

THE WAY FORWARD

Kecia Barkawi-Hauser presents the key findings of the SATC white paper on the future regulation of trust companies in Switzerland

IN JULY 2007 the Swiss Association of Trust Companies (SATC) was established as a professional association aiming to strengthen the standing and reputation of the trustee industry and ensure a high level of quality standards, professionalism and integrity for trust service providers in Switzerland. It has since grown to 28 members, representing small and large, independent and bank-owned companies. Today the SATC is recognised by the Swiss government and other influential bodies, and its committee and advisory board members are in regular contact with key people in Bern.

The Swiss trust industry is a vital part of the Swiss private wealth management offering to the international community, and its visibility is growing, with many foreign service providers having established offices in Switzerland. The trust business is, however, not regulated. Since 2000, trust companies have been subject to strict anti-money laundering (AML) regulations. There is no Swiss trust law, but the concept of trusts has been formally recognised since Switzerland ratified the *Hague*

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Trust Convention in 2007. After that, certain provisions of Swiss law were adapted to reflect the trust concept, and a circular on the taxation of trusts was issued.

In recent years international pressure on Switzerland’s financial service industry and that of many other financial centres has increased dramatically, and regulation has been introduced at increasing speed. This is one of the reasons why the SATC’s members decided to lay out a possible way forward for regulation of the trust business in a position paper. In addition, the association was concerned that regulation introduced by the federal government would not properly reflect the particularities of the trust concept, given that Switzerland is a civil-law country and the regulator is rather unfamiliar with trusts. Ideas of introducing a trust register or a register of trust deeds were put forward earlier and gave rise to concern throughout the industry. The SATC’s members voted in favour of the white paper at their general meeting in May 2012. They agreed to act proactively, rather than wait for new rules detrimental to the way trustees work.

Objectives of the white paper

The SATC white paper *The Regulation of Trustees in Switzerland* has three main objectives, which the SATC believes the Swiss regulator should consider. First, regulation should ensure that trustee activities are carried out by fit and proper persons and in accordance with industry standards, creating a secure framework for the protection of beneficiaries and safeguarding the reputation of the Swiss trust industry. Second, it should ensure maintenance of appropriate records for trustee regulation, satisfaction of existing AML requirements and the protection of beneficiaries, while upholding individuals’ legitimate expectations of confidentiality. Finally, the white paper suggests harmonising the regulation with existing regulatory requirements to ensure

a credible regime, while not adding to the regulatory burden unnecessarily.

An SRO model

The white paper proposes to create a self-regulating organisation (SRO), a well-established system for the effective implementation of AML regulation in Switzerland. The SRO system has proven to be successful and is internationally recognised.

The new SRO would act as a trustee licensing body and regulator, ensuring trustees’ adherence to professional standards. It would exist alongside current AML SROs to avoid overlap with existing AML procedures. The white paper proposes a board composed of representatives of existing Swiss AML SROs, including a representative or observer from the Federal Department of Finance, in effect creating a hybrid SRO.

The SATC would see its role as setting professional standards, briefing auditors and the regulator on those standards, and providing industry support and information to the regulator.

Scope of future regulation

The white paper foresees licensing for Swiss-registered trust service providers (TSPs) with operative offices carrying out trustee activities from within Switzerland. The scope would initially cover only TSPs that are ‘financial intermediaries’ according to Article 2 of the Swiss *Anti-Money Laundering Act*. Hence certain companies would be exempted, such as those with fewer than 20 clients, less than CHF5 million in assets under administration, less than CHF20,000 in annual fee income,

or less than CHF2 million in total annual transaction volume, which is in line with current Swiss AML laws. There is a range of sanctions for trustees who fail to meet required standards, such as increased frequency of audits, or the suspension or even withdrawal of the trustee licence.

The proposed licensing foresees certain minimum standards for operative trust

companies registered in Switzerland, including a minimum capitalisation of CHF100,000, a minimum of three employees, adequate professional qualifications of management and staff, strict adherence to the ‘four-eyes principle’ for the administration of the trust funds, appropriate insurance coverage of at least CHF2 million and a clean AML record. In addition, a licensee must be able to operate at an appropriately high standard of professionalism, befitting the reputation and standing that the Swiss trust industry seeks.

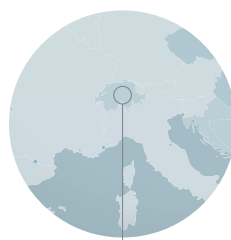
To ensure adherence, the SATC white paper proposes a member audit. It suggests that the existing AML auditors add a layer of trustee regulation to the AML audits they presently undertake. Trustee audits would be carried out under the supervision of the regulator, to review the performance of TSPs against required standards.

Conclusions

The SATC believes Switzerland will remain the centre for excellence in wealth management services. The anticipated regulation of the Swiss trust industry would be very advantageous for its players. A delay in the implementation of regulation may have a negative impact for the industry as there may not be sufficient time to wait for a federal law to be passed, which could take up to ten years. Hence, the SRO approach to regulation would be favourable and manageable, enabling the implementation of an effective licencing system within a reasonable timeframe. Also, it would increase the credibility of the Swiss system in the eyes of foreign jurisdictions and markets.

For further information about the SATC and its white paper, please visit www.satc.ch.

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SWITZERLAND
CAPITAL: BERN
POPULATION: 7,925,517
AREA: 41,277 KM²