

Strona główna>Sprawy rodzinne i dziedziczenie>Własność w małżeństwie i związkach partnerskich>**Małżeńskie ustroje majątkowe**

**Małżeńskie ustroje majątkowe**

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Ostatnia aktualizacja: 30/05/2023

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**Matrimonial property regimes - Czechia**

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

Yes.

Under Czech law, whatever belongs to the spouses, has an asset value and is not excluded from the legal regime is considered to be matrimonial property. Matrimonial property is subject to the statutory regime, to a specific agreed regime, or to a regime laid down in a court ruling.

Under the statutory regime, whatever one spouse acquired, or both of the spouses acquired jointly, during their marriage is considered to be joint property, except for the following:

- a) assets serving the personal needs of one of the spouses;
- b) assets acquired by gift, inheritance or bequest to just one of the spouses, unless the person giving the gift, or the testator, expressed a different wish;
- c) assets received by one of the spouses as compensation for non-material damage to their natural rights;
- d) assets acquired by one of the spouses by means of a legal process relating to their sole ownership;
- e) assets acquired by one of the spouses as compensation for damage, destruction or loss of their exclusive property.

Under the statutory regime, any profits from assets belonging solely to one of the spouses is joint property.

Under the statutory regime, any debts taken on during the marriage are joint property, unless they relate to assets belonging solely to one of the spouses, and only in relation to the part that exceeds the value of the profits from these assets, or unless they were taken on by one of the spouses without the agreement of the other. This does not concern the acquisition of routine purchases or basic necessities for the family.

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

Engaged or married couples may agree on a property regime that differs from the statutory regime. The agreement may consist of a separate ownership regime or of a regime that limits the establishment of joint property to the period before the marriage ends, or it may extend or limit the scope of joint property defined in the statutory regime. The agreement may contain any arrangements relating to any item of property, unless prohibited by law. The agreement may in particular cover the scope or content of the regime, or the period during which the statutory regime or other joint property regime is applicable, or individual items of property or groups thereof. The agreement may classify future joint property differently to the statutory regime. The agreement may also provide for a property regime in the event of the end of the marriage.

An agreement on a matrimonial property regime must be in the form of an official record (i.e. it must have been certified by a notary).

When an engaged couple enter into a matrimonial property regime agreement, this agreement becomes effective on the date of the marriage.

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

The agreement may contain any arrangements relating to any item, unless prohibited by law.

The agreement may not exclude or amend any provisions on customary household furnishings, unless one of the spouses has left the household and refuses to return. The agreement may not prevent a spouse from providing for their family. The agreement may not, by virtue of its content or purpose, affect the rights of any third party, unless that party has so consented in the agreement. Any agreement concluded without the consent of the third party has no legal effect in relation to that party.

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

Matrimonial property ceases to be such upon the end of the marriage; this happens when a spouse dies, when a spouse is declared dead, or upon divorce. When matrimonial property is dissolved, the residual property must be distributed.

If the marriage is annulled, it is regarded as not having been entered into. After annulment, the couple's property rights and obligations are treated in the same way as property rights and obligations following a divorce.

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

The matrimonial property is dissolved and is then distributed. The remaining spouse is the statutory first- and second-category heir of the deceased.

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

A court.

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

Whatever either of the spouses acquired before the marriage (*inter alia*) is not considered to be matrimonial property under the statutory regime. Under the statutory regime, any debts taken on during the marriage are joint property, unless they relate to assets belonging solely to one of the spouses, and only in relation to the part that exceeds the value of the profits from these assets, or unless they were taken on by one of the spouses without the agreement of the other. This does not concern the acquisition of routine purchases or basic necessities for the family.

In matters concerning joint property or parts thereof that are not considered routine, the spouses must act together in legal proceedings, unless one spouse acts with the consent of the other. If a spouse refuses to grant consent without good reason and against the interests of the matrimonial pair, of the family, or of the family household, or is unable to express their will, the other spouse may apply for a court to grant consent in their place.

If a spouse acts in legal proceedings without the consent of the other spouse where such consent was required, the other spouse may have these proceedings declared invalid. If a part of the joint property is to be used for commercial purposes by one of the spouses, and if the asset value of that part of the property exceeds an amount commensurate with the material circumstances of the spouses, the consent of the other spouse is required on the first occasion this property is used in this way. If the other spouse is excluded from these proceedings, he or she may have them declared invalid. If a part of the joint property is to be used to acquire a share in a trading company or a cooperative, or if acquiring such a share leads to the guaranteeing of a company's or a cooperative's debts to an extent exceeding that commensurate with the material circumstances of the matrimonial pair, the consent of the other spouse is required; if the other spouse is excluded from these proceedings, he or she may have such proceedings declared invalid.

If the spouses have negotiated an agreed property regime, the agreement may not, by virtue of its content or purpose, infringe the rights of any third party, unless that party so consents in the agreement. Any agreement concluded without the consent of the third party has no legal effect in relation to that party.

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

If joint property is dissolved or liquidated, or if its scope is reduced, the previously joint obligations and rights are discharged by means of distribution. If the reduced, dissolved or liquidated property is not distributed, the rules on joint property are applied to them as appropriate.

The distribution of the property may not affect the rights of any third party. If any third person's rights have been affected by the distribution, that person may demand that a court find that the distribution has no effect in relation to them. Debts may only be distributed between spouses.

The preference is for an agreement to be reached between the spouses to distribute the joint property, if this is possible (in the event of divorce or a reduction in the joint property, for instance). A distribution agreement always takes effect as of the day on which the joint property was reduced or dissolved or liquidated, irrespective of whether the agreement was made before or after the reduction, dissolution or liquidation of the joint property.

The distribution agreement must be in written form if it was concluded during the marriage or if any item to be distributed requires an ownership transfer agreement in written form (e.g. immovable items). If the distribution agreement does not need to be in written form and if one of the spouses arranges it, the other spouse must submit to that spouse a confirmation of the distribution.

If the spouses fail to agree on a distribution settlement, either of them may apply for a court ruling. The court must make a distribution ruling in accordance with the situation that prevailed when the matrimonial property was reduced or dissolved or liquidated.

The following rules are applied in the distribution:

- a) the shares of both spouses in the assets to be distributed must be the same;
- b) each spouse must reimburse any resources from the joint assets spent on his or her exclusive property;
- c) each spouse has the right to require compensation for any resources from his or her exclusive property that were spent on joint assets;
- d) account must be taken of the needs of dependent children;
- e) account must be taken of how each of the spouses cared for the family, especially how they cared for the children and the family household;
- f) account must be taken of how each spouse contributed to the acquisition and maintenance of joint assets.

If, within three years of the reduction, dissolution or liquidation of the joint property, there has been no distribution of the assets that formed part of that property, or no distribution agreement has been reached, or there has been no application for the court to rule on distribution, the spouses or former spouses are deemed to have settled the distribution as follows:

- a) tangible movable assets are the property of the spouse who uses them, as sole owner, to provide for their own needs or those of their family or their family household;
- b) other tangible movable and immovable assets are the joint property of both spouses and each has an equal share in this property;
- c) other property rights, liabilities and debts attach to both spouses and they have an equal share in these.

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

Legal proceedings establishing or transferring a right in rem to immovable assets, or proceedings amending or revoking such rights, must be in written form. If the transfer involves ownership of immovable assets that are entered in a public register, the change in ownership takes effect by means of an entry in that register.

Last update: 14/12/2020

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#### **Matrimonial property regimes - Germany**

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

Who owns the property acquired during a marriage and how this property is divided after the end of the marriage is always determined by the particular family-law property regime. The effects of marriage on property rights are governed by the regulations on matrimonial property regimes in the German Civil Code (*Bürgerliches Gesetzbuch* – BGB). The BGB recognises the following property regimes: community of accrued gains (*Zugewinnngemeinschaft*), separation of property (*Gütertrennung*) and 'optional community of accrued gains' (*Wahl-Zugewinnngemeinschaft*).

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

Community of accrued gains applies unless the married couple agree otherwise by means of a notarial marriage contract. Community of accrued gains means separation of property during the marriage and equalisation of gains accrued during the marriage once the property regime has ended.

By contrast, separation of property must be agreed by the spouses by means of a notarial contract. The separation of property means complete separation of the spouses' respective assets, without any equalisation of accrued gains at the end of the marriage. Each spouse keeps as their own the assets they acquired before and during the marriage. Separation of property may also arise without an explicit contract between the spouses, for example if the property regime is rescinded or excluded under the marriage contract without another property regime being agreed at the same time.

Community of property must likewise be agreed by the spouses by means of a notarial contract. Under community of property, the assets owned prior to the marriage and the assets acquired during the marriage usually become the common property of the couple (*Gesamtgut* - jointly owned property). In addition to that, the spouses may each have their own separate property (*Sondergut*), which does not form part of the common marital property. These are things that

cannot be transferred by legal transactions, for example non-attachable claims or a share in a partnership. Finally, each spouse may reserve certain items as separate property. Spouses may also establish a special form of community of property, namely community of acquired assets (*Errungenschaftsgemeinschaft*). To this end, they must declare in the marriage contract that all assets acquired before the marriage are to be reserved property.

The optional community of accrued gains is a Franco-German property regime designed to avoid potential problems in legal relations between a French and a German national because of the differences in matrimonial property regimes. If the spouses opt for this type of property regime, their assets will remain separate during the marriage, as in the case of the German community of accrued gains regime. Only at the end of the property regime is the increase in the value of the couple's property equalised between the two spouses. Despite the similarity in content with the German community of accrued gains, the optional community of accrued gains has a number of special features influenced by arrangements in France. For example, damages for pain and suffering and any random increases in the value of real estate (e.g. via zoning as building land) are not taken into account in the equalisation of accrued gains.

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

If the spouses feel that the statutory property regime - community of accrued gains - is not suitable for their marriage, they may enter into a notarial marriage contract. In that contract they can agree on separation of property or community of property, or make arrangements other than the statutory ones within a specific property regime. The contract may also specify arrangements on pension splitting or maintenance.

When entering into a marriage contract, however, care should be taken that the arrangements provided for are actually valid. For example, if a marriage contract unilaterally disadvantages one of the spouses and certain other circumstances are present, it may be considered contrary to accepted principles of morality and therefore null and void. In that case, the statutory regulations which are theoretically excluded by the marriage contract continue to apply. Case law in this area is very diverse. Whether an arrangement is really contrary to accepted principles of morality and therefore null and void, or whether it must be adjusted, can ultimately be decided only on a case-by-case basis.

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

Under the statutory property regime - community of accrued gains - equalisation of the accrued gains takes place if the property regime is ended (e.g. by the death of one of the spouses, by divorce or by contractual agreement on a different property regime). The equalisation of the accrued gains means that the spouse who, during the marriage, acquired more assets than the other one, has to compensate that spouse by half of the difference in accrued gains in the form of a cash payment.

Under the community of property regime, the common property is divided in the event of a divorce, following the settlement of any liabilities. Each of the spouses is, as a rule, entitled to half of the surplus that remains. If, on the other hand, the spouses have agreed separation of property, there will be no equalisation following the end of the matrimonial regime because of the complete separation of the assets of the two spouses.

The right to maintenance is independent of the matrimonial property regime. If the spouses are living apart, without having divorced, the spouse in need is generally entitled to maintenance from the economically-able spouse. The claim for maintenance will only exist until the divorce comes into effect. Following divorce, however, the spouse in need may, under certain circumstances, be able to demand post-marital maintenance. The law recognises the following entitlements to maintenance: maintenance for childcare, maintenance due to age, illness or infirmity, maintenance because of unemployment, top-up maintenance, maintenance for the duration of education, further training and retraining, and maintenance for reasons of equity.

Where there are grounds for annulment of a marriage, there may be entitlements to compensation and maintenance in individual cases even after the annulment.

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

In a community of accrued gains, the accrued gains are equalised on the death of one spouse in the form of a flat-rate increase of one quarter in the statutory portion of the inheritance (*gesetzlicher Erbteil*), irrespective of whether the deceased spouse actually accrued any gains during the marriage. If the surviving spouse is not an heir or rejects the inheritance, they may demand equalisation of the gains that were actually accrued and also claim the compulsory minimum share (*kleiner Pflichtteil*). This compulsory minimum share is calculated on the basis of the statutory portion of the inheritance, whereby the flat-rate one quarter of accrued gains is not taken into account.

