

A short glossary for cross-border documents

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The following list supplements the table at the beginning of the chapter with terms that appear in banking and corporate documents. It gives the Swiss Italian term, its German equivalent and the nearest Italian or English concept.¹

- *avente diritto economico* (*wirtschaftlich berechtigte Person*): beneficial owner; in Italian anti-money-laundering law *titolare effettivo*.
- *società di sede* (*Sitzgesellschaft*): domiciliary company without operational business in Switzerland.
- *atto di carenza di beni* (*Verlustschein*): certificate of loss after unsuccessful enforcement; no Italian equivalent.
- *cartella ipotecaria* (*Schuldbrief*): mortgage note, a negotiable security over land; Italian law knows only the *ipoteca*.
- *pegno manuale* (*Faustpfand*): pledge of movables by delivery; Italian *pegno*.
- *imposta preventiva* (*Verrechnungssteuer*): Swiss withholding tax of 35 per cent on dividends and certain interest; Italian *ritenuta*.
- *ufficio del registro fondiario* (*Grundbuchamt*): land register office; Italian *conservatoria dei registri immobiliari* and the *catasto*.
- *autorità di protezione* (*Kindes- und Erwachsenenschutzbehörde*): child and adult protection authority; Italian *giudice tutelare*.
- *mandato precauzionale* (*Vorsorgeauftrag*): advance care directive for incapacity; Italian *amministrazione di sostegno* (a court measure, which differs in nature).
- *fondazione di famiglia* (*Familienstiftung*): family foundation under Art. 335 CC, with purposes restricted by Swiss law; Italian law has no comparable institution.

1 A drafting checklist

The checklist below condenses the practical lessons of this chapter for anyone drafting a document that will be used on both sides of the border.

For the practitioner. Drafting cross-border documents in Italian: - Decide first which legal order governs the document and use the terminology of that order consistently. - Check each term that carries a legal concept in TERMDAT for Swiss usage and in IATE or Normattiva for Italian usage. - Keep foreign terms in italics in the original language and explain them, instead of replacing them with look-alike terms of the other order. - In Swiss documents, use SA, Sagl, *gerente*, *procura* (Art. 458 CO), *fideiussione* (Art. 492 ff. CO), *diritto di compera* and *porzione legittima* in their Swiss meaning; in Italian documents, use SpA, Srl, *amministratore*, *istitutore*, *fideiussione* (Art. 1936 ff. c.c.) and *legittima* in their Italian meaning. - Include a language clause with a prevailing version and a rule that legal terms have the meaning of the governing law's statutes. - For suretyships under Swiss law, respect the written form, the maximum amount and the public deed for natural persons; prefer a guarantee under Art. 111 CO with an express statement of independence. - For wills and succession agreements, check whether the institution exists in the other legal order (in particular the *contratto successorio*) and choose the applicable law expressly. - For powers of attorney, list the acts covered, state the governing law and execute in notarial form with an apostille if the document will be used abroad. - For court use in Italy, prepare sworn Italian translations (Art. 122–123 c.p.c.); for Swiss registers, check the language and legalization rules of Art. 16, 20 and 25 CRO. - For banking documentation, align the language of contracts, information and correspondence with the client's language of correspondence.

2 Notes

1. CC, Art. 335 (family foundation), <https://www.droit-bilingue.ch/en-it/2/21/210-335-407.html>; Art. 884(1) (pegno manuale, "Possesso del creditore"), <https://www.droit-bilingue.ch/en-it/2/21/210-884-994.html>; Federal Act of 13 October 1965 on Withholding Tax, SR 642.21, Art. 13(1)(a) ("il 35 per cento della prestazione imponibile"), <https://www.droit-bilingue.ch/de-it/6/64/642.21-13-17.html>. CC, Art. 360 ff. and 842 ff., and Decreto legislativo 21 novembre 2007, n. 231, Art. 1 and 20. ↩

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