

Revision to the Swiss Law of Succession:

What Changes Will Enter into Force on January 1, 2023?

The Federal Council has decided to bring the first part of the revised law of succession into force on January 1, 2023. The revision will partially adapt the Swiss law of succession to today's lifestyles and needs. In particular, the revision grants the deceased greater level of freedom in the structuring of his estate. This new flexibility in estate planning can be of benefit, for example, to cohabiting couples, when passing on family businesses or in patchwork constellations.

We are happy to provide you with a brief overview of the most important changes below.

1. Changes to the Compulsory Portion Entitlement: Reduction of the Compulsory Portion of the Issues and Abolition of the Compulsory Portion of the Parents

One of the most important changes concerns the compulsory portion entitlement. The compulsory portion is reduced, thus increasing the testator's right to dispose of his or her property.

The compulsory portion for any issue is now 1/2 of their legal inheritance entitlement (previously: 3/4 of their legal inheritance entitlement). The parents' compulsory portion entitlement (previously 1/2 of their legal inheritance entitlement) is abolished completely. The compulsory portion entitlement of the surviving spouse or registered partner remains unchanged (1/2 of their legal inheritance entitlement).

What this means in specific is, that if a deceased leaves her spouse and issues (or only issues) as heirs, she in future will be able to freely dispose of 1/2 of her estate (previously only of 3/8 with a surviving spouse or of 1/4 without a surviving spouse). Where she is survived by her spouse or parents, she will be able to freely dispose of 5/8 in the near future (previously 1/2). Childless spouses and registered partners will in future be able to appoint themselves as sole heirs without restriction, even if the parents or one parent is still alive. If a deceased leaves behind only the parents (no spouse or issues), there will be no restrictions at all anymore. The new law thus enables the testator to dispose of a larger part of his or her assets without restrictions and, for example, to favour individual heirs, the cohabiting partner, stepchildren or other persons or institutions more strongly. In future, childless, unmarried persons will even be able to dispose freely of their entire assets by means of a will.

It should be noted, however, that the cantons are still responsible for levying inheritance taxes, whereby non-relatives (which also include cohabiting partners) are liable to inheritance taxes in many cantons. For example, the Inheritance and Gift Tax Act of the Canton of Zurich currently provides that non-relatives are liable to inheritance tax at the maximum rate of up to 36% (cohabiting partners with a tax allowance of CHF 50,000).

It should also be emphasised that only the compulsory portion entitlement will be adjusted, but not the legal inheritance entitlement. Consequently, in the absence of issues, the parents (or the parental line) continue to be entitled to legal inheritance right. Thus, for example, if childless spouses will wish to appoint each other as sole heirs, a testamentary disposition is mandatory. If no such precautionary measures have been taken, the surviving spouse will receive (only) 3/4 of the estate and the parents (or the parental line) will continue to receive 1/4, even under the new law.

2. Usufruct in Favour of the Surviving Spouse

Under the current law, the deceased may favour the surviving spouse by allocating to him/her a maximum of 1/4 of the estate for ownership and 3/4 of the estate (which goes to the joint descendants for ownership) for usufruct. As a consequence of the reduction of the compulsory portions of the descendants, the testator may in future even assign up to 1/2 of the estate to the surviving spouse for ownership, in addition to the lifelong usufruct on the other half.

3. Discontinuation of the Protection of the Spouse's or Registered Partner's Compulsory Portion in the Event of a Pending Divorce/Dissolution Proceedings

According to the current legal situation, the spouse or registered partner loses his or her entitlement to inheritance and to compulsory portion if a legally binding divorce or dissolution decree. If the partner dies during the pending proceedings, the survivor is still entitled to the compulsory portion, which could lead to shocking results.

Under the new law, the point in time at which the surviving partner loses his or her right to the compulsory portion is moved forward on the timeline: If a spouse or partner dies while divorce or dissolution proceedings are pending, the surviving spouse/partner is no longer entitled to a compulsory portion if the divorce/dissolution proceedings were initiated on joint request (or continued on joint request according to the provisions on divorce) or if the spouses have lived separately for at least two years.

It should be noted that the surviving spouse/partner retains his or her legal entitlement to inheritance under the new law until the divorce or dissolution decree becomes legally binding. Consequently, it is mandatory to draw up a testamentary disposition during pending divorce/dissolution proceedings if the surviving spouse/partner is to be deprived of his or her compulsory portion entitlement.

The new rule is that the spouse or registered partner can no longer assert any claims under any wills or inheritance contracts once the divorce or dissolution proceedings have been initiated (unless expressly ordered or agreed otherwise).

