



Swiss Association  
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Zug, 24 April 2015

**Position paper on asset structures - for the attention of the Future Financial Centre Advisory Board ("Beirat Zukunft Finanzplatz")**

Dear Mr Odier, Dear Mr Roth,

I am contacting you today in my capacity as a member of the Future Financial Centre Advisory Board. Pursuant to the remit set out by the Federal Council, the Advisory Board is charged with assessing the strategic challenges and future prospects for the financial sector in Switzerland. If necessary, it is required to submit recommendations to adjust the financial market strategy and to improve operating conditions for the financial centre. The Swiss Association of Trust Companies SATC notes that insufficient attention is being paid to the importance of asset structures. This is the background and context to the following thoughts and suggestions.

In my function the Chairman of the Swiss Association of Trust Companies I have recently held many discussions in Switzerland and abroad that addressed the role played by asset structures (trusts, foundations, stock corporations, partnerships, investment funds, securitisation companies etc.) in the success of a financial centre.

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Such asset structures often – although by no means always – hold standard bank assets. It is important to state that the following addresses only asset structures that adhere to all applicable Swiss and non-domestic laws, and not "planning-by-hiding" structures.

Irrespective of the fact that their reputation has been somewhat undermined by abuses, asset structures are an established part of every financial centre, including Switzerland. However, the difference between Switzerland and competing financial centres is that within this context local Swiss legal forms are not interesting, either for company law reasons or tax law reasons. This means that only the use of non-domestic legal forms remains. These consequently tend to be beyond Switzerland's supervisory scope and regulations. In the past, this regularly led to crass disregard for elementary governance rules. It also led to abuses that had an impact on the entire Swiss financial centre (e.g. in conjunction with US qualified intermediary rules).

It is also obvious that a trustee in, e.g. Singapore, will favour working together with a bank that is likewise based in Singapore. This means it is likely that assets will flow out of Switzerland, or will be recorded at another financial centre. This applies to the private client side of the business, as well as to institutional clients.

Our established and future competitors tend to see asset structures under local law as a key factor for the success of their financial centre. In fact, I do not know of any financial centre that can afford not to offer asset structures organised under local law, with the exception of Switzerland. For example, Great Britain, the United States, Luxembourg, Singapore, Hong Kong etc. all offer a broad spectrum of asset structures. Even the Dutch government has identified the introduction of a domestic trust law as a prerequisite for the expansion of its financial centre.

The Switzerland's associated special position might be explained by the fact that the Swiss financial centre has always been first and foremost a banking centre. By contrast, most of our current competitors have used asset structures under local law to facilitate the subsequent development of their domiciled banks. Put simply: firstly, the operating conditions were established by means of laws on asset structures, and it was only following this that the bank landscape began to become more firmly established. This can currently be impressively observed in up-and-coming financial centres within the Gulf region.

The starting position is made doubly difficult by the fact that asset structures, in practice, are often deliberately overlooked. It is far too often the case that banks, industry associations as well as public authorities focus only on the beneficial owners on the one hand, and the bank relationship on the other hand, and tend to ignore the asset structure as the bank's actual contracting partner at the day-to-day business level. The asset structure is treated as transparent, even if this contradicts applicable company law or tax law rules in specific cases. This has been shown, for example in conjunction with the Rubik Agreements and, to a certain extent in relation to FATCA as well. In both cases, this has resulted in disadvantages for the Swiss financial centre. However, it is obvious that detailed knowledge about non-domestic legal forms is less widespread than knowledge about domestic legal forms.

In the near future, the introduction of the automatic exchange of information will make the absence of a Swiss asset structure even more of a disadvantage. This means that in future both Swiss banks as well as non-domestic asset structures will be obliged to submit OECD-compliant reports in the capacity of contracting partners of the bank. In the case of financial centres that offer local asset

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structures, by contrast, the purely domestic relationship (asset structure and bank domiciled in the same country) means that a cascade solution will enable a financial intermediary to issue the report. Here too, it is likely that domestic solution which is easier to administrate will be favoured. Unfortunately, Switzerland cannot offer a solution of this nature. This could lead to an outflow of assets. A possible exception to this is solely the trust with Swiss trustee. Whereby in this case, however, foreign trust law is applied. On a more positive note, the Convention on the Law Applicable to Trusts and their Recognition, which came into force in Switzerland in 2007, significantly improved operating conditions for trust providers.

In a transparent and internationally networked world, high-net-worth individuals or groups of individuals have little option but to organise their assets in asset structures. High-net-worth individuals tend to have links with a variety of different countries, and only asset structures make it possible to defuse conflicts between the legal systems of different states effectively. For this reason it comes as no great surprise that it is estimated that well over half of the more substantial assets at Swiss banks are held by (non-domestic asset structures), and not by natural persons. Unfortunately, there are no detailed public figures on this topic.

It is probably because of its already highly-successful banking scene that Switzerland has not felt it necessary, to date, to strengthen its financial centre by means of asset structures under Swiss law. In addition, there has been a lack of political will, as well as a failure to recognise that asset structures could represent a genuine locational advantage.

Today, the starting situation is different, and the Swiss financial centre is much more strongly exposed to foreign competition. In a situation of this nature, one should at least have equally good arguments. A side-effect, and one that is probably not insignificant, could be additional tax revenues for Switzerland, for example in the case of "liberalised" foundations. Other states have led the way, and have consequently benefited from tax revenues on assets that are locally taxable only on the basis of the utilised asset structure.

I wish to present these findings and deliberations to the Advisory Board, in the name of the SATC, and kindly ask you to forward these accordingly. It goes without saying that my colleagues and I will be available to the SATC at all times to provide any additional information you may require.

Yours sincerely  
Swiss Association of Trust Companies

Alexandre von Heeren  
Chairman

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