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Family Law **2025**

Eighth Edition



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1 Divorce

1.1 What are the grounds of jurisdiction for divorce proceedings? For example, residence, nationality, domicile, etc.?

If both parties have habitual residency in Switzerland, the courts of the canton of either habitual residence have sole jurisdiction.

Should either of the spouses have their habitual residency abroad, the following courts have jurisdiction and can all be used alternatively: (1) the Swiss courts of the canton of the respondent's habitual residency; (2) the Swiss courts of the canton of the petitioner's habitual residency if the petitioner has taken habitual residency in Switzerland at least one year ago or has Swiss citizenship or where neither of the spouses have habitual residency in Switzerland but one of them is a Swiss national; or (3) the courts of the Swiss spouse's "place of origin" (a specific Swiss concept of family provenance similar to the English domicile) if the proceedings cannot be initiated in the jurisdiction of the spouses' habitual residency/ies or if the spouses cannot reasonably be required to initiate such proceedings abroad.

1.2 What are the grounds for a divorce? For example, is there a required period of separation; can the parties have an uncontested divorce?

The spouses may at any time petition for divorce by joint application and an agreement on associated matters. If the agreement is partial, the judge will rule on the remaining aspects.

In the absence of an agreement between the spouses to file for divorce, a two-year separation period prior to the date of unilateral filing is required.

In exceptional circumstances, this separation period can be shortened if the continuation of the marriage cannot be imposed on the petitioner any longer.

1.3 In the case of an uncontested divorce, do the parties need to attend court and is it possible to have a "private" divorce, i.e. without any court involvement?

All divorces require a ruling issued by a judge.

In case of an uncontested divorce, there is one court hearing that the spouses have to attend in person. Depending on the canton in which the divorce takes place and on the court's practice, spouses may be exempt from personal attendance if they live abroad.

1.4 What is the procedure and timescale for a divorce?

There is no standard application form to fill out, neither for contested nor for uncontested divorces. The spouses need to explain their requests in an individual lengthy writ.

In case of an uncontested divorce, the parties lodge their joint request, pay the court's advance fee and are summoned to appear at a single hearing within a few months. The court drafts and issues the actual divorce decree a few weeks after that hearing. The decree enters into force 31 days after receipt (this period is subject to extension during holiday periods).

If the spouses and the judge agree to a summary judgment, said period is reduced to 11 days.

Uncontested divorces can usually be obtained within three–six months from the date of filing. But the actual timescale for the total procedure depends on the canton in which the divorce takes place and the workload of the judge who is in charge of the case.

Contested divorce proceedings begin with the petitioner's filing and are followed by a first hearing of the parties in person during which the judge tries to decrease the number of issues in the divorce that require continued litigation. The respondent then lodges their response, after which the judge can order a second round of writings or schedule a hearing to discuss means of evidence. Thereafter, proceedings are meant to administer proofs, expert opinions and to hear witnesses as requested by the parties and deemed necessary by the judge. Final pleadings take place after this and judgment is handed down. There is no block trial; hearings (of one–two hours each) take place approximately once a year throughout the procedure until the end.

The duration of contested divorces depends on the complexity (complicated parent-child relationship, high diversity of matrimonial assets, need of expert opinions, numerous witnesses, offshore real estate, etc.) and the procedural "attitude" of the parties (appeals to the higher instances). They can last between two and 15 years.

1.5 Can a divorce be finalised without resolving other associated matters? For example, children and finances.

Only in exceptional circumstances if at least one of the spouses is of a certain age or plans to remarry quickly. In this case, the initial petition must nevertheless be lodged with respect to all points on associated matters and can only be dissociated into two separate matters (divorce and associated matters) and finalised once the procedure is ongoing.

1.6 Are foreign divorces recognised in your jurisdiction? If so, what are the procedural requirements, if any?

Foreign divorce decrees are recognised in Switzerland if they are rendered in the jurisdiction of the spouses' domicile or habitual residence or in one of the spouses' country of citizenship. They are also recognised in Switzerland if they are recognised in one of the said jurisdictions.

However, a decision rendered in a country of which neither of the spouses or only the petitioner is a national will only be recognised in Switzerland (1) if at the time the application is made, at least one of the spouses was domiciled or had their habitual residence in the rendering jurisdiction and the respondent was not domiciled in Switzerland, (2) where the respondent has submitted to the jurisdiction of the foreign court, or (3) where the respondent has expressly consented to the recognition of the decision in Switzerland.

