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Matrimonial property regimes



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(in civil and commercial
matters)

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 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 notarially 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, on the one hand, a fee of 2.5%, reduced to 1.80% from 1 January 2021 and to 1.10% from 1 January 2022 for partition following a judicial separation or divorce, calculated on the basis of the net value of the divided assets and, on the other hand, the fees and emoluments of the notary.

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