

**The Adjustment on the Amount of the Equalization Claim for  
Surplus of Matrimonial Assets under the Statutory  
Matrimonial Property Regime: A Comparative Study of the Art.  
1030 a paragraph 2 of the Civil Code of Taiwan with the  
relevant provisions in the Swiss ZGB and the German BGB**

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**Abstract**

In 1985 the equalization claim of the spouse for surplus of matrimonial assets was introduced in the statutory matrimonial property regime of Taiwan. Art. 1030 a paragraph 1 of the Civil Code of Taiwan enables each spouse to equalize the surplus of gains accrued during the matrimonial period. At the same time Art. 1030 a paragraph 2 of the Civil Code of Taiwan also grants the courts the power to mitigate the amount of equalization claim. In 2002 this provision was modified that the courts shall have the power to adjust and exempt this amount. This article uses the comparative studies on the relevant adjustment provisions in the Art. 216 of the Swiss Civil Code (ZGB) and § 1381 of the German Civil Code (BGB) and analyses their practices. Besides this article analyses the principles to use the Art. 1030 a paragraph 2 of the Civil Code of Taiwan and its practices. The courts shall examine whether the amount of equalization claim is grossly inequitable or not. But in Taiwan the practices of the courts by the examination show that the extent of the contribution of one spouse to the creation of matrimonial assets and the breach of matrimonial personal obligations were also taken into consideration in the past. These lead to a general adjustment of the amount of equalization claim. This article finds that these undermine the purpose of the legislation to protect each spouse equally

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while matrimonial assets are distributed. The fruit of joint contribution of one spouse to create the values of matrimonial assets in the past will also be erased while he or she breaches the matrimonial personal obligations. The adjustment on the amount of equalization claim should only be an exception. The court should initiate his adjustment power only when one spouse does not have the justified foundation of equalization claim, i.e. when he or she does not provide the assistance to create values of matrimonial assets, so that the true face of the Art. 1030 a paragraph 2 of the Civil Code of Taiwan it should have can be recovered.

**Keywords: matrimonial property regime, statutory matrimonial property regime, the equalization claim for surplus of matrimonial assets, grossly inequitable, mitigation, adjustment, Art. 1030 a of the Civil Code of Taiwan**