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Revision of the nationality rights of children with one Swiss parent

(which will come into force on 1st July 1985)

On 14th December 1984 Parliament passed a long-awaited amendment to the Swiss Nationality Act: in future, every child whose mother is Swiss by descent, adoption or naturalization will automatically be Swiss from birth. Hitherto, the child of a Swiss mother and her foreign husband could only acquire Swiss nationality at birth if the mother was Swiss by descent and the parents were domiciled in Switzerland at the time of the birth, or if the child

could not acquire any other nationality at birth.

The amended law eliminates a form of discrimination against women – long considered as unjust – regarding the transmission of nationality to their children. A Swiss man married to a foreign woman has always been able to transmit Swiss nationality unconditionally to the children of that marriage, in contrast to the case of a Swiss woman married to a foreign man. The revision of the

Federal Constitution, decided by a plebiscite of 4th December 1983, removed the last obstacles to a revision of the nationality law aimed at ensuring equal rights for men and women. The revision of married couples' nationality rights and other provisions of the Federal Act concerning the Acquisition and Loss of Swiss Nationality will take several years because of the extensive preparatory work involved, so the Federal Council proposed to Parliament that priority be given to the revision of the nationality rights of children with one Swiss parent, which would be more easily accomplished. The present amendment of the Act is the result of these efforts.

What is the effect of the revision?

- 1. Children born after 1st July 1985 to Swiss women will** automatically acquire Swiss nationality at birth. (Their birth certificates must be delivered to the competent Swiss embassy or consulate, which will forward them to Switzerland. In this way the negative consequences mentioned under [4] below can be avoided).
- 2. Children who were born after 31st December 1952 to Swiss women married to foreigners, and who have not hitherto been able to acquire Swiss nationality,** have until 30th June 1988 to apply for recognition as Swiss nationals, provided the mother acquired Swiss nationality by descent, adoption or naturalization. Application forms can be obtained from the competent Swiss embassies or consulates (see attached slip).
- 3. The child of a marriage between a foreign man and a Swiss woman who acquired her Swiss nationality through a previous marriage to a Swiss national** only acquires Swiss nationality if he/she cannot acquire any other nationality at birth or if he/she becomes stateless before reaching the age of majority. Such a child born after 31st December 1952 can benefit from facilitated naturalization on certain conditions (if the mother has close ties with Switzerland; if one or more children of the mother's previous marriage have been Swiss nationals from birth; if the child lives in Switzerland and has done so for at least six years). The relevant application forms can also be obtained from the Swiss embassies and consulates abroad (see attached slip).
- 4. More rigorous provisions concerning the loss of Swiss nationality. Dual nationals born abroad lose their Swiss nationality on reaching the age of 22 if they have not by that time registered or been registered with a Swiss authority abroad or in Switzerland, or declared in writing that they wish to retain their Swiss nationality.** A child born abroad, whose father or mother was born in Switzerland and who will be more than 22 years old on 1st July 1985 or will reach the age of 22 within three years after that date, will lose his/her Swiss nationality if he/she does not register or make the necessary declaration, as indicated above, by 30th June 1988. Hitherto, only second-generation dual nationals born abroad could lose their Swiss nationality.

Fees for recognition as a Swiss national

The fees are approximately 170 francs per applicant. There may be a reduction for minors. The Swiss embassy or consulate will indicate the exact amount to be paid in the local currency when it sends the application form.

Important:

In certain circumstances recognition as a Swiss national can result in the loss of the existing nationality. Precise information on this point can only be given by the competent authorities of the countries concerned (or, in the case of applicants living in Switzerland, by the relevant diplomatic or consular missions).

The transitional provisions

Art. 57, paras 8 and 9

A child born after 31st December 1952 to a foreign father and a Swiss mother can,

within three years from the entry into force of the Federal Act of 14th December 1984 amending the Federal Act on the Acquisition and Loss of Swiss Nationality:

a) apply to the competent authority of his/her mother's canton of origin for recognition as a Swiss national if his/her mother is a Swiss national by descent, adoption or naturalization;

b) apply for facilitated naturalization under Article 28 if his/her mother acquired Swiss nationality through a previous marriage to a Swiss national.

Articles 32, 33 and 34 are applicable *mutatis mutandis*.

Where the conditions of Article 10 are fulfilled, a child born abroad, whose father or mother was born in Switzerland and who is more than 22 when the Federal Act of 14th December 1984 amending the Federal Act on the Acquisition and Loss of Swiss Nationality comes into force, or who will reach the age of 22 within three years after it comes into force, will lose his/her Swiss nationality if he/she does not, within three years after the amendment of the Act, register or make a declaration as provided for in that Article.

Art. 58^{ter}

After the expiry of the three-year time-limit provided for in Article 57, paragraph 8, a child whose mother is a Swiss national by descent, adoption or naturalization can benefit from facilitated naturalization if he/she lives in Switzerland and submits the necessary application before reaching the age of 32.

Occupational provision for retirement, disability etc. and the Swiss Abroad

A. Fundamentals of occupational Provision

1. Purpose of occupational provision

The Federal Act of 25th June 1982 concerning occupational provision for old age, survivors and disability, which came into force on 1st January 1985, completes the Swiss system of provision in respect of old age, death and disability. This system is based on three pillars:

- state provision (first pillar), consisting of the Federal Old Age and Survivors' Insurance (OAI), the Federal Disability Insurance (DI) and supplementary benefits;
- occupational provision or collective staff insurance (second pillar) and
- individual provision (third pillar).

