

THE IMPACT OF SWITZERLAND'S RATIFICATION OF THE HAGUE CONVENTION ON BAHAMIAN TRUSTS

By: Ivylyn Cassar, CPA TEP



Summary of Main Provisions

- Each Signatory recognizes the existence and validity of trusts. However, the Convention only relates to trusts with a written trust agreement.
- The Convention sets out the characteristics of a trust.
- The Convention sets out clear rules for determining the governing law of trusts with a cross border element.

What did Switzerland's ratification accomplish?

- Swiss Parliament decided on December 20, 2006 to authorise the Federal Council to ratify the Hague Convention on the law Applicable to Trusts and on their Recognition
- Provisions were introduced in the Swiss Private International Law Act in order to transpose the Convention into Swiss law
- Swiss Debt Collection and Bankruptcy Act was amended to provide for the segregation between the assets of the trust and those of the trustee

What did Switzerland's ratification accomplish?

- The Hague Trust Convention will come into effect on July 1, 2007
- Until now, Swiss law did not contain any specific legal provisions on the recognition of foreign trusts.

Applicable Law and Jurisdiction

- The Settlor has unfettered freedom to choose the law applicable to the trust eg the laws of the Bahamas
- The trust instrument should contain an exclusive forum selection clause and specify the place of administration
- The selected court will have jurisdiction over all matters concerning trust law

Foreign Trust decisions

- Foreign decisions relating to matters concerning trust law will be recognised in Switzerland
- There is no Swiss trust law, the Swiss trustee must therefore have a clear knowledge of the foreign law governing the trust eg Bahamian trust laws

Tax implications

- The Hague Trust Convention does not deal with taxation of trusts
- The Swiss Tax Conference have been working on a directive on trust taxation

Potential Impact on Bahamian trusts

- Large number of financial organizations in Switzerland have a trust company elsewhere in the world...such as the Bahamas
- Trust administration is usually carried out in Switzerland
- Strength of Swiss finance industry and confidentiality laws
- Ratification has increased Switzerland's attractiveness for setting up and administering trusts

Potential Impact on Bahamian Trusts

- Presently, the Bahamian trustee must ultimately take responsibility, even where the trust administration is being delegated
- Major trustee decisions must be discussed, reviewed and resolved in the Bahamas
- Trust accounts are signed off by the Bahamian trustee
- Ongoing monitoring of client transactions
- Bahamian trusts are subject to local regulatory and compliance checks and balances

Potential Impact on Bahamian Trusts

- Existing trusts which have links to Switzerland will require review to ensure compliance with the new provisions
- Should the Bahamian trustee retire in favour of a Swiss trustee...need to consider options
- Switzerland will need well trained resources...job opportunities
- Switzerland has no formal registration of licensing regime...I

CONCLUSION

- Opportune time to brainstorm and further consider and analyse the impact on our trust business in the Bahamas...July 1, 2007 is not so far away.....

The Impact of Switzerland's Ratification of the Hague Convention on Bahamian Trusts

➤ QUESTIONS & ANSWERS

Ivylyn Cassar CPA TEP
Director – Experta Trust Company (Bahamas) Limited
Tele: (242) 325-0922
Email: icassar@experta.bs

