

Removing a trustee or protector: grounds, courts and governing law

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A trustee who no longer enjoys the confidence of the family, or a protector who blocks every decision, can paralyse a structure. Whether and how they can be removed depends largely on the trust deed and the law governing the trust.

1 Removal under the trust deed

Many modern deeds give a protector, the settlor or a committee the power to remove and replace the trustee without having to give reasons. This is usually the fastest route, provided that the power is exercised strictly in accordance with the deed and for its proper purpose. A removal that ignores formal requirements or serves an improper aim may itself become the subject of a dispute, so the wording of the clause deserves careful attention.

2 Removal by the court

Where the deed offers no route, beneficiaries may ask a court to remove the trustee. Under common law systems, courts generally focus on the welfare of the beneficiaries and the proper administration of the trust. Breaches of trust, conflicts of interest, persistent failure to account and a breakdown of relations that prevents proper administration are typical grounds, although courts are often reluctant to intervene on the basis of hostility alone. Protectors are increasingly treated as holding fiduciary powers, which may expose them to similar scrutiny, depending on the governing law and the terms of the deed.

3 Which court decides

From a Swiss perspective, jurisdiction in trust matters is governed by Art. 149b PILA, which gives effect to a choice of forum in the trust instrument and otherwise refers to the defendant's domicile or the place where the trust is administered. In relations with European states bound by the Lugano Convention, that convention also contains rules on trust disputes. Swiss courts can, in principle, hear an application concerning a foreign-law trust and will then apply the foreign governing law, which may require expert evidence on that law.

4 The role of the governing law

The governing law determines who may apply, which grounds suffice and what powers the court has, including the appointment of a replacement. It is therefore often sensible to bring removal proceedings before the courts of the governing jurisdiction, while using Swiss proceedings for measures relating to assets booked in Switzerland.

5 What pays off in practice

- **Read the removal clause closely** before involving a court, as a contractual removal is usually quicker and cheaper.
- **Document the failures** such as missing accounts or unanswered requests, since courts look for concrete evidence.
- **Plan the succession** by identifying a suitable replacement trustee in advance.

6 How Ressos Legal helps

I advise beneficiaries, protectors and trustees on removal and replacement and coordinate proceedings between Switzerland and the governing jurisdiction. [Contact me](#) for a first conversation.

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