

Corporate documents

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Corporate documents for groups with Swiss and Italian entities pose the problem of parallel terminologies within one group. A group resolution that refers to "the board" must use *consiglio d'amministrazione* for the SA and the SpA, the *gerenti* or the *gestione* for the Sagl and the *amministratori* for the Srl. Minutes of a Swiss general meeting that were drafted in Italian by an Italian lawyer may describe the auditor as *sindaco* or the share register as *libro soci*, which is an Italian term. Articles of association translated from Italian may contain provisions that Swiss law prohibits, for example clauses that allow the board to refuse a transfer of registered shares at its discretion. Swiss law permits a refusal only on important grounds stated in the articles or against an offer to acquire the shares at their real value (Art. 685b CO).¹ When Italian documents are submitted to the commercial register in Ticino, the register office may require a translation under Art. 20(4) CRO,² and when Swiss documents are filed with an Italian *registro delle imprese*, a certified Italian translation and an apostille are generally required. These formal requirements are discussed in the section on notarial instruments. The substantive risk is greater. Each translation creates a second text, and if the two texts diverge, the question arises which one prevails. That question belongs to the technique of bilingual drafting.

Essentials. Translation risk is concept risk. A Swiss document in Italian must use Swiss terms consistently and explain them where an Italian reader may misread them. An Italian document used in Switzerland must be read through Italian concepts, whatever the Swiss look-alike word suggests. Wills, suretyships and powers of attorney are the documents in which a wrong word most often destroys the legal effect.

1 Notes

1. CO, Art. 685b(1)–(2) (refusal of approval on important grounds stated in the articles or by an offer to take over the shares), <https://www.droit-bilingue.ch/fr-it/2/22/220-685b-950.html>. ↩
2. CRO, Art. 20(4) (above). ↩

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