Matrimonial property regimes

Portugall

1 Is there a statutory matrimonial property regime in this Member State? What does it provide?

Yes. In principle, spouses are free to choose their matrimonial property regime by entering into a marriage contract known as a prenuptial agreement (*convenção antenupcial*) as provided for in Article 1698 of the Portuguese Civil Code (*Código Civil*).

However, if the spouses do not choose a property regime or in certain cases where the prenuptial agreement is invalid, the statutory matrimonial property regime that applies by default is joint ownership of the property acquired after marriage in accordance with Articles 1717 and 1721 of the Civil Code.

In this case, Articles 1721 to 1731 of the Civil Code lay down which property is jointly owned and which property is separately owned.

By way of exception, in certain circumstances set out in Article 1720 of the Civil Code, the separate property regime is mandatory.

2 How can spouses arrange their matrimonial property regime? What are the formal requirements in this case?

Spouses can arrange their matrimonial property regime by entering into a prenuptial agreement, whereby they can choose one of the three property regimes set out in the Civil Code or make different arrangements within the limits of the applicable law (Article 1698 of the Civil Code).

The three matrimonial property regimes set out in the Civil Code are:

joint ownership of the property acquired after marriage (*regime da comunhão de adquiridos* – Articles 1721 to 1731 of the Civil Code);

joint ownership of all property (*regime da comunhão geral de bens* – Articles 1732 to 1734 of the Civil Code);

separation of property (*regime da separação de bens* – Articles 1735 to 1735 of the Civil Code).

As indicated above, spouses can agree on different arrangements within the limits of the applicable law. This will be the case where the matrimonial property regime is joint ownership of property acquired after marriage, but the spouses agree, in a prenuptial agreement, that a specific immovable property acquired by one of them prior to the marriage (for example, a family home) will become a jointly owned property after the marriage because they want both of them to be responsible for the loan when the property is encumbered by a mortgage.

The formal requirements are that the prenuptial agreement must take the form of an authentic document drawn up before a notary (public deed) or a statement made before a registry office official (Article 1710 of the Civil Code and Articles 189 to 191 of the Civil Register Code (*Código do Registo Civil*)).

In principle, the prenuptial agreement must be concluded before the marriage. In accordance with Article 1714 of the Civil Code, the prenuptial agreement and the matrimonial property regime cannot be varied after the marriage, except as otherwise provided by Article 1715 of the Civil Code.

The legal provisions applicable to prenuptial agreements can be found in Book IV, Title II, Chapter IX, Section III of the Civil Code (Article 1698 to Article 1716).

The legal provisions applicable to marital donations and gifts between spouses can be found in Book IV, Title II, Chapter X, Sections I and II of the Civil Code (Articles 1753 to 1766).

3 Are there restrictions on the freedom to arrange a matrimonial property regime?

There are two situations set out in Article 1720 of the Civil Code in which the separate property regime is mandatory: when the marriage is contracted without going through the procedures to be observed prior to marriage, and when the spouses are 60 years old or older.

Otherwise, spouses are free to choose their arrangements within the limits of the applicable law.

4 What are the legal effects of divorce, separation or annulment on the matrimonial property?

Under Article 1688 of the Civil Code, the marital relationship ends with divorce or annulment, without affecting maintenance arrangements. Legal separation does not dissolve the marriage, but the legal effects are very similar to those of divorce, as explained below.

With regard to the division of property and payment of debts, Article 1689 of the Civil Code provides that, once the matrimonial property regime has ended, the spouses or their respective heirs are entitled each to receive their personal property and their share of any jointly owned property. A spouse who owes a debt towards the marital estate must settle that debt.

With regard to debts, joint debts are paid from the jointly owned property first, and only then will the remaining debts be settled. If one of the spouses owes a debt to the other spouse, they must pay that debt from their share of the jointly owned property. Where there is no jointly owned property, the spouse must pay the debt from their personal property.

Legal effects of divorce

The effects of divorce are set out in Articles 1788 to 1793-A of the Civil Code.

The general principle is that divorce dissolves the marriage and has the same legal effects as dissolution by death.

As regards succession, Article 2133 of the Civil Code provides that after a divorce judgment the former spouse loses the status of legal heir even where the divorce judgment is delivered after the other spouse’s death.

Under Portuguese law, as a rule, the matrimonial property is divided only after the divorce proceedings have ended, and not while they are pending.

