Divorce and legal separation

Latvia

1 What are the conditions for obtaining a divorce?

Cases in which a marriage may be dissolved are detailed in the Family Law part of the Civil Law of Latvia and in Division P of the Notaries Law. The general framework of the institution of marriage is stipulated in the Family Law part of the Civil Law.

In Latvia, marriage may be dissolved only by a court or a notary (*notārs*). A court can dissolve a marriage upon application by one or both spouses. A notary can dissolve a marriage if the spouses have reached agreement on the dissolution of their marriage and have no joint minor child or joint property, or, where the spouses have a joint minor child or joint property, if they have entered into a written agreement on guardianship of the joint minor child, access rights, the child's means of support, and the division of the joint property.

One of the prerequisites for a divorce of this kind, therefore, is an agreement between the spouses on the guardianship of a child born within the marriage, the child's means of support, and the division of joint property.

If a marriage is to be dissolved by a court, the court must find that the marriage has broken down. A marriage is considered to have broken down if the spouses are not cohabiting and it cannot be expected that they will resume cohabitation.

One of the prerequisites for a dissolution by a notary is an agreement between the spouses on the guardianship of a child born within the marriage, the child' s means of support and the division of joint property. If the spouses fail to reach an agreement, these claims have to be settled in court concurrently with an application for divorce.

2 What are the grounds for divorce?

Dissolution of marriage by a notary

A marriage may be dissolved if it has broken down and the spouses have reached agreement on the dissolution of their marriage, and a notary receives a joint application signed by both spouses. If the spouses have a joint minor child or joint property, a written agreement on guardianship of the joint minor child, the child's means of support, access rights and the division of joint property must be attached to the application.

Dissolution of marriage by a court

A marriage may be dissolved by a court in cases where the spouses have not reached agreement on the dissolution of their marriage and one of the following conditions is met:

The spouses have lived separately for more than three years: the spouses live separately, there is no joint household and one of the spouses is determined not to revive the joint household, thus denying the possibility of marital cohabitation. A joint household may be lacking even if the spouses live in a joint property.

If the spouses have been living separately for less than three years, the court may dissolve the marriage only if:

the reason for the breakdown of the marriage is physical, sexual, psychological or economic violence by one of the spouses against the spouse who is requesting the dissolution of marriage, or against his other child, or against the joint child of the spouses;

one spouse consents to an application by the other for the dissolution of the marriage;

one of the spouses has started living together with another person, and a child has been born or is expected within that partnership.

Where in the circumstances just described the court believes that the marriage can still be preserved, divorce proceedings may be postponed for up to six months with a view to a possible reconciliation of the spouses.

Where before they have lived separately for three years one of the spouses applies for a divorce on grounds other than the three listed above, the court may not dissolve the marriage before the statutory term of three years of separation, and must postpone examination of the case with a view to a possible reconciliation of the spouses.

If the spouses have been living separately for less than three years, a notary may dissolve the marriage only if both spouses agree to the dissolution of their marriage and have submitted an application for dissolution to the notary in accordance with the procedure laid down in the Notaries Law.

A court may not dissolve a marriage even if it has broken down if and to the extent that the preservation of the marriage is necessary in exceptional circumstances in the interests of a joint minor child of the spouses.

3 What are the legal consequences of a divorce as regards:

3.1 the personal relations between the spouses (e.g. the surname)

As soon as a judgment granting a divorce comes into effect or as soon as a certified notary has issued a divorce certificate, the rights and obligations arising from the legal relationship between the spouses cease to exist. Divorce may impose new obligations and rights on the former spouses. Once the marriage is dissolved, either party may enter into another marriage.

According to the Civil Law, a spouse who changed their surname upon entering into marriage is entitled to use their married surname after dissolution of the marriage, or alternatively, if they so request, a court or a notary will allow them to use their unmarried surname.

On application by the other spouse, a court may forbid a a spouse who contributed to the breakdown of the marriage from retaining the married surname, provided that this does not prejudice the interests of a child.

3.2 the division of property of the spouses

A notary may dissolve a marriage if the spouses have reached prior written agreement on the division of any joint property and if the agreement is attached to the application for divorce.

When a marriage is dissolved by a court, the spouses may agree on a division of joint property. If the spouses fail to reach an agreement, their claims will be settled by the court on the basis of the Civil Law or of the provisions of the marriage contract. The Civil Law provides for two types of property relationship, namely relationships determined by legislation and relationships determined by the marriage contract, and these define the procedure for the division of property in the event of divorce.

