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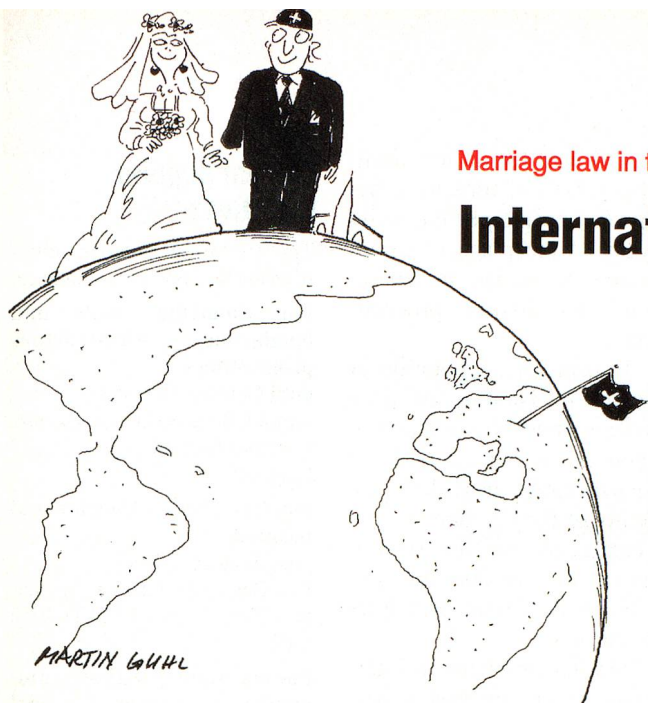
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Marriage law in the case of residence abroad

International private law applies



What legal rules apply to marriage in the case of residence abroad? What are the effects of the marriage? What about matrimonial property law and divorce? A guide.

If a Swiss citizen intends to marry abroad, or to marry in Switzerland when resident abroad, or to be divorced abroad, or to call upon a Swiss divorce judge when resident abroad, the following questions arise: Which authority is responsible for the marriage? Which law is applicable to it? Is the marriage abroad recognised in Switzerland? Or, vice versa, is the marriage in Switzerland recognised abroad? What happens in the event of divorce? How are the matrimonial property rights of the spouses regulated?

If no specific provisions are contained in an international treaty which is binding upon the two states, the answers to these questions are to be found in the international private law of the countries in question.

With respect to Switzerland, the Federal Act on International Private Law (IPRG), which came into force on January 1, 1989, is determinant.

The IPRG

The IPRG is not an international treaty regulating the rights and obligations of contractual parties. It is a Swiss federal law. It contains Swiss

legal provisions and does not concern the conduct of other states. Every country has its own international private law.

If, for example, someone wishes to know whether a marriage in Switzerland is recognised in Argentina, the answer must be sought in Argentine international private law. If, on the other hand, the question posed is whether a marriage in Argentina is recognised in Switzerland, the answer lies in the Swiss IPRG.

In consequence, the following explanations about marriage, its recognition, divorce, etc. refer to the situation as seen from Switzerland only. This is not the place for a discussion on the international private law of other countries.

Marriage

The requirements for marriage abroad may differ from country to country.

This means that before concluding marriage abroad it is important to examine the international private law of the state in question to discover what requirements for marriage are contained in the legal provisions of its international private law. In some cases, this may be the factor

which decides whether the marriage should take place abroad or in Switzerland.

If either of the respective spouses is of Swiss nationality, the Swiss registry authorities are obliged to conduct the marriage in Switzerland if so requested, provided the legal conditions under substantive law (marriageable age, competence to reach a decision, no prohibited relationship) and the requirements for marriage contained in the Swiss Civil Code (e.g. formal announcement of the marriage) are fulfilled.

In principle, a marriage which takes place abroad according to law is recognised in Switzerland. But if the marriage is concluded abroad with the intention of circumventing nullity grounds in Swiss law (e.g. a spouse is already married at the time of the marriage), it will not be recognised.

Effects of marriage

By "effects of marriage" the Swiss Civil Code means those legal effects which are not concerned with matrimonial property law. Such effects are also known as the personal effects of marriage. They include the standards which define the rights and obligations of each spouse in their conjugal life (e.g. faithfulness and support) and maintenance of marriage (e.g. reference to a marriage or family advisory body).

For suits or measures respecting these conjugal rights and obligations, Swiss spouses resident abroad may call upon the courts or authorities of their Swiss place of origin only if it is impossible or unreasonable to make the suit or request at the place of residence of the spouses. In fact, it is the courts and authorities of the

place of residence which are competent.

Conjugal rights and obligations are governed by the law of the state in which the spouses are resident. However, if in the exceptional circumstances mentioned above a Swiss court or authority becomes responsible, it applies Swiss law.

Foreign divorces or measures concerning conjugal rights and obligations are recognised in Switzerland if they are enacted or ordered in the country of residence or normal abode of one of the spouses.

Matrimonial property law

Marriage has effects on the property of the spouses. In this respect, the Swiss Civil Code refers to the matrimonial property rights of the spouses. According to its provisions, spouses are subject to general matrimonial property law based on participation in acquisition unless community of property or separation of property has been agreed upon by means of a marriage contract.

