

Matrimonial property and the family

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Wealth planning does not stop at the law of succession. Matrimonial property law determines how the assets of spouses are divided on divorce or death, and in an international family several matrimonial property regimes may be in play. The ordinary regime of Swiss law, the participation in acquired property, divides the acquisitions made during the marriage equally between the spouses and leaves each spouse's own property to that spouse. Spouses can choose separation of property or community of property by a marriage contract executed before a notary.¹

International families face the question of which law governs their matrimonial property. Swiss private international law allows spouses to choose the law of their domicile or the law of the nationality of one of them. Without a choice, the law of their common domicile applies, and when they move, the new law applies retroactively from the date of the marriage unless they have agreed otherwise.² The European Union has its own Matrimonial Property Regulation, applicable since 2019 in the participating member states, which follows different principles. A German couple that moves to Basel can therefore find that its matrimonial property is governed by different laws in Switzerland and Germany. A marriage contract that contains a choice of law is often the only way to create certainty.

The planning of family wealth must also consider the protection of assets in the event of divorce, the provision for children from earlier relationships and the role of prenuptial agreements in families that own businesses. These questions are delicate, because they touch on the relationships within the family. A wealth planner who handles them well combines legal knowledge with tact and an understanding of the dynamics of families.

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1 Notes

1. On the matrimonial property regimes of Swiss law (participation in acquired property, Art. 196 ff. ZGB; community of property, Art. 221 ff. ZGB; separation of property, Art. 247 ff. ZGB) and the marriage contract (Art. 182 ff. ZGB), see the standard literature. To be verified. ↩
2. On the law applicable to matrimonial property under Art. 52–55 PILA (choice of law, law of common domicile, retroactive effect of a change of domicile, Art. 55 para. 1 PILA), see the standard commentaries. To be verified. ↩

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