Where the property relationships are those determined by the legislation, in the event of a division of property each of the spouses has the right to retain the property that belonged to him or her before the marriage and any separate property he or she acquired during the marriage. Everything acquired during marriage by the spouses together, or by either of them using the resources of both, is the joint property of both spouses. It will be assumed that joint property belongs to both spouses equally, unless either of them can substantiate and prove that it should be divided in a different proportion.
Where the property relationships are determined by the marriage contract, the contract may provide for separate ownership or for joint ownership of all property of the spouses, and the division of property will then be decided in accordance with the procedure laid down in the legislation for the appropriate contractual property relationship.

3.3 the minor children of the spouses

In cases of divorce the issues arising from the legal relations within the family that have been described above, and in particular those arising from the legal relations of parents and children, may not be considered separately.
If the marriage is dissolved by a notary, the spouses have to agree not only on the divorce but also on guardianship, access rights and the maintenance of the children. A prior written agreement on the guardianship of a joint minor child, access rights and the child's maintenance must be submitted together with an application for divorce.
If marriage is dissolved by a court, the spouses have to agree on the guardianship of a joint minor child, access rights and the child's maintenance. If no such agreement has been concluded, unless the claims have already been settled, the claims have to be brought together with the application for divorce; the court cannot grant the divorce otherwise.
Consequences of the divorce with regard to parental responsibility
The responsibility to take care of a child does not end if the child no longer lives with one or both of the parents.
If the parents live separately, their joint responsibility continues. The care and supervision of the child must be ensured by the parent with whom the child is living.
Parents are to take decisions jointly on issues that may have a significant effect on the child's development. Disputes between the parents are settled by the orphans' court (*bāriņtiesa*), unless the legislation provides otherwise.
Joint guardianship of parents is terminated when an agreement between the parents or a court decision establishes the separate guardianship of one parent. If a child is under the separate guardianship of one parent, that parent has the rights and obligations arising from the guardianship. The other parent must have access rights (the right to maintain contact and private relationships with the child).
Consequences of the divorce with regard to maintenance of a child
The issue of child maintenance must be determined during the divorce proceedings. Parents are obliged to provide maintenance for a child commensurate with their ability and financial circumstances. The duty to provide for a child rests with the father and the mother until such time as the child is able to provide for itself. The responsibility to provide maintenance for a child does not end if the child lives separately from the family or if the child no longer lives with one or both of the parents. Upon the dissolution of their marriage a child's parents may mutually agree on the maintenance of a child, but if the parents fail to reach agreement the dispute is settled by the court during the divorce proceedings.

3.4 the obligation to pay maintenance to the other spouse?

The Civil Law states that at the time when a marriage is dissolved, or even thereafter a, former spouse may claim from the other spouse payments commensurate with the other spouse's financial circumstances in order to ensure the first spouse's previous level of welfare. The duty to ensure the previous level of welfare of a former spouse ends when:
the time that has passed since the divorce or annulment of the marriage is the same as the duration of the dissolved marriage, or in the case of a marriage that has been annulled, the duration of cohabitation;
the former spouse enters into a new marriage;
the income of the former spouse ensures his or her maintenance;
the former spouse avoids acquiring the means of his or her own maintenance through his or her own work;
the former spouse who was required to maintain the other former spouse has not got sufficient means of subsistence or has become work-incapacitated;
the former spouse to be maintained has committed a crime against the other former spouse or against the life, health, liberty, property or honour of the other spouse or of one of the other spouse's relatives in the ascending or descending line;
the former spouse has left the other former spouse in a helpless state when it was possible to help;
the former spouse has deliberately brought a false accusation of a crime against the other former spouse or one of his or her relatives in the ascending or descending line;
the former spouse lives wastefully or immorally;
the former spouse who was required to maintain the other former spouse dies or is declared dead, or the other former spouse dies or is declared dead;
there are other important reasons for ending the duty.

4 What does the legal term "legal separation" mean in practical terms?

The term 'legal separation' does not exist in the Latvian legal system.

5 What are the conditions for legal separation?

The term 'legal separation' does not exist in the Latvian legal system.

6 What are the legal consequences of legal separation?

The term 'legal separation' does not exist in the Latvian legal system.

7 What does the term "marriage annulment" mean in practice?

A marriage may be annulled if it was concluded in breach of legislative provisions that prevented it from being concluded lawfully. From the moment that a judgment annulling a marriage comes into effect, the parties are deemed never to have been married, and the marriage is considered null and void from the time it was concluded. It may be noted that a marriage may be annulled even after a divorce.

