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# Matrimonial property regimes



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## 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, u 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.

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