4. Prohibition of Gifts after the Conclusion of a Contract of Succession

Under the current law, it is not clearly regulated whether or to what extent gifts are still permissible after the conclusion of a contract of succession. According to the case law of the Swiss Federal Supreme Court, a testator may in principle continue to make gifts after the conclusion of an inheritance contract, unless the inheritance contract provides for an explicit prohibition of gifts or the testator has obviously made the gift with the intention of causing damage.

The new law provides for a general prohibition of gifts and thus leads to a paradigm shift. Now, gifts inter vivos (as well as dispositions upon death) – with the exception of the usual occasional gifts – can be challenged if they (i) are incompatible with the obligations under the inheritance contract (namely if they reduce the benefits under the inheritance contract) and (ii) have not been reserved in the inheritance contract.

In the inheritance contract it is therefore essential to explicitly provide whether and to what extent the testator may make gifts to other persons.

If the testator is to continue to be able to make gifts after concluding an inheritance contract, an explicit reservation is necessary. Existing inheritance contracts should be reviewed in this respect and, if necessary, adapted to the new law.

5. Tied Personal Pension Provision (Pillar 3a)

Under the current law, it is disputed whether claims from tied personal pension provision (in the case of insurance institutions or bank foundations) fall within the estate or are settled outside the rules of the law of succession. After the forthcoming revision, the law provides that the beneficiaries will be entitled to their own claim against the bank or insurance company, which is governed by the pension law and not by the law of succession. Consequently, the pension funds can pay their benefits directly to the beneficiaries without the consent of the community of heirs. According to the new concept, pillar 3a benefits are therefore not part of the estate, but are part of the compulsory portion of the estate and can be abated.

From a tax perspective, pillar 3a benefits are subject to income tax (at a reduced tax rate) and not to inheritance tax. Since in several cantons income tax is lower than inheritance tax for non-relatives (e.g. cohabiting partners) and distant relatives, favouring non-relatives via pillar 3a (instead of via the estate) can be a fiscally recommendable option for appointing an heir (which, however, only works as long as the pension assets have not yet been disbursed).

6. Over-Allotment of the Surplus

The revision then clarifies an academic controversial question in matrimonial property law:

In the statutory marital property regime of participation in acquired property each spouse is entitled to one-half of the surplus (total value of the acquired property minus debts) of the other on dissolution of the matrimonial property regime. However, the spouses are free to agree on a different arrangement within the framework of a marriage contract, e.g. to the effect that the surviving spouse should be entitled to both surpluses. The revision now clarifies that this allocation of surpluses under the marriage contract is not added to the estate when calculating the compulsory portions of the surviving spouse and the joint children. For the calculation of the compulsory portions of non-joint children, however, an addition is made (as before).

This clarification is much welcomed. In most cases with allotments of the surplus in the marital agreements, there should be no need for action with regard to the revision, but with regard to the implementation of the new provisions it is nevertheless advisable to review previous estate planning.

7. Order of Abatement

The revision clarifies the order of abatement. Acquisitions and gifts may be abated in the following order: (1) acquisitions according to statutory succession, (2) dispositions upon death, (3) inter vivos gifts (the later ones before the earlier ones).

Furthermore, the law now expressly states that gifts from a marriage contract are to be qualified as deductible gifts inter vivos, namely as the latest and thus the first to be abated.

8 Transitional Provisions and Recommendations

The new provisions will apply to all deaths after January 1, 2023 and will consequently also apply to wills or inheritance contracts concluded earlier.

We therefore recommend that you review existing testamentary dispositions (wills/inheritance contracts) to ensure that they are up to date and clear or, if desired, that you make new testamentary dispositions in order to take advantage of the now wider scope for estate planning. We will be happy to support you in this process and to advise you in consideration of the revised provisions and tax law.

We look forward to hearing from you.

Your contacts

For inheritance law



Lorenz Baumann
Dr. iur., Attorney at Law

Specialist Attorney SAV Inheritance Law



Dominique Ott
Dr. iur., Attorney at Law



Regula Dannecker
lic. iur., Attorney at Law, LL.M.



Manuel Mühlestein
MLaw, Attorney at Law

Marco Frigg
MLaw, Attorney at Law, LL.M.

For family law



Chiara Pignatelli
lic. iur., Attorney at Law

For tax law



Peter Schaub
lic. iur., Attorney at Law



Jürg Dannecker
Tax expert



Matthias Heusser
Tax expert

Contact

weber schaub & partner ag
Mühlebachstrasse 2
8008 Zürich

T +41 44 268 25 25
F +41 44 268 25 26
office@weber-schaub.ch
www.weber-schaub.ch

