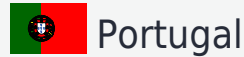


[Home](#) > ... > [Family Matters & Inheritance](#) > [Divorce and Legal Separation](#) > Portugal

# Divorce and legal separation



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## 1 What are the conditions for obtaining a divorce?

In Portugal, a divorce can be obtained by mutual consent or without the consent of one of the spouses through a contested divorce (Article 1773(1) of the Civil Code (*Código Civil*)).

The former presupposes that both spouses agree to the dissolution of the marriage and, in principle, to the payment of maintenance to the spouse in need, the exercise of parental authority with regard to minor children, the disposal of the marital home and the arrangements for any pets (Article 1775(1) of the Civil Code).

A contested divorce is applied for in court by one of the spouses against the other, based on legally established facts or other facts which, irrespective of the fault attributed to the spouses, prove the irretrievable breakdown of the marriage (Articles 1773(3) and 1781 of the Civil Code).

## 2 What are the grounds for divorce?

In a divorce by mutual consent, the spouses do not have to give the reason for their application.

The following are grounds for a contested divorce (Article 1781 of the Civil Code):

1. de facto separation for one full year, it being understood that there is de facto separation when there is no communal life between the spouses and one or both of them does not intend to re-establish the relationship (Article 1782 of the Civil Code);
2. a change in the mental faculties of the other spouse which has lasted for more than one year and which, because of its seriousness, compromises the possibility of communal life;
3. absence, without any contact from the absent spouse, for a period of not less than one year;
4. any other facts that, irrespective of the fault attributed to the spouses, prove the irretrievable breakdown of the marriage.

## 3 What are the legal consequences of a divorce as regards:

### 3.1 the personal relations between the spouses (e.g. the surname)

Divorce dissolves the marriage and has the same legal effects as dissolution by death, apart from the exceptions provided for in law (Article 1788 of the Civil Code).

The effects of the divorce as regards the property-related relationships between the spouses are produced from the moment that the divorce ruling becomes final and is no longer subject to appeal, but are retroactive to the date when the action was brought (Article 1789(1) of the Civil Code).

If the de facto separation of the spouses is proved in the proceedings, either spouse may request that the effects of the divorce be retroactive to the date on which the separation began, as decided by the ruling (Article 1789(2) of the Civil Code).

Despite divorce, a spouse who has adopted the surname of the other spouse may retain it provided that the latter consents or the court gives its authorisation, bearing in mind the reasons stated. The consent of the former spouse may be given through a notary document, a document drawn up in court (a written record, in proceedings, of the declaration of intent of the party) or a declaration before a registry office official. The application for court authorisation to use the surname of the former spouse may be submitted as part of the divorce proceedings or in separate proceedings, even after the divorce has been decreed (Article 1677-B of the Civil Code).

### 3.2 the division of property of the spouses

In the event of divorce, neither spouse may receive more than they would have received if the marriage had been entered into under the community of acquired property regime (*regime da comunhão de adquiridos*) - Article 1790 of the Civil Code).

Each spouse loses all the benefits received or to be received from the other spouse or a third party with regard to the marriage or in consideration of the state of being married, whether this stipulation is prior to or after the celebration of the marriage. The grantor may determine that the benefit accrues to the children of the marriage (Article 1791 of the Civil Code).

The effects of the divorce as regards the property-related relationships between the spouses are produced from the moment that the divorce ruling becomes final and is no longer subject to appeal, but are retroactive to the date when the action was brought (Article 1789(1) of the Civil Code).

If the de facto separation of the spouses is proved in the proceedings, either spouse may request that the effects of the divorce be retroactive to the date on which the separation began, as decided by the ruling (Article 1789(2) of the Civil Code).

The court may award the rental of the marital home to either spouse at their request, whether it is jointly owned or owned by the other spouse, taking into particular account the needs of each spouse and the interests of the children of the marriage. The rental is subject to the rules on the renting-out of accommodation, but the court may define the conditions of the agreement, having heard the spouses, and may terminate the rental at the landlord's request when supervening circumstances so justify. The arrangements set, whether by approval of the agreement between the spouses or by court order, may be amended under the general terms of voluntary jurisdiction (Article 1793 of the Civil Code).