If the spouses agreed the separation of property, there will be no flat-rate equalisation of accrued gains at the end of the marriage. The generally applicable legal order of succession applies.

Under the community of property regime, the estate comprises half of the common property, the reserved property and the separate property of the deceased. The share of inheritance of the surviving spouse is determined according to the general provisions.

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

The family court is competent for matters involving property law, i.e. proceedings that concern claims based on matrimonial property law, in particular equalisation of spouses' accrued gains.

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

A married person is typically liable only for their own debts and only with their own assets. This excludes transactions for the reasonable coverage of the family's everyday needs.

In a community of accrued gains, however, there are exceptions to the principle that a spouse is free to dispose of their own property. If one of the spouses wishes to dispose of (sell, give away etc.) all or nearly all of their own assets, they need the consent of the other spouse. The same applies if a married person wishes to dispose of objects which are owned solely by that person but form part of the married couple's household.

On the other hand, under the separation of property regime, each spouse may freely dispose of all their entire assets and does not need the consent of the other spouse to dispose of items forming part of the household.

If the spouses have agreed the community of property regime, they will as a rule manage their common property jointly, unless the marriage contract assigns management to one spouse. The common property is only liable for an obligation arising from a legal transaction that a spouse has entered into during the community of property if the other spouse has agreed to the legal transaction, or if the legal transaction is effective for the common property even without their consent.

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

The matrimonial home and the household items may be distributed while the spouses are living apart or after the divorce. If co-ownership has otherwise arisen and the spouses are unable to agree, the item is to be auctioned and the proceeds divided up.

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

If the spouses opt for community of property as the matrimonial property regime, they must submit the notarial marriage contract to the land register and apply for the land register to be revised. In all other cases, i.e. if the spouses do not opt for the community of property as the matrimonial property regime, the land register does not have to be revised.

Last update: 02/11/2023

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## **Matrimonial property regimes - Spain**

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

#### **1.1 Legal regime: Common civil law and the particular law of certain Autonomous Communities**

It would be incorrect to speak of a single law or matrimonial property regime in Spain. Certain Autonomous Communities, alongside the State, have jurisdiction over civil law (although not all include matrimonial property regimes among the matters they can regulate). This means that all Spanish citizens have a specific regional citizenship (*vecindad civil*) in addition to their Spanish nationality. This determines whether they are subject to the common civil law or to a specific or regional civil law (Article 14 of the Civil Code).

The regions with their own civil law include Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia and Valencia (although the latter does not regulate matrimonial property regimes since the law it passed was declared unconstitutional by the Constitutional Court (Tribunal Constitucional)). Thus, citizens of the remaining Autonomous Communities have 'common' regional citizenship (*vecindad civil común*) (Article 14 of the Civil Code regulates how regional citizenship is acquired).

- In the case of marriage between Spanish citizens (with no international connection), to identify the law applicable to the matrimonial property regime and whether to apply common law or the law of a particular Autonomous Community, it is necessary to turn to the rules of interregional law contained in the Preliminary Title of the Civil Code (Título Preliminar del Código Civil) ((Articles 9(2) and 16 of the Civil Code).

The regime under the Civil Code applies to spouses with common regional citizenship.

If the spouses do not have such common regional citizenship, the applicable law is that relating to the regional citizenship or habitual residence of one of the spouses, jointly chosen in an authentic document issued prior to the celebration of the marriage. Failing this, the applicable law is that of the place of common habitual residence immediately following the celebration of the marriage. Finally, in the absence of such a residence, the applicable law is that of the place where the marriage is celebrated.

In exceptional cases, where the spouses have different regional citizenship, if both regions have as their matrimonial property regime separation of property (and the regime applicable according to the abovementioned rules was different from that), the separation of property regime found in the Civil Code applies.

- When one of the spouses is not Spanish or the married couple has a connection to another country, the applicable law is determined according to the provisions of Article 33 of Regulation (EU) 2016/1103, which is understood in such a way that, in relation to Spanish citizens, where the Regulation refers to nationality as a criterion of connection, this is regarded as a reference to regional citizenship.

However, regional citizenship is a concept that only applies to Spanish citizens (Article 15 of the Civil Code); therefore, since it does not apply to foreigners, Article 33(2) comes into play, replacing the law of nationality with the law of closest connections, i.e. the law of the territorial unit with which the spouses have the closest connections.

#### **1.2 Matrimonial property regimes applicable in the absence of an agreement between the spouses under the Civil Code and the particular laws of the Autonomous Communities**

With regard to specifying the matrimonial property regime in cases where there is no agreement between the spouses, supplementary law applies, which varies depending on the applicable internal civil law:

Civil Code (applied unless the applicable law is that of Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia): community of property (*sociedad de gananciales*) (Article 1344 et seq. of the Civil Code). Under this regime, the acquisitions and benefits obtained by either of the spouses become the joint property of both. Each spouse's personal property essentially includes property brought to the marriage and property acquired during the marriage free of charge or as replacement for personal property. The main residence acquired prior to marriage is covered by a special regime under which, in contrast to the other property acquired prior to marriage (which is always personal), payments made afterwards with joint funds convert the main residence proportionally into joint property. In case of doubt, property is presumed to be jointly owned. The liability regime of community property is regulated in the same way, and it includes property resulting from the regular exercise of a profession, artistic activity or trade. If there are debts incurred by only one spouse, initially only that person is liable with his or her own property; if this is insufficient, creditors may seize community property. However, in this case the other spouse can request the dissolution of the community of property, replacing the seizure of joint property by the share held by the debtor spouse; from that point on, the marriage falls under the separation of property regime. Community property is managed jointly (although on a day-to-day basis – domestic authority (*potestad doméstica*) – either of the spouses may manage it). Management of personal property is the responsibility of the spouse who owns the property (although there are special provisions where the family home is concerned, since although it may belong to just one spouse, the other spouse's consent is necessary or, failing that, judicial authorisation). Disposals of or encumbrances on community property require the consent of both spouses.

Aragon: community of property (*consorcio conyugal*) regulated in Articles 210 et seq. of the Aragon Regional Legal Code (*Código de Derecho Foral de Aragón*). Under this regime the acquisitions or benefits obtained by either of the spouses as a result of their work, activity or returns on their assets, become joint property. Each spouse's personal property essentially includes property brought to the marriage and property acquired during the marriage free of charge or as replacement for personal property. In case of doubt, property is presumed to be jointly owned. Under Aragon civil law, property acquired before marriage, including the main residence, is always personal, unless the cost has been wholly deferred and will be paid in full out of joint funds once the marriage begins. The system of liability for this property regime is regulated. Where debts are incurred by only one spouse, that person alone is liable with his or her own property; if this is insufficient and in the case of enforcement against joint property for debts that are not under joint responsibility, the debtor's spouse may exercise the right to safeguard the value of his or her share of the joint property, requesting the liquidation of the community of property solely for the purpose of determining the value that must be safeguarded, without dissolving it.

It should be mentioned that in Aragon the surviving spouse has a right to usufruct (*usufructo viudal aragonés*) which, while an inheritance right, is also a prospective right during life (*derecho expectante de viudedad*).

Catalonia: separation of property (Article 232(1) of the Catalonia Civil Code (*Código Civil de Cataluña*)). In this regime, each spouse is entitled to the ownership, enjoyment, management and free use of all his or her property. In case of doubt as to which of the spouses owns an asset or right, it is understood to belong to both in equal, indivisible parts. However, it is presumed that personal-use moveable property that is not extraordinarily valuable belonging to one of the spouses, and property directly intended for the exercise of his or her activity, are his or her exclusive property.

Balearic Islands: separation of property (Article 3 of the Balearic Islands Civil Law Code (*Compilación de Derecho Civil de las Islas Baleares*), as regards Mallorca; Article 65 as regards Menorca; and Article 67 for Ibiza and Formentera). Under this regime, property belonging to each spouse at the time of marriage is considered his or her personal property, as well as any property acquired by any means in the course of the marriage

Navarre: community of property (*conquistas*) (Law 87 et seq. of the Navarre New Legal Code (*Fuero Nuevo de Navarra*)). This is a regime in which the acquired property includes (among others) property acquired during the marriage through work or other activity by either of the spouses, as well as the proceeds of and returns on both joint and personal property. Personal property includes property that a spouse obtains by payment prior to the marriage, even if acquisition takes place during the marriage, or the cost or consideration is paid in full or in part with funds from the other spouse or from the

community of property, or acquisitions by way of profit prior to or during the marriage. All property not documented as personal is considered community property. Housing and furnishings are subject to a specific regime when acquired or totally or partially paid during the marriage, even when they result from prior ownership. In this case, if the payment was made with the sole, exclusive contribution of one of the spouses, it will be his or her personal property. If the payment was made with assets owned by both spouses, the property will belong indivisibly to them both in proportion to their respective contributions. If payment was made with the assets of one or both spouses in addition to assets from the community of property, indivisibility applies in proportion to each spouse's contribution and those of the community of property. The system of administration and liability for community property and personal property is also regulated. Where personal debts are incurred, if the debtor spouse's personal assets are insufficient, the creditor may request seizure of community property, which is notified to the other spouse. If he or she fails to respond and the community property is seized, enforcement takes place, and the debtor spouse is considered to have received the value of his or her share, when he or she makes payment with his or her own funds or when the community of property is liquidated. However, the other spouse may, within nine days of notification of the seizure, request that the seizure of community property be replaced by the remainder assigned to the debtor spouse on liquidation of the community of property. In this case, the seizure results in the dissolution and liquidation of the community of property, as well as the application of the separation of property regime from that point on.

**Basque Country:** when both spouses are residents of the lowlands of Bizkaia, Aramaio or Llodio, the marriage is regulated by the regional universal community of property regime (comunicación foral de bienes). When only one of the spouses has regional citizenship in the lowlands of Bizkaia, Aramaio or Llodio, this regime applies if it corresponds to the spouses' first common habitual residence; failing that, the regime of the place where the marriage was celebrated is applied. In other parts of the Basque Country, if there is no agreement, the matrimonial property regime is the community of property regime (sociedad de gananciales) found in the Civil Code (Article 127 et seq. of the Basque Country Regional Civil Law Act (Ley de Derecho Civil Foral del País Vasco). Under the regional universal community of property regime, all assets, rights and shares – regardless of their origin – belonging to either of the spouses and acquired by whatever means are shared equally between the spouses. This applies both to property brought to the marriage and property acquired during the marriage, regardless of where the property is located. Despite this theoretically universal character, the scope of the community of property varies depending on the cause of dissolution. Thus, if the marriage is dissolved by the death of one of the spouses and there are children from the marriage, the community of property is universal in nature. However, if it is dissolved by the death of one of the spouses, but there are no children from the marriage, or if it is dissolved for another reason (such as divorce), the community of property is limited to acquisitions or property acquired for payment, excluding both property brought into the marriage and property received free of charge.

**Galicia:** community of property (gananciales) (Article 171 of the Galicia Civil Law Act (Ley de Derecho Civil de Galicia)).

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

Spouses can stipulate their matrimonial property regime such that the supplementary provisions mentioned in the previous section do not apply.

For this purpose they must sign a public pre-marital agreement before a notary (Articles 1280 and 1315 of the Civil Code), which must be recorded in the civil registry, and the notary must, on the same day as the agreement is signed, send an authorised electronic copy of the public document to the corresponding registrar as evidence in the registration of the marriage (Article 60 of the Civil Registry Act (Ley del Registro Civil)).

The spouses may also modify the matrimonial property regime during the marriage by meeting the same formal requirements (Article 1331 of the Civil Code) and without this infringing thirdparty rights (Article 1317 of the Civil Code).

This same possibility is provided for in the Autonomous Communities that have their own civil law for marriages governed by that law: Articles 231(10) et seq. of the Catalonia Civil Code; Article 3 of the Balearic Islands Civil Law Code as regards Mallorca and Menorca (capítulos) and Article 66 of the Balearic Islands Civil Law Code as regards Ibiza and Formentera (espolits); Articles 125 et seq. of the Basque Civil Law Act; Articles 171 et seq. of the Galicia Civil Law Act; Article 185 of the Aragon Regional Legal Code; Act 78 et seq. of the Navarre Regional Civil Law Code.

