

# TRUSTS: risk factors and risk assessment obligations

## FINMA licensed trustees, banks, family offices

- > Risk assessment by the trustee (“clients”, custodian bank, EAM...) and by the bank (onboarding trusts)
- > Risk factors for trustees, risk factors for banks, risks associated with PTCs and DTCs

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Marc is the founder of Alithis, a compliance services provider specializing on trustees and non-profits. He is a Swiss attorney with over 10 years of experience in the wealth planning, trustee and corporate services business working for independent and bank-owned trustees. As a board member and in-house counsel of different organisations, Marc has also gained relevant experience in the non-profit and sports sector.

Risk management is an essential element of the financial market regulation globally and in Switzerland. With the (still new) Swiss Financial Institutions Act (FINIA), FINMA standards have to be complied with by portfolio managers, trustees and banks, leading to a fair amount of confusion and potential overlaps and duplication. This seminar aims to clarify the roles between FINMA, banks, investment managers, trustees and single family offices. On the basis of select topics of interest, we will discuss the regulatory framework in Switzerland, focusing on FINMA licensed trustees, Swiss Private Trust Company and Swiss Dedicated Trust Company, and revisit some trust law basics, including what is a constructive trustee.

#### RISK ASSESSMENT

##### 9.00 Risk assessment – FINMA licensed trustees

- Risk assessment of the trustee by FINMA
- Risk assessment of the “clients” by the trustee
- Risk assessment by the trustee when delegating investment management
- Risk assessment by the trustee when choosing the custodian bank
- Risk assessment of the trustee by the trustee

##### 9.30 Risk assessment – Banks

- Risk assessment when onboarding trusts
- Risk assessment during transaction monitoring

#### RISK FACTORS

##### 9.50 Risk factors for SFOs and families linked to the use of special types of trustees PTCs and DTCs

- **PTCs and DTCs:**
  - what is a PTC; different uses of the term
  - DTC – Dedicated Trust Company
  - FINMA definitions and restrictions of PTC and DTC
- **Risks associated with PTCs**

10.20 Break

##### 10.40 Risk factors for trustees:

- **Settlor’s continued control over trust assets**
  - Legal clarification on the relationship between settlor and trustee after the formation of the trust
  - Power on Underlying Companies (UC): risk of fraudulent payments when settlor of trust is also director of UC
  - Powers of instruction on the bank account: example power of settlor: redflag?
- **The “pathological” Protector**
  - Legal clarification on the powers and duties of the protector
  - Protector controlled by trustee
  - Protector without expertise or information
- **(Invalid) Requests from beneficiaries:**
  - Legal clarification on rights and powers of beneficiaries
  - Distributions: to persons who are not beneficiaries
  - Loans to settlor and loans to beneficiaries

##### 11.30 Risk factors for banks:

- **Violation of fiduciary duty by trustee: is it a problem for the bank?**
  - Legal clarification on what fiduciary duty of trustee means / discretionary is not arbitrary
  - Legal clarification on what a constructive trustee is
- **“Suspicious” transactions: can the bank ask too many questions?**
  - Distribution dissimulated behind a loan
  - Inflow of capital to the trust, or to UC, by other persons than settlor
  - Flow through payments

12.30 End of the seminar

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#### FEE

620 CHF + VAT (8.1%)  
Additional participants from the same company: -50%

#### PAYMENT

An invoice will be sent to you by email following registration. Payment is made by bank transfer or credit card.

I register to the seminar “Trusts: risk factors and risk assessment obligations” on 20 June.

I will attend in the conference room  I will attend online on Zoom.

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