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Inheritance law for those living abroad

# Take precautions in good time

**No one enjoys thinking about their death. Many people die without regulating their estate by leaving a will. There is a specific reason why it is particularly important for Swiss Abroad to deal with this matter before they die.**

When a Swiss Abroad dies, two legal systems have to be taken into account: that of the country of residence and that of Switzerland. According to Swiss law,

well provide the occasion for re-igniting old conflicts between heirs, leading to tedious, undignified and also costly inheritance disputes. Those who dispose of their

ask the question what would be the situation if they did nothing. Which legal system would apply to their estate in such a case? What are the rules which would apply? And which authorities would be competent?

## International private law

If this matter is not regulated in an international treaty (which mutually binds the states concerned), the international private law authority of the state where an enquiry is made will provide infor-

*The optional state pension scheme:*

### **No changes for present pensioners**

*In the last issue of Swiss Review, we reported on a possible reform of the optional state pension scheme (AHV/IV). It should go without saying that persons who have already reached pensionable age or will reach it before the entry into force of any reforms will not be affected by them.*

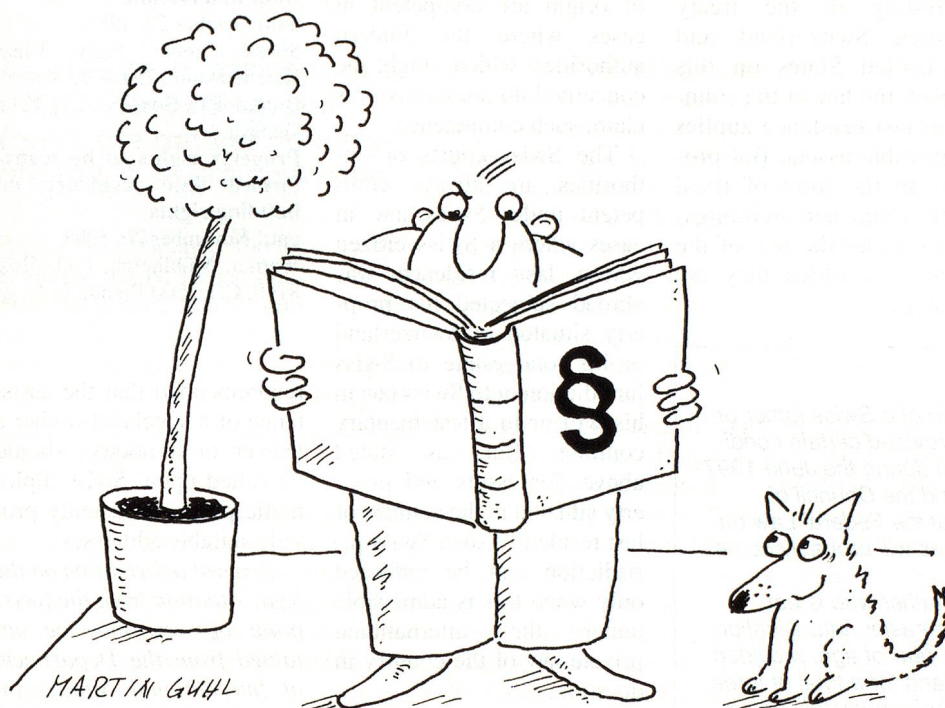
zerland, must be consulted about matters concerning applicable law and legal competence. (See Swiss Review 3/97 for a detailed discussion of this point.)

This is not the place for explaining the international law of other countries, and the following remarks are restricted to the provisions of the Swiss Federal Law on International Private Law. In specific cases, however, the international private law of the country in which the deceased Swiss Abroad had his place of last residence (e.g. France) would also have to be consulted.

## Which law applies?

It is primarily the private international law of the place of last residence of the testator which must state which law is applicable to his estate. Generally speaking, this is the law of the state in which the deceased person had his place of last residence – which means that Swiss inheritance law is not applicable.

However, a person who does not find this situation satisfactory can state in his will or in a testamentary contract that he wishes to subject his estate to Swiss law. But Swiss Abroad are able to do this with respect to assets and property in the country of residence only provided that the international private law of that state permits it.



Swiss Abroad have the possibility of subjecting their property situated in Switzerland (and often their entire estate) to Swiss jurisdiction or Swiss law in their wills or by testamentary contract.

In view of this right to choose between two legal systems, it is highly recommended that a will should be made in good time. For in some inheritance cases the question of whether Swiss or foreign inheritance law is applicable can play an important role.

In addition, lack of clarity (even when only one legal system is involved) may

estates before they die in a way which cannot be misinterpreted render an importance service to their heirs.

