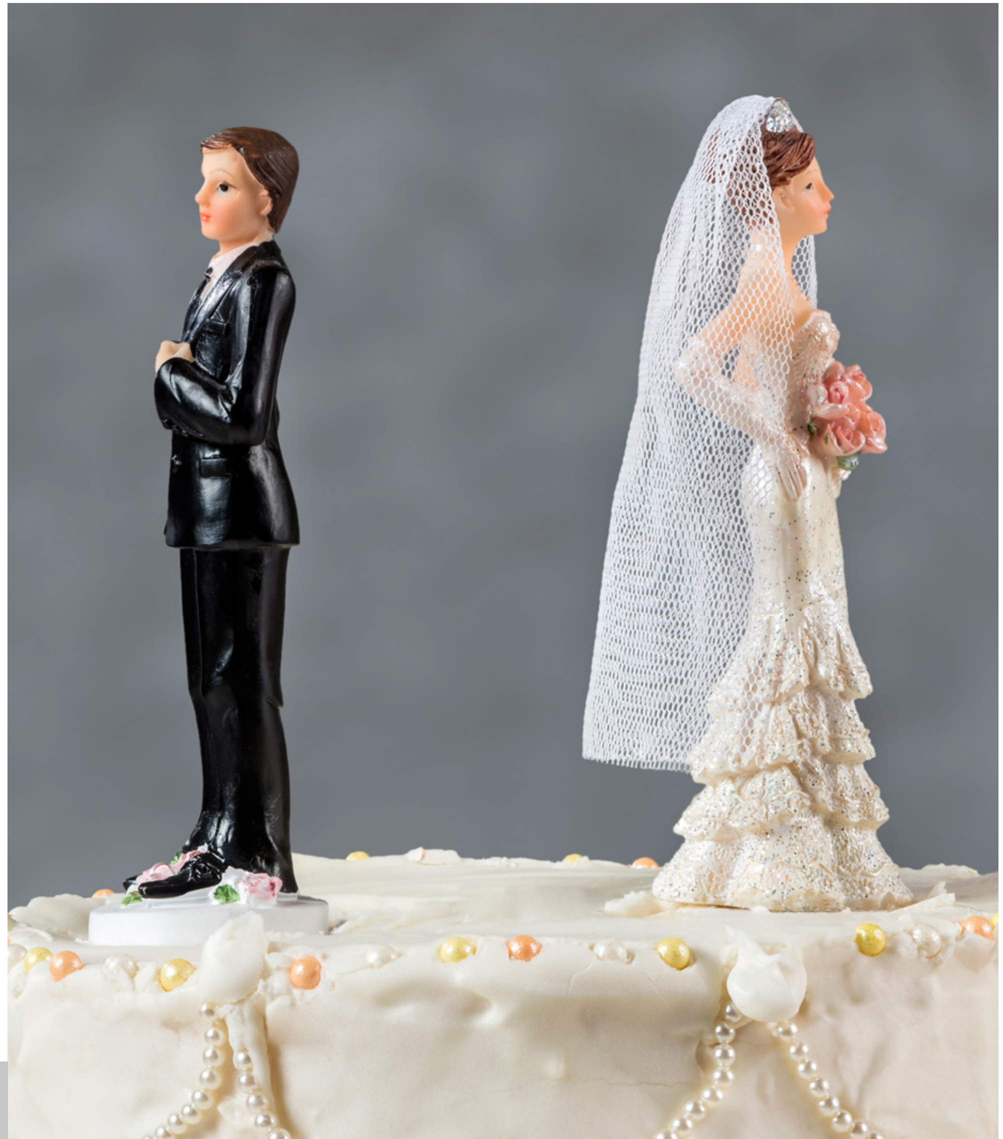
BLACKDEN FINANCIAL

INTERNATIONAL PERSPECTIVE, INDEPENDENT ADVICE



Divorce and Retirement

Divorce – How does it impact your retirement?

Marriages normally begin with a sense of excitement and endless possibility - idyllic plans on the horizon. However, as the statistics indicate, for many couples and families sadly this is not how they end. According to the Swiss Federal Statistical Office (FSO), 16,200 divorces were registered in 2018 , a slight increase on the previous year, with the average length of a marriage ending in divorce being 15 years.

> **Foreign couples were particularly affected by this trend. While divorce between Swiss partners, or between one Swiss and one foreign, declined, divorces of non-Swiss families increased substantially (+23.4%).**

The divorce process can often be confrontational and litigious, and what is often missing is relevant advice on the financial consequences of the settlement. By working with a qualified financial planner, as well as a legal expert, both parties can get a clear understanding of their financial situation pre and post-divorce, thereby increasing the chance of a swift and amicable settlement.

