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Matrimonial property law and foreign residents

Swiss matrimonial property law determines what belongs to a husband and wife during their marriage and how their assets are to be divided up in the event of divorce or death. If you live abroad, the international private law of the host country may stipulate that the matrimonial property regime selected in Switzerland does not apply. It is therefore advisable to find out about the applicable international private law regulations in your intended country of residence if you are planning to move abroad.

The Swiss Civil Code (ZGB) distinguishes between three different types of property regime:

Community of acquisitions

This is laid down in Articles 196–200 of the ZGB. It is described as the “statutory property regime” and applies automatically whenever a husband and wife have not entered into a marriage contract. Under the terms of the community of ac-

quisitions, the husband and wife basically have separate estates. Their assets are divided into personal and jointly-acquired property.

Personal property includes assets that each spouse uses purely for his own use, for example clothes, sports equipment or assets that the person either had before marrying or he/she acquires free during the marriage (gifts, inheritances, etc.) Jointly-acquired property is defined as everything the couple acquires during their marriage, for instance through work, including interest on personal assets.

If the estate is dissolved due to divorce or death, the jointly-acquired property is divided equally between the husband and wife. The part belonging to the deceased spouse is inherited in accordance with the provisions of the law of succession.

Community of property

This is defined in Articles 221–246 of the ZGB and laid down by a marital contract/nuptial agreement between the husband and wife. In this case, three estates are differentiated: the wife’s, the husband’s and their common property. The

common property belongs to both parties in its entirety. The marital contract defines which items constitute the common property.

Separation of property

The separate estate regime is described as an “extraordinary property regime” since it is imposed either by law or by a court ruling (Articles 247–251 ZGB). However, the couple may choose to separate their property through a marriage contract. The separation of property regime recognises no common property. Both spouses manage and use their assets autonomously, and have independent rights to them during their marriage. If the marriage is dissolved, neither spouse has any claim on the other’s assets.

Changes to the property regime through a marriage contract

Within certain limits, the spouses may adapt the legally stipulated regulations to their individual needs by means of a marriage contract. Persons wishing to draw up a marriage contract must be capable of judgement. Minors and those placed under guardianship re-

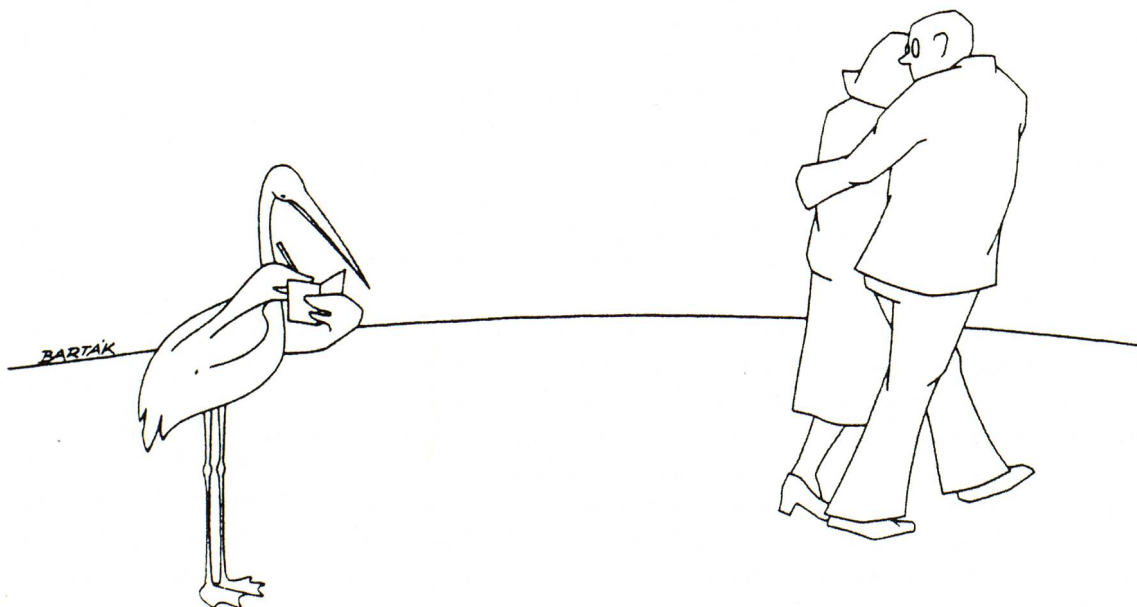
quire authorisation from their legal representative. In Switzerland, marriage contracts are usually concluded in the presence of a notary.

