

The trust in Swiss law

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Switzerland does not have its own law of trusts. The civil law of Switzerland does not recognise the division of ownership between a legal owner, the trustee, and beneficial owners, the beneficiaries, that characterises the trust of the common law. Swiss professionals have nonetheless administered foreign trusts for decades. Swiss banks hold the assets of many trusts governed by the laws of Jersey, Guernsey, the Cayman Islands, the British Virgin Islands, Bermuda and other jurisdictions.

The legal position of such trusts in Switzerland was clarified when Switzerland ratified the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. After the Convention entered into force for Switzerland on 1 July 2007, the Federal Act on Private International Law was supplemented by provisions on the jurisdiction, the applicable law and the recognition of foreign decisions in matters of trusts.¹ Under the Convention, a trust validly created under a foreign law is recognised in Switzerland. As a consequence, the trust assets constitute a separate fund, which is not part of the trustee's own estate and is protected against the trustee's personal creditors. The recognition is subject to the mandatory rules of Swiss law, including the rules on forced heirship and matrimonial property, and to Swiss public policy.

The Federal Council examined the introduction of a Swiss law of trusts in response to a parliamentary motion. A preliminary draft was put out for consultation. On 15 September 2023, however, the Federal Council concluded that there was currently not sufficient political consensus for the introduction of a trust under Swiss law. The consultation had revealed clear opposition, in particular to the tax provisions associated with the proposal. The Federal Council decided not to prepare a bill and asked Parliament to write off the underlying motion.² The Swiss professionals will therefore continue to work with foreign trusts.

1 Notes

1. Federal Office of Justice, "Haager Trust-Übereinkommen", bj.admin.ch: the Convention (SR 0.221.371) entered into force for Switzerland on 1 July 2007, together with the accompanying amendments of the IPRG and the SchKG. Art. 149a IPRG (text via [swissrights.ch](https://www.swissrights.ch)) defines trusts by reference to the Convention. Art. 284a SchKG (enforcement against trust assets, through the trustee as representative of the trust, bankruptcy limited to the trust assets) and Art. 284b SchKG (in the bankruptcy of a trustee, the trust assets are separated from the bankrupt estate after deduction of the trustee's claims against them), text via [swissrights.ch](https://www.swissrights.ch). ↩
2. Swiss Federal Council, press release "Die Einführung eines Schweizer Trusts ist derzeit nicht mehrheitsfähig", 15 September 2023, admin.ch: there is currently insufficient political consensus for establishing a trust under Swiss law; the consultation revealed clear opposition to the tax provisions associated with the proposed framework; the Federal Council decided against drafting a formal legislative proposal and asked Parliament to write off motion 18.3383. ↩

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