

Prenuptial and marriage agreements for international couples

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Many internationally mobile couples sign a prenuptial agreement in the country where they marry, often in a common law style. Once the couple settles in Switzerland, the question arises whether and to what extent a Swiss court would give effect to it. The answer depends on the applicable law, the form of the document and its content.

1 Why foreign agreements raise questions

Swiss law distinguishes clearly between the matrimonial property regime, maintenance after divorce, the division of occupational pensions and succession. A foreign prenuptial agreement frequently addresses all of these in a single document. Under Swiss law, each topic follows its own rules on applicable law and permissible agreements, so that individual clauses may be effective while others are not.

2 Recognition and applicable law

For the matrimonial property regime, the PILA allows spouses to choose the law of their common domicile or the law of a state of which one of them is a national. An agreement concluded abroad may be recognised as formally valid if it complies with the law governing the regime or with the law of the place where it was concluded. Whether its content is respected depends on the governing law. Clauses on post-divorce maintenance are, by contrast, assessed under the law applicable to maintenance and are reviewed by the court at the time of divorce, so that a waiver agreed many years earlier may not be upheld in full.

3 Limits under Swiss law

Where Swiss law governs, spouses can choose only among the regimes provided by the Swiss Civil Code and modify them within statutory limits. Agreements on the division of occupational pensions are subject to court review and are possible only under specific conditions. Waivers of inheritance rights require the form of an inheritance contract. A document that ignores these distinctions risks being only partly effective.

4 Practical drafting points

A well-structured agreement for an international couple states expressly which law is chosen for the matrimonial property regime and sets out the regime in terms that a Swiss court can apply. It lists the assets brought into the marriage, addresses business interests and future inheritances, and separates matrimonial, maintenance and succession matters. Where Switzerland is a likely place of residence, executing the agreement as a Swiss public deed often offers additional certainty.

Independent advice for each spouse and full disclosure of assets also strengthen the agreement, since courts in many countries look at the circumstances in which it was signed.

5 What pays off in practice

- **Review agreements on moving.** An existing prenuptial agreement should be checked against Swiss law when the couple settles here.
- **Separate the topics.** Distinct clauses for property, maintenance, pensions and succession are easier to enforce.
- **Use parallel documents if needed.** A Swiss marriage contract and inheritance contract can complement a foreign prenuptial agreement.

6 How Ressos Legal helps

I review foreign prenuptial agreements for their effect in Switzerland and draft Swiss marriage contracts and inheritance contracts for international couples. [Contact me](#) for a first conversation.

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