizerische Steuerkonferenz), Circular No. 30 of 22 August 2007 on the taxation of trusts. To be verified. ↩

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