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

Spouses are free to decide their matrimonial property regime and may choose to apply any regime, including those that are regulated by any of the Spanish civil laws (in which are detailed both the matrimonial property regime to be applied in the absence of an agreement and others that the parties may agree to) and those provided for in the regulations of other states. However, provisions contrary to the law or decency, or which limit the equality of rights belonging to each spouse, must never be incorporated (Article 1328 of the Civil Code and Article 14 of the Spanish Constitution).

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

Annulment, separation and divorce end the matrimonial property regime. This is provided for in the various regulations of the different matrimonial property regimes (including, for example, Article 1392 of the Civil Code with respect to community of property or Article 1415 of the Civil Code regulating participatory regimes in the Civil Code).

In community of property regimes, the procedure set out in the Code of Civil Procedure (Ley de Enjuiciamiento Civil) must be followed for liquidation. While this is carried out, a form of jointly owned property arises between the spouses, distinct from the other community of property regimes, with a specific legal regime, which remains in place for the duration of the community until, through the appropriate liquidation-division transactions, a specific, individualised share of the property is produced for each of the co-owners.

A community of property (sociedad de gananciales) may be liquidated pursuant to the rules found in Articles 1392 to 1410 of the Civil Code, by mutual agreement in the presence of a notary or, in the absence of such an agreement, before the court, which will be subject to the procedure found in the Code of Civil Procedure.

Under the separation of property regime, it is not necessary to liquidate the matrimonial property regime, since each spouse is owner of his or her property. Property which belongs to both spouses from the beginning is subject to a co-ownership regime, which continues as before following annulment, separation or divorce, without prejudice to either of the co-owners being able to seek its division (as is the case in all situations of co-ownership).

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

Death also ends the matrimonial property regime, as provided for in the various regulations of the different matrimonial property regimes (including e.g. Article 1392 of the Civil Code in conjunction with Article 85 thereof with respect to community of property or Article 1415 of the Civil Code regulating participatory regimes in the Civil Code).

Without prejudice to anything the deceased spouse may have arranged in a last will or testament, certain rights are laid down for the widowed spouse depending on the law applicable to succession. Likewise, if the spouse dies intestate, he or she has certain rights in the succession of his or her spouse.

To determine the applicable civil law:

- In cases where the couple has connections to more than one state, the applicable civil law is determined in line with the provisions of Regulation 650/2012. The provision contained in Article 36 comes into play where Spanish law is applicable, such that when that is the case, the existing Civil Code or autonomous civil regulations apply, depending on the specific connection the testator may or may not have had with an Autonomous Community that has its own civil law regulating the matter.

- Where successions with no foreign component are concerned, while succession is governed by the civil regulations relating to the regional citizenship the testator had at the time of death, the rights which by operation of law are attributed to the surviving spouse are governed by the same law regulating the effects of marriage, the descendants' legitimate shares always being safeguarded (Articles 16 and 9(8) of the Civil Code). Below the rights of the surviving spouse are analysed in light of the various civil laws existing in Spain, depending on whether the testator voluntarily arranged his or her succession (most commonly by a will) or died intestate.

- If the deceased left a will:

Civil Code (applies unless the applicable law is that of Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia), which establishes that the minimum to which the surviving spouse is entitled is the same as when the spouse dies without a will, i.e. usufruct of one third of the estate if there are children or descendants. If there are only ascendants, he or she is entitled to the usufruct of one half of the estate. Finally, the right to usufruct is two-thirds if there are neither ascendants nor descendants (Article 834 et seq. of the Civil Code).

Aragon: the celebration of marriage endows each spouse with survivor's usufruct (usufructo de viudedad) of all the property of the first spouse to die (Article 271 of the Aragon Regional Civil Law Code). This right (which is of the nature of family law and not inheritance law) is held by spouses under the Aragon community of property regime, even if their regional citizenship subsequently changes, excluding in this case the legitimate share established under inheritance law. The surviving spouse is also entitled to survivor's usufruct when the predeceased had regional citizenship of Aragon at the time of death.

Balearic Islands: in Mallorca and Menorca, the surviving spouse's universal right to usufruct is recognized if the testator has no living parents. The usufruct is two-thirds if the testator's parents are alive and one half if there are descendants (Article 45 of the Balearic Islands Regional Civil Law Code). In Ibiza and Formentera, the surviving spouse is not considered a forced heir (legitimario).

Catalonia: a widowed spouse who lacks financial resources is assigned a quarter of the estate (Article 452(1) of the Catalonia Civil Code). Likewise, he or she is assigned other rights as regards the assets belonging to the surviving spouse without being included in the estate (Article 231(30) of the Catalonia Civil Code) and the home. Specifically in this regard the concept of one year's survivor's pension (año de viudedad) comes into play, consisting in the right to continue using the marital home and to be maintained at the expense of the deceased's estate for one year following the testator's death (Article 231(31) of the Catalonia Civil Code).

Galicia: the surviving spouse is entitled to usufruct of half the estate (Article 228 et seq. of the Galicia Civil Law Regulations Act, Ley normas reguladoras del Derecho Civil de Galicia).

Navarre: the surviving spouse is entitled to usufruct (usufructo de fidelidad) of all the property and rights of the predeceased (provided the latter had regional citizenship of Navarre at the time of death) which belonged to him or her at the time of death (Act 253 of the Navarre New Legal Code).

Basque Country: the widowed spouse or surviving member of a non-marital union is entitled to usufruct of half of all the testator's property if there are descendants. In the absence of descendants, he or she has usufruct of two-thirds of the property (Article 52 of the Basque Country Regional Civil Law Act). This does not apply in Ayala valley - municipalities of Ayala, Amurrio and Okondo, and in the towns of Mendieta, Retes de Tudela, Santacoloma and Sojoguti in the Artziniega municipality (Article 89 of the Basque Country Regional Civil Law Act), which are governed by testamentary freedom. Nor does it apply in the lowlands of Vizcaya, Aramaio and Llodio, where special rules on family property (bienes troncales) are in effect (Articles 61 et seq. of the Basque Regional Civil Law Act).

- If the deceased has not made a will (intestate succession):

Civil Code (applied unless the applicable law is that of Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia): the widowed spouse is entitled to usufruct of one third of the estate if there are children or descendants, half of the estate if there are only ascendants, and he or she is named sole heir if there are neither ascendants nor descendants (Article 834 et seq. and Article 944 of the Civil Code).

Aragon: the widowed spouse inherits non-family property (bienes no troncales) after the ascendants, without prejudice to the survivor's usufruct referred to under testate succession, which is always retained (Article 517 of the Aragon Regional Legal Code). Family property refers to property that has remained in the home or family of the testator for two generations immediately prior to his or her generation, regardless of the property's direct origin and means of acquisition, as well as property which the testator received free of charge from ascendants or collateral relatives to the sixth degree. This property is transferred to certain relatives (parientes troncales) listed in Article 526 of the Aragon Regional Legal Code.

Balearic Islands: the provisions of the Civil Code (mentioned above) apply, while in Mallorca and Menorca, at least, the widowed spouse enjoys universal usufruct if there are no parents, two-thirds usufruct if the testator's parents are alive and half if there are descendants.

Catalonia: if there are no descendants, the widowed spouse inherits all property of the estate before the deceased's ascendants (Articles 441(2) and 442(3) of the Catalonia Civil Code). If the widowed spouse shares the succession with the testator's children or their descendants, he or she is entitled to universal usufruct of the estate (Articles 441(2) and 442(3) of the Catalonia Civil Code).

Galicia: the same regime applies as found in the Civil Code (Article 267 of the Galicia Civil Law Regulations Act).

Navarre: the spouse inherits non-family property after siblings and ascendants. As regards family property, the spouse is entitled to usufruct of all property and rights of the predeceased (provided the latter had Navarre regional citizenship at the time of death) that belonged to him or her at the time of death (Act 304 et seq. of the Navarre New Legal Code).

Basque Country: as regards family property, solely in respect of real estate acquired by the spouses during the marriage, both spouses or members of the non-marital partnership are heirs (Article 66 of the Basque Country Regional Civil Law Act). The surviving spouse inherits nonfamily property in the absence of descendants (Articles 110 et seq. of the Basque Country Regional Civil Law Act).

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

Jurisdiction is held by the Court of First Instance (Juzgado de Primera Instancia) that is hearing or has heard the annulment, separation or divorce proceedings, or before which actions to dissolve the matrimonial property regime are being or have been brought for any of the reasons provided for in civil legislation (Article 807 of the Code of Civil Procedure).

In those judicial districts with specialized family law courts, the latter hear the proceedings for dissolution and liquidation of the property regime, even if the proceedings do not result from a prior annulment, separation or divorce proceeding.

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

In general and under our common civil system, Article 1373 of the Civil Code provides that each spouse is liable with regard to third parties for his or her own debts with his or her personal assets; if the personal property is insufficient to discharge the debts, the creditor (third-party) may request seizure of community property. However, the non-debtor spouse may request that joint property be replaced by the share held by the debtor spouse in the community of property, in which case the seizure entails the dissolution of the community of property.

A provision of similar scope is found in the Code of Civil Procedure for the purposes of enforcement when the debt is personal but the community of property must nevertheless assume liability.



Specifically, it is provided (Article 1365 of the Civil Code) that community property is used to pay the creditor (third party) for the debts incurred by a spouse: 1) in the exercise of domestic authority or in the management or disposal of community property which by law or contract belongs to him or her; and 2) in the regular exercise of his or her profession, artistic activity or trade or in the regular management of his or her personal property.

There are likewise provisions in the Commercial Code (Código de Comercio) for cases where one of the spouses is a trader.

As regards encumbrances or disposal of jointly owned property, unless separate provision has been arranged for in a pre-marital agreement, the consent of both spouses is required. If the disposal is free of charge (e.g. donation), disposal carried out by just one spouse is null and void.

Nonetheless, in the interest of security of trade, the Civil Code indicates that acts of property management and disposal of money or securities are valid when conducted by the spouse in whose name they are registered and who has possession of them.

As regards registered immoveable property, in order to register the property in the name of the married person and the acquired right in relation to the current or future rights of the community of property, the name of the spouse and the matrimonial regime must be identified for the benefit of a third party consulting the registry. If nothing is declared in the registry, a third party acting in good faith who acquires by payment property from the person who appears in the registry with authority to carry out the transfer retains ownership of the property thus acquired.

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

This is regulated in Articles 806 et seq. of the Code of Civil Procedure. It has the following steps:

a) Inventory drawn up of the property included in the community of property.

This can occur at the same time as the annulment, separation or divorce proceedings or the dissolution of the matrimonial property regime, even if in practice it begins once the final judgment dissolving the regime has been issued.

The request must include a proposed inventory. An appearance is made before an officer of the court (Letrado de la Administración de Justicia), during which, based on the proposal, a joint inventory is sought. If there is a dispute over an asset, a hearing is held before a judge for a ruling, which can be appealed.

b) Liquidation.

To begin this step the decision dissolving the matrimonial property regime must be final. It begins with a liquidation proposal and appearance before an officer of the court in order for the spouses to reach an agreement on the payment of compensation and reimbursement due to each spouse, and the proportional division of the remainder by establishing lots.

If no agreement is reached, an estate partitioner is named to handle the division transactions. Once the proposal has been made, the spouses can accept or reject it; in the latter case the disagreement is resolved by court ruling, which can be appealed

c) Delivery of assets and registration in the property register.

Once the liquidation transactions are finally approved and the lots established, the officer of the court is responsible for delivering the assets and sending property titles to each spouse.

In addition to this procedure, there is another, simpler procedure under which liquidation takes place by mutual agreement of the spouses or between the surviving spouse and the heirs of the predeceased spouse, pursuant to the rules of the Civil Code and before a notary.

In both cases, if there is immoveable property among the assets subject to liquidation, a copy of the decree approving the division transactions, the judgment establishing the division of assets or the notarised public document on the liquidation of the community of property may be recorded in the property register.

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

Acts and contracts related to ownership and other rights in rem in immoveable property may be recorded in the property register. They must be authorised in a public document, which is brought to the registry in whose territorial jurisdiction the immoveable property is located, and the corresponding taxes and fees paid.