However, in the case of divorce by mutual consent before the Civil Registry Office, spouses can immediately agree on how the matrimonial property will be divided (Article 272-A of the Civil Register Code).

As regards the effects of divorce, the general rule is that:

Divorce takes effect from the date when the divorce judgment becomes final.

The property effects of divorce as between spouses are as follows:

Divorce has retroactive effects on the property arrangements between the spouses from the date when the divorce proceedings were brought.

However, at the request of either spouse, the property effects of their divorce can be backdated to the date when the spouses stopped cohabiting, if this date has been established in the proceedings.

In the division of property following divorce, neither spouse can receive more than they would have received if the marriage had been contracted under the regime of joint ownership of the property acquired after marriage.

Each spouse loses all the benefits received or to be received as a result of the marriage (e.g. donations between spouses; gifts made by a third person to the couple with a view to their marriage); in the latter case, the person making the gift can decide that the benefit will accrue to the couple’s children.

A spouse who has suffered harm is entitled to seek damages from the other spouse under general civil-liability rules and in the ordinary courts.

Where the grounds for divorce relate to a mental disorder of one of the spouses, the spouse applying for the divorce must compensate the other spouse for the non-pecuniary damage caused by the dissolution of the marriage. This claim must be brought during the divorce proceedings.
Each spouse can ask the court to grant the right to continue renting the family home, whether it is jointly owned or owned by the other spouse.
Pets are entrusted to one or both spouses, taking into account the interests of each spouse and of their children and the welfare of the animal.
The property effects of divorce on relations between the spouses and third parties are as follows:
The spouses can only assert the property effects of divorce against third parties after the date when the judgment is registered in the Civil Register.
With regard to maintenance obligations between former spouses, Articles 2016 and 2019 of the Civil Code provide that:
As a general rule, after divorce, each former spouse has a duty to support themselves.
Each former spouse has a right to maintenance, regardless of whether or not the divorce was by mutual consent, but the right to maintenance can be denied for reasons of fairness.
The right to maintenance ends if the beneficiary remarries, enters into cohabitation or disqualifies themselves by improper conduct.
Effects of legal separation
For legal separation, Article 1794 of the Civil Code refers to the provisions on divorce, as set out above, with one exception: legal separation does not dissolve the marriage.
Aside from this one exception, under Articles 1795-A, 2016 and 2133 of the Civil Code, the effects of legal separation on matrimonial property, maintenance obligations and succession are the same as the effects of divorce.
Legal effects of annulment
There is a difference between annulment and void marriage.
In the case of a void marriage under Articles 1628 to 1630 of the Civil Code (e.g. in the complete absence of consent by one or both spouses), the void marriage produces no effects.
In the case of an annulment of a civil marriage under Article 1631 of the Civil Code (e.g. in the event of legal impediments or consent vitiated by error), the effects laid down by Article 1647 of the Civil Code are as follows:
If both spouses acted in good faith, the marriage produces effects between them and vis-à-vis third parties until the annulment judgment becomes final.
If only one spouse acted in good faith, then only that spouse can benefit from the effects of the marriage. In addition, the spouse acting in good faith can assert the effects of the marriage against third parties, provided that they reflect the relationship between the spouses.
These rules apply to the annulment of Catholic marriages granted by ecclesiastical authorities until the judgment has been registered in the Civil Register, provided that the Catholic marriage was registered there.
Articles 1649 and 1650 of the Civil Code lay down special property sanctions in the event of the marriage of a minor or a marriage in breach of legal impediments, such as the following:
Minors who marry without the necessary authorisation are deemed minors until the age of majority for the purposes of the administration of property owned at the time of the marriage and acquired after the marriage by gift. However, any necessary maintenance will be awarded to them from the income from this property.
The parents or legal representative of the minor, and not their spouse, will administer this property until the minor reaches the age of majority.
This property cannot be used, either during the marriage or after its dissolution, to settle the debts of either spouse before the minor reaches the age of majority.
If the impediments laid down in Article 1604(c) and (d) of the Civil Code are breached (e.g. an impediment resulting from a blood relationship), the spouse in breach cannot receive any benefit by gift or will from the other spouse.

