



Switzerland Trusts for South African families

Introduction

A trust is a flexible legal relationship created by contract or 'trust deed' and is frequently used for estate planning, wealth management and asset protection purposes. In simple terms, a trust can best be described as a relationship: an arrangement whereby ownership of assets is transferred from one person (the "settlor") to another person (the "trustee") to hold for the benefit of others (the "beneficiaries"). Trustees owe a fiduciary duty to both the Settlor and the Beneficiaries, as well as to the trust itself. Depending on the jurisdiction under whose laws the trust is constituted, the trust can either have a pre-determined life span or be indefinite.

Switzerland follows Civil Code and does not have specific Trust Laws but recognises trusts by virtue the ratification of The Hague Convention on the Law Applicable to Trusts (1985). Whilst there is no domestic law governing trusts in Switzerland, trusts from other jurisdictions, and their specific rules, are recognised and can be administered in Switzerland. The Settlor can choose the law of any specified trust jurisdiction to govern the trust, for example a Jersey Trust can be established with a Swiss Trustee.

Why South African families establish trusts abroad (some examples)

- Asset Protection – outside the estate of the Founder or Settlor, thus protects assets against political and economic risks in South Africa
- Family Wealth Planning – trust deed is a binding legal document which determines how assets are managed by independent trustee
- Safeguard assets in USD, EUR, CHF protects against domestic currency fluctuations
- Estate Duty upon demise and Capital Gains Tax upon disposal assets mitigated unless distributed to SA beneficiaries
- Assets externalised with Reserve Bank approval do not need to be repatriated



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Why Switzerland

South African resident clients are generally familiar with overseas trusts in the Channel Islands, Isle of Man and Mauritius in particular. Here are a few reasons why Switzerland can also be considered an option when setting up a family trust outside of South Africa:

- Stable country from an economic, political and legal perspective which provides a solid base for the provision of high-quality support and administration services.
- Located in Central Europe in the same time zone as South Africa which makes it more practical for South African clients.
- Well-established reputation for professional support when managing the affairs of wealthy private individuals.
- Has well-developed, sophisticated banking laws, and has been a popular international private banking centre for many years. Corpag has trusted relationships with several of the well-known global private banks in Switzerland.
- Jurisdiction with a good reputation and offers a high quality of knowledgeable professionals working within asset management, tax planning and private banking.
- In terms of Swiss Law:
 - A Swiss resident Trustee is not liable to Swiss income tax or capital gains tax on the assets held under management in a trust.
 - Non-Swiss resident Settlers and Beneficiaries are exempt from Swiss taxation.

Conclusion

A trust governed by the Trust Law of Jersey, Guernsey, the BVI or alike with a Swiss based trustee can offer a number advantages in terms of wealth preservation and confidentiality and if structured correctly will also create tax efficiencies. We recommend that formal tax and exchange control advice be sought before any decisions are made.

Through our office in Geneva, Corpag Switzerland can assist with the set-up of international trusts and act as professional trustee which includes providing ongoing administration, compliance and accounting services.

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