### 3.3 the minor children of the spouses

In the case of divorce, legal separation, declaration of nullity or annulment of a marriage, the arrangements for the children, the maintenance due to the latter and the method of paying maintenance will be governed by an agreement between the parents, subject to approval by the court (or the civil registrar (*Conservador do Registo Civil*) in proceedings for separation and divorce by mutual consent) (Articles 1905(1) and 1776-A of the Civil Code).

The process of regulating parental responsibilities at the civil registry office (*Conservatória do Registo Civil*) is governed by Articles 274-A, 274-B and 274-C of the Portuguese Civil Registration Code (*Código do Registo Civil*).

In the absence of an agreement, the court will take a decision in accordance with the interests of the minor, including that of maintaining a close relationship with both parents, encouraging and accepting agreements or making decisions that encourage ample opportunities for contact with both parents and the sharing of responsibility between them. Custody of the minor may be given to either parent, a third person or a re-education or care establishment (Article 1906(8) of the Civil Code).

*For further information, please see the factsheet on ['Parental Responsibility'](#).*

### 3.4 the obligation to pay maintenance to the other spouse?

Each spouse must provide towards their own sustenance following divorce. Either spouse is entitled to maintenance, regardless of the type of divorce. For manifest reasons of fairness, the right to maintenance may be denied (Article 2016(1), (2) and (3) of the Civil Code).

In setting the maintenance amount, the court must take account of the length of the marriage, the contribution made towards the family finances, the age and state of health of the spouses, their professional qualifications and employment possibilities, the time they will possibly have to spend on bringing up their joint children, their earnings and income, the existence of a new marriage or non-marital habitation and, in general, all circumstances affecting the needs of the spouse receiving the maintenance and the financial capacity of the person paying the maintenance (Article 2016-A(1) of the Civil Code).

The court must give precedence to any maintenance obligations relating to a child of the debtor spouse over the obligation to the former spouse arising from the divorce (Article 2016-A(2) of the Civil Code).

The creditor spouse has no right to demand that the standard of living they enjoyed during marriage be maintained (Article 2016-A(3) of the Civil Code).

*For further information, please see the factsheet on 'Maintenance'.*

## 4 What does the legal term “legal separation” mean in practical terms?

Legal separation does not dissolve the marriage but extinguishes the duties of cohabitation and assistance, without prejudice to the right to maintenance. With regard to property, separation produces the same effects as those produced by dissolution of the marriage (Article 1795-A of the Civil Code).

Legal separation ends with the reconciliation of the spouses or the dissolution of the marriage (Article 1795-B of the Civil Code).

## 5 What are the conditions for legal separation?

The conditions for legal separation, whether contested or by mutual consent, are the same as those for divorce, *mutatis mutandis* (Article 1794 of the Civil Code).

## 6 What are the legal consequences of legal separation?

As indicated in the answer to question 4, legal separation extinguishes the duties of cohabitation and assistance, without prejudice to the right to maintenance. With regard to property, legal separation produces the same effects as those produced by dissolution of the marriage (Article 1795-A of the Civil Code).

The provisions on divorce apply, *mutatis mutandis*, to legal separation (Article 1794 of the Civil Code).

Legal separation may be converted into divorce, although this is not a precondition for divorce or a stage in divorce proceedings. If the spouses have not been reconciled one year after the ruling decreeing the legal separation (whether contested or by mutual consent) became final and unappealable, either spouse may apply for the separation to be converted into a divorce. If the conversion is applied for by both spouses, the period specified need not be observed and a judgment will be handed down immediately (Article 1975-D(1) and (2) of the Civil Code).

