

Flight capital today

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Capital flight has not disappeared from the world. Many States still restrict the export of capital, among them several of the emerging markets whose wealthy families are courted by Swiss banks today. The current code of conduct of the Swiss banks preserves the distinction of 1977. Banks may not provide active assistance in transferring capital from countries whose legislation restricts the investment of funds abroad, and they may not organize meetings abroad to accept funds, participate in offsetting transactions or collaborate with persons who organize capital flight. The rule does not apply to transfers out of Switzerland.¹ A bank that accepts funds which a client has transferred in breach of his home country's exchange controls therefore does not violate the code, unless it took an active part in the transfer. The anti-money laundering rules apply on top of this, and where the funds are also the proceeds of a qualified tax offence or another crime, the bank's duty to clarify and report under the AMLA takes precedence over any distinction between active and passive conduct.

For Lugano the lesson of the lira economy has been absorbed into a new business model. The Ticinese banks today serve Italian clients whose assets are declared, under rules of cross-border market access that Chapter E.IV describes, and they compete on advice, stability and the Swiss franc. The memory of the *spalloni* survives in the language of the border, in court files and in the occasional legacy safe deposit box. It also survives as a warning that the growth of a financial centre can rest on foundations that its own law does not examine until it is forced to.

Essentials. Swiss law long distinguished criminal money, which banks were to refuse, from tax money and flight capital, which were regarded as matters for the foreign State. The lira economy made the distinction difficult to apply because the same channels carried all three. The reputational damage accumulated through scandals and led to a sequence of rules from the due diligence agreement of 1977 to the qualification of tax

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fraud as a predicate offence in 2016. The current code of conduct still prohibits only active assistance to capital flight.

1 Notes

1. CDB 20 (as above), Arts. 47–50. ↩

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