The document must be presented in authentic form and accompanied by certification from the Spanish civil registry (if the marriage was registered there) acknowledging dissolution of the matrimonial property regime for it to be effective with regard to third parties. If the original document was issued outside the country, it must be duly legalised and, should the registrar request it, translated. This regime is not applicable to legal documents and judicial decisions covered by European regulations, which circulate pursuant to the relevant provisions.

Last update: 01/02/2023

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#### **Matrimonial property regimes - France**

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

A matrimonial property regime is the set of legal rules governing property relationships between spouses and with third parties. It sets out the rules applicable to spouses in respect of powers and ownership of assets during or on dissolution of the regime, by death or divorce.

If spouses have not opted for a matrimonial property regime under a marriage contract they are subject to the statutory regime of community of after-acquired property (*communauté réduite aux acquêts*) defined in Article 1401 et seq. of the Civil Code (*Code civil*).

That statutory community distinguishes between three of groups of assets: the separate assets of each spouse and assets jointly owned by the spouses. All assets owned by the spouses before the marriage and those acquired during the marriage by inheritance, gift or legacy (Article 1405 of the Civil Code) remain separate property. Certain personal assets such as clothing, compensation for physical injury or non-pecuniary damage, etc., as defined in Article 1404 of the Civil Code, also remain separate. Assets acquired incidentally or in exchange for separate property also constitute separate assets (Articles 1406 and 1407 of the Civil Code).

Community, on the other hand, consists of assets acquired together or separately by the spouses during the marriage, including their earnings and wages. Article 1402 of the Civil Code also provides for a presumption of community, allowing any asset that cannot be proved to be separate to be classed as community of after-acquired property.

In principle each spouse has the right to administer or dispose of the common assets on their own (Article 1421 of the Civil Code). However, the consent of both parties is required for the most serious actions such as disposal without payment, transfer and establishment of rights *in rem* on immovable property, goodwill, non-negotiable shares, etc. (Articles 1422 and 1424 of the Civil Code).

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

As regards the basic rules, matrimonial property agreements are in principle not subject to any restrictions. Article 1387 of the Civil Code provides that 'the law only governs the marriage relationship in respect of assets in the absence of specific agreements the spouses may enter into as they deem appropriate, provided that these do not breach public morality or the following provisions'.

Hence spouses are free to decide on their matrimonial property regime, provided that they conform to the mandatory primary regime set out in Article 212 et seq. of the Civil Code.

The Civil Code describes several possible types of contractual regime: contractual community of property (such as the full community system defined in Article 1526 of the Civil Code), separation of property (Article 1536 et seq. of the Civil Code), or share in after-acquired property (Article 1569 et seq. of the Code).

As regards the formal requirements, in order to be valid, matrimonial property agreements must be drawn up by deed before a notary before the marriage takes place (Articles 1394 and 1395 of the Civil Code). They may be amended by notarial act by the same procedure, in accordance with the conditions of Article 1397 of the Civil Code. Since the entry into force of Law No 2019-222 of 23 March 2019 on programming for 2018-2022 and reform for the judicial system (*loi no 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice*), it is now possible to change the matrimonial property regime without waiting for a period of two years to expire and judicial confirmation of the change of regime is no longer required in principle (unless there is any objection from creditors or adult children).

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

The principle of freedom to decide on matrimonial property agreements is restricted by the mandatory conditions of the primary regime, which are applicable to all regimes without distinction.

These are set out in Article 212 et seq. of the Civil Code. They include, in particular, the provisions protecting the family home (Article 215, third paragraph), the rules applicable to the contribution to household expenses (Article 214) and joint and several liability for household debts (Article 220).

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

In the event of divorce, judicial separation or annulment of the marriage, the matrimonial regime is dissolved and liquidated.

Liquidation of the matrimonial property regime is a process carried out before a notary in which the assets and debts of each spouse are determined and assessed.

However, the use of a notary is not compulsory when there is no immovable property to be divided.

The causes of dissolution of community are set out in Article 1441 of the Civil Code: death of one of the spouses, presumption of death of one of the spouses, divorce, judicial separation, separation of property or a change of matrimonial regime.

As regards the date on which the divorce becomes effective, in the case of divorce by mutual consent the marriage is dissolved on the date on which the divorce agreement concluded by private deed countersigned by lawyers becomes enforceable. In the case of divorce through the courts, it is the date on which the divorce decision becomes final.

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

The death of one spouse is a cause of dissolution of the matrimonial property regime. It is dissolved on the date of death, for relations both between the spouses and with third parties. For couples married under the statutory community of property regime, Article 1441 of the Civil Code provides that community is dissolved by the death of one of the spouses.

Thus a double liquidation is required when a married person dies: liquidation first of the matrimonial property regime and then of the succession.

According to Article 763 of the Civil Code, if the surviving spouse occupied as their main residence a property owned by both spouses or belonging entirely to the estate, they have the right to use and enjoy the property free of charge for one year. That is an effect of the marriage.

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

The family court judge (*juge aux affaires familiales*, JAF) has jurisdiction for matrimonial property regimes (Law No 2009-506 of 12 May 2009 on simplification of the law (*loi n° 2009-506 du 12 mai 2009 sur la simplification du droit*), Decree No 2009-1591 of 17 December 2009 on proceedings before the family court judge relating to matrimonial property regimes and ownership in common (*décret n° 2009-1591 du 17 décembre 2009 relatif à la procédure devant le juge aux affaires familiales en matière de régimes matrimoniaux et d'indivisions*), Circular CIV/10/10 of 16 June 2010 on the powers of the family court judge in respect of liquidation (*circulaire CIV/10/10 du 16 juin 2010 sur les compétences du juge aux affaires familiales en matière de liquidation*)).

In a divorce by mutual consent not involving the courts, the agreement between the spouses is in the form of a private document countersigned by lawyers, the original document being filed with a notary (Article 229-1 of the Civil Code). With a divorce by mutual consent, the matrimonial property regime is to be liquidated at the time of divorce. The agreement must contain a settlement statement for the matrimonial property regime, which is to be notari ally recorded when the liquidation relates to property requiring land registration (in particular immovable property) (Article 229-3 of the Civil Code). Two lawyers and a notary are then involved.

As a general rule a notary must be used to liquidate a matrimonial property regime whenever the liquidation concerns at least one property requiring land registration.

Only contentious or non-agreed cases are decided in court.

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

Article 220 of the Civil Code, a primary regime provision applicable irrespective of the matrimonial property regime of the spouses, governs relations between spouses and third parties. The article establishes a principle of joint and several liability of spouses for household debts: 'Each spouse shall be empowered to enter on their own into contracts for household maintenance or children's education. A spouse is jointly and severally liable for any debt thus incurred by the other. However, the joint and several liability shall not apply to expenditure that is manifestly excessive in the light of the household's lifestyle, the usefulness or uselessness of the transaction or the good or bad faith of the contracting third party. Nor shall it apply if such debts were not incurred with the consent of both spouses for hire purchase or loans, unless these are for small sums necessary for everyday needs and the cumulative amount of the sums, in the case of multiple loans, is not manifestly excessive in the light of the household's lifestyle.'

Under the statutory community of property regime, creditors may in principle sue for payment of debts for which the couple are liable on common property, under Article 1413 of the Civil Code.

However, the earnings and wages of a spouse may only be seized by the creditors of the other spouse if the debt was incurred for household maintenance or children's education, in accordance with Article 220 of the Civil Code (Article 1414 Civil Code).

Common property is also not committed when one of the spouses takes out a security or loan on their own. Without the express agreement of their spouse, only the separate assets and income of the contracting spouse are committed in such cases (Article 1415 of the Civil Code).

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

In order to liquidate matrimonial property, the various groups of assets (separate and common property, payments due and debts between spouses, assets and liabilities) need to be identified. If there are groups to be divided, they are then divided in order to distribute the property and assets between the spouses. In the community of after-acquired property regime, the principle is that the community is shared half and half between spouses. However, the parties may have agreed on a different, unequal, partition in their marriage contract.

The partition of the common property may be by amicable settlement or through the courts. With an amicable settlement, a partition agreement is drawn up between the spouses. This will be in the form of a notarial act if it relates to property requiring land registration. Partition will be arranged through the courts if



the parties fail to reach agreement on the liquidation or distribution of property. The judge will rule on applications for continued joint possession or preferential allocation (Article 831 of the Civil Code).

Whether the partition is by amicable settlement or through the courts, the process ends with division into portions, according to an equal partition principle based on equal value. Thus each beneficiary is allocated property to a value equal to their rights in the co-ownership. If the composition of the group is such that it is impossible to create portions of equal value, the inequality is offset by a balancing payment. Certain assets might also be preferentially allocated to one beneficiary's share.

The partition has declaratory effect; in other words each spouse is considered, by a legal fiction, always to have owned the property included in their share, and never to have owned the other property in the partition.

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

In the case of partition by amicable settlement of property subject to land registration (in other words immovable property), the deed of liquidation and partition must be received in notarised form.

Article 710-1 of the Civil Code stipulates that, 'in order to give rise to land registration formalities, any act or right must be based on a notarised act received by a notary practising in France, a court decision or an authentic instrument from an administrative authority'.

The spouses must then pay, firstly, a fee of 2.5% calculated on the basis of the net value of the divided assets and, secondly, the fees and emoluments of the notary.

Last update: 01/10/2021

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### **Matrimonial property regimes - Italy**

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

The matrimonial property regime in Italy is the statutory community of property, as provided for in Articles 177 *et seq.* of the Civil Code.

The statutory community of property establishes that purchases made by the spouses either jointly or separately during the marriage, with the exception of purchases relating to personal property, fall under the community regime.

The following are considered to be a spouse's personal property:

- 1) property that already belonged to the spouses before the date of marriage;
- 2) property received as a gift or inheritance after the date of marriage;
- 3) property for strictly personal use by each spouse;
- 4) property needed by a spouse for carrying out his/her profession;
- 5) property received as compensation for damages, as well as any pension related to a partial or total loss of the ability to work;
- 6) property acquired with the price of the transfer or exchange of personal property, provided that this is explicitly stated at the time of acquisition.

The following assets also fall under the community of property regime:

- 1) the profits earned by each spouse, received and not spent at the time the community is dissolved;
- 2) the proceeds from the separate activities of each spouse, if not spent at the time the community is dissolved;
- 3) any businesses managed jointly by the spouses and established after the date of marriage.

The administration of community property and representation in legal proceedings in respect of acts regarding community property are the responsibility of both spouses separately, whereas they are jointly responsible for acts of extraordinary administration.

Property falling under the statutory community regime is divided by splitting assets and liabilities into equal shares.

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

The spouses may enter into a different agreement, which must take the form of a public deed in order to be valid.

If the separation of property regime is chosen, this decision may also be declared in the record of marriage.

The spouses may agree to set up a capital fund by allocating certain movable or immovable assets entered in public registers or credit instruments in order to meet the needs of their family (Article 167 of the Civil Code).

The fund may be set up by just one spouse or both spouses by way of a public deed. The fund may also be set up by a third party by way of a public deed or last will and testament.

The ownership and administration of the fund are subject to the rules on the statutory community of property regime (Article 168 of the Civil Code).

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

The spouses may not decide in a general manner that their property relationships should be governed, in whole or in part, by laws to which they are not subject or by customs, but must specifically declare the content of the agreements intended to govern these relationships (Article 161 of the Civil Code). Any agreement designed to create a dowry is invalid, in any event (Article 166-*bis* of the Civil Code).

If the spouses choose to amend the statutory community of property regime by agreement, the following may not be included under that regime:

- 1) property for strictly personal use;
- 2) property needed by a spouse for carrying out his/her profession;
- 3) property received as compensation for damages;
- 4) any pension related to a partial or total loss of the ability to work.

In addition, there may be no exceptions to the rules on the statutory community regime as regards the administration of property and the equality of shares.

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

Divorce, separation or annulment of the marriage will result in dissolution of the statutory community.

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

Death will result in dissolution of the community of property.

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

The judicial authority has jurisdiction in accordance with the general rules.

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

The obligations incurred by one of the spouses before the date of marriage do not apply to property falling under the statutory community regime, nor do the obligations associated with gifts and inheritances received by the spouses during the marriage that do not fall under the community regime (Articles 187 and 188 of the Civil Code).