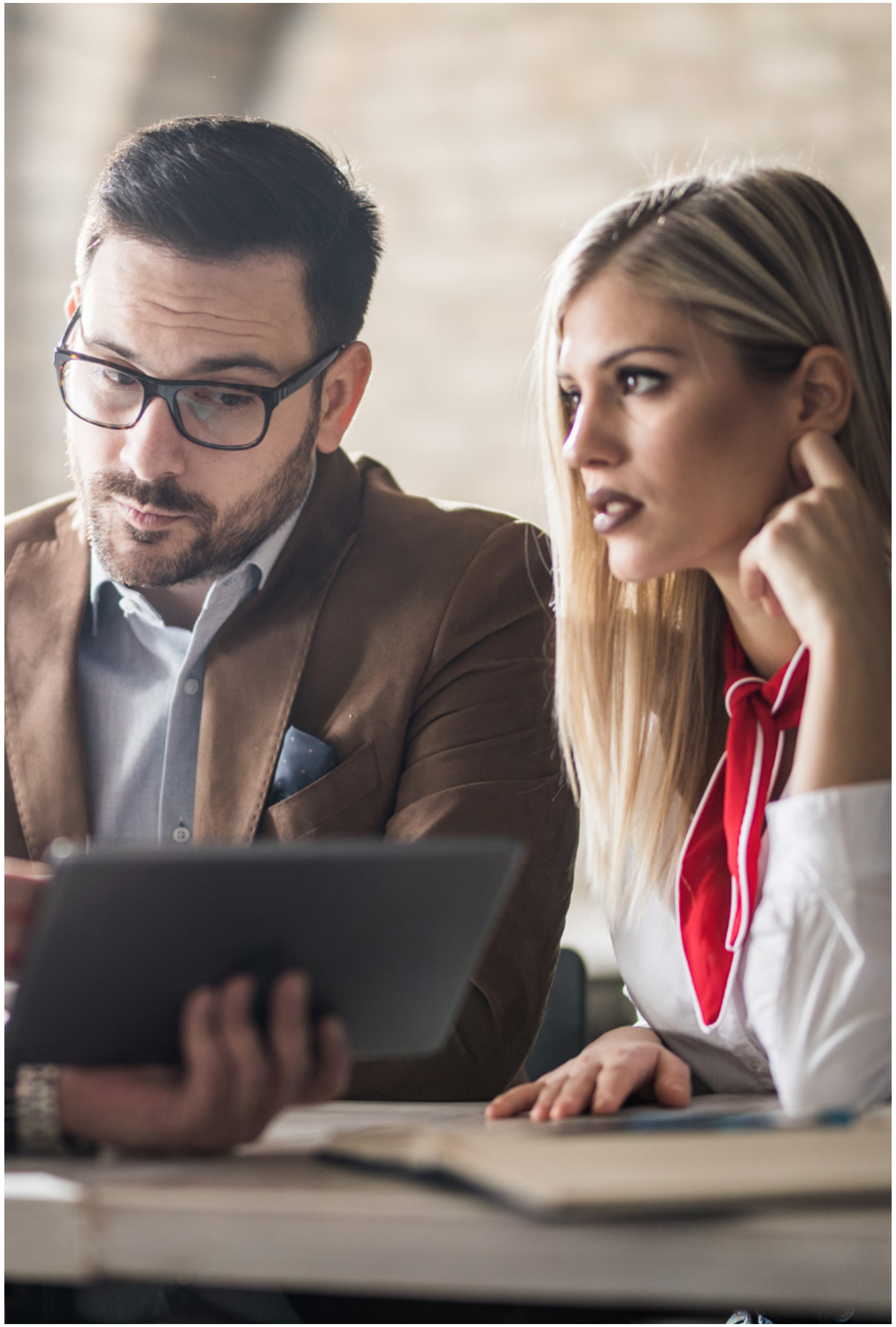
If you or your spouse are considering a divorce or have already made the decision, it is clearly important that you get as much information as you can. This will allow you to make the right personal and financial decisions and avoid unnecessary conflict with your spouse or partner.

- Pension splitting arrangements
- Property and investment ownership
- Support of non-independent children
- Support of non-working spouse
- Applicable Divorce Jurisdiction

Even beyond the financial consequences there can of course be issues with minor children for example, with the need to agree on custody, visitation rights and maintenance payments.

Properties, pensions or mortgages are just a few examples of assets that may need to be divided. The following is a brief (non-comprehensive) overview of the Swiss divorce process, matrimonial property regimes and a high-level overview of how pensions (Swiss and other countries) and other assets are treated under Swiss law.