If the conversion is requested by one of the spouses, the other will be notified in person or via their legal representative, where applicable, to contest the application - which may only be based on reconciliation of the spouses - within a period of 15 days (Article 993(3) and (4) of the Code of Civil Procedure (*Código de Processo Civil*)). After evidence has been presented, the judge shall hand down a ruling on any contestation within 15 days (Article 986(3) of the Code of Civil Procedure).

The conversion of legal separation into divorce may also be applied for at any civil registry office (Article 5(1)(e) and Article 6 of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices). The application, well founded in fact and law, must be submitted to the civil registry office, providing evidence and attaching documentary proof (Article 7(1) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

The respondent is notified, within 15 days, to contest the application, give evidence and attach documentary

proof (Article 7(2) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

If the respondent does not contest the application, the facts indicated by the applicant are deemed to have been proven and the registrar, after verifying that the legal requirements have been met, grants the application (Article 7(3) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

If the respondent contests the application, the registrar schedules a meeting for an attempt at reconciliation, to be held within 15 days, and may order the performance of legal acts and the production of the evidence necessary to fulfil legal requirements (Article 7(4) and (5) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

Where the respondent contests the application and an agreement cannot be reached, the parties are notified to plead and request the production of new evidence within 8 days. The case is then referred to the judicial court of first instance with jurisdiction over the matter within the area where the registry office is located (Article 8 of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

Once the case is referred to the court, the judge orders the presentation of evidence and schedules the hearing (Article 9 of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

## 7 What does the term “marriage annulment” mean in practice?

'Marriage annulment' means terminating the legal effects of the marriage by invoking a significant defect affecting the marriage.

## 8 What are the conditions for marriage annulment?

Marriages entered into in the following circumstances can be annulled (Article 1631 of the Civil Code):

1. where there is an invalidating impediment (absolute or relative);
2. where there is a lack of consent or consent invalidated by an error or by duress on the part of one or both of the spouses;
3. where it is celebrated without the presence of witnesses, when this is required by law.

The following are absolute invalidating impediments, hindering the marriage of the person in question to any other (Article 1601 of the Civil Code):

1. being under the age of sixteen;
2. known dementia, even during lucid periods, and prohibition or incapacitation on account of a mental disorder;
3. a previous undissolved marriage, whether Catholic or civil, even if the respective entry has not been made in the register of births, marriages and deaths.

The following are relative invalidating impediments, hindering the marriage of the persons in question to one another (Article 1602 of the Civil Code):

1. direct line consanguinity;
2. a prior relationship of parental responsibility;
3. consanguinity in the second degree of the collateral line;
4. affinity in the direct line;
5. the previous conviction of one of the spouses of being the perpetrator of or accomplice in an attempt, even if unsuccessful, to murder the spouse of the other party.

A marriage may be annulled on the grounds of lack of consent (Article 1635 of the Civil Code):

1. if at the time the marriage was celebrated, one of the parties was not aware of their actions owing to accidental disability or other causes;

2. if one of the parties was misled with regard to the physical identity of the other party;
3. if the declaration of consent was extorted by physical coercion;
4. if consent has been simulated.

The error invalidating consent is only relevant for the purposes of annulment when it is based on essential personal qualities of the other spouse and is excusable, and it is proven that the marriage would not reasonably have been entered into without it (Article 1636 of the Civil Code).

Marriages entered into under moral coercion can be annulled if one of the parties is being seriously and unlawfully threatened and their fear of the threat being carried out is justified (Article 1638(1) of the Civil Code).

If someone, knowingly and unlawfully, extorts the declaration of consent from the other party with the promise of freeing them from unforeseeable harm or harm caused by others, this is equivalent to an unlawful threat (Article 1638(2) of the Civil Code).

The declaration of consent, in the act of celebration, constitutes the presumption not only that the spouses wish to marry, but that their consent is not vitiated by error or coercion (Article 1634 of the Civil Code).

## 9 What are the legal consequences of marriage annulment?

The annulment of a civil marriage, where entered into in good faith by both spouses, takes effect in relation to the spouses and to third parties when the respective ruling becomes final and is no longer subject to appeal (Article 1647(1) of the Civil Code).