The obligations incurred by one of the spouses after the date of marriage in relation to the performance of acts falling outside the ordinary course of business without the necessary consent from the other spouse, in the event that amounts due to creditors cannot be settled using personal property, apply to property falling under the statutory community regime (Article 189 of the Civil Code).

Where the amounts due cannot be settled using community property, creditors may alternatively take action in relation to the personal property of each spouse, up to the amount of half of the claim (Article 190 of the Civil Code).

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

Property falling under the statutory community regime is divided by splitting assets and liabilities into equal shares. In consideration of the needs and custody of any dependants, the court that carries out this division may grant one spouse a right of usufruct over some of the property belonging to the other spouse (Article 194 of the Civil Code).

During the division, the spouses are entitled to collect any movable property that belonged to each of them prior to the date of community or that was received during the community period as an inheritance or gift.

If the movable property to be collected cannot be found, the spouses may request a sum equivalent to the value of that property by providing proof of its value, including by way of reputation, unless such property is missing because it has been used or lost or for any other reason that cannot be attributed to the other spouse (Article 196 of the Civil Code).

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

All contracts transferring ownership of immovable property and, more generally, all deeds establishing, transferring or modifying immovable property rights must be entered in the relevant Land Register. Purchases of immovable property falling under the statutory community regime are not exempt from this rule.

Any person requesting a transcript must notify the Land Registry Office, in duplicate, of the property regime of the parties – if married – according to the declaration made in the deed or certificate of the civil registrar who entered the property regime in the margin of the marriage certificate, and must also provide a copy of the title.

Other marriage agreements, by means of which, for example, specific items of personal immovable property belonging to one spouse are made subject to a community regime or a capital fund for immovable property is established, are also subject to entry in the Land Register.

Last update: 21/12/2023

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### **Matrimonial property regimes - Latvia**

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

In Latvia, matrimonial property regimes are governed by Section I ('Legal matrimonial property regimes'), Sub-Chapter 4 ('Matrimonial property regime'), Part One 'Family law' of the Latvian Civil Law (*Civillikums*), specifically Articles 89-110 of that Law.

Each spouse retains the property that belonged to him or her before their marriage, and the property he or she acquires during their marriage, as their own separate property. Everything acquired during their marriage by the spouses together, or by one of them separately, but using the resources of both spouses or assisted by the other spouse's actions, is the joint property of both spouses; in case of doubt, it is assumed that the property in question belongs to both spouses equally.

For the duration of the marriage, each of the spouses has the right to manage and use all of their own property – both the property they owned before their marriage and the property acquired during their marriage. The spouses manage and dispose of shared matrimonial property jointly, but upon the agreement of both spouses, that property may also be managed by one of them separately. Disposal of this property by one of the spouses requires the consent of the other spouse.

The separate property of each spouse is specifically:

- (1) property owned by a spouse before their marriage, or property the spouses have stipulated in a contract as separate property;
- (2) articles suited to the personal use of one spouse only or required for independent work;
- (3) property acquired during their marriage by one of the spouses free of charge;
- (4) income from the separate property of a spouse which is not transferred to meet the needs of the family and the needs of the joint household;
- (5) property that replaces the property referred to in paragraphs (1)-(4) above.

The burden of establishing that certain specific property is separate falls upon the spouse who asserts that it is. The fact of immovable property being the separate property of one spouse is recorded in the Land Register.

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

Spouses may establish, alter or terminate their property rights by means of a matrimonial property agreement before or during their marriage.

The parties to a matrimonial property agreement may, in place of a legal matrimonial property regime (Articles 89 et seq. of the Civil Law), apply the principle of separate property during marriage (Articles 117 et seq. of the Civil Law) or institute a full community property system (Articles 124 et seq.).

If the matrimonial property agreement establishes a full community property system, the property that belonged to each spouse prior to their marriage and the property acquired by each spouse during their marriage are combined into a joint indivisible whole which, during their marriage, does not belong to either spouse in separate parts. In a matrimonial property agreement establishing a full community property system, the spouses agree on which of them will be the manager of the system (the husband, the wife or both jointly). If the manager of the system is one of the spouses, that spouse may, subject to the limitations set out in Article 128, use the property without accounting for it and dispose of it in his or her own name, and it is that spouse's duty to cover the costs of the family and the costs of the joint household.

If the matrimonial property agreement enshrines the principle of separate property during marriage, each spouse not only retains the property that belonged to them separately prior to their marriage, but may also acquire, use and dispose of it in an individual capacity, independently of the other spouse.

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

A spouse may assign their property or their share of the joint spousal property to be managed by the other spouse, who is obliged to preserve and protect that property using all means at their disposal. If the joint immovable property of the spouses is recorded in the Land Register under the name of one of the spouses, it is presumed that the other spouse has assigned their share of that property to be managed by the spouse under whose name it is recorded.

A spouse managing buildings belonging to the other spouse must not only carry out the requisite repairs, but also make improvements to the extent that income from the assets of the other spouse permits.

The immovable property of one of the spouses may be leased or rented by the other spouse for a period of time not exceeding three years and without the agreement being recorded in the Land Register. For a spouse to be able to dispose of items of the other spouse's property he or she administers in such a way that his or her actions exceed the normal limits of management, that spouse must obtain the consent of the other spouse.

Both spouses have a duty to cover the costs of the family and the costs of the joint household from the joint spousal property. If the joint spousal property is insufficient to support the family, each spouse may require the other to contribute to the costs of the family and the costs of the joint household in a manner commensurate with his or her own separate financial circumstances. If the spouses live separately, one of the spouses may, if necessary, claim from the other spouse resources commensurate with the other spouse's financial circumstances in order to secure the claimant's previous level of welfare.

A dowry given to a woman in the event of marriage by her parents, kin or other persons is the property of the wife, even if it is given to the husband.

The following are considered a spouse's personal property:

- (1) property that already belonged to the spouses before the date of their marriage;
- (2) property received as a gift or inheritance after the date of their marriage;
- (3) property for strictly personal use by each spouse;
- (4) property needed by a spouse to pursue his/her profession;
- (5) property received as compensation for damages, as well as any pension related to a partial or total loss of the ability to work;
- (6) property acquired with the price of the transfer or exchange of personal property, provided that this is explicitly stated at the time of acquisition.

The following property also falls under the community of property regime:

- (1) the profits earned by each spouse, received and not spent at the time the community is dissolved;
- (2) the proceeds from the separate activities of each spouse, if not spent at the time the community is dissolved;
- (3) any businesses managed jointly by the spouses and established after the date of their marriage.

The management of community property and representation in legal proceedings in respect of acts regarding community property are the responsibility of each spouse separately, whereas they are jointly responsible for acts of extraordinary management.

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

Legal property relations between spouses are terminated:

- (1) on the basis of an agreement between the spouses;
- (2) if one of the spouses dies;
- (3) when divorcing or within an existing marriage – on the basis of a request from one of the spouses, if the debts of the other spouse exceed the value of his or her separate property or if, as a result of his or her actions, the property is at risk of significant reduction or dissipation.

When dividing up joint spousal property, all of the spouses' property not recognised as the separate property of one of the spouses is taken into account, namely movable and immovable property with all appurtenances, as well as the spouses' claims and obligations.

Joint spousal property is divided up on the basis of the general provisions underpinning the procedures for the division of an estate (Article 731 et seq.).

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

If the spouses' legal property relations are terminated by the death of one of the spouses, then, once the share of the surviving spouse has been separated out, the share of the deceased spouse passes to his or her heirs.

The surviving spouse inherits from the deceased regardless of the form of property relationship in effect between the spouses during their marriage.

The spouse receives the child's share if the number of children who have expressed the intent to inherit is less than four, but a quarter share if there are four or more children who have expressed the intent to inherit.

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

Judicial authorities have jurisdiction in accordance with the general rules.

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

Spouses are held liable for the obligations they have entered into jointly to meet the needs of the family or the needs of the joint household to the extent of their joint property, and each to the extent of their separate property, if the joint property is insufficient.

A spouse is held liable for obligations he or she has entered into individually to meet the needs of the family or the needs of the joint household to the extent of his or her own property, if the spouses' joint property is insufficient. The other spouse is held liable for these obligations to the extent of his or her own property only if the consideration received pursuant to his or her obligation has been used to meet the needs of the family or the needs of the joint household.

A spouse is held liable for obligations arising from his or her wrongful acts firstly to the extent of his or her separate property, but, if that is insufficient, to the extent of his or her share in the spouses' joint property.

A spouse is held liable for obligations entered into on his or her own account or without the consent of the other spouse firstly to the extent of his or her separate property, but, if that is insufficient, to the extent of his or her share in the spouses' joint property.

The property of one spouse is not used to satisfy the obligations of the other spouse. If, in respect of the debts of one of the spouses, recovery proceedings are initiated against the separate property of the other spouse, the other spouse may request that such property be released from the recovery proceedings. If, in respect of the debts of one of the spouses, recovery proceedings are initiated against the spouses' joint property, the other spouse may request that the property be divided and his or her share be released from the recovery proceedings.

The division of matrimonial property does not deprive the spouses' creditors of their rights. Rights acquired by third parties remain in effect.

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

If, in an existing marriage, the spouses' joint property has been divided, provisions enshrining the principle of separate property during marriage are applied to their property relations (Article 117 et seq.).

If the matrimonial property agreement enshrines the principle of separate property during marriage, each spouse not only retains the property that belonged to them separately prior to their marriage, but may also acquire, use and dispose of it in an individual capacity, independently of the other spouse.

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

For matrimonial property agreements to have binding effect vis-à-vis third parties, they must be registered in the Matrimonial Property Regimes Register and, where immovable property is concerned, also in the Land Register.

The burden of establishing that certain specific property is separate falls upon the spouse who asserts that it is. The fact of immovable property being the separate property of one spouse is recorded in the Land Register.

The fact of immovable property falling under a community of property regime is recorded in the Land Register. Each of the spouses may request that immovable property rights included in the community of property regime be entered in the Land Register under the names of both spouses.

If, in an existing marriage, the spouses' joint property has been divided, provisions enshrining the principle of separate property during marriage are applied to their property relations. Contracts and court judgments acquire binding effect against third parties after they are recorded in the Matrimonial Property Regimes Register or, in the case of immovable property, after they are recorded in the Land Register.

Extracts of records in the Matrimonial Property Regimes Register are published for information without delay in the official gazette, and notices regarding the immovable property are communicated to the Land Registry Office for recording in the Land Register.

Last update: 25/06/2023

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## Matrimonial property regimes - Luxembourg

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

The Luxembourg Civil Code (*Code Civil*) provides that in the absence of a marriage contract (*contrat de mariage*), the spouses are subject to the statutory matrimonial property regime (*régime matrimonial*) (see Article 1400 et seq. of the Civil Code). In this case, the regime applicable is that of the community of after-acquired property (*communauté des biens réduite aux acquêts*), generally referred to as the statutory community of marital property (*communauté légale*). These rules distinguish between joint property (*biens communs*) and each spouse's separate property (*biens propres*).

Any property owned by the spouses before the marriage remains separately owned. In principle, property acquired during the marriage forms part of the spouses' jointly owned property (salaries and income, benefits and income from separate property, assets acquired for payment).

Property in respect of which the spouses cannot prove ownership is presumed to be joint property.

There are several exceptions to this presumption, including assets of a personal nature and strictly personal rights, which are considered to be separately owned. For example, clothing, family mementos, copyright or industrial property rights and claims for compensation are considered to be separate property (Article 1404 of the Civil Code). Assets acquired during the community of property by inheritance, gift or legacy are also deemed to be separate property (Article 1405 of the Civil Code).

<https://legilux.public.lu/eli/etat/leg/code/civil/20220701>

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

Article 1387 of the Civil Code on the principle of freedom of matrimonial agreements provides that 'the law only governs the marriage relationship in respect of property in the absence of specific agreements that the spouses may enter into as they deem appropriate, provided that they do not breach public morality or the following provisions'.

Spouses may depart from the statutory matrimonial property regime by drawing up a marriage contract. This contract is established either freely or by opting for one of the predetermined forms set out in the Civil Code.

