

Estate Planning between Switzerland and Israel

Individuals with family ties in Switzerland and Israel often face unique challenges when it comes to estate planning. For example, someone might own a holiday home in Israel while residing in Switzerland – or a Swiss bank account might serve as a financial safe haven for an Israeli family.

In such cases, both Swiss and Israeli inheritance laws may become relevant after death. However, there are significant differences between the two legal systems, making cross-border estate planning complex. Without careful consideration of these differences, legal pitfalls may arise, placing unnecessary burdens on assets and heirs.

This guide provides a first orientation by highlighting key differences between the inheritance law systems and explains how to securely and in line with personal wishes pass on assets to the next generation or other beneficiaries.

Different Planning Instruments

Freedom of Testation Instead of Statutory Entitlement

Understanding Israeli inheritance law requires setting aside a fundamental principle of Swiss law: the concept of statutory entitlement (Pflichtteil). In Switzerland, close relatives such as children and spouses cannot be completely disinherited. They are entitled to a minimum share of the estate, which cannot be revoked in full (at least not without their consent).

In contrast, Israel follows the principle of absolute freedom of testation. A testator can freely distribute their entire estate in a will, with no obligation to adhere to statutory entitlements. This allows for a more personalized estate planning, for example in favor of close friends or charitable organizations.

Alimony Payments from the Estate

Still, close relatives in Israel are not left entirely unprotected. Instead of a statutory entitlement, they may claim socially motivated alimony payments from the estate. This is not intended to secure a share of the estate, but merely to cover the living expenses of close relatives who find themselves in financial need as a result of the death of the testator. Eligible individuals include, for example, minors or a surviving spouse, provided they are in financial need.

Key Planning Tool: The Will

Given this freedom, the will becomes the main tool in Israeli estate planning. It is the most important and most flexible tool to implement one's own wishes. While handwritten wills are legally possible, they are a rare occurrence. The common form in practice is a typed will signed in front of two witnesses (which would be invalid under Swiss law).

A noteworthy feature of Israeli law is its pragmatic approach to formal errors: a will may still be declared valid despite minor formal defects, as long as its respective essential formal components are present and the testator's true and free intent is clear.

Inheritance Contracts are not Permitted in Israel

In Switzerland, inheritance contracts are a well-established tool to secure binding estate arrangements. In Israel, however, they are strictly prohibited. Any agreement concerning future inheritance or advance renunciation is considered void. The law aims to protect the testator's freedom and prevent unwanted speculation about the estate. However, existing Swiss inheritance contracts with cross-border elements are not considered invalid in Israel. If Swiss law applies to an Israeli inheritance proceeding, for example due to the deceased's residence in Switzerland, the Swiss inheritance contract will be recognized and enforced in Israel.

Special Case: Joint Spousal Wills

An important exception to the strict ban on inheritance contracts exists for married couples. A joint spousal will allows spouses to align their last wishes. The special feature of a joint spousal will is that it cannot be easily changed unilaterally. Once one spouse dies, the surviving spouse can only revoke the joint will by waiving all benefits from the deceased's estate.

Trusts

As a legal system influenced by common law, Israel allows the establishment of trusts, which are often used in estate planning. Trusts are especially useful for large estates, securing wealth across generations or achieving tax advantages.

Different Inheritance Proceedings

Why the Swiss Certificate of Inheritance is not Accepted in Israel

Following a person's death, inheritance proceedings are initiated and conclude with the issuance of a certificate of inheritance. This certificate enables the heirs to assert their rights and gain legal access to the estate.

However, a Swiss inheritance certificate is not recognized in Israel. Unlike Switzerland, Israeli authorities claim jurisdiction not only over Israeli residents but also over any assets located in Israel, for example real estate or bank accounts, even if the deceased was resident abroad.

Thus, separate Israeli inheritance proceedings, in which a certificate of inheritance needs to be obtained, are required for foreign decedents with assets in Israel. This process requires considerable resources, as all relevant documents must be submitted in certified Hebrew translation.

Which Law Applies – Swiss, Israeli, or maybe even Religious Law?

In both Switzerland and Israel, the applicable inheritance law is determined by the last place of residence. If the deceased last resided in Switzerland but owned assets in Israel, Israeli authorities apply Swiss law. Therefore, to obtain an Israeli certificate of inheritance, a legal opinion on Swiss law must be submitted in the Israeli proceedings.

An exception arises if the deceased lived in Israel and the involved heirs unanimously wish to handle the estate not through civil courts, but through religious courts (Jewish rabbinical, Christian, or Muslim Sharia courts). In such cases, the respective religious provisions replace Israeli civil inheritance law.