8 What are the conditions for marriage annulment?

A marriage may be annulled only in the following cases stipulated by the legislation:
the marriage was not registered by an official of a registry office or by a minister of religion of one of the denominations listed in the Civil Law;
the marriage was concluded fictitiously, without the intention of establishing a family;
the marriage was concluded before both spouses had reached the age of eighteen years, or in certain cases before one of the spouses had reached the age of sixteen years, after which the marriage may be valid if it was entered into with an adult and parents or guardians consented; however, such a marriage cannot be annulled if a child has been conceived after the marriage or if both spouses have attained the minimum age by the time of a court judgment;
at the time the marriage was entered into, one of the spouses was in a condition that prevented him or her from understanding the significance of his or her actions or from controlling his or her actions;

the marriage was concluded between persons who are within the forbidden degrees of kindred, namely, relatives in the direct ascending or descending line, a brother and a sister, or a half-brother and half-sister;
the marriage was concluded between an adopter and an adoptee, except where the legal relations established by adoption have been terminated;
the marriage was concluded between a guardian and a minor, or between a trustee and a person under trusteeship, before the relations of guardianship or trusteeship were terminated;
one of the spouses was already married.
In all these cases, an application to have the marriage annulled may be brought at any time without limitation, by any interested party or by the public prosecutor. If the marriage has been terminated by death or divorce, only persons whose rights are affected may bring an application for annulment. If both spouses have died, an application for the annulment of their marriage can no longer be brought.

9 What are the legal consequences of marriage annulment?

A spouse whose marriage is annulled resumes his or her unmarried surname. If at the time the marriage was contracted a spouse was not aware of the fact that the marriage ought to be annulled, he or she may ask the court to be allowed to retain his or her marital surname.
If at the time the marriage was contracted one of the spouses was aware that it might be annulled, the other spouse is entitled to claim from the former not only the means necessary to maintain his or her previous level of welfare but also compensation for moral damages.
When a marriage is annulled, the circumstances in which a former spouse is relieved of the obligation to ensure the other spouse's previous level of welfare are the same as in the case of a divorce (see question 3.4).
As far as division of property upon annulment of marriage is concerned, each of the former spouses is entitled to keep his or her premarital property and any property acquired by him or her during cohabitation. Jointly acquired property is to be divided equally among the former spouses.
If at the time the marriage was contracted neither of the spouses was aware of the fact that the marriage ought to be annulled, property will be divided in accordance with the provisions of the Civil Law governing the division of property acquired during lawful marriage. If, however, only one spouse was not aware of the fact that the marriage ought to be annulled, the procedure concerning the division of property acquired during lawful marriage in the event of divorce applies only to the spouse who was not aware that the marriage ought to be annulled.

10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?

In Latvia, marriage may be dissolved by a notary upon a joint application by both spouses. The procedure for dissolution of marriage by a notary is laid down in Division P of the Notaries Law. A certified notary will dissolve the marriage in cases where the spouses have agreed to the divorce and have no joint minor child or joint property, or if the spouses have a joint minor child or joint property and have entered into a written agreement on the guardianship of the joint minor child, access rights, the child's maintenance and the division of the joint property.

