

Swiss Case Law on Trusts – A Decade of Development

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By **Christine Breitler**, 15th September 2025

Switzerland's accession to the Hague Trust Convention in 2007 marked a significant step in recognising and integrating foreign trusts into its legal framework. Since then, Swiss courts have progressively built a body of case law that provides both clarity and predictability for practitioners and international families.

Over the past decade, a consistent theme has emerged: the courts have demonstrated a pragmatic approach, applying established principles of Swiss law while accommodating the distinctive features of trusts. The result is an evolving set of rulings that strengthens Switzerland's role as a trusted jurisdiction for administering and overseeing these structures.

Trusts and Succession – Exclusion from the Estate

In 2024, the Swiss Federal Supreme Court made a significant contribution to the limited Swiss case law on the treatment of trusts in Swiss estates.

In *TF 5A_89/2024* (16 December 2024), the Federal Supreme Court addressed whether assets held in an irrevocable discretionary trust form part of the settlor's estate, clarified the nature of beneficiary appointments, and examined the role of *hotchpot* (equalisation) in estate division.

The case involved a deceased settlor who had established an irrevocable discretionary trust during his lifetime. Following his death, legal heirs contested whether the trust assets, which only came to light after the distribution of the inheritance, were part of the deceased's estate.

The Federal Supreme Court ruled that the funds within the trust had already been taxed during the settlor's lifetime and therefore did not form part of the estate. It further ruled that the granting of beneficial status constituted an inter vivos gift, as it took effect during the settlor's lifetime.

A further point of contention concerned the by-laws, which provided that after the settlor's death, two of his children would benefit from the capital and income of the trust. The question was whether these beneficiaries were obliged to bring such benefits into hotchpot (equalisation) when dividing the estate. The Federal Supreme Court concluded that, in the case of a discretionary trust, the mere appointment of a beneficiary upon the settlor's death does not constitute a lifetime gift requiring equalisation within the estate distribution.

These clarifications provide vital assurance for international estate planning. They reinforce the stability of cross-border trust structures and give families confidence that assets transferred into a properly established discretionary trust remain outside the settlor's estate and will not later be reclassified as lifetime gifts.

Representation in Criminal Proceedings – *Trustee Authority*

In *1B_319/2022* (17 November 2022), the Federal Supreme Court clarified that only a trustee has standing to file a criminal complaint when trust assets are misappropriated; beneficiaries, even principals, cannot act directly before Swiss courts.

This decision underscores the trustee's central role as the legal representative of the trust and prevents conflicting claims from beneficiaries, highlighting the importance of appointing a trustee with the requisite expertise, judgment, and independence.

Divorce Proceedings – *Freezing Orders*

Swiss courts have also demonstrated a pragmatic approach to trusts in matrimonial litigation. In the well-known Rybolovlev case, Mr Rybolovlev created two irrevocable Cypriot discretionary trusts in 2005 without his wife's knowledge, shortly after she declined a post-nuptial agreement.

The main beneficiaries of the trust were himself and his two daughters, excluding his wife, who he indicated would benefit under his will.

Following their divorce, Mrs Rybolovleva sought to include her husband's trust assets in the marital estate. The Swiss courts, applying the Hague Convention on the Recognition of Trusts, recognised the trusts' validity and granted interim measures such as freezing orders to protect her potential claims. After three and a half years of disputes over interim measures, the spouses finally addressed the merits of their case, focusing on the liquidation of their marital property. The Geneva courts valued the trust assets as of the date they were settled, rather than at the time of the divorce, underscoring that irrevocable transfers without spousal consent must be assessed at the moment of alienation. The Federal Supreme Court confirmed that Swiss law respects the terms of foreign discretionary trusts while ensuring fairness in marital disputes.

The acceptance of freezing orders over assets held in foreign trusts demonstrates that, while respecting the integrity of trust structures, the courts will intervene to ensure equitable outcomes in complex cross-border disputes. This provides reassurance to spouses seeking fair results while reminding trustees that trust assets may be subject to interim measures in Switzerland.

(Federal Supreme Court of Switzerland, 5A_259/2010 of 26 April 2012).

Taxation and Transparency – The CRS Framework

In *2C_946/2021* (6 June 2023), the Federal Administrative Court confirmed that trust-related information may be subject to disclosure under the Common Reporting Standard (CRS), even when trustees or protectors are located abroad.

The case concerned a trust with two Argentine settlors whose information had been transmitted to the Federal Tax Administration (FTA) as part of Switzerland's automatic exchange of tax information. Claiming that the transmission of the information to Argentina would put them personally at risk, the settlors requested the FTA to issue a decision, subject to appeal, opposing the transmission.

The Federal Supreme Court upheld the FTA's decision, confirming that only a violation of public order could justify withholding information and that no such violation existed in this case.

This alignment with international standards reflects Switzerland's firm commitment to global compliance. Trustees, protectors, and advisors should expect that trust information can be shared automatically with other jurisdictions.

Jurisdiction and Applicable Law – Foreign Trust

In *LF160056-03* (25 November 2016), the High Court of Zurich affirmed that Swiss courts may exercise jurisdiction in trust disputes even if the trust itself is governed by foreign law, provided the trustee is domiciled in Switzerland. In this case, the Zurich court accepted jurisdiction but applied Guernsey law as the governing law of the trust.

This distinction is important: the competent forum may be in Switzerland, but the substantive law applied remains that of the jurisdiction chosen for the trust. The ruling ensures that beneficiaries and other interested parties have access to a Swiss forum for dispute resolution, while also underscoring the responsibilities of trustees operating from Switzerland.

Conclusion

Taken together, these decisions mark the steady consolidation of Switzerland's approach to trusts. While remaining creatures of foreign law, trusts have been consistently upheld and integrated within the Swiss legal order in areas spanning succession, criminal and matrimonial litigation, taxation, and jurisdiction.

The direction is clear: Switzerland continues to reinforce its position as a stable, internationally minded jurisdiction, capable of providing a secure environment for the administration of trusts in a cross-border context.

It should be remembered that trusts remain governed by foreign law, as Switzerland does not have its own substantive trust legislation. Careful structuring and administration are therefore essential, and it is strongly recommended to seek advice from professionals with the necessary expertise.

If you would like to know more about Swiss Trusts, or if you have any questions about how we can support you, please contact [Christine Breitler](#) at:

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