



Swiss Association
of Trust Companies

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White Paper on the regulation of Trustees in Switzerland

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EXECUTIVE SUMMARY

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1. BACKGROUND: SATC AND THE REGULATION OF TRUSTEES

In consultation with its members, the Swiss Association of Trust Companies (“**SATC**”) has issued a “*White Paper on the regulation of Trustees in Switzerland*”. The White Paper sets out SATC’s proposal for Trustee regulation in Switzerland.

In producing the White Paper, SATC reviewed the works of their influential bodies in the trust world, most notably the Society of Trust and Estate Practitioners (“**STEP**”), the Offshore Group of Banking Supervisors (“**OGBS**”) and the OECD-administered Financial Action Task Force (“**FATF**”). However, the White Paper has not formally been published in conjunction with any of these bodies.

SATC was formed in 2007 and is a Swiss association including many of Switzerland’s largest trust companies. At the inception of SATC, its membership had the combined intentions that the body should become the main representative body of the Swiss ‘trust industry’ and that SATC should promote the reputation of the Swiss ‘trust industry’ by upholding an appropriate standard of professionalism. Since it was formed, SATC has been reviewing and developing its stance on regulation, and the White Paper, approved by its members is the result of this work.

2. THE WHITE PAPER: SATC’S OBJECTIVES

SATC considers that the Swiss ‘trust industry’ is a vital part of the Swiss private wealth management offering to the international community. With this in mind, SATC has determined that three main objectives should be considered by Swiss regulators when considering a Trustee regulation regime:

1. Ensuring that Trustee activities are carried on only by fit and proper persons having due regard to the applicable laws of, and the interests of all appropriate parties to, each trust under such persons’ trusteeship and in accordance with industry standards, creating a secure framework for the protection of



beneficiaries and thereby the reputation of the Swiss 'trust industry' as a whole.

2. The maintenance by Trustees of appropriate records for the purposes of Trustee regulation, satisfaction of existing anti-money laundering requirements and the protection of beneficiaries, whilst all the while protecting individuals' legitimate expectations of confidentiality in respect of their financial affairs.
3. The harmonisation of regulation with existing regulatory requirements so as to ensure a full and credible regulatory regime whilst not adding to the burden of the Swiss 'trust industry' unnecessarily.

3. THE WHITE PAPER: THE PROPOSALS

3.1 Trustee licensing

The White Paper proposes that Trustees within the scope of the regulatory regime will be required to obtain a licence to carry out trustee activities in Switzerland. Under such a licensing system, Trustees will be subject to appraisals in respect of personal suitability (i.e. 'fit and proper'), appropriate qualifications and satisfactory business practices. The White Paper proposes that Trustees who fail to meet the required standards may be subject to a range of sanctions – from the imposition of more frequent audits to the suspension or withdrawal of Trustee licences in the most serious of cases.

3.2 Harmonising Trustee regulation with existing processes and institutions

The White Paper proposes that no overlap in existing anti-money laundering procedures should exist.

The White Paper proposes that a Trustee licensing body and regulator (the "**LB&R**") will be created, in conjunction with the existing SROs that have Trustee members and with input from FINMA. Such an LB&R will have representatives of SATC and the existing SROs participating in its board and, if possible, a FINMA representative as a board member or observer. The existing SROs will add a layer of Trustee regulation, as devised by the LB&R, to the AML audits that they presently undertake.



3.3 Who is included in the new regulatory regime

The White Paper adopts the expression “*Trust Service Providers*” to those persons or entities who would require a license to act as trustee in or from Switzerland.

Bearing in mind the objective to provide a harmonised regime, the White Paper proposes that the scope of the regulatory regime should, at least initially, only extend to Trust Service Providers who are “*financial intermediaries*” within the meaning of Article 2 of the *Swiss Anti-Money Laundering Act*, all of whom are currently subject to AML audit by an existing SRO or the FINMA.

3.4 The requirements with which Swiss Trustees should comply

The White Paper proposes that Trustee audits carried out under the supervision of the LB&R will review the performance of Trustees against required standards which it will be the first task of LB&R to develop. Typical requirement might include: (a) entity registration in Switzerland, (b) the maintenance of operative offices within Switzerland, (c) minimum capitalisation of CHF 100,000, (d) a minimum of three employees carrying out their employment within Switzerland, meeting the fit and proper test (e) observance of the “four eyes” principle, (f) appropriate insurance cover, and (g) a clean AML record.

4. FURTHER INFORMATION

The full text of the White Paper can be found on the SATC’s website, at www.satc.ch.

SATC welcomes comments and contributions that the White Paper may encourage – observers may send these to SATC email: info@satc.ch.

SATC’s working committee on this matter is chaired by Mark Barmes of Lenz & Staehelin, Geneva.

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