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# Property consequences of registered partnerships

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## 1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

The form of "civil partnership" provided for in Maltese law is that of the "civil union" according to the Civil Unions Act - Chapter 530 of the Laws of Malta. The registration of the partnership as a civil union is permissible between two persons of the same sex or of different sex. Once registered, the civil union has the corresponding effects and consequences in law of civil marriage. Partners in a civil union contracted prior to the coming into force of the Marriage Act Other laws (Amendment) Act, 2017 may, within 5 years from 1 September 2017, convert their civil union into marriage. Where a civil union is converted into marriage, the civil union shall end upon conversion, and the resulting marriage shall be deemed to have been in existence from the date when the civil union was formed.

## 2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

Since a civil union and a civil marriage produce the same legal effects, even property regimes are the same. The Maltese State allows parties who would like to enter into a civil union under Maltese law the freedom to choose the regime that will regulate their property. However, the principal matrimonial property regime in Malta is that of the Community of Acquests.

This regime operates by default by law in every union, unless the parties who have already contracted or are about to contract a union choose to have their matrimonial property regulated by another regime that does not go against the spirit of Maltese law. This other regime must be set up by means of a public deed.

Other types of matrimonial property regimes which exist in Malta and which also apply to civil unions are the Separation of Estates and the Community of Residue under Separate Administration.

The Community of Acquests as a statutory matrimonial property regime in Malta, provides that everything that is acquired by the parties after the partnership, forms part of the Community of Acquests and therefore belongs to both of them 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 another matrimonial property regime that the parties can 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 the union, without requiring the consent of the other party.

The Community of Residue under Separate Administration as another matrimonial property regime that the

parties can choose instead of the Community of Acquests, provides that each party to the partnership has the right to acquire, maintain and administer property bought in his or her own name as exclusive owner of the said property. However, under this regime, the parties are not precluded from acquiring property together, which property would have to be administered jointly by the parties.

### 3 How can partners arrange their property regime? What are the formal requirements in this case?

Under the Community of Acquests regime, the general rule is that both parties 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 which can be carried out by one of the partners in the partnership on his or her own, and extraordinary administration, that is acts that are carried out by the parties jointly. Maltese law lists only acts of extraordinary administration, therefore that which is not expressly mentioned by law, must be considered to constitute an act of ordinary administration. Therefore a formal requirement that must always be complied with for the good operation of the regime of the Community of Acquests, is the consent of both parties to the partnership. In cases where the consent of the parties for a deed of transfer or of creation of a real or personal right over movable and immovable property was not given, the deed may be annulled on the request of the party withholding its consent.

Under the Separation of Estates regime, the general rule is that each party in the partnership has the right to regulate and administer the property in his or her name without the consent of the other party.

Under the Community of Residue under Separate Administration regime, the general rule is that when one of the parties to the partnership chooses to acquire alone, he or she may do so without first having to obtain the consent of the other party, and the former will have the right to regulate and administer said acquisition on his or her own. Whereas when both parties to the partnership make a joint purchase, both would have given their consent and therefore both have the right to regulate and administer said purchase jointly.

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

Under the Community of Acquests regime, the partners are obliged to act jointly. Therefore they are not free to regulate and administer alone, except for those acts of ordinary administration that do not require the consent of both parties.

On the other hand, under the Separation of Estates regime, each partner is free to do as he or she sees fit with the property in his or her name without any interference from the other party.

Under the Community of Residue under Separate Administration regime, where one of the parties to the agreement makes a purchase without the consent of the other, the acquiring party is free to regulate the regime without restrictions. However, if the parties acquire property jointly, they can only act jointly where the joint purchase is concerned.

### 5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

Under the Community of Acquests regime, the law clearly provides that this regime becomes effective from the date of marriage and ends upon death of one of the spouses or upon the dissolution of the marriage. The law also provides that in case of personal separation of the spouses, the legal division of the estate may be requested.

Under the Community of Residue under Separate Administration regime, the law stipulates that it terminates, amongst others, upon the dissolution of the marriage and the legal separation of the spouses.

However, under the Separation of Estates regime, where the spouses have ended their marriage, separated or annulled their marriage, they continue to regulate and administer the assets acquired in their own name.

This also applies in case of registered partnerships.

Therefore the effects of divorce, separation or annulment on matrimonial property are such that all that was acquired during the marriage is divided between the parties either by way of an amicable settlement or via a judgement of the competent Court.

## 6 What are the effects of death on the property consequences of the registered partnership?

Upon death of one of the parties, Maltese succession law will only apply if Malta has jurisdiction and the main factor to be taken into consideration is whether the party died testate or intestate.

## 7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

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

## 8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

Once the matrimonial property regime takes effect over the partnership, it gives rise to a legal relationship between the partners and third parties, where applicable. Third parties have the right to exercise their legal rights against both partners jointly or separately, as the case may be, depending on with whom they entered into a contract or incurred a debt.

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

The procedure for division of property normally takes place at the stage where the parties have initiated separation or divorce proceedings. Before having recourse to the competent Court, these types of procedures require the parties to start mediation proceedings, where the mediator is tasked with trying to reconcile the parties,

If the mediation is successful, the partners may separate in an amicable way where they agree on their reciprocal rights, on their rights over the children and concerning the division of matrimonial property, via a public deed that is scrutinised by the competent Court which makes sure that the rights of the parties are balanced. After being approved by the competent Court this contract is notarised and registered for legal effect for all intents and purposes, including with regard to third parties,

If the mediation is not successful and the parties do not come to an amicable agreement, they must initiate the appropriate proceedings before the competent Court, where they plead for the dissolution of the matrimonial property regime so that the matrimonial estate may be divided between them. Once the judgement of the competent Court becomes *res judicata*, said judgement is registered for legal effect, for all intents and purposes at law, including with regard to third parties.

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

For immovable property to be registered in Malta, the Notary Public who drew up the contract presents a note of notarisation to the Public Registry for this purpose. As soon as the note of notarisation is entered, the immovable property is registered and the contract is legally binding on the parties to the contract as well as *vis-à-vis* third parties.

■ Last update: 05/02/2020

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