In the case of a marriage abroad, the question arises whether the provisions of Swiss or foreign matrimonial property law should be applied, e.g. in the event of death or dissolution of the marriage, either abroad or in Switzerland.

Matrimonial property is subject to the law chosen by the spouses (e.g. by written agreement or marriage contract). The spouses may choose between the law of the state in which they are both resident and the law of one of their states of origin. If no such choice of law is made, the IPRG states which law is applicable.

If complex problems in matrimonial property law



arise, it is normally advisable for a specialist to be consulted.

Separation, divorce, death

Swiss spouses resident abroad may make a separation or divorce suit in Swit-

zerland only if it is impossible or unreasonable to make the suit in their foreign state of residence. The Swiss court of the place of origin may be competent, for example, if the separation or divorce conditions applied by the foreign court are extraordinarily strict or if a petitioner

has to wait for an unreasonable length of time for a decision. In principle, the Swiss court of the place of origin applies Swiss law in separation and divorce proceedings.

In principle, separation or divorce decisions made in the foreign state of residence of spouses is recognised in Switzerland, provided the rights of the respondents are guaranteed and the separation or divorce does not contravene the basic principles of our law.

Similar problems in international private law (jurisdiction, applicable law, recognition) arise in inheritance law. This subject will be treated in one of the next issues of Swiss Review.

Further information may be obtained from the Federal Office of Civil Status, Bernastrasse 28, CH-3003 Berne.

Internet:
<http://www.admin.ch/bj>
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Documents

When Swiss citizens marry abroad, it is for the state in which the marriage takes place to decide which documents are to be provided. Only the authorities in that state or its diplomatic post in Switzerland can provide binding information on this. Generally speaking, the following documents must be presented (obtainable from):

- Birth certificate (registry office of place of birth)
- Certificate of marital status (registry office of place of origin)
- In some cases, certificate of marriageability (registry office of place of origin)
- Certificate of residence (authorities of foreign place of residence)
- Passport or identity card (responsible Swiss diplomatic post)

Certificate of marriageability

In providing a certificate of marriageability, the registry officer certifies that in Swiss law there is no obstacle to marriage in the case of the person concerned. The certificate of marriageability is provided by the competent Swiss registry officer only on the basis of a marriage announcement (Article 105 ff. of the Swiss Civil Code). This means that an authenticated promise of marriage and various other documents (e.g. certificate of residence, certificate of marital status, family book) must be presented.

Family names

Article 160 of the Swiss Civil Code states that the name of the husband is the family name of the spouses. However, the wife may declare to the registry officer that she wishes her previous name to precede the family name. If the wife already possesses two names of this nature, however, she may precede the family name with only the first of these. The husband has the same right as the wife if the spouses are permitted (pursuant to Article 30, paragraph 2, of the Civil Code) to use the wife's name as the family name.

Registration

The Swiss diplomatic post which covers the state in which the marriage takes place is responsible for translation and authentication of the certificate of marriage presented to it by the Swiss spouse after the marriage has taken place. If there has been no announcement procedure, the foreign spouse must present a birth certificate with marginal notes and a certificate of single status or a marriage certificate accompanied by a divorce decision or the death certificate of the previous spouse. These documents will be transmitted by the Swiss diplomatic post through the Federal Office of Civil Status to the authority responsible for civil status of the canton of origin. The latter is responsible for deciding upon recognition of the marriage and inscribing it in the Swiss marriage register.

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Current popular initiatives

The following popular initiatives are still open for signature:

For financing costly and longlasting infrastructure programmes

until October 16, 1997

Arnold Schlaepfer, 18 Avenue Cardinal-Mermillod, CH-1227 Carouge

For free choice of doctor and hospital

until May 26, 1998

Dr. Bernhard Gasser, lawyer, St. Alban-Vorstadt 110, CH-4052 Basle

For one Sunday without automobiles per season – a trial for four years

until August 11, 1998

Mrs. Judith Hauptlin, P.O. Box 40, CH-9414 Schachen bei Reute

For sickness insurance premiums proportional to income and fortune

until October 22, 1988

Swiss Labour Party, Mrs. Elise Kerchenbaum, 25 rue du Vieux-Billard, P.O. Box 232, CH-1211 Geneva 8

Initiatives in brief

For financing costly and long-lasting infrastructure programmes

A group of seven private individuals without fixed political links (mainly from the Geneva area) has launched the initiative "For financing costly and long-lasting infrastructure programmes". It seeks to include the following new provisions in the federal constitution:

- The National Bank should establish an annual account which would include hidden reserves resulting from the under-valuation of balance-sheet assets. The hidden reserves could be activated for financing costly and long-lasting infrastructure programmes. The global amount to be made available for each programme should be laid down by law.
- No less than two-thirds of remaining net profit, after

use of the hidden reserves for the said infrastructure programmes, after contributions to the open reserves and after payment of appropriate interest and/or an appropriate dividend on the endowment or share capital, should be paid to the cantonal authorities.

- The National Bank should revalue its gold reserves on the basis of 80% of their market value.
- The sum available should be transferred to a separate account. The Federal Council may withdraw sums from this account to pay for construction of the trans-Alpine railways, but without financing future maintenance work in this way.

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