[1]Federal Statistical Office Divorces in Switzerland in 2018



Filing for divorce

In Switzerland there are three different ways to start the process:

1) Divorce by joint request with an agreement
When the couple jointly request the divorce and submit a comprehensive agreement on the consequences of the divorce.

2) Divorce by joint request with a partial agreement
In this case, they jointly request divorce, but ask the Court to decide matters on which they cannot reach a consensus.

3) Divorce at the petition of one spouse after having lived apart
A spouse can unilaterally request the divorce if the couple have lived apart for at least two years.

Matrimonial property regimes

The way in which your assets (and debts) will be distributed in the event of divorce depends on your matrimonial property regime. This basically defines what belongs to whom during the marriage. In Switzerland, there are three different property regimes: Contribution to jointly acquired property, joint estate and separate estates.

1) Ordinary marital property - Contribution to jointly acquired property
This applies to couples who have not proactively arranged any other type of regime.
You retain ownership of your estate (e.g. property before marriage, inheritances etc)
The savings made during the marriage (e.g. salaries, pensions) can be used and managed independently by each spouse.

2) Community of property - Joint estate
Established by a marriage contract, this should be certified by a notary and allows different types of property: wife's property, husband's property and joint property.

3) Separation of property - Separate estates
This regime is also established by a marriage contract. You retain ownership of your own property and nothing is divided up between the ex-husband and ex-wife if the marriage ends.

SWISS PENSIONS

1st Pillar (OASI)

AHV contributions accumulated during the marriage will be split evenly and redistributed to you and your partner's account. A partner would be treated as a widowed person if they fulfil one of the following requirements:

- She/he was married for at least ten years and have children.
- Your youngest child became 18 after the divorced person reached 45.
- She/he was married for at least ten years and is older than 45.

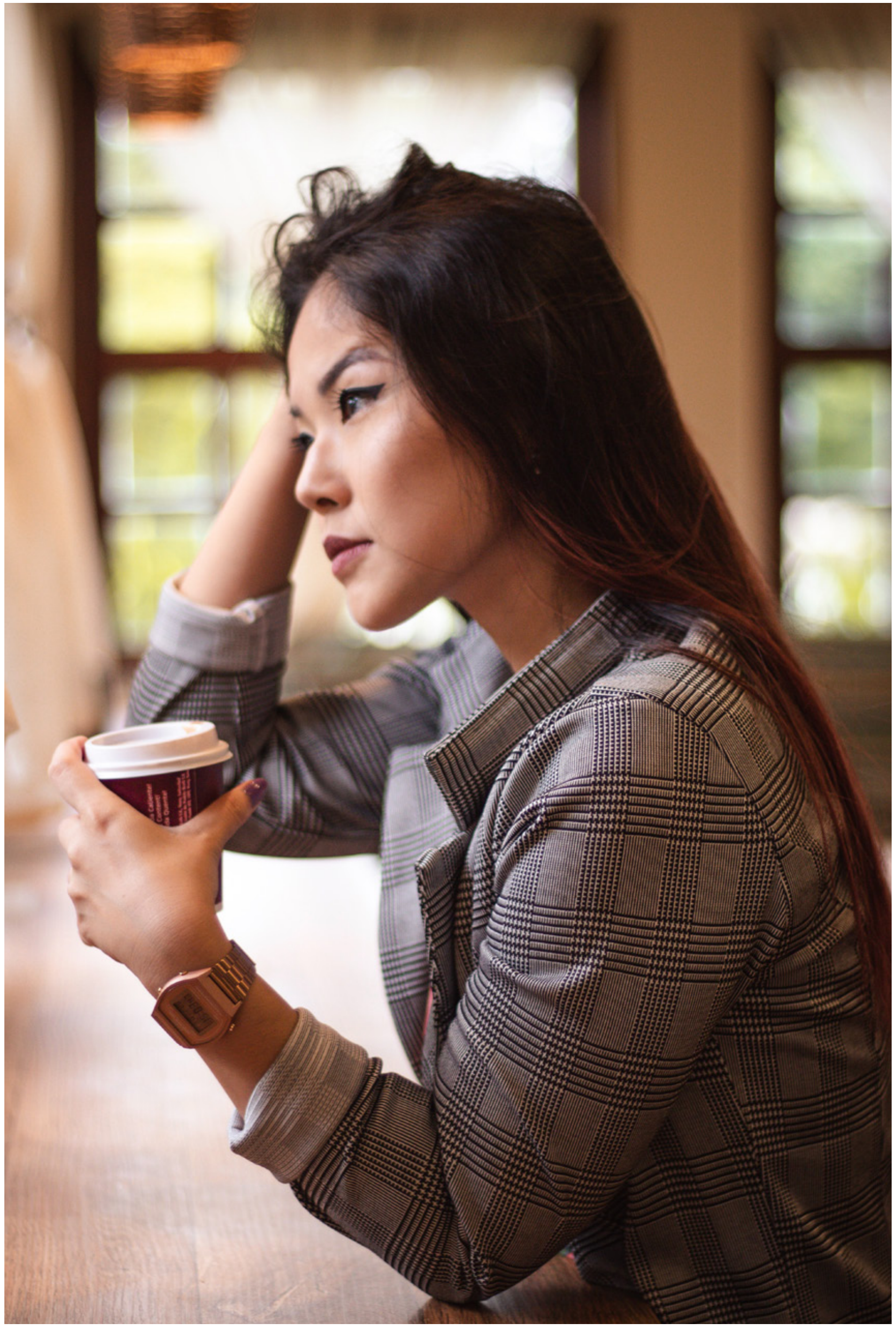
In order to split the AHV provisions, it is important to submit a request to the social security administration office.