5 What are the effects of death of one of the spouses on the matrimonial property regime?

The matrimonial property regime ends on death, as set out in Article 1788 of the Civil Code.
Jointly owned property must be divided. The deceased's property includes their personal property and, as applicable, their share of the jointly owned property of the spouses, in accordance with Article 2024 of the Civil Code.
As a general rule, the surviving spouse is the legal heir and benefits from a reserved portion in the succession, regardless of whether or not there is a will (Articles 2131 and 2133 or 2158 and 2159 of the Civil Code, as applicable).
In addition, under the terms of Article 2103-A of the Civil Code, when the property is divided, the surviving spouse has the right to be granted use of the family home, its contents and its furniture. Where this exceeds their portion in terms of both the succession and the jointly owned property, the surviving spouse must compensate the other heirs.
However, in accordance with Articles 1698 and 1700(3) of the Civil Code, where the matrimonial property regime is separation of property, the spouses can waive their status as heir in the prenuptial agreement.

6 Which authority has the competence to decide in a case relating to a matrimonial property regime?

Courts, registry offices and notaries have the authority to decide on matters concerning matrimonial property, as appropriate in the situations indicated below.
In Portuguese law, prenuptial agreements and matrimonial property regimes are in principle immutable in accordance with Article 1714 of the Civil Code. So if the future spouses wish to choose a property regime and depart from the statutory property regime, the property regime must be established in a prenuptial agreement (Article 1710 of the Civil Code), which must be concluded before the spouses marry. During the marriage, the spouses may not enter into an agreement altering or terminating the matrimonial property regime. The exceptions to this principle are laid down in Article 1715 of the Civil Code (*e.g.* court-ordered separation of property or legal separation of the spouses).
The arrangements governing the property regime must be set out in a prenuptial agreement (Article 1698 of the Civil Code), the conclusion of which must comply with requirements as to form and publication. Under Article 1710 of the Civil Code, prenuptial agreements must take the form of a statement made before a civil registrar or a public deed drawn up before a notary, failing which they are invalid. In order to produce effects vis-à-vis third parties, prenuptial agreements must be registered as laid down in Article 1711(1) of the Civil Code. The heirs of the spouses and other parties to the prenuptial agreement are not deemed to be third parties for this purpose. Registering the agreement does not obviate the need to enter in the property register facts subject to registration therein. There is also a time limit to be complied with: the prenuptial agreement must be signed before the marriage, but not more than one year must elapse between signing the agreement and contracting the marriage, otherwise the agreement lapses in accordance with Article 1716 of the Civil Code.
The above information can be consulted in the guide *Os Regulamentos Europeus: impacto na actividade registal e notarial* (The European Regulations: Impact on the Activity of Registry Offices and Notaries), available in Portuguese and English at https://www.redecivil.csm.org.pt/os-regulamentos-europeus-impacto-na-atividade-registal-e-notarial/.
In the event of divorce, legal separation or annulment of the marriage, the authority responsible for dealing with the division of property and therefore applying the relevant property regime to the division will depend on whether or not the spouses agree on how the matrimonial property is to be divided.

If the spouses agree on how the matrimonial property is to be divided, in the event of divorce or legal separation the Civil Registry Offices are responsible. In this case, there are two possible scenarios: in the event of divorce or legal separation by mutual consent, Civil Registry Offices handle the divorce or legal separation and, as part of these proceedings, can approve the property division agreement, address the payment of tax obligations and make any changes to the property register arising from the division of property; in the event of contested divorce or legal separation, for which the Family and Juvenile Courts (*Tribunais de Família e Menores*) have jurisdiction, if the parties agree on the division of property after the divorce or separation, then Civil Registry Offices handle the division, tax obligations and any changes to the property register arising from the division of property. The relevant rules are set out in Articles 272-A and 272-B of the Civil Register Code. Practical information on this service and its costs is available at https://justica.gov.pt/Servicos/Balcao-Divorcio-com-Partilha.

Alternatively, if a property division agreement is reached after the divorce or legal separation, the parties can sign a public deed to this effect before a notary. In this case, the notary is responsible for registering the immovable property within two months and the parties must meet their tax obligations within the same time limit (Articles 8-B and 8-C of the Property Register Code (*Código do Registo Predial*)).