If only one spouse entered into the marriage in good faith, then only that spouse can claim the benefits of marital status and invoke them against third parties, provided that this is simply a reflection of the relationship between the spouses (Article 1647(2) of the Civil Code).

A spouse who entered into the marriage in excusable ignorance of the defect causing nullity or annulment of the marriage or whose declaration of consent has been extorted by physical or moral coercion is considered to have entered into the marriage in good faith (Article 1648(1) of the Civil Code).

Recognition of good faith is the prerogative of the State courts. The good faith of the spouses is presumed (Article 1648(2) and (3) of the Civil Code).

Once the marriage has been declared null or annulled, the spouse in good faith retains the right to maintenance after the decision becomes final and is no longer subject to appeal, or the judgment is registered (Article 2017 of the Civil Code).

## 10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?

Before starting divorce proceedings, the civil registry office or court must inform the spouses of the existence and objectives of family mediation services (Article 1774 of the Civil Code and Article 14(3) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

**Family mediation** is a non-judicial method to resolve conflicts arising within family relationships, in which the parties, with their personal and direct participation and aided by the conflict mediator, try to reach an agreement.

The use of this alternative means of dispute resolution can resolve conflicts resulting from the regulation, amendment and failure to comply with the exercise of parental responsibility, divorce and legal separation, conversion of legal separation into divorce, reconciliation of separated spouses, assignment and amendment of provisional or definitive maintenance, assignment of the family home, denial of the right to use the surname of the other spouse and authorisation to use the surname of the former spouse (Article 4 of Legislative Order (*Despacho Normativo*) No 13/2018 of 9 November 2018 regulating the activity of the family mediation system (SMF), created by Order No 18 778/2007 of 22 August 2007, and approving the Regulation on procedures for

selecting mediators to provide mediation services in the family mediation system).

Family mediators are professionals licensed by the Ministry of Justice (*Ministério da Justiça*) and are responsible for conducting meetings with independence and impartiality to help the parties reach an agreement amongst themselves (Article 7 of Legislative Order No 13/2018 of 9 November 2018 regulating the activity of the family mediation system (SMF), created by Order No 18 778/2007 of 22 August 2007, and approving the Regulation on procedures for selecting mediators to provide mediation services in the family mediation system).

Divorce by mutual consent can be applied for at the civil registry office, except in situations arising from an agreement obtained within the proceedings for a contested divorce (Article 1779 of the Civil Code) and provided the application for divorce by mutual consent is accompanied by a detailed list of the couple's communal property, an agreement on the disposal of the marital home, an agreement on the payment of maintenance to the spouse in need of maintenance, and a certificate of the court judgment regulating the exercise of parental responsibility or agreement on the exercise of parental responsibility with regard to any minor children, where this has not been previously ruled on by the courts (Article 272(1) of the Portuguese Civil Registration Code).

## 11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

Separation and divorce by mutual consent

Separation and divorce by mutual consent are applied for at the civil registry office by both spouses, in mutual agreement. The application must be accompanied by the following documents (Article 272(1) of the Portuguese Civil Registration Code):

1. a detailed list of the communal property specifying the respective values, or, if the spouses choose to share this property, an agreement on sharing or an application to draw up such agreement;
2. a certificate of the court judgment ruling on the exercise of parental authority or an agreement on the exercise of parental authority with regard to any minor children, where this has not been previously ruled on by the courts;
3. an agreement on the payment of maintenance to the spouse in need of maintenance;
4. an agreement on the disposal of the marital home;
5. a certificate of the prenuptial agreement, if one exists.

Unless otherwise specified in the documents submitted, it is understood that the agreements apply both to the period of the proceedings and to the subsequent period (Article 272(4) of the Civil Code).

