

Capital flight, legal certainty and the Swiss position

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The movement of the Locarnese and their capital from Locarno to Zurich is an early case of what modern economists call capital flight: the transfer of wealth from a jurisdiction where its owners fear for their safety or their property to one where they expect protection. Lugano's own rise as a financial centre in the twentieth century rested on the same mechanism in the opposite direction, when Italian savers moved capital across the southern border to escape political instability, inflation, currency controls and taxation (Chapters D.I and D.II). The history of 1555 and the history of Italian flight capital after 1945 have one thing in common: capital moves towards legal certainty.

Legal certainty in this sense has three elements, each of which the award of 1554 partly provided and modern Swiss law provides more fully. The first is that rules are known in advance: the Locarnese knew by November 1554 what they had to do by March 1555. The second is that rules are applied by a procedure that the affected persons can use: the community's representatives could appear before the Diet and negotiate the reduction of fines. The third is that property rights survive a change of residence: the emigrants could sell, take their capital and invest it elsewhere. The award fell short on all three counts, since the rules were imposed after the fact on a community that had formed when no rule forbade it, since the procedure was controlled by parties with an interest in the outcome, and since forced sales and fines reduced the value of the property. These shortcomings are precisely the points on which the modern guarantees of legality, procedural fairness and the protection of property insist.

For Swiss financial institutions there is a further lesson that is less comfortable. The same legal certainty that protects a persecuted minority also attracts capital that is fleeing legitimate taxation or criminal prosecution. The distinction between the two is the task of the modern law on money laundering, tax transparency and the exchange of information,

which Part G and Chapter E.II discuss. The Locarnese of 1555 were refugees whose capital was legally theirs and whose departure was ordered by the state. A modern client who moves to Ticino or moves assets to Lugano must show, under the due diligence rules that Chapter D.III traces to the Chiasso scandal, that the assets are legitimately acquired and properly taxed. The right to leave and the protection of property have become, in modern Swiss law, rights that presuppose transparency.

For the practitioner. Advising a client who relocates persons or assets under political, religious, regulatory or fiscal pressure raises questions that the Locarnese faced in 1555: - Establish the legal basis and timetable of any measure that forces the move, and keep evidence of it for later claims. - Review the exit tax rules of the state of departure for individuals and companies (for example Art. 166 TUIR, § 6 AStG, Art. 61b DBG) and plan liquidity for taxes on unrealized gains. - Identify assets that cannot be sold before departure and arrange their administration through agents, trustees or foundations with clear powers. - Check the right to settle in the destination state separately from the right to leave the state of origin, including permits and any lump-sum taxation regime. - Document the lawful origin and tax compliance of the assets moved, since Swiss due diligence and exchange of information rules apply irrespective of the reasons for the move. - Keep access to the courts of the state of origin open, and consider the recognition of judgments and judicial assistance rules that apply across the border.

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-capital-flight-legal-certainty-and-the-swiss-position