When the spouses cannot reach agreement on the division of property in the event of divorce, legal separation or annulment, proceedings for the division of property known as 'inventory proceedings' (*processo de inventário*) must be brought by either party. In the situations listed in Article 1083(1) of the Code of Civil Procedure (*Código de Processo Civil*) (e.g. when the inventory proceedings are ancillary to other judicial proceedings), the courts have exclusive jurisdiction over inventory proceedings. In other situations, in accordance with Article 1083(2) of the Code of Civil Procedure, inventory proceedings may, at the applicant's choice or by mutual agreement between all parties concerned, be brought before a court or a notary on the list referred to in Article 1 of the Legal Regime for Inventory Proceedings (*Regime do Inventário Notarial*) published in Annex to Law No 117/19 of 13 September 2019. Notaries handle the case using the case management system https://www.inventarios.pt/.

7 What are the effects of the matrimonial property regime on legal relationships between a spouse and a third party?

Articles 1682 and 1683 of the Civil Code provide that, in some cases, a spouse must have the other spouse's consent to enter into certain contracts with a third party. This depends on the matrimonial property regime (e.g. separation of property or joint ownership of property), the powers of administration resulting from that regime (e.g. joint administration of certain property), the nature of the property (e.g. family home, joint property) or the nature of the contract (e.g. contract of sale and purchase, acceptance of gifts).

Under Article 1687 of the Civil Code, lack of consent from the other spouse has the following consequences for third parties:

If one of the spouses enters into a contract that infringes Civil Code Articles 1682(1) and (3) (e.g. transfer of ownership of certain movable property), 1682A (e.g. transfer of ownership of immovable property under joint ownership of property regimes, transfer of ownership of the family home under any matrimonial property regime), 1682B (e.g. cancellation of the lease on the family home) or 1683(2) (waiver of a succession or legacy), the other spouse or their heir can seek the cancellation of that contract.

If a spouse transfers ownership of unregistered movable property or enters into a contract that creates a charge over that property, without the other spouse's consent where such consent is necessary, the cancellation referred to above cannot be relied on against a third party who acted in good faith.

If one of the spouses unlawfully transfers ownership of property belonging solely to the other spouse or enters into a contract that creates a charge over that property, the contract will be null and void and the price must be repaid, in particular under Articles 892 to 904 of the Civil Code, which set out the consequences of the seller's lack of legitimacy.

8 A short description of the procedure for the division, including partition, distribution and liquidation, of matrimonial property in this Member State.

Where there is a property division agreement, it may be approved by the Civil Registry Offices or set out in a public deed signed before a notary, as appropriate to the situations mentioned above in reply to question 6.

Where no agreement is reached on the division of the property, inventory proceedings are initiated at the court or with a notary, as already described in reply to question 6.

Judicial inventory proceedings are governed by the provisions of Book V, Title XVI (Articles 1082 to 1130) of the Code of Civil Procedure, which apply, with the necessary modifications, to notarial inventory proceedings (Article 2 of the Legal Regime for Inventory Proceedings published in the Annex to Law 117/19 of 13 September 2019).

Inventory proceedings for the division of the marital property involve the following stages: initial stage; opposition and verification of liabilities; preliminary hearing of the interested parties; preliminary order and meeting of the interested parties (*conferência de interessados*); division plan and ratifying judgment; final stages.

9 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

Anyone applying for registration of immovable property must submit a registration application to the Property Registry Office and attach documentary evidence. The documents normally required are: public deed; legal description of the property (*caderneta predial*); proof of payment of stamp duty and municipal property tax; removal of mortgage, where applicable. If these documents are already registered with the Property Registry Office, they need only be referred to.

In addition, if the application is submitted by a representative of the applicant, their power of attorney must be included with the application. However, under Article 39 of the Property Register Code, lawyers, notaries and legal agents (*solicitadores*) do not need to include a power of attorney in order to apply for registration.

Applicants who have a digital certificate (citizens with a Portuguese citizen's card, lawyers, notaries and legal agents duly registered with the respective professional associations) can submit an application to register immovable property and add the necessary documents online. Applicants without a digital certificate can submit the application in person at the Property Registry Office or send it by post.

Information on the registration procedure and its costs is available at:
https://justica.gov.pt/Servicos/Pedir-registo-predial

The current versions of the Portuguese Civil Code and other legislation referred to above can be consulted in Portuguese at:
Código Civil
Código do Registo Civil
Código do Registo Predial
Código de Processo Civil
Regime do Inventário Notarial

Final note:

This factsheet contains general information; it is not exhaustive and has no binding effect on the Contact Point, the European Judicial Network in Civil and Commercial Matters, the courts or any other user. The most up-to-date version of the applicable law must always be consulted. This information is not a substitute for taking legal advice from a legal professional.

Last update: 06/10/2023
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