Proceedings for legal separation or divorce by mutual consent are brought by submitting an application signed by the spouses or their representatives to any civil registry office (*conservatória do registo civil*). The application must be filed with the aforementioned documents and the marriage certificate (Article 14(1) and (2) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

Having received the application, the registrar invites the spouses to a meeting during which the registrar verifies whether the legal requirements are met (Article 1776(1) of the Civil Code). At the meeting, the spouses are informed of the existence of family mediation services; if the spouses still intend to divorce, the agreements are considered and the spouses are invited to amend them if they do not duly protect the interests of one of them or of the children. Legal acts may be performed and evidence taken for this purpose. Where the legal requirements are met and the aforementioned procedures have been followed, the registrar grants the application (Article 14(3) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

Where an agreement is submitted on the exercise of parental authority over minor children, the proceedings are referred to the Public Prosecutor's Office (*Ministério Público*) at the court of first instance with jurisdiction over the matter within the area where the civil registry office is located, such that a ruling on the agreement can be handed down within 30 days (Article 14(4) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

If the Public Prosecutor's Office considers that the agreement does not duly protect the interests of the minors, the applicants may amend it as required or submit a new agreement. In the latter case, the agreement will be resubmitted to the Public Prosecutor's Office. If the Public Prosecutor's Office considers that the agreement does not duly protect the interest of the minors or where the spouses amended the agreement as indicated by the Public Prosecutor's Office, the divorce will be decreed (Article 14(5) and (6) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

In cases in which the applicants do not agree with the amendments indicated by the Public Prosecutor's Office and still intend to divorce and/or the agreements submitted do not sufficiently protect the interests of one spouse, approval will not be granted and the divorce proceedings will be referred to the court in the area where the civil registry office is located (Article 14(7) of Decree-Law No 272/2001 of 13 October 2001 - Proceedings falling under the jurisdiction of the Public Prosecutor's Office and of Civil Registry Offices).

After receiving the case, the judge considers the agreements that the spouses have submitted, inviting them to amend them if they do not protect the interests of one of the spouses or those of their children (Article 1778-A(2) of the Civil Code).

The judge will then determine the consequences of divorce on issues which the spouses have not amended. If any of the agreements do not sufficiently protect the interests of one of the spouses, the judge may, for this purpose and for consideration of the proposed agreements, order the performance of acts and the production of any evidence required (Article 1178-A(3) and (4) of the Civil Code).

When determining the consequences of divorce, the judge should always not only encourage but also take into account the agreement of the spouses (Article 1778-A(6) of the Civil Code).

Divorce by mutual consent is then decreed and recorded in the corresponding register (Article 1778-A(5) of the Civil Code).

Applications for legal separation or divorce by mutual consent are submitted to the court, provided the parties do not attach any of the aforementioned agreements to it (Article 1778-A(1) of the Civil Code).

In this case, the divorce application is filed with the court. Once the application has been received, the judge considers the agreements that the spouses have submitted, inviting them to amend them if the agreements do not protect the interests of one of them or of their children. The judge determines the consequences of divorce on the issues which the spouses have not agreed upon, and may, for this purpose and for consideration of the proposed agreements, order the performance of acts and the production of any evidence required. When determining the consequences of divorce, the judge should not only encourage but also take into account the agreement of the spouses. Divorce by mutual consent is then decreed and recorded in the corresponding register (Article 1778-A(2), (3), (4), (5) and (6) of the Civil Code).

#### Contested separation or divorce

Applications for contested separation or divorce are submitted to the Family and Children's Court (*Juízo de Família e Menores*) or, if no such court exists, to the local civil court (*Juízo Local Cível*) or the general court (*Juízo de Competência Genérica*) with territorial jurisdiction (Article 122(1)(c) of the Law on the Organisation of the Judicial System (*Lei da Organização do Sistema Judiciário*)). Territorial jurisdiction is defined according to the domicile or residence of the petitioner (the person bringing the action) (Article 72 of the Code of Civil Procedure).

The provisions on divorce apply, *mutatis mutandis*, to legal separation (Article 1794 of the Civil Code).

Legal separation ends with the reconciliation of the spouses or the dissolution of the marriage (Article 1795-B of the Civil Code).

