

From the fiduciary company to the regulated profession

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The fiduciary sector of Lugano became the institutional memory of the lira economy. Many of the firms founded in the 1950s and 1960s continued into the 1990s and 2000s, when Italian tax amnesties led clients to repatriate or declare their assets (Chapter E.II). The Canton of Ticino later subjected fiduciaries to a licensing regime of its own through the law on the exercise of the fiduciary professions of 18 June 1984, in force since 1 January 1985, which created a cantonal supervisory authority and requirements of qualification, reputation and insurance. The Grand Council replaced it with a new law of 1 December 2009, which, after a constitutional complaint had been dismissed by the Federal Supreme Court in November 2011, entered into force on 1 July 2012.¹ Since 2020 the federal Financial Institutions Act has subjected independent asset managers and trustees to authorization by the Swiss Financial Market Supervisory Authority (FINMA) and supervision by supervisory organizations, while the cantonal law continues to govern the other fiduciary activities (Chapter E.III).² The density of independent asset managers and fiduciaries in Lugano today has its origin in the decades described here.

For the practitioner. Legacy structures from the period of the lira economy still surface in estates, family disputes and tax regularizations. Points to check: - Whether a Swiss, Liechtenstein or Panamanian company founded before 1990 still exists, who its directors are and whether its register entries, statutes and share certificates are complete. - Whether bearer shares of a Swiss company have been converted into registered shares as required since 2019, failing which they may have become void. - Whether a fiduciary agreement or power of attorney from the period identifies the beneficial owner, and whether that owner's heirs can prove their title. - Whether the assets were declared in Italy under one of the amnesties or the voluntary disclosure procedure, or remain undeclared. - Whether the bank

still holds the relationship or has transferred dormant assets to the central reporting procedure of the Swiss Banking Ombudsman.

1 Notes

1. Gran Consiglio della Repubblica e Cantone Ticino, Commissione Costituzione e leggi, Rapporto No. 7753 R of 5 October 2021, https://www4.ti.ch/fileadmin/POTERI/GC/allegati/rapporti/25092_7753%20R.pdf ("Il 18 giugno 1984 venne approvata la nuova Legge cantonale sull'esercizio delle professioni di fiduciario (LFid), entrata in vigore il 1° gennaio 1985"; approval of messages 5896 and 5896A on 1 December 2009, dismissal of the complaint by the Federal Supreme Court on 24 November 2011, entry into force on 1 July 2012); LFid of 1 December 2009, Art. 30 (repeal of the law of 18 June 1984), text on LexFind, <https://www.lexfind.ch/tolv/103359/it>. ↩
2. Federal Act on Financial Institutions of 15 June 2018 (Financial Institutions Act, FinIA), SR 954.1, Arts. 17–21 (portfolio managers and trustees; Art. 17 paras. 1 and 2 define both), in force since 1 January 2020 (Art. 75 and Ordinance of 6 November 2019), English text at <https://www.droit-bilingue.ch/de-en/9/95/954.1-17-20.html> and <https://www.droit-bilingue.ch/de-en/9/95/954.1-75-79.html>. ↩

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