

Remittances and the modern law of payments

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Remittances remain an economic reality in Switzerland, although the direction of the flow has reversed. Switzerland is today a country of immigration, and foreign residents send money from Switzerland to their families abroad. Money transmitting is a financial intermediary activity under the Anti-Money Laundering Act of 10 October 1997 (AMLA, SR 955.0), which covers persons who provide services for payment transactions, in particular by carrying out electronic transfers for third parties (Art. 2 para. 3 let. b AMLA).¹ The international standards of the Financial Action Task Force on money or value transfer services (Recommendation 14) and on wire transfers (Recommendation 16) address the same problem that faced the emigrant economy of the lakes. Transfers between distant places require trusted intermediaries, and those intermediaries can be abused.

The informal transfers "by the hand of" a fellow villager recorded in the notarial registers of the Sottoceneri resemble the informal value transfer systems that the FATF has analysed in its work on *hawala* and similar networks. Such systems rest on kinship, reputation and mutual obligation, and they offer speed, low cost and reliability to communities that lack access to formal banking. The modern regulatory response, which requires registration and customer identification, reflects the concern that the same features make them vulnerable to misuse. The historical comparison does not justify either the informal systems or the regulation. It shows that the tension between trust-based networks and formal control is old.

1 Dowries, family foundations and trusts

The dowry, which in the early modern period transferred wealth to daughters on marriage and protected it for the wife, has disappeared from Swiss and Italian law. In Italy the family law reform of 1975 (Law No. 151 of 19 May 1975) abolished the dowry and prohibited its constitution (Art.

166-bis of the Italian Civil Code).² In Switzerland the family foundation under Art. 335 SCC, which may be established for the education, endowment or support of family members, preserves the endowment purpose of the old dowry in a modern form. The Federal Supreme Court has consistently held that family foundations whose purpose is the mere maintenance of family members without a specific need are invalid, which limits their usefulness for modern wealth planning.³

Swiss law has recognized foreign trusts since the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition (SR 0.221.371) entered into force for Switzerland on 1 July 2007, together with the corresponding new provisions of the PILA on trusts (Art. 149a ff. PILA).⁴ Ticinese trustees and fiduciaries, discussed in Chapter E.III, today administer trusts and foundations for Italian and international families. The underlying need is the one that led emigrant families to create entails, found chapels and endow dowries: to keep a family fortune together across generations and borders while providing for individual members.

Early modern Function Modern counterpart instrument *Procura* before a acting for the absent agency (Art. 32 ff. CO); notary owner precautionary mandate Undivided family joint management by *indivisione* (Art. 336 ff. SCC) community brothers Bill of exchange transfer and exchange bank transfer, payment services under AMLA Dowry endowment of family foundation (Art. 335 SCC), daughters trust *Fedecompresso* keeping the estate trust, foundation together Membership of the lasting bond with the place of origin (Art. 37 Cst.), *vicinanza* village *patriziato*

Table 3: Early modern instruments of the emigrant economy and their modern counterparts. The table shows functional parallels; it does not imply legal continuity.

2 Notes

1. Anti-Money Laundering Act of 10 October 1997 (AMLA), SR 955.0, Art. 2 para. 3 let. b, text at <https://www.droit-bilingue.ch/en-de/9/95/955.0-2-5.html>. ↩
2. Legge 19 maggio 1975, n. 151, Riforma del diritto di famiglia, Gazzetta Ufficiale, text at http://lnx.ispitalia.org/wp-content/uploads/L_151_1975.pdf; Codice civile, Art. 166-bis, "Divieto di costituzione di dote", inserted by Art. 47 of Law No. 151/1975, Brocardi.it, <https://www.brocardi.it/codice-civile/libro-primo/titolo-vi/capo-vi/sezione-i/art166bis.html>. ↩

3. Grüniger, "Historisches Missverständnis?" (cited above), on the restrictive case law since BGE 71 II 86 (1945) and on BGE 108 II 393. ↩
4. Übereinkommen vom 1. Juli 1985 über das auf Trusts anzuwendende Recht und über ihre Anerkennung, SR 0.221.371, Fedlex ELI <https://www.fedlex.admin.ch/eli/cc/2007/375/de>; Federal Office of Justice, "Haager Trust-Übereinkommen", <https://www.bj.admin.ch/de/haager-trust-uebereinkommen>, on the entry into force of the Convention and of the accompanying amendments to the PILA on 1 July 2007. ↩

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