

Switzerland as your chosen trust jurisdiction

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With its stable, reliable legal system, long-standing commitment to privacy and confidentiality, political and economic stability, educated workforce and wealth of high-quality trust companies, assets managers and other financial service providers, Switzerland is considered a prime jurisdiction for the administration of trust assets.

One point on which Switzerland differs however from other trust jurisdictions is the fact that it does not have its own substantive trust law. Trusts administered by Swiss trustees are therefore inevitably governed by the laws of foreign jurisdictions. Of particular interest in this context is the question of firewall legislation, namely the set of rules and laws included in the substantive trust laws of trust jurisdictions which are designed to protect trusts from certain foreign claims or judgements. As we will see below, although Switzerland recognizes and applies foreign laws to the trusts administered by Swiss trustees, this recognition does not extend to foreign trust laws' firewall provisions. Such trusts and their trustees are however not left defenseless against foreign claims and judgements.

1. Recognition of foreign trusts and similar entities

Switzerland executed and ratified the Hague Trusts Convention¹ in 2007, and the latter came into force on Swiss soil on July 1st, 2007. Accordingly, as of that date, any trust administered by a Swiss trustee which has been validly created in accordance with the applicable foreign law chosen by the settlor is recognized in Switzerland as a trust².

As a result, the Swiss authorities and judiciary are bound, in accordance with the provisions of the Hague Trusts Convention, to refer to the foreign law applicable to a trust when faced with queries pertaining thereto, which provides welcomed legal certainty. Even in the case of "trusts" which do not qualify as such under the Hague Trusts Convention, the Swiss Supreme Court has recently ruled that, when faced with an entity presenting several parallels with trusts, the principles developed for trusts should be used as part of its assessment³.

That being said, the Hague Trusts Convention also states that it does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to succession rights, testate or intestate, especially indefeasible shares of spouses and relatives⁴. In essence, this means that the foreign firewall provisions of the law applicable to

¹ Full name: The Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition

² Article 11 para. 1 of the Hague Trusts Convention

³ Swiss Supreme Court decision 5A_89/2024 of 16 December 2024, section 4.3. In this case, a Liechtenstein Treuunternehmen (Trust Reg.)

⁴ Article 15 let. c of the Hague Trusts Convention

a trust administered by a Swiss trustee will not be recognized and applied by Swiss courts and authorities if and when they conflict with applicable mandatory provisions of the succession law designated by the conflicts rules of the forum.

2. Switzerland's very own set of safeguards

As Switzerland does not have its own substantive trust law and resulting firewall legislation, how would Swiss courts handle attacks on trusts and which safeguards do Swiss-based trustees have recourse to in order to ensure the trust assets are protected and the settlor's wishes upheld?

a. Swiss public policy

The first is Swiss public policy, which can be invoked to refuse recognition in Switzerland of foreign judgements.

In a nutshell, Swiss public policy precludes recognition of foreign law provisions and decisions which unacceptably offend the morals and legal sensibilities of Switzerland, would be intolerably offensive to the sense of justice as it generally exists in Switzerland and would violate the fundamental rules of the Swiss legal system, or which would lead to situations that would shock the most fundamental principles of the legal order as conceived in Switzerland.

In this respect, in 2016, the Swiss Supreme Court was asked to decide whether a Deed of Inheritance issued by an Egyptian court and attesting that a deceased's brothers and sisters were his heirs, to the exclusion of his widow, who was barred from inheriting from her husband under Egyptian law because she wasn't Muslim, could be recognized in Switzerland.

In its ruling, the Swiss Supreme Court held that 1) the mere fact that assets of the deceased's estate were located in Switzerland created a sufficient link with the jurisdiction for the Swiss public policy exception to be invoked and 2) the exclusion under Egyptian law of any succession between a Muslim and a non-Muslim clearly contravened the principle of non-discrimination on grounds of religious belief, which forms part of Swiss public policy⁵.

In addition, it must be noted that Swiss trustees can also invoke the public policy considerations of the law applicable to the trust before the competent foreign courts, as evidenced by a recent decision issued by Jersey courts⁶.

b. Recognition of the specific nature of irrevocable discretionary trusts

The second consists in recognition by the Swiss Supreme Court of the specific nature of irrevocable discretionary trusts, in particular the fact that such trusts do not necessarily violate inheritance laws.

Indeed, under certain inheritance laws, gifts received by heirs during an individual's lifetime are in principle subject to hotchpot (or equalization) upon said individual's passing. In a landmark judgement, the Swiss Supreme Court specified however that, in the case of

⁵ Swiss Supreme Court decision 143 III 51 of 21 November 2016

⁶ Jersey Court decision in the case *Representation of Zedra Trust Company (Suisse) SA re C and D Trusts [2023] JRC 213*, in which the court concluded that the public policy interests in respecting a settlor's wishes could be disregarded in light of the Island's competing public policy requirement to comply with applicable anti-discriminatory legislation. This decision was reviewed by Stephen Alexander TEP and Benjamin Meggitt-Smith in the article *Blessing gender inclusion*, published in the Trust Quarterly Review (TQR), Issue 3, 12 September 2025, available here: <https://journal.step.org/tqr-september-2025/blessing-gender-inclusion> (subscription required).

irrevocable discretionary trusts, 1) the assets held in trust do not automatically and necessarily form part of the deceased's estate, as the deceased irrevocably waived all rights to these assets upon settling them in trust, and 2) the assets cannot be directly attributed to one or the other beneficiary of the discretionary trust, unlike what prevails when dealing with fixed interest trusts, where beneficiaries have enforceable legal claims to the distribution of income and/or capital out of the trust⁷.

It is thus safe to say that the Swiss Supreme Court will not automatically consider settlements in an irrevocable discretionary trust as outright gifts to the beneficiaries of the trust, but is very likely to consider that the settlor simply disposed of these assets during his lifetime. In turn, the law applicable to the settlor's estate will determine whether such lifetime gifts are still subject, in whole or in part, to hotchpot (or equalization), or if the settlor had complete freedom to dispose of these assets as he wished.

3. Switzerland's added bonus: the Swiss Arbitration Center's new Supplemental Rules for Trust, Estate and Foundation Disputes ("TEF Rules")

In addition to the above reassurances, the newly adopted TEF Rules offer a modern and practical framework for resolving private wealth disputes through arbitration, specifically designed to address the specificities and particular complexities of trust, estate and foundation matters.

Indeed, they confirm that Swiss arbitration clauses in unilateral legal instruments such as wills, trust deeds and foundation statutes are valid and thus allow testators, settlors and founders to ensure disputes are dealt with confidentiality and efficiently, even where assets or parties are spread across different countries.

The TEF Rules further allow to tailor proceedings and select arbitrators with relevant expertise, which means that complex disputes are handled professionally and efficiently, and ensure that all persons affected by a dispute have their interests properly represented, which increases the likelihood that any award rendered in arbitration will not only be accepted by the parties, but also enforced in Switzerland and abroad. Coupled with the fact that arbitral awards can only be challenged before State courts in a limited number of circumstances, the overall framework offered by the TEF Rules only reinforces Switzerland's position as a go-to jurisdiction for the administration and preservation of trust assets.

⁷ Swiss Supreme Court decision 5A_89/2024 of 16 December 2024, sections 5.4 and 7.4.4