In any case, Switzerland does not recognise foreign rulings on divorce-related sharing of Swiss occupational pension assets and Swiss courts also refuse to recognise a foreign divorce decision if it violates Swiss public policy (violation of one of the parties' basic rights, etc.).

1.7 Does your jurisdiction allow separation or nullity proceedings?

Both are allowed.

Separation proceedings are common in view of the mandatory two-year waiting period to file for unilateral divorce. They also have certain advantages to the less financially autonomous spouse.

The conditions for nullity proceedings are strict (lack of mental capacity at the time of entering into marriage, etc.).

1.8 Can divorce proceedings be stayed if there are proceedings in another country?

Yes, provided that the foreign divorce decree is likely to be rendered within a reasonable time frame and if it is expected to be recognisable in Switzerland once it is issued.

2 Finances on Divorce

2.1 What financial orders can the court make on divorce?

Financial orders concern the division of matrimonial assets (unless agreed otherwise, the court can only award a lump-sum that corresponds to the value of the asset share), the division of occupational pension rights as well as spousal and child maintenance.

2.2 Do matrimonial regimes exist and do they need to be addressed by the court on divorce? Is there a default matrimonial regime?

Yes, matrimonial regimes exist and need to be addressed by the court on divorce. Every marriage is subject to a matrimonial regime.

Yes, there is a default matrimonial regime that is the regime of joint acquisition of matrimonial assets (assets that are the result of gainful employment during marriage are split equally

provided they are still available at the time of divorce). The parties can select the matrimonial regime of separation of assets (where no assets are shared) either before or during marriage until the time of divorce.

2.3 How does the court decide what financial orders to make? What factors are taken into account?

For the liquidation of the matrimonial regime, the court is bound by the rather complex mathematical rules of the Swiss civil code and the Supreme Court's case law. Fairness of similar concepts are not taken into account.

The occupational pension rights are usually split in half, except for special circumstances (significant age difference, etc.).

Child maintenance is based on the parents' means and lifestyle. Usually, the primary caretaker is exempt from any financial contribution to the children.

The right to spousal maintenance as well as its duration have been significantly reduced by case law in the past years and are set to be reduced further with time. The judge has large discretion ordering or refusing such payments based on numerous factors (loss of financial autonomy during marriage, health and age of the spouses, number and age of children, education and income level, professional perspectives, language proficiency, etc.).

2.4 Is the position different between capital and maintenance orders? If so, how?

Unless otherwise agreed by the parties, capital orders *in lieu* of monthly maintenance payments are rendered in exceptional circumstances only. They have different tax consequences and require the fulfilment of different conditions in case of a potential modification request later on.

2.5 If a couple agrees on financial matters, do they need to have a court order and attend court?

Yes, a court order is mandatory. In principle, court attendance is as well (in certain cantons and with certain judges, a spouse with habitual residence overseas can be exempt from attending court).

2.6 How long can spousal maintenance orders last and are such orders commonplace?

If a maintenance payment request is granted, the order mostly lasts for less than five years.

In rarer cases, maintenance will be ordered until the paying party reaches retirement age.

Only in exceptional cases are maintenance orders issued for the receiving spouse's lifetime (mainly if the paying party's income is not dependent on their profession).

2.7 Is the concept of matrimonial property recognised in your jurisdiction?

Yes, matrimonial property mainly includes assets that have been accumulated from gainful employment during marriage and that are still available at the time of divorce.

2.8 Do the courts treat foreign nationals differently on divorce? If so, what are the rules on applicable law? Can the court make orders applying foreign law rather than the law of the jurisdiction?

Foreign nationals have more options than Swiss citizens in terms of choice of law or jurisdiction. Other than this, they are treated the same way as locals.

For the liquidation of matrimonial assets, spouses can choose between the law of the jurisdiction of which they are both habitual residents before or after marriage or of which at least one of them is a national. In the absence of such choice, courts will apply the law of the jurisdiction in which both spouses had their last common habitual residency. If none of these jurisdictions are known, if their law cannot be determined or if it is against Swiss public policy, courts will apply Swiss law.

Regarding maintenance payments, the law of the receiving party's habitual residence is applicable.