Download the application form here: here
OASI: estimation online: here

2nd Pillar – Professional Pension Fund

Your funds from the second pillar are also divided evenly between you and your partner. The calculation is based only on the contributions during your marriage. If a separation of assets was agreed in a prenuptial contract, this will have no effect on your second pillar.

The partner who benefits from the adjustment will receive the funds directly in his or her pension fund. Even If the person is not a member of a pension fund, the funds will be transferred to a vested benefits account or a vested benefits policy.



3rd Pillar – Personal Pension

Regarding the optional third pillar, as this is a private retirement savings account, your marital property regime would determine how to consider these funds. If no other arrangement has been made, the 'community of acquisitions' regime is the most common status.

In this scenario, funds from the 3rd pillar financed using income from employment would be shared equally as well. On the other hand, if your properties are separated, the assets will not be redistributed. In some cases, you or your partner may decide to waive the division or divide the funds in another manner.

> **It is of course unusual that both parties to the divorce have identical pension funds built up over the course of the marriage. In the event that one party suffers a decrease in their pension provision as result of the 50:50 principle mentioned above, it is possible to make further tax-deductible purchases to bring the pension fund to its former level.**

The most efficient method is usually by making staggered contributions over several tax years, in order to ensure maximum income tax efficiency.

Expat couples

If either of the divorcing party is a non-Swiss national, then the first action you should take is to consider contacting the consulate of your country of origin and request information about divorce recognition between the two countries. With multiple bilateral agreements, you might find out that more than one country has the power to deal with your divorce, in which case it is essential to also ensure that the divorce will be recognized internationally.

Generally speaking, Swiss law will govern the divorce if you have lived in Switzerland for more than a year. Exceptionally, if both spouses have the same foreign citizenship and only one is residing in Switzerland, the common citizenship's law is the applicable law.

When a Swiss court manages divorce proceedings, it will also handle the division of assets and maintenance. The local legislation allows you to choose the law based on which the division of assets will be made or can enforce a prenuptial agreement, in case one exists. Nonetheless, for a prenuptial agreement to be recognized in Switzerland, certain requirements imposed by the Swiss Civil Code must be fulfilled.

In any case, having first contacted your consulate, the next step should be to approach a lawyer based in Switzerland, as well, potentially, as a lawyer from your country of origin.

Once you have agreed the jurisdiction of divorce, you should then approach a financial planner with experience of handling divorce assets, including non-Swiss pension assets.

UK Pensions

As in many other fields, British expats should consider certain peculiarities from their pension system. It all goes back to 2006, when the UK government enacted a piece of EU legislation which allowed the free movement of member state pensions. This legislation allowed someone with a UK pension the option to realise the full value of that pension and transfer it to another pension elsewhere.

Therefore, if you are a British national or during your marriage you worked in the UK for over two years (regardless of your nationality) is likely that you have contributed to a UK pension. Either it is a defined benefit pension (final salary) or a defined contribution (personal pension), its transfer value will be part of the assets to be included in the financial settlement.

Properties

If you bought the property together, the partner that moves out must receive compensation based on the present value of the property – and not the price paid in the past.

Mortgages

If you have a joint mortgage, it remains in place despite the divorce, which means that you both are jointly liable (even if one partner has moved out). Although it is possible to get out of a mortgage if you have enough capital, this often involves repayment penalties.

In summary

Whilst the emotional aspects of a divorce can be devastating, the financial ramifications, if properly handled by the right combination of financial and legal advisory experts, need not be so. With careful planning and advice from the relevant experts, the chances of arriving at a settlement that is equitable and addresses the needs of both parties increases substantially.

This is particularly relevant for those expats with assets, (whether property, pensions or investment), domiciled in more than one jurisdiction.

Don't hesitate to get in contact with us if you require further information. Our experienced financial planners will always advise with your overall personal and financial situation in mind.

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