

Fact sheet «Application for a division of pension assets and for supplementing a foreign divorce decree»

Background

Article 63(1bis) of the Federal Act on Private International Law (PILS) provides that Swiss courts have exclusive jurisdiction to rule on claims for the division of occupational pension entitlements against a Swiss pension fund. This applies even if a foreign court has decided on the division of the pension entitlements or has already taken into account the provisions of a divorce settlement agreement regulating the division of pension entitlements.

Switzerland's new statutory pension equalization rules mean that decisions on pension assets held in Switzerland handed down by foreign courts after 1 January 2017 (effective date) are no longer recognized in Switzerland and are, therefore, no longer enforceable.

So unless a supplementing decision of a Swiss court covering the division of the pension assets held with Lealta Foundation for Vested Pension Benefits can be presented, the foreign divorce decree will be considered incomplete. Divorce decrees issued by foreign courts must be supplemented by the decision of a Swiss court with respect to the pension assets held in Switzerland.

Needless to say, the Swiss court will examine and take into account the foreign divorce decree or, as the case may be, the divorce settlement agreement with regard to the secondary consequences and the division of pension assets; in particular, the Swiss court will ensure that the pension assets (acquired during the marriage) held with the Swiss occupational benefit institution have been duly taken into account regardless of any waivers declared by the ex-spouses.

Under certain circumstances, a Swiss court may decide not to divide the pension assets equally between the spouses. However, as mentioned above, this decision lies in the exclusive remit of the Swiss court.

A foreign divorce decree must be supplemented before subsequent payment can be made

To enable us to pay out your vested pension benefits, you must file a decision supplementing the foreign divorce decree together with your application. We recommend that you apply for a supplementing decision from the District Court in Schwyz when you divorce.

To recognize a foreign divorce decree, the Swiss court needs the foreign divorce decree and a **certificate of non-appeal**.

Address for service

If both parties live abroad, an address for service or a delivery address in Switzerland is required. A written application can then be filed with the court at the seat of the Foundation (Schwyz District Court) referencing «Recognition and supplementing a foreign divorce decree». If you have no address for service or delivery address in Switzerland, you may use the address of Lealta Foundation for Vested Pension Benefits.

If both parties agree on the payment of the pension assets, they can co-sign the application and waive a settlement hearing: the court can thus proceed with the recognition of the divorce decree.

Contacts

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Notes

- The district court does not provide a special template for the application to supplement a foreign divorce decree.
- In their application, the parties must state their wishes: for example, for the available pension assets to be shared equally between them in accordance with the feasibility statement.
- The fees depend on the scope and the sum at dispute; they will normally amount to about CHF 500.
- The proceedings last between three and six months.
- Accountholders who are foreign residents should file a feasibility statement issued by the occupational benefits institution with their application.
- If both applicants are foreign residents and do not have a Swiss address for service, the address of Lealta Foundation for Vested Pension Benefits must be indicated in the application as the address for service.
- Foreign divorce decrees issued in an official language (German, French, or Italian) do not need to be translated. The Schwyz District Court also accepts foreign divorce decrees in English. For all other languages, a certified translation must be submitted.
- In principle, applications for recognition of a foreign divorce decree are to be signed by both spouses. However, an application may be signed by a single spouse if the other spouse refuses to sign it. This means that the formal procedure will last longer and be more burdensome since the non-signing party must be given time to respond.
- Applications must be accompanied by a certified copy of the foreign divorce decree and a certificate of non-appeal.