For the split of occupational pension rights, Swiss law is applicable.

2.9 How is the matrimonial home treated on divorce?

If owned jointly, full title of property shall be transferred to the spouse who can prove preferential interest in keeping it (usually the primary caretaker of the children) provided they have the means to compensate the other spouse at market value.

If the family home is rented, the lease is transferred to the spouse who has a preferential interest (mainly the one who still lives in it (with the children) at the time of divorce).

2.10 Is the concept of "trusts" recognised in your jurisdiction? If so, how?

Yes, Switzerland has ratified the 1985 Hague Trust Convention and therefore recognises foreign trusts. While Swiss law does not provide for trusts (a recent initiative in parliament to introduce trusts was again not successful), they can be established for Swiss divorce purposes based on foreign law.

2.11 Can financial claims be made following a foreign divorce in your jurisdiction? If so, what are the grounds?

Yes, foreign divorce decrees entailing financial claims can be enforced in Switzerland.

Foreign divorce orders can, furthermore, be amended to obtain an increase in child maintenance or a change of a financial award based on new facts. Switzerland has jurisdiction, provided the respondent has their habitual residency in Switzerland or the petitioner has had their habitual residency in Switzerland for one year or is a Swiss citizen. If neither of the ex-spouses has their habitual residency in Switzerland but one of them is a Swiss national, and if litigation cannot be initiated in the jurisdiction of the habitual residency of one of the spouses, or if they cannot reasonably be requested to do so, Switzerland is also competent for amendment requests.

Claims regarding the split of Swiss occupational pension schemes can always be brought in front of Swiss courts.

2.12 What methods of dispute resolution are available to resolve financial settlement on divorce, e.g. court, mediation, arbitration?

Depending on the judge, agreements on financial orders are sometimes fostered during court hearings.

The courts also often propose or even order external mediation sessions.

Private arbitration can be used relating to matrimonial regimes and spousal support, subject to the court's review in terms of fairness and equity.

3 Marital Agreements

3.1 Are marital agreements (pre- and post-marriage) enforceable? Is the position the same if the agreement is a foreign agreement?

Pre- and post-nuptial agreements dealing with the choice of the matrimonial regime are enforceable. The position is the same if the agreement is a foreign one.

Other marital agreements (regarding maintenance, asset split, pension rights, children's matters, etc.) usually need to be reiterated by the parties at the time of divorce and are subject to the court's approval.

3.2 What are the procedural requirements for a marital agreement to be enforceable on divorce?

Pre- and post-nuptial agreements dealing with the choice of the matrimonial regime must be notarised to be enforceable. Foreign agreements are enforceable if they respect the procedural requirements of the jurisdiction in which they were formalised.

Other marital agreements (regarding maintenance, asset split, pension rights, children's matters, etc.) need to be presented to the court in writing at the time of divorce.

3.3 Can marital agreements cover a spouse's financial claims on divorce, e.g. for maintenance or compensation, or are they limited to the election of the matrimonial property regime? Can they deal with financial claims regarding children, e.g. child maintenance?

The election of the matrimonial property regime can be covered and is binding upon the judge and the parties at the time of divorce. Marital agreements covering the other above-named matters usually need to be reiterated by the parties at the time of divorce and ratified by the judge.

4 Cohabitation and the Unmarried Family

4.1 Do cohabitants, who do not have children, have financial claims if the couple separate? What are the grounds to make a financial claim?

No, there is no concept of common-law marriage in Switzerland. They have no claim unless they entered into contractual relationships with each other (housing, business, investments, etc.).

4.2 What financial orders can a cohabitant obtain?

Besides the above-mentioned claims based on the contractual relationships, a cohabitant can indirectly request maintenance to cover a share of their basic living expenses if they take care of small children.

4.3 Is there a formal partnership status for cohabitants (for example, civil partnerships, PACS)?

No, there is not, but cohabitants are free to enter into contractual relationships with respect to the financial terms of their cohabitation.

4.4 Are same-sex couples permitted to marry or enter other formal relationships in your jurisdiction?

They are permitted to marry but do not have the same rights in terms of reproductive medical care. The mere registration of same-sex partnerships, as previously provided, is discontinued.