By entering into a marriage contract, spouses can establish a full community of property (*communauté universelle*). Under this regime, the spouses have **no separate property other than** assets that belong to one of the spouses by their very nature (personal clothing, family mementos, etc.). All assets are jointly owned (movable property, immovable property, property acquired during marriage and present on the day of the marriage). Similarly, any **debts** of the spouses are held jointly and both spouses are jointly and severally liable for them.

The Civil Code provides for a second type of matrimonial property regime: the separation of property (*séparation de biens*). This regime is based on the principle that the spouses own no joint property. All property belongs to one spouse or the other. Each spouse therefore retains the sole right to administer, enjoy and freely dispose of their personal property. Similarly, each spouse remains solely liable for their debts (incurred before or during the marriage). An exception applies to debts incurred by either of the spouses for the maintenance of the household or the upbringing of children. These debts are always binding on both spouses.

As regards **procedural requirements**, matrimonial agreements are drawn up by notarial act (*acte devant notaire*).

A marriage contract, or the amendment of a pre-existing contract, must therefore always be drawn up in the form of a notarial act in the presence and with the consent of all parties thereto (Article 1394 of the Civil Code). The notary draws up the marriage contract, arranges for its signature by the spouses or future spouses, and is responsible for transmitting it to the Public Prosecutor's Office for transcription into the civil register. This formality is essential in order to render the marriage contract binding on third parties (e.g. on the creditors of one of the spouses).

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

Yes, certain principles must be respected. A marriage contract cannot breach public morality (Article 1387 of the Civil Code), derogate from the rules of parental authority, legal administration and guardianship (Article 1388 of the Civil Code) or have the effect of changing the statutory order of succession (Article 1389 of the Civil Code).

The primary regime (Articles 212 to 226 of the [Civil Code](#)) must be fully respected, except where it provides for the application of matrimonial agreements. The stipulations of the marriage contract may not conflict with the spouses' respective rights and obligations.

Among their other obligations, spouses have a mutual duty to remain faithful and to provide help and assistance to one another. They may not dispose of the rights by which the family home is secured, nor of the furnishings therein. Likewise, joint and several liability (*solidarité*) for household debts is presumed.

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

(a) **Divorce** (*divorce*) dissolves the marriage and entails the liquidation (*liquidation*) and division (*partage*) of the matrimonial property regime. The marriage contract is no longer effective and the property relations of the parties are governed by the general law of obligations and of co-ownership.

The court that hears the divorce may grant a maintenance allowance (*pension alimentaire*) to either spouse. The maintenance allowance is determined according to the needs of the spouse to whom it is paid and the contributory capacity of the other spouse.

If a spouse has abandoned or reduced their professional activity during the marriage (e.g. in order to look after children), they are entitled, under certain conditions, to claim against the other spouse in order to make a retroactive purchase from the general pension insurance scheme.

Where one or more children of the marriage are under the age of twelve on the date on which the divorce is granted, the spouse who exercises parental authority (*autorité parentale*) (alone or jointly with the other parent) and with whom the children habitually reside may ask the court to award them the right to stay in the matrimonial home. The fact that the home may belong to the other spouse does not prevent this award.

In principle, the divorce of the parents does not change the conditions in which they exercise parental authority, which continues to be exercised jointly by both. The court only confers parental authority upon one of the two parents when this is in the child's interests.

b) Spouses who wish to separate, but who do not yet wish to divorce, may opt for a **legal separation** (*séparation de corps*). Legally separated spouses are no longer obliged to reside together, but legal separation always entails the separation of property, which in turn entails the dissolution of the community of property. The other duties and obligations of marriage remain.

Although legal separation ends upon reconciliation of the spouses, they remain subject to the separation of property, unless a new matrimonial regime is agreed upon.

c) **Annulment of the marriage** (*annulation du mariage*) has the effect of retroactively nullifying the marriage. The matrimonial property regime is deemed never to have existed. The rights and duties of marriage disappear and the persons concerned are considered to have lived together as a cohabiting couple.


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

The death of one of the spouses dissolves the community of property. A dual liquidation is necessary: the liquidation of the statutory or contractual matrimonial property regime, and then the inheritance rights of the surviving spouse.

Unless otherwise provided and where the deceased leaves children or descendants of those children, the surviving spouse is entitled to inherit either the minimum amount that a legitimate child is legally entitled to receive, which must amount to at least a quarter of the estate, or to the enjoyment of the property jointly inhabited by the spouses and its furnishings, provided that the property was owned by the deceased in its entirety or jointly by the deceased and the survivor (Article 767-1 of the Civil Code).

Where the deceased leaves neither children nor descendants of those children, the surviving spouse is entitled to full ownership of the entire estate unless otherwise provided for in the will (Article 767-2 of the Civil Code).

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

The provisions of the Law of 27 June 2018 establishing the family court and reforming divorce and parental authority (*loi du 27 juin 2018 instituant le juge aux affaires familiales, portant réforme du divorce et de l'autorité parentale*), which came into force on 1 November 2018, are applicable:  <https://legilux.public.lu/eli/etat/leg/loi/2018/06/27/a589/jo>

The family court hears applications relating to matrimonial property regimes.

An amicable, out of court division is possible. However, the involvement of a notary is only necessary when a property is subject to land registration (*publicité foncière*).

Only contentious cases are decided in court.

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

Article 220 of the Civil Code, which applies irrespective of the matrimonial property regime, establishes a presumption of joint and several liability between spouses and third parties with regard to household debts, whereas *each of the spouses has the power to enter into contracts alone for the upkeep of the household or the education of children; any debt thus incurred by one is jointly and severally binding on the other*.

*However, joint and several liability shall not apply to expenditure that is manifestly excessive taking into account the household's lifestyle, the usefulness or otherwise of the transaction, or the good or bad faith of the contracting third party.*

*Nor shall it apply to obligations arising from instalment purchases, unless they were concluded with the consent of both spouses.*

Another effect of the matrimonial property regime on the legal relationship between a spouse and a third party concerns the change of matrimonial property regime, which takes effect with regard to third parties three months after being entered in the civil register. However, in the absence of this entry, the change is nonetheless binding on third parties if, in the instruments concluded with them, the spouses declare that they have amended their matrimonial property regime.

With regard to third parties, the divorce ruling only takes effect from the date of the entry or transcription. If one of the spouses is a trader, any marriage contract and any instrument amending or changing the matrimonial property regime must be transmitted within one month to the Commercial Register.

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

The marriage contract has no further effect once it has been dissolved.

The liquidation of the jointly owned property is based on various calculations that determine the proportion of the joint property to be divided, and the assets and liabilities of each spouse.

The spouses each regain possession of their separate property. A compensation statement (*compte des récompenses*) is then established, showing both the compensation due to each spouse from the community of property, and the compensation owed by the spouses to the community of property.

The division is subsequently carried out on an equal basis, in principle, unless otherwise agreed.

The matrimonial property regime can be liquidated by amicable arrangement. The division of property subject to land registration is carried out by notarial act. When the spouses do not agree on the liquidation and division of the matrimonial property regime, a notary, previously appointed by the family court for that purpose, draws up a report on the difficulties and respective declarations of the spouses. The court, sitting as a bench, decides upon the remaining disputes between the spouses and refers them to the notary in order to draw up the final scheme of division (*l'état liquidatif*).

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

Any division affecting an instrument subject to land registration is carried out by notarial act.

In any event, any *inter vivos* instruments (*actes entre vifs*), whether free of charge or for payment, transferring rights in rem in immovable property (*droits réels immobiliers*) other than preferential rights (*privilèges*) or mortgages (*hypothèques*), must be transcribed at the office of the mortgage registry (*bureau de la conservation des hypothèques*) of the jurisdiction in which the property is located.

The provisions of the amended Law of 25 September 1905 on the transcription of rights in rem in immovable property (*loi modifiée du 25 septembre 1905 sur la transcription des droits réels immobiliers*) are applicable:  <https://legilux.public.lu/eli/etat/leg/loi/1905/09/25/n1/jo>

Last update: 24/05/2023

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### **Matrimonial property regimes - Malta**

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

The Maltese State offers parties who want to contract marriage under Maltese law, the freedom to choose the regime that will regulate their matrimonial property. However, the main matrimonial property regime in Malta is the Community of Acquests. This regime operates by operation of law in any marriage, unless the parties who are already married or are about marry decide that their property regime shall be regulated by another regime that does not go against the spirit of Maltese law by means of a public deed. Other types of matrimonial property regimes existing in Malta, apart from that of the Community of Acquests, are the Separation of Estates and the Community of Residue under Separate Administration.

**The Community of Acquests** as a statutory matrimonial regime in Malta, provides that anything acquired by the parties following marriage will form part of this Community of Acquests and therefore belongs to both parties in equal shares. Maltese law specifically provides what shall form part of the Community of Acquests, and excludes donations, inheritances and the paraphernal property of each party.

**The Separation of Estates** as a regime that the parties may choose instead of the Community of Acquests, provides that each party has the right to have absolute control over and administer property acquired before and after marriage, and the consent of the other party shall not be required.

**The Community of Residue under Separate Administration** as another regime which the parties may opt for instead of the Community of Acquests, provides that each spouse has the right to acquire, keep and administer property acquired on his or her behalf as if it were his or her exclusive property. However, through this regime, the spouses are not precluded from obtaining common property, which would then be administered jointly.

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

As regards the **Community of Acquests regime**, the general rule is that both spouses are obliged to regulate and administer their matrimonial property jointly. However, with regard to this particular regime, Maltese law distinguishes between ordinary administration, that is those acts that may be carried out by one of



the spouses alone, and extraordinary administration, that is those acts that must be carried out by both jointly. Only acts of extraordinary administration are listed by Maltese law, and whatever is not expressly contained in law is to be considered to constitute an act of ordinary administration. Therefore a formal requirement that should always be observed for the operation of the regime of the Community of Acquests is that of the consent of both spouses. Where the consent of the parties has not been given as regards a transfer or establishment of a real or personal right to immovable or movable property, the act may be annulled at the request of the party who withheld his or her consent.

As regards the **Separation of Estates regime**, the general rule is that each of the spouses has the right to regulate and manage the property in his or her name without the consent of the other spouse.

As regards the **Community of Residue under Separate Administration regime**, the general rule is that when a spouse chooses to acquire property on his or her own, he or she would not have to obtain the consent of the other spouse beforehand, and the acquiring spouse would have the right to regulate and administer said acquisition on his or her own. On the other hand, when both spouses acquire something together, both would have given their consent and therefore both would have the right to regulate and administer said acquisition together.

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

When the **regime of Community of Acquests** is chosen, the spouses are obliged to do everything together. Therefore they have no freedom as to how to regulate and administer, with the exception of those acts of ordinary administration which do not require their joint consent.

On the other hand, when the **regime of Separation of Estates** is chosen, each spouse is free to do as he or she thinks fit with the property in his or her name without any interference from the other spouse.

As regards the **regime of Community of Residue under Separate Administration**, where a spouse acquires property without the consent of the other spouse, he or she shall have the freedom to regulate the regime without any restrictions. However, if a purchase is made on behalf of both spouses, said spouses may not do as they please individually but must act jointly.

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

During the validity of the **regime of the Community of Acquests**, the law clearly stipulates that this regime operates as of the day of marriage and ends as soon as the marriage has been dissolved, that is via divorce. Moreover, the law provides further that in the event of personal separation, legal division of the property may be requested.

In cases concerning the **regime of the Community of Residue under Separation Administration**, the law stipulates that it would end, amongst others, with dissolution of marriage or personal separation.

However, in case the marriage is regulated by the **Separation of Estates regime**, each spouse whose marriage has ended, whether in legal separation or annulment, continues to regulate and administer the assets acquired in their respective names.

Therefore the effects of divorce, separation or annulment, concerning matrimonial property, are that whatever was acquired is divided between the spouses through an amicable settlement or via a decision of the competent court.

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

Upon death of one of the spouses, the matrimonial property regime ends and Maltese succession laws begin to apply so that the property of the deceased spouse is divided between the heirs. The main factor to be taken into consideration is whether the deceased party died testate or intestate.

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

The competent authority to decide on matters related to matrimonial property regimes is the Civil Court (Family Section).

