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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?

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 (*pflichtteilsberechtigzte 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.

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