

The regulation of professional trustees in Switzerland

1. Capital Trustees got licensed

On April 12, 2022, Capital Trustees received the authorization to duly carry on its professional trustee activity within the framework of the legislation regulating the activity of trustees recently enacted in Switzerland by the Swiss Financial Market Supervisory Authority (FINMA).

Therefore, to date, Capital Trustees is one of the first few trustee companies to obtain the license and the very first one also being a member of the Swiss Association of Trust Companies (SATC).

Providing its professional expertise in the set-up and administration of trusts, Capital Trustees has assisted numerous international private clients over the years in achieving their wealth planning goals and by meeting all the stringent requirements necessary to obtain the FINMA license, it has now received official recognition of the quality of the services it offers.

2. The trustees' license -key aspects

The new Swiss legislation - i.e. the Federal act on financial institutions (FinIA) and the related Ordinance on financial institutions (FinIO) – includes professional trustees within the ranks of financial institutions and therefore subjects them to the scrutiny and supervision of the highly-regarded FINMA, notably among the most rigorous supervising authorities worldwide.

The major requirements that trustees must meet in order to lawfully keep on providing their services from January 1, 2023 onwards are:

- effectively manage their trusts from within Switzerland;
- have sufficient equity capital or securities and sufficient financial solidity;
- be suitably organised with adequate risk management and internal controls, meaning that the functions of governance, supervision and control are ring-fenced from the management;
- effectively implement risk-mitigating measures, proportionate to the inherent risks involved in the business model;
- have skilled and knowledgeable management and personnel, whose expertise shall be proportionate to the activity actually pursued and the risks actually involved.

The above requirements are all substantive and demanding, and appear to be unmatched among those few other jurisdictions which require trustees to be licensed.

Using a case-by-case method, FINMA evaluates the adherence to the above requirements, which clarifies that it rejects a “one-size-fits-all” approach in favour of a risk-based assessment.

In fact, FINMA evaluates whether or not a given applicant trustee meets the prescribed standards, analysing in detail the activities it carries out and evaluating its suitability for the tasks on-the-ground through the skills and knowledge of the professionals it employs.

In particular, trustees that also deal with non-bankable assets such as operational businesses, real estate or less ordinary assets (e.g. ships, aircraft, works of art, digital assets) and/or trustees which have trusts governed by a large number of different laws or which have settlors and beneficiaries domiciled in different jurisdictions – all being circumstances considered to be of higher inherent risk – must have appropriate know-how and be able to access specialists from the relevant jurisdictions/areas of expertise.

Trustee companies like Capital Trustees handling complex structures, which indeed involve many different jurisdictions, different asset classes, utilising different governing laws for their trusts – cherry picking the most adequate solution to meet the specific needs in each individual case – are therefore evaluated in a particularly rigorous way.

3. What are the benefits for settlors and beneficiaries?

The qualities that Swiss professional trustees must demonstrate to have in order to meet the above described requirements substantially increase the protection of trusts’ beneficiaries.

The high professionalism, the exclusion of possible conflicts of interest and an effective protection of privacy – a notion enshrined in the Swiss constitution and also a key aspect of the legislation concerning financial institutions – in turn result in an increased peace of mind for settlors and beneficiaries.

For all these reasons, Switzerland, an already very reputable jurisdiction, will likely increase its allure amongst international clientele in the years to come as the place to go when it comes to finding a reliable, professional trustee to entrust with the preservation of wealth.

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