Either spouse may apply for a contested divorce on the grounds of de facto separation for one full year, a change in the mental faculties of the other spouse which has lasted for more than one year and which, because of its seriousness, compromises the possibility of communal life, absence, without any contact from the absent spouse, for a period of not less than one year, and other facts that, irrespective of the fault attributed to the spouses, prove the irretrievable breakdown of the marriage (Article 1781 of the Civil Code).

The aggrieved spouse has the right to seek compensation for the damage caused by the other spouse under the

general terms of civil liability and in the ordinary courts (Article 1792(1) of the Civil Code).

The spouse who filed for divorce on the grounds of a change in the mental faculties of the other spouse must compensate them for the personal injury caused by the dissolution of marriage; this claim must be made during the divorce proceedings (Article 1792(2) of the Civil Code).

If the grounds for divorce are a change in the mental faculties of the other spouse which has lasted for more than one year and which, because of its seriousness, compromises the possibility of communal life, and absence, without any contact from the absent spouse, for a period of not less than one year, only the spouse who claims the change in mental faculties or the absence of the other spouse can file for divorce (Article 1785(1) of the Civil Code).

Where the spouse who is able to file for divorce is an accompanied adult, the action may be brought by them or, when they have powers of representation, by the person accompanying them, having obtained court approval; where the accompanying person is the other spouse, the action may be brought, on behalf of the person entitled to file for divorce, by any of their direct relatives or relatives up to the third degree of the collateral line or by the Public Prosecutor's Office (Article 1785(2) of the Civil Code).

The right to divorce is not transferred upon death. However, the petitioner's heirs may continue the action for the purposes of the estate, should the petitioner die during the proceedings; an action may continue against the respondent's heirs for the same purposes (Article 1785(3) of the Civil Code).

Once the petition has been submitted, and if the action is able to proceed, the judge will schedule a date for an attempt at reconciliation and both the petitioner and the respondent will be summoned to attend in person (Article 931(1) of the Code of Civil Procedure).

If reconciliation fails, the court will seek the agreement of the spouses for divorce by mutual consent. Where an agreement is reached or if the spouses opt for divorce by mutual consent at any point in proceedings, the procedure for that type of divorce will be followed, *mutatis mutandis* (Article 1779(2) of the Civil Code).

If the judge is unable to obtain the agreement of the spouses regarding divorce or separation by mutual consent, the judge will seek to obtain the agreement of the spouses on maintenance and on the regulation of the exercise of parental responsibility. The judge will also seek to obtain the agreement of the spouses on the use of the marital home during the period while the procedure is pending, where applicable (Article 931(2) of the Code of Civil Procedure).

In an attempt at reconciliation or at any other point during the proceedings, the parties may agree to divorce or legal separation by mutual consent, provided the necessary prerequisites are met (Article 931(3) of the Code of Civil Procedure).

In the absence of one or both parties, or where reconciliation proves impossible, the judge will order notification of the respondent that they may contest the application within 30 days; at the time of notification, which is done immediately, a duplicate of the original petition is delivered to the respondent (Article 931(5) of the Code of Civil Procedure).

If the whereabouts of the respondent are unknown, once all efforts provided for in procedural law have been made to locate them and have proven unsuccessful, the date scheduled for the reconciliation attempt will be void and the respondent will be summoned by public notice to contest the application (Article 931(6) of the Code of Civil Procedure).

After the deadline for contesting the application has elapsed, the common procedure will be followed. During that procedure, the object of the dispute is identified and the basis of evidence announced. The final hearing takes place during this procedure, with production of evidence. Upon conclusion of the final hearing, the case is closed and sent to the judge, who hands down a decision within 30 days (Article 932 of the Code of Civil Procedure).

Legal separation may be applied for in a counterclaim, even if the petitioner has filed for divorce; where the petitioner has filed for legal separation, the respondent may also apply for divorce in a counterclaim. In these cases, divorce should be decreed where the application and the counterclaim are granted (Article 1795 of the

Civil Code).