5 Child Maintenance

5.1 What financial claims are available to parents on behalf of children within or outside of marriage?

In addition to direct costs (rent, health insurance, food, clothing, schooling fees, transport, extracurricular activities, etc.), support for small children must also cover basic living costs of the primary caretaker if they are unable to support themselves and depending on the other parent's financial situation.

There is no difference if such claims are made on behalf of children within or outside of marriage.

5.2 How is child maintenance calculated and is it administered by the court or an agency?

Child maintenance is administered by the court, not an agency.

Even though there is a mandatory calculation method based on costs of living, there are numerous exceptions and adaptations to it, depending on the parties' income and the lifestyle. The judge has significant discretion regarding the amount of child maintenance.

5.3 For how long is a parent required to pay child maintenance or provide financial support for their children? For example, can a child seek maintenance during university?

Maintenance is due until the end of the child's full education programme, including university. However, from the age of 18 on, support is paid to the child directly (not the caretaker) and the calculation method changes, which usually results in lower amounts. A parent may also discontinue payments if the adult child no longer wishes to maintain personal contact.

5.4 Can capital or property orders be made to or for the benefit of a child?

Only under exceptional circumstances and when it is in the interest of the child.

5.5 Can a child or adult make a financial claim directly against their parents? If so, what factors will the court take into account?

A child cannot act directly but needs to be represented by their parents or a court-appointed guardian. If they come of age, adult-children can act directly. If they come of age during the procedure, they can delegate their right to act to one of their litigating parents.

6 Children – Parental Responsibility and Custody

6.1 Explain what rights of custody both parents have in your jurisdiction whether (a) married, or (b) unmarried.

The only remaining difference in terms of custody between married and unmarried parents is that unmarried fathers do not automatically have shared legal custody. They need to either obtain the mother's signature on an administrative form or seek a court ruling (which is usually a mere formality).

Legal custody entails the obligation to agree on the child's: name and surname; habitual residency; education; medical treatments; and religion, etc. If the parents cannot agree on either of these points, one or both can seek a court ruling.

The parent having physical custody is the one who lives with the child. The other parent and the child have visitation rights, which can habitually be exercised at least every other weekend and during half of the school holidays. Even though the law does not say so, physical custody is usually with the mother. Shared physical custody is less common and fathers with physical custody are rare.

6.2 At what age are children considered adults by the court?

At the age of 18.

6.3 What is the duration of children orders (up to the age of 16 or 18 or otherwise)?

Maintenance orders are valid until the end of a child's complete education programme, including university (whereas maintenance is paid directly to the child once they turn 18, not to the caretaker anymore). Custody and contact orders last until the child turns 18.

6.4 What orders can the court make in relation to children? Does the court automatically make orders in relation to child arrangements in the event of divorce?

The court makes orders regarding legal and physical custody, visitation rights and maintenance.

If the children are underage, the court must make all these orders in the event of divorce.

6.5 What factors does the court consider when making orders in relation to children?

According to the law, the court can only consider the children's interest. Parents' or third parties' considerations are supposed

to be irrelevant. Even if the parents agree on custody or financial matters, the court must verify whether such agreement is in the children's best interest.

In practice, physical custody is usually attributed to the mother. And if the parents agree on child-related matters, the judge's verification of the child's best interest becomes a mere formality.

6.6 Without court orders, what can parents do unilaterally? For example, can they take a child abroad?

If parents agree, they can do whatever pleases them.

Without agreement, and if only one parent has legal custody (parental authority), such parent can establish the child's habitual residency abroad. If legal custody is shared, the green light of the other parent or of the court is necessary for this not to qualify as an abduction.

No agreement is necessary for mere overseas holidays.

6.7 Is there a presumption of an equal division of time between separating or divorcing parents?

No, equal division of time between separating or divorcing parents applies to the minority of families only. The court is, however, obliged to investigate the possibility of such equal time sharing if one of the parents requests it.

6.8 Are unmarried parents treated in the same way as married parents when the court makes orders on separation or divorce?

Yes, but depending on the specific request that is made, a different type of court might be competent.

6.9 Is a welfare report prepared by an independent professional or is the decision taken by the judge alone? If so, does the child meet the judge?

A welfare report is prepared if the parties disagree on parental rights. The child gets to meet the employee of the State protection services who drafts such report. In particularly contentious cases, and if the child is more than six years old, they get to meet the judge directly.

