

Legal News

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The new European matrimonial property regime regulation - impact on Switzerland

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1. Purpose

The increase in marriages and registered partnerships between couples of different nationalities and growing mobility have led to a rise in the number of cross-border cases involving matrimonial property law. Different connecting criteria in the rules governing the conflict of laws in the relevant countries often caused conflicts of jurisdiction. This can result in unwanted consequences with respect to matrimonial property law. The aim of the EU regulation concerning matters of matrimonial property regimes and the parallel EU regulation on matters concerning the property consequences of registered partnerships is to make the rules governing the conflict of laws uniform among participating EU member states and to avoid disputes over jurisdiction among EU member states. For this reason, the following information about the matrimonial property regime regulation also applies for the registered partnership regulation, unless expressly noted otherwise.

2. Scope

The matrimonial property regime regulation applies to all civil law aspects of matrimonial property, i.e. both the everyday administration of the spouses' assets as well as property disputes (in particular, as a result of the separation or divorce of the spouses or the death of one of the spouses). It applies to

couples who were married after 29 January 2019 or those who made a decision regarding the choice of law applicable to their property regime after this date. Among other things, the matrimonial property regime regulation does not apply to the legal capacity or capacity to act of the spouses, the existence, validity or recognition of a marriage, support obligations or legal succession following the death of one of the spouses. The regulation does not affect the application of international treaties to which one or more members and third countries are party when the regulation was issued and that relate to areas that are also governed by the regulation. This can lead to conflicts with EU conflict norms.

Denmark, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Hungary, the United Kingdom and Ireland have not (yet) adopted the matrimonial property regime regulation/registered partnership regulation.

The matrimonial property regime regulation is not directly applicable to Switzerland. However, the regulation will have an impact if

- ▶ a court in a participating EU member state takes up the issue of legal succession following an individual's death on the basis of the EU succession regulation,

- ▶ the habitual place of residence of a petitioner is in a member state,
- ▶ the immovable assets of one of the spouses are located in an EU member state, or
- ▶ the spouses make a decision regarding the choice of law in favour of a participating EU member state.

3. Jurisdiction

3.1 Legal jurisdiction

If a matter related to legal succession following the death of a spouse or a partner is brought before a court in a member state in accordance with the succession regulation, the courts in this state have jurisdiction to make decisions concerning the matrimonial property. This does not apply if a decision in the matter is pending in a court in a third country, e.g. in Switzerland. In this case, Art. 6 of the matrimonial property regime regulation applies. Pursuant to this article, the courts of the member state in which the spouses have or most recently had their habitual place of residence when the matter was brought to court have jurisdiction. These provisions will result in conflicts of jurisdiction with third countries such as Switzerland.

3.2 Subsidiary jurisdiction

If no court in a member state has ordinary jurisdiction, then the courts in the jurisdiction where the immovable property (e.g. real estate) of one or both spouses is located have subsidiary jurisdiction.

4. Applicable law

The applicable law is based on the first shared habitual place of residence of the spouses following their marriage. Subsequent changes to the shared habitual place of residence are therefore irrelevant to the applicable law. Contrary to Swiss law, the matrimonial property regime regulation assumes that matrimonial property regime is immutable.

Pursuant to the registered partnership regulation, the property regime of a registered partnership is subject to the law of the state in which the partnership was established.

The matrimonial property regime regulation allows for a choice of law. The spouses may choose the law of the state

where one or both spouses maintain or maintained their habitual place of residence when the choice of law was made, or the law of the state of which one of the spouses is a citizen when the choice of law was made. This choice of law option is broader than that specified in Swiss international private law. This can lead to unintended consequences, and therefore the validity of the choice of law should be reviewed to determine its compatibility with Swiss international private law if one or both spouses are resident in Switzerland.

5. Recognition of decisions

Decisions in cases concerning property law made in one EU member state are recognised in all other member states without the need for special proceedings. However, this (automatic) recognition does not apply with respect to Switzerland and, as has been the case to date, will continue to require a formal act of recognition in the future as well. Whether a ruling handed down in a member state will or would be recognised in Switzerland is based on international private law.

6. Transitional provisions

The provisions of the EU matrimonial property regime regulation concerning the applicable property regime only apply for spouses who marry after 29 January 2019 or who make a decision regarding the choice of law after this date. In all other cases, the current conflict norms of the relevant member states will continue to apply.

7. Conclusion

As a result of the immutability of the matrimonial property regime, the matrimonial property regime regulation will result in planning and legal certainty for EU member states. There is a potential for conflicts of jurisdiction and applicable law with third countries such as Switzerland. The matrimonial property regime regulation cannot avoid these conflicts and the resulting unintended consequences. It is therefore advisable to have the legal impact on the matrimonial property of a change of residence between a third country and an EU member state reviewed and to take advantage of the available options for avoiding potential conflicts and unwanted consequences.

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