While the OAI and DI afford appropriate cover in respect of the necessities of life for the old, for survivors and for the disabled, occupational provision aims at supplementing the first pillar and thus maintaining the accustomed standard of living. The Occupational Provision Act is a first step in this direction.

2. Scope

The Occupational Provision Act provides for a compulsory system for employees and a voluntary one for the self-employed (and for employees exempted from the compulsory system). **For both categories there is a precondition: they must also be insured with the OAI/DI.**

3. Insured benefits

Calculation bases

The provident institution opens an **old age account** for every insured person; throughout his/her period of employment this accumulated from interest (4%) and age credits fixed by the Act (not to be confused with the contributions).

The **age credits** are calculated in percentages of the insured salary, which is that part of the salary between 16,560 and 49,680 francs.

The age credits prescribed by the Act vary according to age and sex.

Pensions provided for in the Act

The old age account is used as the calculation basis for the **old age pension** at retirement age (65 for men, 62 for women). In the event of **disability** the insured person is entitled to a pension equal to the presumed future old age pension. The Act provides for full and half pensions according to the degree of disability.

Slip

(to be sent to the competent Swiss embassy or consulate)

Unmarried applicants – whether or not they have reached the age of majority – must each complete a form. In the case of married applicants only one form, containing also the personal data of the wife and children, need be submitted.

☐ Please send me _____ form(s) «Reconnaissance du droit de cité suisse» / «Anerkennung als Schweizer Bürger»

☐ Please send me 1 form «Naturalisation facilitée art. 28» / «Erleichterte Einbürgerung Art. 28» (for children whose mother acquired Swiss nationality through a previous marriage to a Swiss national and who were born of a subsequent marriage to a foreigner).

(Put a cross in the appropriate box)

Name and address: _____



In the event of **death** the widow's pension amounts to 60% of the old age or full disability pension, and the orphan's pension to 20%.

4. Finance

Each provident institution is responsible for its own financial equilibrium. It can bear the insurance risks itself or transfer them to an insurance institution. It establishes its own contribution system (e.g., uniform rates or rates graduated according to age). The employer's contribution must be at least equal to the sum of all his employees' contributions.

It is estimated that the total compulsory basic contributions under the Occupational Provision Act should amount to a **national average** of about 15 to 16% of the compulsorily insured part of the salary, that is to say, approximately 8% of the whole salary. However, these figures will vary considerably according to the age of the insured person or the age structure of the fund.

There is also a **national guarantee fund**, which is financed by all the registered provident institutions. It subsidizes provident institutions which have a particularly unfavourable age structure. It also guarantees the legally prescribed benefits in the event of a provident institution becoming insolvent.

The public authorities do not subsidize occupational provision in any way.

B. Questions of special interest to the Swiss Abroad

5. Compulsory insurance

In principle, employees working abroad for a Swiss firm are subject to compulsory occupational provision to the extent that they are subject to the OAI, irrespective of nationality.

As stated under [2] above, employees who are not working in Switzerland and who are adequately insured abroad can apply for exemption. **The employer's provident institution in Switzerland is responsible for examining their application.** «Adequately insured» means having insurance cover which, taken as a whole, corresponds to at least the minimum protection laid down by the Occupational Provision Act.

6. Voluntary insurance

Voluntary occupational provision (voluntary insurance) is open to those Swiss abroad who are not subject to the compulsory system, either because they are self-employed or because they are working for firms whose registered office is abroad and which are thus not subject to the OAI.

However, admission to voluntary in-

surance is restricted to those persons who are also insured with the federal OAI. As the voluntary OAI is reserved for Swiss nationals, foreigners domiciled abroad are not eligible to join the voluntary insurance system under the Occupational Provision Act.

The age and salary conditions are the same as for compulsory insurance. Therefore, only persons whose earned income exceeds 16,560 francs are admitted to voluntary insurance.

Swiss abroad, whether employed or self-employed, are subject to the same conditions with respect to voluntary occupational insurance as self-employed persons in Switzerland, i.e. they must pay all the contributions themselves. From 1st January 1986 a proviso on health grounds (for a maximum of three years) will be possible, but not in the case of persons who become insured less than a year after they had been compulsorily insured for at least six months (Article 45 of the Occupational Provision Act).

The **supplementary institution** is competent to insure Swiss abroad who wish to join the voluntary insurance system. It lays down the detailed provisions in a set of regulations, particularly with respect to benefits and contributions.

Those interested can apply for information to one of the supplementary institution's branches in Switzerland:

for German-speaking Swiss abroad:

Basle branch
Stiftung Auffangeinrichtung BVG
Zweigstelle Basel
St.-Alban-Anlage 15
Postfach
4002 Basel

Berne branch
Stiftung Auffangeinrichtung BVG
Zweigstelle Bern
Brückfeldstrasse 16
Postfach 2366
3001 Bern

Winterthur branch
Stiftung Auffangeinrichtung BVG
Zweigstelle Winterthur
Römerstrasse 17
Postfach 300
8400 Winterthur

Zurich branch
Stiftung Auffangeinrichtung BVG
Zweigstelle Zürich
Austrasse 44
Postfach 4327
8022 Zürich

for French-speaking Swiss abroad:

Lausanne branch
Fondation institution supplétive LPP
Agence régionale de la Suisse romande
Avenue de la Gare 2
Case postale 1027
1001 Lausanne

for Italian-speaking Swiss abroad:

Lugano branch
Fondazione istituto collettore LPP
Agenzia regionale di Lugano
Via Camara 17
Casella postale 73
6932 Breganzona

7. Concluding remark

This article gives only a brief survey of the most important provisions. The legal provisions alone are authoritative.

Federal Office for Social Insurance

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