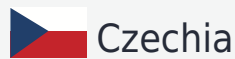


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Matrimonial property regimes



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European Judicial Network
(in civil and commercial matters)

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 or 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.

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