

The Swiss rules after 1 January 2025

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Swiss private international law of succession is contained in Art. 86 to 96 PILA. These provisions were revised by an amending act of 22 December 2023, which the Federal Council brought into force on 1 January 2025. According to the Federal Council, the revision aimed to reduce "insbesondere das Risiko von Zuständigkeitskonflikten zwischen den Behörden in der Schweiz und im Ausland", and in particular to coordinate Swiss law better with the European Succession Regulation, without adopting its concept of habitual residence.¹ Swiss law continues to use domicile as its main connecting factor. Under Art. 86(1) PILA the Swiss judicial or administrative authorities at the last domicile of the deceased have jurisdiction for the estate proceedings and for disputes concerning the estate. Art. 90(1) subjects the estate of a person whose last domicile was in Switzerland to Swiss law.

The revision introduced three changes that matter for Italian families. First, foreign nationals with their last domicile in Switzerland may now exclude Swiss jurisdiction by designating, in a will or an agreement as to succession, the authorities of their home state, provided that those authorities accept jurisdiction (Art. 88b PILA). An Italian national living in Lugano can therefore provide that the estate is to be dealt with by Italian courts and notaries.² Second, under Art. 91(1) PILA a person may now submit the estate, by will or agreement as to succession, to the law of any state of which he or she is a national at the time of the disposition or at death. The choice is open to foreign nationals and to Swiss dual nationals. Swiss citizens, however, "remain bound by the provisions of Swiss law on freedom of disposition", so that the Swiss reserved shares continue to protect their heirs.³ Third, the rules on the material validity of wills and agreements as to succession (Art. 94 and 95 PILA) and on the recognition of foreign decisions (Art. 96 PILA) were rewritten and broadened. Swiss and foreign authorities are now more likely to treat the same documents in the same way.⁴

1 Domicile and habitual residence

The different connecting factors create a risk of divergent results. Swiss law defines domicile in Art. 20(1)(a) PILA as the place where a person resides with the intention of settling permanently. The Succession Regulation uses habitual residence, which its recitals describe as the place of the deceased's close and stable connection, determined by an overall assessment of the circumstances of life in the years before death.⁵ In most cases the two concepts lead to the same place. They may diverge for persons who divide their time between Milan and Lugano and for elderly persons who move into a care home on the other side of the border. Entrepreneurs who live in Lugano but spend most of the working week at the company's seat in Italy are another example. In such cases a Swiss authority may consider the deceased domiciled in Lugano and apply Swiss law, while an Italian notary considers him or her habitually resident in Italy and applies Italian law. The heirs then face two inconsistent successions, each enforced in its own territory.

The renvoi rules mitigate the problem in some constellations. Under Art. 34(1) of the Succession Regulation, the law of a third state designated by the Regulation includes its rules of private international law in so far as they refer back to the law of a member state. The same applies where they refer on to the law of another third state that would apply its own law. If an Italian national dies habitually resident and domiciled in Lugano, the Regulation designates Swiss law, which Swiss private international law also designates under Art. 90(1) PILA. If an Italian national dies domiciled in Lugano but with an Italian choice of law, the Regulation applies Italian law under Art. 22 and the Swiss authorities apply Italian law under Art. 91(1) PILA. In both constellations the two systems agree. The difficult cases are those without a choice of law in which the two states locate the last residence differently.⁶

2 Notes

1. Federal Council, press release "Internationales Erbrecht: Neue Regeln gelten ab dem 1. Januar 2025", 26 June 2024, <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-101602.html> (consulted 5 October 2026). Thomas M. Mayer, "Die neuen Bestimmungen des IPRG-Erbrechts", AJP 2024, 682–699, <https://ius.uzh.ch/dam/jcr:89836573-f25f-44fa-8f9d-bd99ce86086a/20.%20Mayer,%20Die%20neuen%20Bestimmungen%20des%20IPRG-Erbrechts,%20AJP%202024.pdf> (consulted 5 October 2026), on the date of the

amending act and on the decision not to adopt the concept of habitual residence. ↩

2. Mayer (above), on Art. 88b PILA. Regula Bergsma and Tamara Völk, "Neue Regeln für internationale Erbsachenangelegenheiten", BDO Schweiz, 14 November 2024, <https://www.bdo.ch/de-ch/publikationen/neue-regeln-fuer-internationale-erbsachenangelegenheiten> (consulted 5 October 2026). ↩
3. Dominique Jakob, Merkblatt Änderungen im internationalen Erbrecht – unverbindliche Übersicht, University of Zurich, spring semester 2025, <https://ius.uzh.ch/dam/jcr:15676b39-c75d-4b3b-a33c-20afcf603a0f/1.%20Merkblatt%20%C3%84nderungen%20im%20internationalen%20Erbrecht%20unverbindliche%20%C3%9Cbersicht.pdf> (consulted 5 October 2026): "Beschränkung der Rechtswahl für Schweizer Doppelbürger, sodass diese die Schweizer Bestimmungen über die Verfügungsfreiheit (Pflichtteilsrecht) nicht abbedingen können". PILA, Art. 91(1) as amended by the Federal Act of 22 December 2023, in force 1 January 2025, English text at Lawbrary, <https://lawbrary.ch/law/art/IPRG-v2025.01-en-art-91> (consulted 5 October 2026). ↩
4. Jakob, Merkblatt (above); Mayer (above). ↩
5. PILA, Art. 20(1)(a), Droit-bilingue.ch, <https://www.droit-bilingue.ch/de-en/2/29/291-20-29.html> (consulted 5 October 2026); Regulation (EU) No 650/2012 (above), recitals 23 and 24 ("close and stable connection"). ↩
6. Regulation (EU) No 650/2012 (above), Art. 34(1)(a) and (b). PILA, Arts 90 and 91 as revised, Lawbrary, <https://lawbrary.ch/law/art/IPRG-v2025.01-en-art-90> and <https://lawbrary.ch/law/art/IPRG-v2025.01-en-art-91> (consulted 5 October 2026). The analysis of the constellations in this paragraph is the author's. ↩

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