

# Current News

GENEVA, JUNE 12 2008

## Offshore Services – Switzerland

### Hague Convention on the Law Applicable to Trusts and on their Recognition Ratified

#### Background

The Hague Convention on the Law Applicable to Trusts and on their Recognition was concluded at The Hague, Netherlands on July 1 1985. The convention became effective on January 1 1992, when Australia became the third signatory member state to deposit an instrument of ratification, acceptance or approval with the Dutch Ministry of Foreign Affairs. As such, the United Kingdom, Italy and Australia were the first three states to ratify the convention and to bring it into effect.

Switzerland signed the convention on April 3 2007 and ratified and acceded to it on April 26 2007. The convention entered into force in Switzerland on July 1 2007.

#### Federal Council

Before Switzerland signed the convention, there was in excess of 20 years of inaction and uninterest in the convention. For many years the banking industry did not see the value of ratification. It was only when the Federal Council mandated a special taskforce led by University of Geneva law professor Luc Thevenoz to advise it on the advantages of ratification that progress was made in recognizing its benefits. Creation of the taskforce was supported by professional associations such as the Swiss chapters of the Society of Trust and Estate Practitioners, which had also been active in lobbying for the convention before the Swiss Parliament and other bodies.

On December 2 2005 the Federal Council published:

- a message promoting ratification of the convention (the Federal Council Final Explanatory Report);<sup>1</sup>
- a draft law to ratify the convention (the Draft Ratification Act);<sup>2</sup> and
- a draft implementation act (the Draft Implementing Ordinance).<sup>3</sup>

The message, draft ratification and draft implementation acts set out the principal proposed modifications to Swiss private international law as governed by the Private International Law Act 1987,<sup>4</sup> including a new Chapter 9a on trusts.

#### Parliament

On March 23 2006 the upper house of Parliament, the Council of States, unanimously approved Bill 05.088, which authorized the Federal Council to sign and ratify the convention acting as executive of the Swiss government, and approved the proposed related amendments to Swiss legislation.<sup>5</sup> The matter was then referred to the lower house, the National Council.

On December 20 2006 the National Council agreed with the Council of States, but due to an overburdened agenda it initially proposed to postpone the debate on ratification until the Spring 2007 parliamentary session.

However, later in the afternoon on that same day - the last of the Winter 2006 parliamentary session - both houses of the Swiss Parliament fully approved ratification of the convention and its implementation through modifications to the Private International Law Act and other domestic laws in an uncontested, unanimous vote under the house rules on reduced debates.<sup>6</sup>

#### Entry Into Force

The December 20 2006 legislative modifications were sent to the Federal Council for signature and on January 3 2007 the Federal Council published the Ratification and Implementing Act.<sup>7</sup> Parliament's approval on December 20 2006 of ratification of the convention led to the subsequent signature of the convention by the Federal Council on April 3 2007, its ratification and accession by the Federal Council on April 26 2007 and its entry into force on July 1 2007.

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<sup>1</sup> Feuille fédérale FF 2006 561.

<sup>2</sup> Feuille fédérale FF 2006 623.

<sup>3</sup> Feuille fédérale FF 2006 61.

<sup>4</sup> RS 291.

<sup>5</sup> AB 2006 5 291/B0 2006 E 291.

<sup>6</sup> RO 2007 2849.

<sup>7</sup> Feuille fédérale FF 2007 41.