## Annulment of marriage

Annulment of a marriage may not be invoked in any terms, either judicial or extrajudicial, until it is recognised by a judgment in an action brought specifically for this purpose (Article 1632 of the Civil Code).

Such an action is brought in the Family and Children's Court by submitting an initial application which, in the form of pleadings, identifies the parties, describes the relevant facts and concludes with a request (Article 122(1)(d) of the Law on the Organisation of the Judicial System).

The legal entitlement to bring such an action varies depending on the grounds of the claim (*please see the answer to question 8*).

The spouses or any of their direct relatives or relatives up to the fourth degree of the collateral line, the heirs and adoptive parents of the spouses and the Public Prosecutor's Office have the legal right to bring or continue an action for annulment based on an invalidating impediment. In addition, the guardian or trustee in the case of minors, prohibition or incapacity due to a mental disorder and the first spouse of the offender in the case of bigamy may also bring or continue an action (Article 1639 of the Civil Code).

Annulment due to misrepresentation may be applied for by the spouses themselves or by any persons adversely affected by the marriage. In other cases involving lack of consent, annulment proceedings may be brought only by the spouse who did not give consent. However, their relatives, direct relatives by marriage, heirs or adoptive parents may continue the action, should the petitioner die during the proceedings (Article 1640 of the Civil Code).

Annulment proceedings based on defects in consent may be brought only by the spouse who was the victim of the error or of duress. However, their relatives, direct relatives by marriage, heirs or adoptive parents may continue the action, should the petitioner die during the proceedings (Article 1641 of the Civil Code).

Annulment proceedings based on the lack of witnesses may be brought only by the Public Prosecutor's Office (Article 1642 of the Civil Code).

Annulment proceedings based on an invalidating impediment should be brought:

1. in the case of minors, persons with known dementia or accompanied legally incapacitated adults, when submitted by said incapacitated individual, up to 6 months after reaching majority, after the natural incapacity has ended, or after accompaniment has ended or been reviewed; when brought by another person, within 3 years of the celebration of the marriage, but never after majority has been reached or after the incapacity has ended (Article 1643(1)(a) of the Civil Code);
2. in the case of conviction for the murder of the spouse of one of the parties, within 3 years of the celebration of the marriage (Article 1643(1)(b) of the Civil Code);
3. in other cases, within 6 months of the dissolution of the marriage (Article 1643(1)(c) of the Civil Code).

The Public Prosecutor's Office may only bring the action before the marriage is dissolved (Article 1643(2) of the Civil Code).

Annulment proceedings based on the existence of a previous undissolved marriage may not be brought or continued when proceedings are pending to declare the nullity or annulment of the first marriage of a bigamist (Article 1643(3) of the Civil Code).

Annulment proceedings based on a lack of consent of one or both of the spouses may be brought only within 3 years of the celebration of the marriage or, if the applicant was unaware thereof, within 6 months of the moment when they became aware (Article 1644 of the Civil Code).

Annulment proceedings based on defects in consent will expire if not brought within 6 months of the cessation of the defect (Article 1645 of the Civil Code).

Annulment proceedings based on the lack of witnesses may be brought only within 1 year of the celebration of the marriage (Article 1646 of the Civil Code).

The marriage certificate and possibly (if age is the ground for the application) the birth certificate of the party in question must accompany the initial application.

After the deadline for contesting the application has elapsed, the common procedure, as referred to above, is followed.

The annulment is considered to be resolved and the marriage considered valid from the moment of its celebration if any of the following events takes place before the annulment judgment becomes final and unappealable:

1. the marriage of an underage child is confirmed by said child before a civil registry officer and two witnesses, after they have reached majority (Article 1633(1)(a) of the Civil Code);
2. the marriage of a person with known dementia or an accompanied adult is confirmed by said person after it has been judicially verified that the causes of the impediment have ceased to exist (Article 1633(1)(b) of the Civil Code);
3. the first marriage of a bigamist is declared nullified or annulled (Article 1633(1)(c) of the Civil Code);
4. the lack of witnesses is due to justified circumstances, such as those recognised by the registrar, provided there are no doubts as to the celebration of the marriage (Article 1633(1)(d) of the Civil Code).