6.10 Is there separate representation for children in your jurisdiction and, if so, who would represent them, e.g. a lawyer?

Not systematically. It is the judge's task to order such an independent representation (usually an attorney) if the parents disagree on what is best for the child or if the child requests it. As soon as the child has capacity (from around 12 years old onwards), the child can also request and choose their own counsel.

6.11 Do any other adults have a say in relation to the arrangements for the children, e.g. step-parents or grandparents or siblings? What methods of dispute resolution are available to resolve disputes relating to children?

Generally not. However, recent case law has admitted requests

from grandparents and step-parents who asked for visitation rights to be ordered between them and the children.

The court may order the parties to try mediation, but this cannot be forced on the parents for more than one session.

7 Children – International Aspects

7.1 Can the custodial parent move to another state/ country without the other parent's consent?

Yes, if the parent has sole legal custody. If custody is shared, the other parent's or the judge's consent is necessary.

7.2 Can the custodial parent move to another part of the state/country without the other parent's consent?

Yes, if the parent has sole legal custody. If custody is shared and if such move prevents the other parent from having a continued adequate personal relationship with the child, such other parent's or the judge's consent is necessary.

7.3 If the court is making a decision on relocation of a child abroad, what factors are taken into account?

The court needs to analyse whether it is better for the child's wellbeing to leave with the relocating parent or to stay behind with the other parent. If one of them is the primary caretaker, it is generally in the child's interest to remain with them, regardless of whether such primary caretaker is the one relocating or the one staying behind.

The answers to these questions also depend on the age of the child. Younger children can adapt easier to new environments and learn a new language. Older children have a word to say when they are supposed to leave their home country.

The decision is taken regardless of the relocating parent's reasons or intentions for such move. It is not the court's task to assess the possibility of the relocating parent to change their mind and to finally remain where they are.

7.4 If the court is making a decision on a child moving to a different part of the state/country, what factors are taken into account?

If the child's new home is far enough for it to intervene in the continuous personal relationship with the parent left behind, the same considerations as under question 7.3 are taken into account.

7.5 In practice, how rare is it for the custodial parent to be allowed to relocate internationally/interstate?

It is, rather, the norm.

7.6 How does your jurisdiction deal with abduction cases? For example, is your jurisdiction a party to the Hague Convention?

Switzerland is party to the 1980 Hague Convention and cooperates fully with foreign authorities on these matters. In addition, Switzerland has internal legislation aiming at hindering and punishing abduction.

8 Overview

8.1 In your view, what are the significant developments in family law in your jurisdiction in the last two years and anticipated in the next year?

Individuals with no genetic link to the children of their former same-sex partner have recently been granted visitation rights by the Supreme Court.

The reduction of the financially weaker party's rights to post-divorce alimony have had a significant impact on divorce proceedings during the past years and this trend will continue.

8.2 To what extent and how has the court process and other dispute resolution methods for family law been adapted in your jurisdiction in light of the COVID-19 pandemic – e.g. virtual hearings, remote access, paperless processes? Are any of these changes likely to remain after the COVID-19 crisis has passed?

While lawyers had to adapt quickly to the needs of their clients (remote work, video conferences, etc.), the court process has

remained identical. There were/are neither virtual hearings, nor remote access nor paperless processes with the authorities. During the COVID-19 pandemic, hearings were postponed and after the end of the pandemic, business as usual resumed.

8.3 What are some of the areas of family law that you think should be considered in your jurisdiction, i.e. what laws or practices should be reformed?

The following are some areas of family law that should be considered in the Swiss jurisdiction:

- Fathers' rights to shared physical custody.
- Stricter enforcement rules in case of violations of court ordered visitation rights.
- Standard application forms for straightforward cases to make separations and divorces more affordable.
- Increase of the number of judges for the families' (sometimes difficult) waiting time to be reduced.



Josef Alkatout is specialised in international family law. He advises clients when entering into settlement agreements and he conducts litigation before cantonal and federal courts. He is also active in matrimonial asset planning, including complex prenuptial and postnuptial agreements. Josef Alkatout assists in urgent separation procedures (kidnapping, asset freezing or protection orders) as well as in parental rights disputes. He has profound knowledge of Switzerland's legislation on same-sex parenting.

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- Child Maintenance
- Children – Parental Responsibility and Custody
- Children – International Aspects