Further information on Swiss marital and succession legislation can be found in a brochure published in German, French and Italian by the Swiss Federal Office of Justice. It is available at the following Internet address: www.bundespublikationen.ch

Swiss nationals resident abroad

The situation is more complex if a Swiss couple moves its residence outside Switzerland. In this case, both Swiss law and that of the host country may apply. Many married couples are not aware that if they switch countries they may be subject to the legal regulations of their country of residence and that their chosen Swiss matrimonial property regime may not apply. The relevant international private law of the country of residence decides which legislation is applied – be it Swiss law or that of the host nation.

International private law determines which legal system is employed in which situation,



and rules on private-law relationships (personal, family, inheritance, contractual, corporate law, etc.) of an international nature. It primarily answers the following questions: Which national law is applicable? Which court has jurisdiction? And under which conditions can a ruling made in one country be recognised and enforced in another? Outside Switzerland, therefore, the norms applied to assess individual cases are those stipulated by the international private-law regulations of the country in question.

It is important for Swiss citizens to note that *in principle, the international private law of their country of residence applies*. This largely determines the law to which their assets are subject and the property options available under this law.

We therefore recommend that Swiss couples living abroad enquire about the relevant international private law in their country of residence. Under some circumstances, couples may have a certain amount of choice in determining their property regime. This would mean that Swiss couples could partly decide which legislation has precedence in regulating their assets: Swiss law or that of their country of residence. Swiss nationals resident abroad should also enquire about what happens to the property rights they held until then.

Swiss embassies and consulates can provide information on the relevant legal authorities in host nations. They can also supply addresses of lawyers and notaries in the country of residence.

If the international private law of the country of residence states that Swiss international private law applies, Swiss expatriates can find out about the

relevant Swiss legislation from the following bodies in Switzerland:

- Cantonal legal information centres
- Cantonal lawyers' associations.

Information is also available from the Swiss Institute for Comparative Law in Lausanne. Please note that this information is not free of charge. Depending on the work involved, fees range from CHF 150 to CHF 450 per hour. Estimates are issued for any research likely to cost more than CHF 500. This allows customers to decide whether or not to ask the Institute to undertake the research on their behalf.

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Energy tax for a healthy environment and securing the welfare state

An inter-party initiative committee has launched a federal popular initiative entitled "Tax non-renewable energy, not labour".

The initiative calls for a new Article 131a BV to be added to the Federal Constitution, laying the foundations for an ecological tax on energy. This would enable the state to replace some or all obligatory social insurance contributions by taxes on non-renewable energy sources. This shift towards taxing energy rather than labour would, it is claimed, protect the

POPULAR INITIATIVES

The following initiatives have been launched since the last issue and can now be signed:

- "For a ban on exports of military equipment" (until 27 December 2007)
- "Against the excessive construction of factories that damage the landscape and the environment" (until 20 December 2007)
- "No more unbridled construction of second homes!" (until 20 December 2007)

Signature forms for current initiatives can be downloaded in German, French or Italian from the Federal Chancellery site: www.admin.ch/ch/d/pore/vi/vis_1_3_1_1.html

VOTING

Federal referendum of 26 November 2006

- Federal law of 24 March 2006 on cooperation with the states of eastern Europe (provided the move for a referendum is successful)
- Federal law of 24 March 2006 on family allowances (provided the move for a referendum is successful)

environment and both secure and fund the Swiss welfare state in the long term.

The initiative wants the welfare contributions of all taxpayers to be phased out as soon as possible. The resultant revenue shortfall would then be covered by taxes on non-renewable energy sources, namely coal, crude oil, natural gas and hydroelectric power.

According to the committee, this would cut wage costs and leave employees with more take-home pay. Labour would also be cheaper for the economy and companies would have a genuine incentive to create more jobs. This would also boost consumer spending.

The initiative can be signed until 24 July 2007.

Changes of address: Not to Berne, please!

Changes of address should be reported only to your responsible Swiss embassy or foreign consulate. These are the sole bodies responsible for managing the addresses of non-resident Swiss citizens and ensuring that "Swiss Review" is sent to the correct address.

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