

Procura and procuratore: a classic false friend

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Commercial representation produces the most dangerous false friend of company law. Swiss law distinguishes between agency in general (*rappresentanza*, Art. 32 ff. CO), the registered commercial power of attorney (*procura*, Art. 458 ff. CO) and other commercial authorities (*altri mandati commerciali*, Art. 462 CO). Under Art. 32 CO the contract concluded by an authorized agent (*rappresentante*) in the name of the principal (*rappresentato*) binds the principal.¹ The *procuratore* in the sense of Art. 458 CO is a person who has been authorized by the owner of a commercial business to run it on his behalf and to sign *per procura*. His authority is defined by statute and must be entered in the commercial register by the owner of the business, who is nevertheless bound by the *procuratore*'s acts even before registration. Towards third parties in good faith it covers all legal acts that the purpose of the business may entail, with the exception of the sale and encumbrance of real estate unless expressly granted.² The Swiss *procura* is thus a specific institution, the German *Prokura*.

In Italian law the word *procura* designates the act by which any power of representation is conferred, whatever its content. A *procura speciale* empowers the agent to sell a particular apartment, and a *procura generale* to administer all the principal's assets. The commercial counterpart of the Swiss *procuratore* is the *istitutore* (Art. 2203 c.c.), the person placed in charge of a business or a branch. Article 2209 c.c. uses the term *procuratori* for persons who, on the basis of a continuing relationship, have the power to perform acts pertaining to the business without being placed in charge of it.³ A document issued in Milan that grants "procura" to a Swiss lawyer to represent a client in a Ticinese transaction is therefore an ordinary power of attorney. The same word in a Swiss board resolution "conferring procura" on an employee creates a registered commercial authority with statutory scope. The difference matters for the bank that checks signing powers. A Lugano compliance officer who reads "procura" in an Italian

document and assumes a registered commercial authority overestimates the agent's powers, while an Italian notary who reads "procuratore" in a Swiss register extract may underestimate them.

1 Register, firm name and public deed

Commercial publicity follows similar patterns. The Swiss *registro di commercio* and the Italian *registro delle imprese* both record companies and their representatives, but their legal effects and their content differ. The Swiss register is kept by cantonal offices under the federal Ordinance on the Commercial Register, which requires that applications be made in an official language of the canton in which the entry is made. In Ticino this means Italian.⁴ The supporting documents may be in another language, but the register office may require a translation if it is necessary for the examination or for consultation by third parties.⁵ The Italian register is kept by the chambers of commerce and has a different system of declaratory and constitutive entries. The Swiss *ditta* is the business name of an enterprise (German *Firma*), a meaning that exists also in Italian law, where however the word is commonly used for the enterprise itself.

For the practitioner. Corporate documents for Swiss and Italian entities in Lugano: - Use the legal form exactly as registered: "SA" and "Sagl" for Swiss entities, "SpA" and "Srl" for Italian ones, without "translating" the suffix. - Describe the managers of a Sagl as *gerenti* and add the function in English or German when the document is used abroad. - Distinguish the registered Swiss *procura* (Art. 458 CO) from an ordinary power of attorney (Art. 32 ff. CO), and in Italian documents from the *istituto* and the *procura speciale*. - Check Italian signatory powers against the *visura camerale* and Swiss ones against the commercial register extract, never against the wording of a translated resolution alone.

2 Notes

1. Federal Act of 30 March 1911 on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations), SR 220, Art. 32(1), Italian text at <https://www.droit-bilingue.ch/en-it/2/22/220-32-36.html> ("non è il rappresentante, ma il rappresentato che diventa creditore o debitore"). ↩
2. CO, Art. 458(1)–(2) (definition of the fondé de procuration / procuratore; duty of the owner to register the procura, which binds him even before registration), <https://www.droit-bilingue.ch/fr-it/2/22/220-458-673.html>; Art.

459(1)–(2) (scope: all acts that the purpose of the business may entail; no alienation or encumbrance of land without express authority), <https://www.droit-bilingue.ch/fr-it/2/22/220-459-674.html>; Art. 462 CO, Italian heading "Altri mandati commerciali", <https://www.droit-bilingue.ch/fr-it/2/22/220-462-677.html>. ↩

3. Brocardi.it, "Art. 2209 Codice civile – Procuratori", <https://www.brocardi.it/codice-civile/libro-quinto/titolo-ii/capo-iii/sezione-iii/art2209.html>. Art. 2203 c.c. ("È institutore colui che è preposto dal titolare all'esercizio di un'impresa commerciale"), which allows the appointment to be limited to a branch or a particular line of business, Brocardi.it, "Art. 2203 Codice civile – Preposizione institutoria", <https://www.brocardi.it/codice-civile/libro-quinto/titolo-ii/capo-iii/sezione-iii/art2203.html>. ↩
4. Commercial Register Ordinance of 17 October 2007 (CRO), SR 221.411, Art. 16(4), Italian text (Ordinanza sul registro di commercio, ORC), <https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/2007/686/20250101/it/html/fedlex-data-admin-ch-eli-cc-2007-686-20250101-it-html-3.html>. ↩
5. CRO, Art. 20(4) (above): "Se i documenti giustificativi sono prodotti in una lingua che non è la lingua ufficiale del Cantone, l'ufficio del registro di commercio può esigere una traduzione purché sia necessario per l'esame o la consultazione da parte di terzi." ↩

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