Planning Opportunities and Pitfalls

Avoiding the Statutory Entitlement? Possible, but risky

Under certain conditions, Israeli citizens residing in Switzerland may benefit from the greater flexibility of Israeli inheritance law with respect to statutory entitlements. To do so, the will must include a choice-of-law clause designating Israeli law as applicable. However, careful consideration is essential:

- Under Swiss law, such a choice is only valid if the Israeli citizen is not also a Swiss citizen. Choice-of-law clauses of dual citizens are valid in principle, must however still comply with Swiss statutory entitlement rules.
- Israeli case law is not clear on whether such a choice-of-law is valid. Since Israeli inheritance proceedings are always required for Israeli assets, there is a risk that Israeli authorities may apply Swiss inheritance law (with statutory entitlements) regardless.

No Inheritance Tax – But be Careful with Real Estate

Israel abolished inheritance and gift tax back in 1981. Thus, no Israeli tax is due on inherited assets.

But property gains tax on real estate is an important exception. When selling any property in Israel, a 25% tax on capital gains applies. Although inherited residential properties are exempted from property gains tax, a significant hurdle has been introduced for heirs residing abroad: tax exemption is only possible if it can be proven that the heir does not own any residential property in their home country, for example in Switzerland. In practice, this regulation can place a considerable financial burden on foreign heirs of Israeli real estate.

If both Israeli and foreign heirs (e.g. Swiss) are involved, it may be wise to assign Israeli real estate to Israeli heirs and compensate foreign heirs with movable assets instead.

If no respective advance planning was made, heirs can still agree among themselves on a tax-optimized distribution by signing an inheritance distribution agreement. It is important, that this is done before any real property is registered in the heirs' names.

Appointing an Executor

For large, complex or international estates, appointing an executor can be beneficial. However, caution is advised in case of a cross-border estate, as Israel does not recognize executors residing abroad. A Swiss executor managing a global estate would not be recognized in Israel. Therefore, for Israeli assets, a local executor with residence in Israel should be appointed.

Submitting to Swiss Jurisdiction?

If someone residing in Israel dies and leaves assets in Switzerland, the Israeli certificate of inheritance, properly translated and apostilled, is usually sufficient to dispose of the assets in Switzerland and register them on the heir's name. A formal recognition process before a Swiss court is only required in exceptional cases.

Swiss testators residing in Israel who seek greater certainty in estate planning may from a Swiss perspective subject their estate to Swiss jurisdiction through a testamentary clause. However, this approach is only advisable in specific constellations:

- Firstly, only the Swiss portion of the estate should be subjected to Swiss jurisdiction. From an Israeli perspective, the subjection is invalid and therefore cannot be enforced for assets located in Israel.
- Secondly, testators must be aware that submitting the estate to Swiss jurisdiction also triggers the application of Swiss inheritance law, including the rules on statutory entitlements (Pflichtteile). Therefore, this option only makes sense if the will complies with the statutory entitlement provisions.

- Thirdly, in most Swiss cantons, inheritance tax applies to the full estate if opened under Swiss jurisdiction. In contrast, without Swiss jurisdiction, only real estate situated in Switzerland is subject to Swiss taxation, not movable assets (e.g. bank accounts). Choosing Swiss jurisdiction for such movable assets could therefore expose heirs to avoidable tax burdens.

Israeli Trusts and Swiss Law?

Switzerland has no domestic trust law but recognizes foreign trusts under the Hague Convention. However, Anglo-American trust law is often incompatible with Swiss inheritance law, creating uncertainty in how trusts should be treated in inheritance matters and how they should be classified and settled in accordance with Swiss inheritance law. (Read our news article on trusts in Swiss estates [here](#).)

If an Israeli trust is already in place and Swiss assets are involved, legal certainty can be enhanced by excluding the Swiss assets from the trust and explicitly subjecting them to Swiss jurisdiction and law through a clause in the will.

Conclusion: A Clear Plan for the Last Will

Estates involving both Switzerland and Israel demand careful and coordinated cross-border planning. Significant differences in substantive and procedural inheritance law create legal risks that can only be mitigated through early and strategic preparation. Clearly drafted wills, the intelligent use of estate planning instruments, deliberate choices regarding applicable law and jurisdiction, tax-efficient structuring, and the appointment of a suitable executor are just some of the key considerations. In most cases, expert legal guidance from both Swiss and Israeli professionals is essential. This helps to ensure legal clarity, preserves family harmony, protects assets and saves costs.

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