

The Federal Supreme Court rules on whether the transfer of a holiday home to a trust is subject to authorisation regime under the LFAIE

The Federal Supreme Court was seized of an appeal by the Federal Office of Justice (FOJ) against a judgment of the Bern Administrative Court, which had held that the transfer of ownership of a holiday home to a trust did not require authorisation under the Federal Act on the Acquisition of Real Estate by Persons Abroad (LFAIE).

The case concerned a British father who owned a holiday apartment in Switzerland. In 2020, he entered into a "Trust Agreement" together with his spouse and their two sons to establish a family trust. Under the "Trust Agreement," all four family members acted both as "Trustees" and "Beneficiaries."

In its judgment of 2C_437/2024 5 February 2026 (not yet published), the Federal Supreme Court upheld the FOJ's appeal.

The LFAIE subjects the acquisition of real estate by foreign persons to an authorisation. Certain exceptions apply: in particular, the transfer of real estate without authorisation is permitted to the spouse or the ascendants or the descendants in the direct line of the transferor (Art. 7 lit. b LFAIE).

With respect to holiday homes, the LFAIE provides that cantons may grant authorisation to foreign persons, provided that certain conditions are met (Art. 9 para. 2 and 3; Art. 11 LFAIE).

The Federal Supreme Court nonetheless holds that a trust is not included within the concept of "foreign persons" under the LFAIE, the latter constituting a "legal entity", despite the absence of legal personality.

A trust refers to the legal relationships created by a person establishing it, whereby assets have been placed under the control of a trustee for the benefit of one or more beneficiaries or for a specific purpose¹.

A trust is not a legal person; accordingly, all assets placed in trust constitute a separate estate distinct from that of the trustee, with which it cannot be merged². Unlike the Anglo-Saxon system, Swiss law does not recognise a split of legal and equitable ownership. Consequently, the trustee must be regarded as the sole owner of the assets of the trust, which he or she administers for the benefit of the beneficiaries in accordance with the rules set out in the trust instrument.

The Federal Supreme Court therefore concluded that the transfer of a holiday home from a father to a family trust is subject to authorisation within the meaning of the LFAIE: this situation falls under none of the statutory exceptions, even if the trustees are the children and the spouse. Moreover and regarding a possible authorisation, the trust cannot benefit from the regime applicable in certain cantons to the acquisition of holiday homes by foreign persons.

In summary

Applying the above principles to the present case, the transfer of the holiday home from the father to the trust is therefore subject to authorisation under the LFAIE.

Had the father, however, transferred his holiday home directly to his spouse or to his children, this act would not have been subject to authorisation regime under the LFAIE, in accordance with Art. 7 lit. b LFAIE.

This judgment therefore confirms the Federal Supreme Court's very restrictive approach regarding the interpretation of the LFAIE.

¹ Art. 2 of the Hague Convention on the Law Applicable to Trusts and on Their Recognition of 1 July 1985

² Art. 2 para. 2 of the Convention

Should you require any further information on this subject, please do not hesitate to contact the authors or your usual contact person at Borel & Barbey. Our specialists will be pleased to assist you.

