TRIED & TRUSTED

An attempt to codify the trust under Swiss law has significant implications for wealth managers' business models. Partners at Stonehage Fleming run through the ramifications

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Nearly a quarter of assets deposited with Swiss banks are held in trusts and other legal structures and this has the potential to grow if the latest attempt to codify the trust under Swiss law is successful.

Banks and asset managers need to start thinking about the ramifications a Swiss substantive trust law will have on their business models and the implications for Switzerland as a global financial centre.

Trusts are unique structures for holding assets and were first developed in England around 1200 AD. Now recognised internationally, they became embedded in the Swiss legal system in 2007 following the ratification of the Hague Convention on the law applicable to trusts and on their recognition.

HOW DO TRUSTS WORK?

For the vast majority of individuals and families using trusts, their tax planning is perfectly legitimate and not based on a desire to hide assets or evade taxes. Demand for trusts remains high because of their durability, versatility and inherent ability to preserve, manage and develop wealth. Foundations, limited partnerships and corporations simply cannot compare with the benefits and flexibility trusts provide.

The essential element of a trust is the free transfer of property from the settlor to the trustee, which results in the assets no longer belonging to the settlor. Following the transfer, the assets legally belong to the trustee. Creditors will only gain access to these assets if it can be shown that the trust was made with the intention of defeating legitimate creditor claims or is otherwise technically invalid. If the trust has been established with appropriate legal advice and properly administered by an independent trustee, this is not easy.

Despite the media interest in scandal, there are many legitimate uses for trusts including: succession and estate planning; tax planning during life and upon decease; continuity of family businesses; provision for heirs unable to take care of their financial affairs; vehicles for charitable giving; joint-venture investment holding vehicles and last, but by no means least, asset protection.

Many wealthy families choose to hold assets in discretionary trust structures to preserve continuity of purpose, to involve trusted family advisers in key decisions, to help avoid family disputes and to prevent the assets being threatened by poor decisions on the part of individual family members.

Placing the assets into trust, with tailored provisions to address the needs of the specific family, can be used to protect the family from their inheritance and the inheritance from the family.

THE IMPACT FOR SWITZERLAND

The absence of a Swiss substantive trust law has been a divisive issue over the years. There have been several attempts to introduce a law on trusts in Switzerland but so far all have been rejected by the Federal Council.

Some see the absence of a Swiss substantive trust law as a benefit in disguise, allowing trustees to select the most appropriate jurisdiction with the most favourable trust laws for the particular needs of the settlor(s).

On the opposite side of the argument, others claim that dealing with foreign legal structures is administratively burdensome and effective oversight is difficult to enforce. Furthermore, they purport the need for increased transparency and control in structuring services will ultimately put pressure on Switzerland as a global financial centre if it cannot offer comparable tools to its 'competitors'.

The current initiatives from National Council members Giovanni Merlini and Fabio Regazzi on the codification of trusts in Swiss law may be the spark that will lead to change. This may require banks and investment managers to examine their business models, not least their ability to provide holistic services in a new landscape of domestic and international clients, independent trustees and professional protectors.

Stonehage Fleming is one of the world's leading independently-owned family offices and the largest in Europe, Middle East and Africa (EMEA), as measured by its breadth of services, geographic reach and by assets under management, advice and administration.