

Improve regulation, please!

The trust industry has come up with suggestions of how to regulate the law governing financial services.

Switzerland's trust industry fears "black sheep" and this is the reason why one has come up with suggestions of how the industry wants to regulate itself. These proposals might form part of the new law governing financial services.

Mifid II, FATCA, AIFM, Basle III – the complaints made about the numerous new regulations in the financial industry cannot be ignored. It's hard to believe that there are stakeholders in the financial sector that wish to have tighter regulations. Yet this is exactly what is the case for the trusts doing business in Switzerland, which are represented by the Swiss Association of Trust Companies (SATC). In May this year, the association came up with a position paper containing suggestions of how to regulate the trust industry. The position paper contains proposals for the licensing and organization of trustees. This attempt is a preventive measure. SATC's chairman, Alexander von Heeren, assumes that the trusts will be in the focus of the regulators the longer the more.

The position paper and the suggestions for the regulation of the business also serve the association as a basis for the talks on the planned law governing financial services (Fidleg) which is meant to improve consumer protection in Switzerland and it is to follow EU guidelines. According to the Swiss Federal Department of Finances (EDF) the aim of the law is to standardize the regulatory environment of the whole financial market place. There was an informative meeting at the end of September. According to Mario Tuor, spokesman for the State Secretariat for International Financial Matters (SIF), there is to be a hearing in February or March 2013 and by the autumn of 2013 the draft should be ready for consultation.

According to Alexander von Heeren, SATC was also invited to the informative meeting on Fidleg. He is optimistic that the position paper will be considered in the law-making process. He also pointed out that it was one of the aims of SATC to prevent reputational risks caused by badly organized trustees. He went on to say that the "lack of regulation" in the Swiss trust industry was causing risks as foreign trustees abuse the situation by setting up business in Switzerland. Founding president Kecia Barkawi-Hauser said that at present SATC consisted of 28 full members and that numbers were increasing, but considering the fact that there were probably more than 500 so-called trust companies in Switzerland, the number was small. An estimated 90 % of these firms were very small firms with one or two employees only, and she explained that these companies did not fulfill SATC's requirements for a membership. Von Heeren added that, more often than not, trust services were offered by financial companies that did not have the special know-how required and that, as a consequence, the danger was that these companies overrated themselves. As SATC has been asking for tighter regulation, part of the trust industry has been accusing SATC of wanting to get rid of the smaller representatives of the branch. SATC has been claiming that there is a lack of rules governing surveillance and organization of trustees in Switzerland, which often proves to be a disadvantage in the international competition. In a comment on the position paper it was pointed out that as the legal owner, a trustee has access to the trust's assets, which means that the interests of the trust's beneficiaries should be better protected, as e.g. done by the rules governing the protection of investors that must be obeyed by banks and asset managers.

This is how SATC wants to prevent the abuse of trusts. Van Heeren said that there had been "black sheep" in the trust industry and that the association wanted to avoid that the trust industry was collectively accused of misconduct because of negative incidents that made the headlines. Trusts' reputation is, indeed, ambivalent: if the press releases articles on this field of the financial market, they are mostly in connection with tax evasion. Kecia Barkawi-Hauser, CEO of the Multi-Family-Office VALUEworks, explained that the vehicles that are similar to foundations have been used to plan inheritance for centuries because they are particularly suitable for international vessels that include private enterprises, real estate, art collections as well as charity projects.

When Switzerland ratified the The Hague Convention for the Recognition of Trusts in 2007, SATC was founded, too. According to Barkawi-Hauser the reason for this, among other things, was that there had been an increase in trust companies, above all in the French part of Switzerland, one reason being the spin-offs of financial institutes. Further, foreign trusts, e.g. from the UK or Jersey, had moved to Switzerland as the barriers for the market access in Switzerland were low.