

The Corpag Group



Corporate Management & Fiduciary Services

" Trusteeship from a civil law jurisdiction: Switzerland "

TTN New York

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Civil Law and Common Law Compared

A Notion of Civil Law

-Origin in Roman law,

-Main feature of civil law is that it is contained in civil codes.

-Most civil codes were adopted in the nineteenth and twentieth centuries:

French Code Civil, 1804, Austrian Burgerliches Gesetzbuch, 1811,

German Burgerliches Gesetzbuch, 1896, Japanese Minpo, 1896, Swiss

Zivilgesetzbuch, 1907, Italian Codice Civile, 1942.



Civil Law and Common Law Compared

B Notion of Common Law

-Origin in England

-Since around the 11th century and was later adopted in the USA, Canada, Australia, New Zealand and other countries of the British Commonwealth.

-Most obvious distinction between civil law and common law systems is a that civil law system is a codified system, whereas the common law is not created by means of legislation but is based mainly on case law.



Concept of Trust & Civil Law, issue?

The principle concern was the need to allow Civil Law jurisdictions to recognize structures, where under Civil Law, such structures would otherwise be incapable of interpretation, because Civil Law does not recognize the ability to split an estate and allow the legal interest in that estate to exist separately from the beneficial interest in the estate.



Switzerland ratifies the Hague Trust Convention

There is no Swiss trust law, but the concept of trusts has been formally recognised since Switzerland ratified the Hague Trust Convention in 2007.

Simultaneously, some adaptations of Swiss law entered into force. Thus, recognition of trusts in Switzerland are governed by predictable rules and legal certainty as to the proper law governing a trust managed in or from Switzerland.

The trustee companies are, however, not regulated. Since 2000, trust companies have been subject to strict anti-money laundering (AML) regulations and to Swiss Bankers' Due Diligence Code (including duty to identify beneficial owner)



Trust concept

Trusts in Switzerland follow the same characteristics than any other Trusts; (Transfer of title, Separation between legal & equitable ownership, segregation of assets);

Distinguishing from a Foundation. The Foundation becomes a legal entity on its creation while the Trust does not have legal capacity;

Distinguishing from a Fiduciary or Nominee “fiducie”.

No Swiss Trust law; A Swiss based trustee might be trustee of Trusts from any Trust jurisdiction, Cayman, Jersey, BVI, Mauritius, New Zealand, UK, Malta...



Financial world

Top ten Financial Centres (Global Financial Centres Index 2014)

1. New York
2. London
3. Hong Kong
4. Singapore
5. Zürich
6. Tokyo
7. Seoul
8. Boston
9. Geneva
10. San Francisco

Switzerland is the only country which has no substantial Trust law amongst the top 10 Financial Centres.



Advantages of having a Swiss Trustee

- Swiss tradition of confidentiality;
- Location; (middle of Europe, half way between Asia and America)
- Switzerland is recognised for its commercial competence
- High quality of knowledgeable professionals in asset management, tax planning and private banking
- the bank, the asset manager and the Trust assets are under the same legal system and can be safeguarded by seeking local judicial relief more promptly than with foreign-based Trustee
- Trust can operate under a well-known set of trust laws (specified in the Trust instrument)
- Trust is not subject to taxation in Switzerland (provided that it has a non-Swiss Settlor & Beneficiaries')
- Simplicity, stability, security



Consideration

Taxation issues

The Trust itself cannot be subject to taxation in Switzerland, nor the Trustee or Protector;

Type of trusts (revocable, irrevocable, discretionary, fixed-interest);

Actors of the trust (Settlor, Beneficiary, trustee, Protector);

The basic principles of international taxation are applicable;

Substance over form;

Tax Rulings (it is possible in Switzerland to secure a tax ruling with the Swiss tax authorities; unlike in most civil law countries);



Example

Irrevocable discretionary Trust



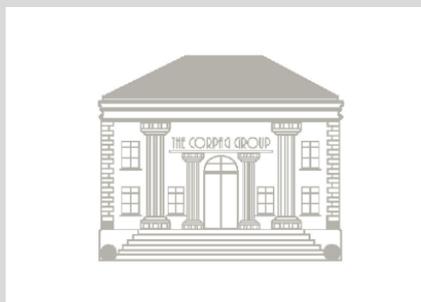
The transfer of assets from the settlor to the Trust or to the trustees is treated as a gift from the settlor for the amount of the capital of the trust.

The beneficiary is not subject to wealth tax on the assets of the Trust.

Distributions to the beneficiary from the assets of the Trust cannot be taxed before their effective payment.



The Corpag Group



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