## 12 Can I obtain legal aid to cover the costs of the procedure?

Yes, the legal aid scheme applies in all courts, whatever the form of the proceedings

([Law No 34/2004 of 29 July 2004](#) - Access to Law and Justice).

For further information, please see the factsheet on '[Legal aid](#)'.

## 13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

Yes. These decisions may always be appealed (Article 629 of the Code of Civil Procedure).

## 14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

If the decision in question was delivered in a Member State of the European Union other than Denmark (Article 31 of Council Regulation (EC) No 2201/2003 of 27 November 2003), it is recognised in the other Member States in accordance with Council Regulation (EC) 2201/2003 of 27 November 2003.

If the decision was delivered in Denmark, the special procedure for review of a foreign judgment applies (Article 978 et seq. of the Code of Civil Procedure).

The court with jurisdiction for reviewing and confirming foreign judgments is the court of appeal (*tribunal da relação*) in the area of residence of the person against whom the judgment was sought (Article 979 of the Code of Civil Procedure).

In this procedure, the document containing the decision to be reviewed is submitted with the application and the opposing party is notified that they have 15 days in which to submit a response. The applicant may respond within 10 days of the notice of submission of that response (Article 981 of the Code of Civil Procedure).

Once the parties have submitted their pleadings and the steps regarded as essential have been taken, the case file is provided to the parties and the Public Prosecutor's Office for examination and observations, each for 15 days (Article 982(1) of the Code of Civil Procedure).

In order for the judgment to be confirmed:

1. there must be no doubts as to the authenticity of the document recording the judgment or the soundness of the decision;
2. the judgment must have become final according to the law of the country in which it was delivered;
3. the judgment must come from a foreign court whose jurisdiction has not been invoked in breach of the law and must not involve a matter falling within the exclusive jurisdiction of the Portuguese courts;
4. it must not be possible to invoke the defence of *lis alibi pendens* or *res judicata* based on a case in a Portuguese court, except where the action was first brought before the foreign court;
5. the respondent must have been duly served in respect of the action, under the law of the country of the court of origin, and the principles of the right of defence and equal protection of the parties must have been observed in the procedure;
6. it must not involve a decision whose recognition leads to a result which is manifestly incompatible with the principles of the public international order of Portugal.

(Article 980 of the Code of Civil Procedure).

## 15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

If the party concerned decides to apply for recognition of a decree of divorce, legal separation or marriage annulment in the Member States of the European Union, except for Denmark, the application is submitted to the Family and Children's Court (Article 122 of the Law on the Organisation of the Judicial System). The court having territorial jurisdiction is determined by the internal law of the Member State in which the application for recognition has been brought.

## 16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

According to the national conflict-of-law rules, in divorce and legal separation the common national law of the spouses is applicable. If they are not of the same nationality, the law of their joint habitual residence applies. In the absence thereof, the law of the country with which their family life is most closely associated is applicable (Article 52(1) and (2) of the Civil Code).

If, however, during the marriage, there is a change in the applicable law, only a fact relevant at the time of its occurrence can provide grounds for separation or divorce (Article 55(2) of the Civil Code).

Where to find the applicable legislation

[Portuguese Civil Code](#)

[Portuguese Civil Registration Code](#)

[Portuguese Code of Civil Procedure](#)

[Proceedings falling under the jurisdiction of the Public Prosecutor's Office and Civil Registry Offices](#)

[Legislative Order No 13/2018](#)

[Law on the Organisation of the Judicial System](#)

[Access to Law and Justice](#)

[Council Regulation \(EC\) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility](#)

## Final Note

The information in this factsheet is of a general nature and is not exhaustive. It is not binding on the contact point, the European Judicial Network in civil and commercial matters, the courts or any other persons. It is not intended to replace consultation of the applicable legislation in force.

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