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

Once a matrimonial property regime begins to operate between the spouses, it gives rise to a legal relationship between the spouses and third parties, when this is the case. Third parties have the right to exercise their legal rights against the spouses jointly or separately, as the case may be, depending on with whom they have entered into a contract or debt.

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

The procedure for division of property normally takes place at the stage where the spouses have initiated separation or divorce proceedings. These types of procedures require the spouses to start a process of mediation, before resorting to the competent Court.

If the mediation is successful, the spouses may separate amicably in which case the spouses agree on their reciprocal rights, on their rights over their children and on the division of matrimonial property via a public deed which is then scrutinised by the competent Court to ensure that balance is kept between the rights of the spouses. After approval by the competent Court, this contract is notarised and registered in order to be effective for all purposes at law, including with regard to third parties.

If the mediation procedure is not successful and the parties do not come to an amicable settlement, they must institute legal proceedings before the competent Court, where they ask for the dissolution of the matrimonial property regime in order for said property to be divided between them. When the decision of the competent Court becomes *res judicata*, said judgement is registered in order to be effective for all purposes at law, including with regard to third parties.

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

To be able to register immovable property in Malta, the Notary Public who drafted the original contract for that immovable property must present a note of notarisation to the Public Registry for it to be notarised. As soon as there is a note of notarisation, the immovable property is registered and the contract is binding on the parties to the contract as well as on third parties.

Last update: 05/02/2020

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## Matrimonial property regimes - Austria

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

Under Austrian law, the default matrimonial property regime is that of separation of property (*Gütertrennung*). Each spouse retains the property he or she brought into the marriage and becomes sole owner of the property acquired by him or her (Sections 1233 and 1237 of the Austrian Civil Code, *Allgemeines Bürgerliches Gesetzbuch*). Each spouse is also the sole creditor to his or her debtors and the sole debtor to his or her creditors.

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

A property regime different from the default one can be chosen by the spouses through a marriage contract (*Ehepakt*). Marriage contracts require a notarial deed in order to be valid (Section 1 of the Notarial Deed Act, *Notariatsaktsgesetz*).

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

In principle, spouses are free to adopt the matrimonial property regime of their choice. However, a marriage contract cannot, for example, provide for a complete mutual waiver of maintenance in an intact marriage.



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

The statutory 'complete' separation of property applies only until the declaration of marriage invalidity, divorce or annulment, since at that point a division must take place in which ownership status is not the decisive criterion. The dissolution of marriage is governed by the principle of division of matrimonial property. Matrimonial assets (objects which were used by both spouses, for example the family home, a car or household goods) are divided up, and matrimonial savings are also divided. The latter include assets of any kind that the spouses acquired while they were married and which, depending on their nature, are usually intended for realisation.

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

If one of the spouses living under community of property (*Gütergemeinschaft*) (rare in practice) dies, the common property is divided. The net assets remaining after deduction of all debts are allocated according to the agreed proportion to the surviving spouse and to the deceased's estate. In the standard case of the separation of property regime (*Gütertrennung*), the statutory share received by the surviving spouse is determined by which other relatives of the deceased also inherit. The surviving spouse is entitled to a third of the estate if the deceased partner left surviving children or their descendants; two-thirds of the estate if the deceased partner left surviving parents; otherwise, the entire estate. The spouse is among the mandatory heirs who are entitled to a reserved portion of the estate (*pflanzteilberechtigte Personen*). The spouse's reserved portion is half of what they would receive under the succession order of precedence.

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

Following divorce, annulment or declaration of marriage invalidity, under Sections 81 et seq. of the Marriage Act (*Ehegesetz*) property is dealt with in accordance with either a mutual agreement or a court decision.

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

In principle, a spouse can neither confer particular rights nor impose obligations on third parties without the other spouse's cooperation. It is only under 'agency implied in fact' (*Schlüsselgewalt*) that a spouse who manages the joint household and has no income can represent the other spouse in legal transactions of everyday life that are carried out for the joint household and do not exceed a certain level corresponding to the standard of living of the spouses. This does not apply if the other spouse has declared to a third party that they do not wish to be represented by their spouse. If the third party cannot determine on the basis of the circumstances that the acting spouse is acting as a representative, then both spouses are jointly and severally liable. The community of property regime – where specifically agreed upon instead of the separation of property regime – merely creates a commitment in the relationship between the spouses that one spouse cannot dispose of their share of the common property without the consent of the other spouse. There is only real effect as regards property if an entry is made in the land register of a sale and encumbrance prohibition under Section 364c of the Civil Code or of a restriction under Section 1236 of the Civil Code stating that as long as the community of property regime applies, no party may unilaterally dispose of their own half or share.

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

The division of property in the case of divorce, annulment or declaration of invalidity of marriage under Sections 81 et seq. of the Marriage Act is independent of fault, although fault can be taken into account in considerations of fairness. The property is divided on the basis of either a mutual agreement of the parties or a court decision applied for by one of the parties. Otherwise, separation of property continues to apply, that is, each spouse keeps their own property. The application must be filed within a year of the divorce decree taking legal effect. Both the matrimonial property and matrimonial savings are divided up. Under Section 82 of the Marriage Act, the following are excluded from the division of the property: objects which a spouse brought into the marriage or inherited, objects gifted by third parties, objects used by one spouse alone for personal or professional purposes, and objects belonging to a company or shares in a company, unless they are just investments.

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

An application for entering the property right in the land register must be filed with the District Court in whose jurisdiction the immovable property to be registered is located.

The application must be filed in writing and signed by the applicant. In principle, the signature need not be certified unless a registration declaration (*Aufsandungserklärung*) is included in the application.

A public or private document containing the legal grounds for acquisition of the property (for example a purchase contract) and bearing the certified signatures of the parties must accompany the application. In addition to exact details of the property, private documents must include the registration declaration.

The registration declaration is an explicit declaration of consent to registration (entry in the land register) by the person whose right is being restricted, encumbered, nullified or transferred to another person (the seller, in the case of a purchase contract). The registration declaration must be certified by a court or notary and signed by the contracting parties. The registration declaration can also be submitted as part of the application for entry of the property right in the land register. In this case, the signatures on the application must be certified by a court or a notary.

A tax compliance certificate in line with Section 160 of the Federal Tax Code (*Bundesabgabeordnung*) must accompany the application. The certificate constitutes confirmation from the Tax Authority that there are no obstacles to entry in the land register in terms of taxes due.

If the application is drafted by a lawyer or a notary, it must be filed electronically. In this case, the accompanying documents must be placed in an electronic document archive. The tax compliance certificate from the Tax Authority can then be replaced by a self-assessment declaration drafted by the lawyer or notary.

Last update: 05/06/2023

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#### Matrimonial property regimes - Portugal

##### 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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### **Matrimonial property regimes - Slovenia**

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

Yes.

Matrimonial property regimes are governed by the Family Code of the Republic of Slovenia (*Družinski zakonik Republike Slovenije* (DZ)):

The statutory matrimonial property regime applies to spouses unless they conclude a contract on a different form of matrimonial property regime. In the latter case, the contractual matrimonial property regime applies to them.

The statutory matrimonial property regime comprises community of property for the spouses' joint property and separation of property for each spouse's personal property.

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

Spouses or future spouses may arrange their property regime through a contract. Contracts arranging a property regime are contracts by which the two spouses specify a different property regime from the statutory one.

In such contracts, they may also agree to specify different matrimonial property regimes for the duration of their marriage and for the eventuality of divorce.

Contracts which spouses conclude on property rights and obligations must take the form of a notarial act. The contractual matrimonial property regime applies to the spouses as soon as the contract on that regime has been concluded, unless they agree otherwise. A pre-nuptial contract concluded by future spouses on the matrimonial property regime takes effect on the day of the marriage or on the day thereafter, as specified by the future spouses in the pre-nuptial contract. Contracts on matrimonial property regimes must be entered in the register of such contracts. If a contract on a matrimonial property regime

is not entered in the register of such contracts, for the purposes of relationships with third parties it is assumed that the statutory matrimonial property regime applies to the property relationship between the spouses.

Spouses must inform each other of their property situation before they conclude a contract governing the matrimonial property regime. If they fail to do so, the contract may be challenged in court.

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

No. However, spouses must inform each other of their property situation before they conclude a contract governing the matrimonial property regime. If they fail to do so, the contract may be challenged in court.

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

The joint property of the spouses is divided if their marriage is dissolved.

If the matrimonial property regime contract by which spouses opt out of the statutory matrimonial property regime fails to specify the manner in which the matrimonial property is to be divided, it is divided in accordance with the rules of the statutory matrimonial property regime, except where the spouses agree otherwise. The property is divided on the basis of the situation when the contract on the matrimonial property regime came into force.

In principle, matrimonial property is divided on the basis of equal shares, but the spouses may provide evidence that they have contributed to the matrimonial property in different proportions. Insignificant differences in the contributions of each spouse to the matrimonial property are not taken into account.

When the shares of matrimonial property have been agreed or established, spouses may agree on the arrangements for the division of the property. If spouses agree to become joint owners of assets in proportion to their respective shares of the matrimonial property, this is also considered to be division.

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

The death of one of the spouses has no effect on the matrimonial property regime.

The property of the deceased spouse is subject to succession proceedings.

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

The courts have competence to rule on disputes concerning matrimonial property regimes.

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

The joint liabilities of spouses are those which are binding on both spouses under general legislation, liabilities which have arisen in connection with the matrimonial property and liabilities incurred by one spouse to meet the needs of cohabiting with the other spouse or the needs of the family. Spouses are jointly and severally liable for these liabilities with their common property and with the personal property owned by each of them.

A spouse may claim reimbursement from the other spouse on the grounds that he/she has paid more than his/her share when settling a joint liability.

The personal liabilities of a spouse are those which he/she held before the marriage was concluded and those which he/she incurred after the marriage was concluded but which do not constitute joint liabilities under Article 82(1) DZ.

A spouse is liable for personal liabilities with his/her personal property and his/her share of the joint property.

If a contract on a matrimonial property regime is not entered in the register of such contracts, for the purposes of relationships with third parties it is assumed that the statutory matrimonial property regime applies to the property relationship between the spouses.

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

The joint property of the spouses is divided if their marriage is dissolved. While the marriage lasts, the matrimonial property may be divided by agreement or at the request of one of the spouses.

Such agreements include any agreement between spouses on the extent of the matrimonial property. If the matrimonial property regime contract by which spouses opt out of the statutory matrimonial property regime fails to specify the manner in which the matrimonial property is to be divided, it is divided in accordance with the rules of the statutory matrimonial property regime, except where the spouses agree otherwise. The property is divided on the basis of the situation when the contract on the matrimonial property regime came into force.

Each spouse's debts and claims in relation to that matrimonial property are established before his/her share in that property is determined.

The amount of each spouse's share in the matrimonial property may be agreed between the spouses or is decided by a court in response to a request from either of the spouses.

In principle, matrimonial property is divided on the basis of equal shares, but the spouses may provide evidence that they have contributed to the matrimonial property in different proportions. Insignificant differences in the contributions of each spouse to the matrimonial property are not taken into account.

In a dispute concerning the amount of each spouse's share in matrimonial property, the court will consider all the circumstances of the case, in particular the income of each spouse, the assistance which one spouse provides to the other, the custody of children, the performance of housework, care of the home and family, care to preserve property and any other form of work and cooperation in the management, preservation and enhancement of matrimonial property.

When the shares of matrimonial property have been agreed or established, spouses may agree on the arrangements for the division of the property. If the spouses agree to become joint owners of assets in proportion to their respective shares of the matrimonial property, this is also considered to be division.

If no agreement is reached on the arrangements for division of the property, a court will divide the property in accordance with the rules governing the division of matrimonial property.

When matrimonial property is divided, the items which are intended for the performance of a spouse's profession or other activity or which enable him/her to earn a living are allocated to him/her out of his/her share, at his/her request.

The same applies to items which are intended exclusively for the personal use of one of the spouses and which are not his/her personal property.

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

The land registry court (*zemljiškopravno sodišče*) decides whether to permit registration on the basis of documents which provide evidence of the legal basis for acquiring the right that is to be registered and which meet the other conditions laid down by law.

Those documents are set out in Article 40(1) of the Land Registry Act (*Zakon o zemljiški knjigi* (ZZK-1)).