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

Dissolution of marriage by a notary
If a marriage is to be dissolved by a notary, there is no specific territorial jurisdiction – the parties may approach any notary anywhere in the country. This does not include cross-border cases where jurisdiction is governed by Council Regulation (EC) No 2201/2003. If under European Union legislation or other international legislation a crossborder divorce does not fall within Latvian jurisdiction, a certified notary may not initiate the divorce proceeding and must inform the spouses accordingly.
In crossborder divorce cases the law that is applicable is determined in accordance with Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.
An application for a divorce made to a notary must indicate the following:
the given name, surname and personal identity number of each spouse (if a spouse has no personal identity number, the year, day and month of birth);
the year, day and month of the wedding and the number of the entry in the register;
the country in which the marriage was registered and the authority, or the religious denomination and minister of religion, before whom it was contracted;
whether the spouses have joint minor children and whether they have reached agreement on the guardianship of the joint minor children, the exercise of rights of access, and maintenance;
whether the spouses have joint property, and whether they have reached agreement regarding the division of such property;
the surnames of the spouses after the divorce.
The application must enclose an original of the marriage certificate, or a copy or extract issued by a civil registry office, or a statement from a registry office.
If the spouses have a joint minor child or joint property, a written agreement on the guardianship of the joint minor child, the child's maintenance, access rights and the division of joint property must be attached to the application.
Dissolution of marriage by a court
An application for divorce or an annulment of marriage has to be brought in the district or city court (*rajona (pilsētas) tiesa*) that has jurisdiction — usually the court of the declared place of residence of the defendant, or failing that the de facto place of residence of the defendant. An application may be brought in the court of the declared place of residence of the plaintiff, or failing that the de facto place of residence of the plaintiff, if:
minor children are residing with the plaintiff;
the marriage to be dissolved is with a person who is serving a prison sentence;
the marriage to be dissolved is with a person who does not have a declared place of residence and whose de facto place of residence is unknown, or who lives abroad.
Rules on jurisdiction in matters of divorce, legal separation and annulment of marriage when one of the spouses is habitually resident in another Member State, or is a citizen of another Member State, are laid down in Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.
Once it has been determined which is the appropriate Member State, the domestic civil procedure of that Member State applies.
Rules on jurisdiction in matters of divorce are also laid down in bilateral international agreements on legal assistance and legal relations which have been concluded with nonEU countries and which are binding on Latvia.
Under Section 128 of the Law on Civil Procedure a court application must indicate the following:
the name of the court to which the application is submitted;
the given name, surname, personal identity number and declared place of residence of the plaintiff (if the plaintiff has no declared place of residence, the plaintiff's de facto place of residence); in the case of a legal person, the name, registration number and registered office; the plaintiff may also indicate another address for correspondence with the court;

the given name, surname, personal identity number, declared place of residence and any declared additional address of the defendant or interested party, or failing that a de facto place of residence; for a legal person, the name, registration number and registered office; the personal identity number or registration number of the defendant is to be indicated if known;
the given name, surname, personal identity number and address for correspondence with the court of the representative of the plaintiff, if the action is brought by a representative, or in the case of a legal person, the name, registration number and registered office;
in a claim for recovery of money, the name of the credit institution and account number to which payment may be made, if any;
the subject-matter of the claim;
the amount of the claim, if the claim can be assessed in terms of money, showing the manner of calculation of the amount being recovered or disputed;
the facts on which the plaintiff bases his or her claim, and evidence which corroborates such facts;
the law on which the claim is based;
the claims of the plaintiff;
a list of the documents appended to the application;
the date on which the application was drawn up, and any other information that may be relevant.
Under Section 235.1 of the Civil Procedure Law, an application for divorce must also indicate the following:
since when the parties have been living separately;
whether the other spouse agrees to the divorce;
whether the parties have reached agreement regarding the guardianship of children, the procedures for exercising the access rights of the other parent, maintenance, and the division of the property acquired during marriage, or whether they are submitting claims to the court in these respects.
The application must be signed by the plaintiff or his or her representative. In a matter of divorce or annulment, a party's representative has to have specific authorisation to handle the matter. Authorisation to act in a matter of divorce or annulment also covers any other related claims.
The following must be attached to the application:
a true copy of the application, to be sent to the defendant;
a document showing that the State fee and other court expenses have been paid in accordance with the procedure and in the amount laid down by law;
a document or documents attesting to the circumstances on which the claim is based (such as a certificate of marriage registration).

12 Can I obtain legal aid to cover the costs of the procedure?

In general, the State provides legal aid if a person's means or level of income prevents them from providing for the protection of their rights, or if they suddenly find themselves in a situations and financial circumstance that prevent them from doing so (e.g. owing to a natural disaster, force majeure or other circumstances outside their control), or the person is entirely dependant on the State or the local authority, thus making it objectively difficult for the person to protect their rights. Legal aid is granted in accordance with the provisions of the State Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*).
Legal aid generally covers expenditure related to the preparation of procedural documents, legal consultation during proceedings, representation in court, and enforcement of a court judgment.
Latvia also provides legal aid in accordance with Council Regulation (EC) No 2201/2003.

13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

At first instance, a case is handled by a district or city court (*rajona (pilsētas) tiesa*). A decision may be appealed to the regional court (*apgabaltiesa*), and may also be challenged on a point of law (*kasācija*).
If a marriage is to be dissolved by a notary, it is worth pointing out that the truthfulness of documents certified in accordance with the statutory procedure cannot be called into question. They may be contested by bringing a separate action.
Any complaint that a certified notary has acted incorrectly in the performance of his or her duties, or has refused to perform his or her duties, must be submitted to the regional court to whose supervision the notary is subject within one month from the day when the notary performed the action complained of or refused to perform the action demanded.

