

Italian rules for Italian clients

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When a Swiss bank provides services to clients resident in Italy, Italian law may impose additional language requirements. Italian consumer law requires that all information intended for consumers be given at least in Italian, and Italian investor protection rules govern the documentation of investment services provided in Italy. The rules on crossborder services into Italy, which Chapter E.IV describes, limit the activities that a Swiss bank may carry out there without authorization. Within those limits, the language question becomes part of the risk analysis: documentation in Italian, sent to an address in Italy, may be one of the factors that an Italian supervisor considers when examining whether a Swiss bank actively solicited Italian clients.¹ The Italian language thus cuts both ways for Lugano's banks. It makes the relationship with Italian clients possible, yet it can also serve as evidence of an unauthorized presence in the Italian market.

1 Legacy documentation and the voluntary disclosure

The Italian regularization programmes after 2009, and above all the voluntary disclosure under Law No. 186 of 15 December 2014, required Italian taxpayers to document the history of their Swiss accounts. Chapter E.II describes these programmes. For the banks this meant producing statements, contracts and account histories reaching back many years, often in German or French, which Italian advisers then had to read and translate for the *Agenzia delle Entrate*.² The experience left two lessons. First, documentation produced in the client's language facilitates later tax and legal procedures. Second, the Swiss terminology of bank documents, such as *conto deposito*, *mandato di gestione*, *società di sede* (domiciliary company) or *avente diritto economico* (beneficial owner), had to be explained to Italian authorities who knew these concepts under different names, such as *titolare effettivo* for the beneficial owner under Italian anti-money-laundering law.

Common misconception. "A Swiss bank must give an Italian client all documents in Italian." Swiss law contains no such general rule. FinSA requires timely and comprehensible information, and FinSO requires the key information document in an official language, in English or in the client's language of correspondence (Art. 89 FinSO). Italian requirements may apply where services are provided in Italy. In practice, documentation in the client's language is the best protection for the bank, because ambiguous or incomprehensible terms are construed against their author.

2 Notes

1. Decreto legislativo 6 settembre 2005, n. 206 (Codice del consumo), Art. 9(1) ("Tutte le informazioni destinate ai consumatori e agli utenti devono essere rese almeno in lingua italiana"), Brocardi.it, <https://www.brocardi.it/codice-del-consumo/parte-ii/titolo-ii/capo-ii/art9.html>, and Art. 67-bis ff., in particular Art. 67-quater (information before the conclusion of a distance contract for financial services), <https://www.brocardi.it/codice-del-consumo/parte-iii/titolo-iii/capo-i/sezione-iv-bis/art67quater.html>; Decreto legislativo 24 febbraio 1998, n. 58 (TUF), Art. 28 (imprese di paesi terzi diverse dalle banche) and 29-ter (banche di paesi terzi), <https://www.brocardi.it/testo-unico-intermediazione-finanziaria/parte-ii/titolo-ii/capo-iii/art28.html> and <https://www.brocardi.it/testo-unico-intermediazione-finanziaria/parte-ii/titolo-ii/capo-iii/art29ter.html>. See Chapter E.IV. ↩
2. Legge 15 dicembre 2014, n. 186, on voluntary disclosure; Agenzia delle Entrate, circolare 10/E of 13 March 2015. See Chapter E.II. ↩

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