Last update: 30/01/2020

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## **Matrimonial property regimes - Finland**

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

The Finnish matrimonial property regime is based on the notion of deferred community of property. This means that during marriage, property is owned separately, but if the marriage is dissolved, property is divided equally between the spouses.

Entering into marriage does not change the ownership of property of the spouses. According to the Finnish Marriage Act (*Avioliittolaki* 234/1929), property that belongs to a spouse before getting married will remain the property of that spouse during the marriage. Any property they acquire or receive as an



inheritance or gift during the marriage also remains their property. In addition to property, debts are also separate, meaning that each spouse will alone be liable for any debt they have incurred before or during the marriage. However, both spouses will be jointly liable for a debt incurred by a spouse for the maintenance of the family.

Under the Finnish matrimonial property regime, each spouse has a marital right to the property of the other spouse. This right entitles each of the spouses, or the widow(er) and the heirs of the deceased spouse, to half of the net property of the spouses when the matrimonial property is divided upon the dissolution of the marriage. The marital right covers all property regardless of when and how the spouses acquired or received the property before the marriage. However, spouses may opt not to apply the marital right in their marriage by making a matrimonial property agreement. In addition, any property received by a spouse under a deed of gift, a will or a beneficiary clause stipulating that the recipient's future spouse shall have no marital right to the property in question is also excluded from the scope of the marital right.

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

The spouses can, either before entering into the marriage or during the marriage, conclude a matrimonial property agreement. A matrimonial property agreement affects how the matrimonial property is divided. For example, the spouses can agree that a spouse has no marital right to any property belonging to the other spouse, but each spouse keeps their own property. The spouses can also agree that certain property is excluded from the division of the matrimonial property.

The matrimonial property agreement must be concluded in writing and be dated and signed. In addition, two disinterested persons must attest it. The matrimonial property agreement enters into force when it has been registered by the local register office [*maistraatti*] (or by the Digital and Population Data Services Agency [*Digi- ja väestötietovirasto*] from the start of 2020).

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

The Marriage Act contains certain restrictions concerning the administration of assets such as the spouses' common home or movable household property. A spouse may not, without the written consent of the other spouse, dispose of immovable property intended to be used as the common home of the spouses. Without the consent of the other spouse, a spouse may not dispose of a leasehold or other rights entitling possession of an apartment intended to be used as the common home of the spouses; movable property which forms part of the common household goods used by both spouses; any necessary tools used by the other spouse; or movable property which is meant for the personal use of the other spouse or the children.

The division of matrimonial property may be adjusted if the division would otherwise lead to an unreasonable result or to the other spouse receiving an unjust financial benefit. This means that in an individual case, on the basis of reasonable consideration, the rules otherwise applicable to the division of matrimonial property may be derogated from. When considering the adjustment of the division of matrimonial assets, special attention must be paid to the duration of the marriage, the activities of the spouses for their common household and for the accumulation and preservation of the property, as well as to other comparable facts regarding the finances of the spouses.

When adjusting the division of matrimonial property, it may be ordered that a spouse is not, under the marital right, to receive any property of the other spouse or that the said right shall be restricted; that certain property shall totally or partly be excluded from the marital right in the division of matrimonial property; or that all or part of property which has been excluded from the marital right of the other spouse by way of a marriage settlement, shall, in the division, be considered totally or partly property subject to the marital right of the other spouse.

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

When proceedings relating to divorce are pending or when the marriage has been dissolved, a division of matrimonial property must be carried out if a spouse or an heir of the deceased spouse so demands. In this division of matrimonial property, the marital right is realised by determining the amount the spouse whose net property is greater must hand over to the other spouse. If neither spouse has a marital right to the property of the other spouse, the property of the spouses must be separated rather than divided. If the spouses have joint property, the said property must be divided upon request when the matrimonial property is being divided or the property of the spouses separated.

Furthermore, a division of matrimonial property may also be carried out if a foreign judgment on separation has been issued for spouses whose matrimonial property matters are governed by Finnish law. However, the division cannot be carried out if the spouses resume cohabiting after the judgment on separation.

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

In principle, the same rules are followed when the marriage is dissolved because of death of one of the spouses.

If the deceased spouse has left direct heirs (children or their descendants), the widow(er) and the heirs of the deceased can request a division of matrimonial property. In this division of matrimonial property, the main rule is to divide all property equally. Half of the property goes to the surviving spouse and the other half is shared between the heirs. However, if the widow(er) has more property than the deceased spouse, they have the right to keep all of their property.

If a marriage is dissolved due to the death of a spouse but the deceased spouse left no direct heirs, the widow(er) inherits all the assets of the deceased spouse, unless the deceased spouse has ordered otherwise in a will. In such a case, the matrimonial property is not divided between the property of the first deceased spouse and the surviving spouse. The general rule is that it is only after the death of both spouses that the property left by the last remaining spouse must be divided equally between the heirs of both spouses. The widow(er) may not bequeath what would thus pass to the heirs of the first deceased spouse.

Unless the direct heirs demand the division of the estate or it is required under the terms of a will left by the deceased spouse, the surviving spouse may retain possession of the undivided estate of the deceased spouse. However, the surviving spouse has the right to retain the possession of the common home of the spouses and any common movable household property undivided, provided that the widow(er) does not own another residence suitable as a home.

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

In Finland, the authorities do not initiate any procedures concerning matrimonial property on their own initiative. If the spouses fail to reach an agreement on the division, the District Court (*käräjäoikeus*) appoints, on application, an executor to carry out the division of matrimonial property.

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

As a rule, marriage does not restrict the right of a spouse to conclude agreements, but during marriage each spouse has the right to make decisions concerning their own property without the consent of the other spouse.

In addition, a spouse is not directly liable under law for a debt incurred by the other spouse. However, the spouses are jointly liable for a debt taken by one of the spouses alone for the maintenance of the family, as well as for the payment of the rent for a common apartment of the spouses. The spouses can only terminate a leasehold for their joint apartment together, even when the leasehold was signed by one of the spouses alone.

The rights of creditors are protected in the Marriage Act so that a spouse cannot waive their rights in the division of matrimonial property in a manner binding on the creditors. If, in the division of matrimonial property, a spouse has handed over property to the other spouse or the heirs of the other spouse to a value considerably exceeding what they should have handed over, the division may be reclaimed and paid into a bankruptcy estate.

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



In Finland, the authorities do not initiate any procedures concerning matrimonial property on their own initiative. When proceedings relating to divorce are pending or when the marriage has been dissolved, a division of matrimonial property must be carried out if a spouse or an heir of the deceased spouse so demands. If neither spouse has a marital right to the property of the other spouse, a separation of the property of the spouses must be carried out instead of the division.

In a division of matrimonial property due to divorce, the main rule is to divide all property equally, unless the spouses have concluded a matrimonial property agreement. The division of matrimonial property may also be adjusted if it would otherwise lead to an unreasonable result. The joint property of the spouses must also be divided upon request, in the case of division or separation of property.

When a marriage is dissolved due to the death of a spouse and the deceased spouse has left direct heirs (children or their descendants), the widow(er) and the heirs of the deceased can request a division of matrimonial property. In this division, the main rule is to divide all property equally. Half of the property goes to the surviving spouse and the other half is shared between the heirs. If, on the other hand, the surviving spouse has more property than the deceased spouse, the surviving spouse always has the right to keep all of their own property. If a marriage is dissolved due to the death of a spouse but the deceased spouse left no direct heirs, the surviving spouse inherits all the assets of the deceased spouse, unless the deceased spouse has stipulated otherwise in a will. The general rule is that it is only after the death of both spouses that the property left by the last remaining spouse must be divided equally between the heirs of both spouses.

The parties may carry out the division themselves in accordance with a mutual agreement (division by agreement). If the parties fail to reach an agreement, the division is carried out by a court-appointed executor upon application by one of the spouses (court-appointed division).

When the division is carried out by agreement, the division must be recorded in a document, which must be dated and signed. In addition, two disinterested persons must attest it. If an executor carries out the division, the division must be drafted in the form of a document, signed by the executor.

The document may be lodged with the local register office (from the start of 2020, the Digital and Population Data Services Agency) for registration.

Registration of the division document protects each spouse against recovery claims from the creditors of the other spouse; it does not otherwise affect the validity of the division of assets between the parties.

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

Ownership of a property can be registered by applying for registration of title. The registration of title is entered into the public title and mortgage register.

Once title to a property has been registered, the new owner is shown on the certificate of title.

If ownership of a property changes because of its division or separation, the original of the agreement to divide or separate the property, an explanation of the reasons for the division of the property (e.g. a notification from the District Court indicating that proceedings relating to divorce have been brought before it), as well as any receipt of payment of transfer tax, must be sent to the National Land Survey of Finland [*Maanmittauslaitos*] for the purposes of applying for registration of title.

The period for registration of title of property divided because of the dissolution of matrimony starts when the division takes effect. The period for registration of title is six months.

Last update: 15/02/2024

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## **Matrimonial property regimes - Sweden**

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

Yes, there is such a system. It lays down rules on the duty of maintenance that applies between the spouses during and after marriage. It also regulates the spouses' rights and duties during and after marriage in respect of the different classes of assets and liabilities, the matrimonial home and its furnishings, and gifts between spouses.

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

The spouses can have assets of two kinds: property susceptible to division (*giftorättsgods*) and private property (*enskild egendom*). Property susceptible to division is the more usual form; property is susceptible to division where nothing else has been determined. The fundamental rule is that such property has to be divided when a spouse dies or in the event of divorce. Private property is not subject to division of this kind. Property can be private as a result of any of the following:

- a) A matrimonial property agreement (*äktenskapsförord*). The agreement must be in writing and must be registered with the Tax Agency (*Skatteverket*).
- b) The terms of a gift.
- c) The terms of a will.
- d) The designation of a beneficiary in a life assurance policy, an accident insurance policy, a sickness insurance policy, or an individual pension savings scheme.

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

Yes, there are restrictions. For example, there are rules protecting the spouses' matrimonial home and its furnishings during the marriage. One spouse cannot sell, let or otherwise dispose of the home without the other spouse's consent. These rules apply even to property that is private under the terms of a matrimonial property agreement. If the property has to be divided between the spouses, their matrimonial home and furnishings are allocated to the spouse who has greater need of them. This is so even if the property belongs in its entirety to the other spouse. If the value of the property thus allocated to one spouse exceeds that spouse's share of the property to be divided, the spouse is nevertheless entitled to take ownership of it if he or she pays the difference to the other spouse. Another example is that a surviving spouse is entitled to a certain minimum sum of money from the property of the two spouses. This applies even if the deceased spouse's property was private and the deceased spouse has left all of his or her own property to someone else.

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

Swedish law provides only for divorce. The legal effect of divorce is that the property susceptible to division has to be divided. One spouse may also be entitled to maintenance, at least for a tideover period.

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

The property is distributed between the deceased's heirs and the surviving spouse. But the couple's common children and grandchildren have to wait until both spouses have died before they can receive their inheritance.

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

The property can be distributed by the parties themselves. If they agree, the only formal requirement is that the distribution be made in writing and signed by both sides. If they do not agree, a court can appoint an executor (*bodelningsförrättare*). Decisions taken by the executor can be challenged by a party in the courts.

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

Each of the spouses is liable for his or her own debts. A creditor of one spouse cannot claim payment out of the other spouse's property, whether the property is susceptible to division or is that spouse's private property. There are also rules to protect a creditor against attempts by spouses to put assets out of a creditor's reach. For example, a spouse cannot decide that his or her private property is to be included in a division of property if the intention is to evade a creditor.

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

The general rule is that all the property susceptible to division is to be included in any division. There are several exceptions. From the property susceptible to division a spouse can take out as much as corresponds to his or her own debts. Each spouse can also take out clothes and other property that that spouse uses personally, and any personal gifts. Nor does the division cover pension entitlements to be met by employers or out of public funds, or in certain respects private pensions either. The value of what is left of the property susceptible to division is in principle to be distributed equally between the spouses. The distribution is to take account of who is the owner of the asset in question. As mentioned above, there are also special rules for the matrimonial home and its furnishings.

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

Every transfer of immovable property must be registered by applying for registration of ownership with the National Land Survey (*Lantmäteriet*). Registration is usually sought by the buyer. The original documents must be submitted with the application.

Last update: 10/02/2020

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