

Choosing the law that governs your estate in Switzerland

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For a foreign national domiciled in Switzerland, Swiss succession law applies by default. The Swiss Private International Law Act (PILA) nevertheless allows a choice of the law of nationality in a will or inheritance contract. Such a choice can significantly change who inherits and whether forced heirship rules apply.

1 The starting point: last domicile

Under the PILA, the estate of a person whose last domicile was in Switzerland is in principle governed by Swiss law, and the Swiss authorities at that domicile are competent. For many families from Asia, the Middle East or Africa, this means that Swiss compulsory portions and Swiss rules on statutory heirs apply, even if the family has little connection to Swiss legal traditions.

2 The choice of national law

A foreign national may submit the estate to the law of a state of which he or she is a national by way of a will or inheritance contract. The choice must comply with the formal requirements for testamentary dispositions. The PILA contains restrictions, for example where the person later acquires Swiss citizenship or no longer holds the chosen nationality at the time of death, and the succession provisions of the PILA have been revised in recent years. The current wording of the statute should therefore be checked before a choice is drafted.

3 Effects on forced heirship

If the chosen national law knows no compulsory portions, or only smaller ones, a *professio iuris* may allow considerably more freedom than Swiss

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law. The opposite can also be the case, since some legal systems grant protected relatives larger shares or apply fixed rules of distribution. A choice of law is therefore a substantive decision that requires a comparison of the two systems in the specific family situation.

Courts may also examine whether the chosen foreign law is compatible with Swiss public policy. In most cases this threshold is high, but it should be kept in mind.

4 Interaction with the EU Succession Regulation

Switzerland is not bound by the EU Succession Regulation. Where a family owns property or bank accounts in EU member states, the authorities there apply the Regulation, which generally refers to the law of the last habitual residence and also permits a choice of the law of nationality. Conflicts between the Swiss and the EU perspective can arise, for instance regarding jurisdiction or the treatment of a choice of law. A coordinated choice that is valid from both perspectives tends to reduce such risks, although complete certainty cannot always be achieved.

5 Assets outside Europe

Real estate and assets in third countries may be subject to their own rules, which sometimes apply the law of the place where the property is situated. For holdings in Greater China, the Gulf states or Africa, local advice on how those jurisdictions would treat a Swiss domiciled estate is often indispensable.

6 What pays off in practice

- **Compare before you choose.** A side-by-side analysis of Swiss law and the national law shows which result each would produce.
- **Make the choice explicit.** A clear clause in the will or inheritance contract avoids later arguments about implied intentions.
- **Check every asset location.** Property in other countries may follow different rules, which the overall plan should reflect.

7 How Ressos Legal helps

I advise foreign nationals in Switzerland on whether and how to make a choice of law for their estate and coordinate the plan with advisers in the other countries concerned. [Contact me](#) for a first conversation.

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