Swiss Abroad who wish to regulate their estate before they die should first of all

mation on which law is applicable and which authorities are competent. If, for example, a Swiss Abroad dies in France, both the international law of France and the Federal Law on International Private Law, which is valid for Swit-

### *Changes of address*

#### **Please not to Berne**

*You should notify changes of address to your Swiss embassy or consulate only. Your diplomatic post alone is responsible for processing the addresses of our compatriots abroad and for distributing Swiss Review.*

*If you do this, you will help us to reduce the time-consuming research work which the Service for the Swiss Abroad has to carry out after publication of each issue because of the large number of wrongly addressed Swiss Review copies which are returned.*





Once the applicable law has been established, it is important to discover which provisions will apply to the estate in question. Those wishing to know what the Swiss provisions on the matter are should consult Art. 457 ff. of the Swiss Civil Code. There exist in addition a large number of publications describing Swiss inheritance law clearly and simply. A number of banks provide such publications free of charge.

## Dual nationality

Swiss Abroad who also hold the nationality of the state in which they reside are considered as citizens of that country and not as foreign nationals. This means that they are in principle subject to the law of their country of residence.

But in some circumstances dual nationals having their

place of residence in the country of their other nationality may be able to subject their estates to the law of their country of origin.

## International agreements

Switzerland has concluded agreements with a number of states by which the succession of Swiss nationals who die in these countries may be processed according to the law of the country of origin, i.e. that of Switzerland. These include Greece, Italy and Iran. According to the treaty between Switzerland and the United States on this subject, the law of the country of last residence applies to movable assets. But property in the form of fixed assets (land and buildings) comes under the law of the country in which they are situated.

## The competent authorities

As a general rule, the courts or other authorities of the country of last residence of the testator have jurisdiction on inheritance procedures and any disputes which may arise in inheritance law. This is not the case, however, when another state claims unlimited jurisdiction over land and buildings situated in its territory.

If the testator was a Swiss citizen whose last residence was abroad, the Swiss courts or the authorities of his place of origin are competent in cases where the foreign authorities which might be concerned do not themselves claim such competence.

The Swiss courts or authorities are always competent under Swiss law in cases where a Swiss citizen whose last residence was abroad subjected his property situated in Switzerland or his total estate to Swiss jurisdiction or to Swiss law in his will or in a testamentary contract. But, as stated above, for assets and property situated in the country of last residence, such Swiss jurisdiction can be enforced only when this is admissible under the international private law of the country in question.

## Obtaining advice

It always makes sense for Swiss citizens resident abroad to regulate their estate in good time in view of the legal clarity thus brought about, in particular with respect to the legal system which is applicable upon the death of the testator – for example, by drawing up a will according to the provisions of the Swiss Civil Code clearly stating which heirs obtain which parts of the property.

The practical regulation of an estate depends on the specific circumstances of each case. In most cases, it is

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

until August 11, 1998

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

**Property rights to be transformed into usufruct or building rights**

until November 20, 1998

Werner Mühlheim, P.O. Box 8140, CH-2500 Bienne 8

recommended that the assistance of a specialist (either a lawyer or a notary) should be called upon. Swiss diplomatic posts can usually provide suitable addresses.

*General information on the legal situation from the Swiss point of view may be obtained from the Department of International Affairs, International Private and Civil Procedural Law Section, at the Federal Office of Justice, Bundesrain 20, CH-3003 Berne.*

NYF

## Signing popular initiatives

*Please make sure that you complete the signature forms in their entirety and after having read the instructions. In particular, do not forget to state in which municipality in Switzerland you are entitled to vote. A separate form must be used for those entitled to vote in a different municipality.*

## Easier naturalisation

*Naturalisation of non-Swiss children of a Swiss father or mother are to be further relaxed, provided certain conditions are fulfilled. This was decided during the June 1997 sessions of the National Council and the Council of States. As a result of the revision of the Federal Law on Naturalisation, the following changes will probably come into force on January 1, 1998:*

1. A non-Swiss child of a Swiss father who is not married to the mother can apply for easier naturalisation after completion of his or her 22nd year of age, provided that he or she has lived in Switzerland for a total of three years (previously five) and one year immediately before applying (Art. 31, para. 2).

2. A non-Swiss child born before July 1, 1985, whose mother possesses Swiss citizenship by birth, adoption or naturalisation can apply for easier naturalisation after the age of 32 if he or she has lived in Switzerland for a total of three years (previously five) and one year immediately before applying (Art. 58a, para. 2).

3. If such a child lives abroad or has been living abroad, he or she may apply for easier naturalisation if he or she is closely connected with Switzerland (new Art. 58a, para. 2bis). This provision permits children of a Swiss mother who were born before 1953 and could not be recognised as Swiss citizens between 1985 and 1988 to apply for easier naturalisation, provided that they are closely connected with Switzerland (through visits to Switzerland, contact with persons living in Switzerland, contact with Swiss Abroad associations, etc.).

*Application for easier naturalisation by persons in the above categories may be lodged at their Swiss diplomatic post as soon as the revision comes into force. Towards the end of this year, all necessary information on the subject will be available at embassies and consulates.*

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