14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

A judgment on divorce, legal separation or marriage annulment given in another Member State has to be recognised in Latvia under Council Regulation (EC) No 2201/2003. That Regulation states that a judgment given in a Member State is to be recognised in other Member States without any special procedure being required.
In order to secure the recognition in Latvia of a judgment on divorce, legal separation or marriage annulment given in another Member State, any interested party may, in compliance with the procedures provided for in Council Regulation (EC) No 2201/2003, apply for a decision that the the judgment is to be recognised, or not to be recognised, by submitting an application for recognition (*atzīšana*) or for recognition and enforcement (*atzīšana un izpildīšana*) of the foreign judgment to the district or city court of the place where the judgment is to be enforced, or of the defendant's declared place of residence, or failing that the court of the defendant's de facto place of residence.
A decision on the recognition or the recognition and enforcement of a judgment given by a foreign court is taken by a judge sitting alone, on the basis of the application submitted and the documents attached thereto, within 10 days of the day of submission of the application, without summoning the parties. The judge may refuse to recognise the judgment in Latvia only on one of the grounds of non-recognition listed in Article 22 of Council Regulation (EC) No 2201 /2003. These allow a judgment given in another Member State to be refused recognition in Latvia in the following cases:
if such recognition is manifestly contrary to the public policy of Latvia;
where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the defendant to arrange for his or her defence unless it is determined that the defendant has accepted the judgment unequivocally;
if the judgment is irreconcilable with a judgment given in proceedings between the same parties in Latvia;
if the judgment is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Latvia.
Under Section 638 of the Civil Procedure Law, an application regarding the recognition of a judgment must indicate the following:
the name of the court to which the application is submitted;
the applicant's given name, surname, personal identity number (or, failing that, other identification data) and address for correspondence with the court; in the case of a legal person, the name, registration number and registered office;
the defendant's given name, surname, personal identity number (or, failing that, other identification data), declared place of residence and any declared additional address, or, failing that, the defendant's de facto place of residence; in the case of a legal person, the name, registration number and registered office;

the subjectmatter of the application and the circumstances upon which the application is based;
the applicant's request that the judgment given by the foreign court be recognised, or recognised and enforced, in whole or in part;
the authorised representative and his or her address, if a representative has been appointed to handle the case in Latvia;
a list of the documents appended;
the date and time that the application was drawn up.
Under Article 37 of Council Regulation (EC) No 2201/2003 an application regarding the recognition of a judgment given by a court of another Member State must be accompanied by the following:
a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
if the judgment was given in default, a document which establishes that the defendant was served with the document instituting the proceedings (for divorce, legal separation or marriage annulment); alternatively, the applicant may submit a document indicating that the defendant has unequivocally accepted the judgment given in default;
a certificate issued by a competent authority or a court of the Member State of origin of the judgment in accordance with Article 39 of Council Regulation (EC) No 2201/2003.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

Under Council Regulation (EC) No 2201/2003, there are two ways in which an interested party may object to the recognition in Latvia of a judgment given in another Member State regarding divorce, legal separation or annulment of marriage.
Firstly, under Article 21 of Council Regulation (EC) No 2201/2003, any interested party may apply to a court for a decision that a judgment given in another Member State should not be recognised in Latvia.
Secondly, the defendant in a case concerning recognition of a judgment may contest recognition of the judgment in Latvia even when another person has already submitted an application for recognition of the judgment, and where on the basis of that application the district or city court has already recognised the judgment. The defendant may raise objections to the recognition in Latvia of a judgment given in another Member State by challenging the district or city court's decision recognising the judgment. Under Article 33 of Council Regulation (EC) No 2201/2003, a district or city court's decision recognising a judgment given by a court of another Member State may be challenged before a regional court by submitting an ancillary objection (*blakus sūdzība*) to the court that took the decision, and sending the application to the respective regional court. The defendant or the applicant may bring a regional court's decision on the recognition of a judgment before the Senate of the Supreme Court (*Augstākās tiesas Senāts*) by submitting an ancillary objection to the court that took the decision and sending the application to the Civil Cases Division of the Senate of the Supreme Court.
The defendant may object to the recognition of a judgment given in another Member State only on the basis of one of the grounds of non-recognition set out in Article 22 of Council Regulation (EC) No 2201/2003 (see question 14).

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

The procedure for determining the law applicable is laid down in
Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III Regulation)
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