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Matrimonial property regimes

Luxembourg

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1 Is there a statutory matrimonial property regime in this Member State? What does it provide?

The Luxembourg Civil Code (*Code Civil*) provides that in the absence of a marriage contract (*contrat de mariage*), the spouses are subject to the statutory matrimonial property regime (*régime matrimonial*) (see Article 1400 et seq. of the Civil Code). In this case, the regime applicable is that of the community of after-acquired property (*communauté des biens réduite aux acquêts*), generally referred to as the statutory community of marital property (*communauté légale*). These rules distinguish between joint property (*biens communs*) and each spouse's separate property (*biens propres*).

Any property owned by the spouses before the marriage remains separately owned. In principle, property acquired during the marriage forms part of the spouses' jointly owned property (salaries and income, benefits and income from separate property, assets acquired for payment).

Property in respect of which the spouses cannot prove ownership is presumed to be joint property.

There are several exceptions to this presumption, including assets of a personal nature and strictly personal rights, which are considered to be separately owned. For example, clothing, family mementos, copyright or industrial property rights and claims for compensation are considered to be separate property (Article 1404 of the Civil Code). Assets acquired during the community of property by inheritance, gift or legacy are also deemed to be separate property (Article 1405 of the Civil Code).

<https://legilux.public.lu/eli/etat/leg/code/civil/20220701>

2 How can spouses arrange their matrimonial property regime? What are the formal requirements in this case?

Article 1387 of the Civil Code on the principle of freedom of matrimonial agreements provides that 'the law only governs the marriage relationship in respect of property in the absence of specific agreements that the spouses may enter into as they deem appropriate, provided that they do not breach public morality or the following provisions'.

Spouses may depart from the statutory matrimonial property regime by drawing up a marriage contract. This contract is established either freely or by opting for one of the predetermined forms set out in the Civil Code.

By entering into a marriage contract, spouses can establish a full community of property (*communauté universelle*). Under this regime, the spouses have **no separate property other than** assets that belong to one of the spouses by their very nature (personal clothing, family mementos, etc.). All assets are jointly owned (movable property, immovable property, property acquired during marriage and present on the day of the marriage). Similarly, any **debts** of the spouses are held jointly and both spouses are jointly and severally liable for them.

The Civil Code provides for a second type of matrimonial property regime: the separation of property (*séparation de biens*). This regime is based on the principle that the spouses own no joint property. All property belongs to one spouse or the other. Each spouse therefore retains the sole right to administer, enjoy and freely dispose of their personal property. Similarly, each spouse remains solely liable for their debts (incurred before or during the marriage). An exception applies to debts incurred by either of the spouses for the maintenance of the household or the upbringing of children. These debts are always binding on both spouses.

As regards **procedural requirements**, matrimonial agreements are drawn up by notarial act (*acte devant notaire*).

A marriage contract, or the amendment of a pre-existing contract, must therefore always be drawn up in the form of a notarial act in the presence and with the consent of all parties thereto (Article 1394 of the Civil Code). The notary draws up the marriage contract, arranges for its signature by the spouses or future spouses, and is responsible for transmitting it to the Public Prosecutor's Office for transcription into the civil register. This formality is essential in order to render the marriage contract binding on third parties (e.g. on the creditors of one of the spouses).

3 Are there restrictions on the freedom to arrange a matrimonial property regime?

Yes, certain principles must be respected. A marriage contract cannot breach public morality (Article 1387 of the Civil Code), derogate from the rules of parental authority, legal administration and guardianship (Article 1388 of the Civil Code) or have the effect of changing the statutory order of succession (Article 1389 of the Civil Code).

The primary regime (Articles 212 to 226 of the [Civil Code](#)) must be fully respected, except where it provides for the application of matrimonial agreements.

The stipulations of the marriage contract may not conflict with the spouses' respective rights and obligations.

Among their other obligations, spouses have a mutual duty to remain faithful and to provide help and assistance to one another. They may not dispose of the rights by which the family home is secured, nor of the furnishings therein. Likewise, joint and several liability (*solidarité*) for household debts is presumed.

4 What are the legal effects of divorce, separation or annulment on the matrimonial property?

(a) **Divorce** (*divorce*) dissolves the marriage and entails the liquidation (*liquidation*) and division (*partage*) of the matrimonial property regime. The marriage contract is no longer effective and the property relations of the parties are governed by the general law of obligations and of co-ownership.

The court that hears the divorce may grant a maintenance allowance (*pension alimentaire*) to either spouse. The maintenance allowance is determined according to the needs of the spouse to whom it is paid and the contributory capacity of the other spouse.

If a spouse has abandoned or reduced their professional activity during the marriage (e.g. in order to look after children), they are entitled, under certain conditions, to claim against the other spouse in order to make a retroactive purchase from the general pension insurance scheme.

Where one or more children of the marriage are under the age of twelve on the date on which the divorce is granted, the spouse who exercises parental authority (*autorité parentale*) (alone or jointly with the other parent) and with whom the children habitually reside may ask the court to award them the right to stay in the matrimonial home. The fact that the home may belong to the other spouse does not prevent this award.

In principle, the divorce of the parents does not change the conditions in which they exercise parental authority, which continues to be exercised jointly by both. The court only confers parental authority upon one of the two parents when this is in the child's interests.

b) Spouses who wish to separate, but who do not yet wish to divorce, may opt for a **legal separation** (*séparation de corps*). Legally separated spouses are no longer obliged to reside together, but legal separation always entails the separation of property, which in turn entails the dissolution of the community of property. The other duties and obligations of marriage remain.

Although legal separation ends upon reconciliation of the spouses, they remain subject to the separation of property, unless a new matrimonial regime is agreed upon.

c) **Annulment of the marriage** (*annulation du mariage*) has the effect of retroactively nullifying the marriage. The matrimonial property regime is deemed never to have existed. The rights and duties of marriage disappear and the persons concerned are considered to have lived together as a cohabiting couple.

5 What are the effects of death of one of the spouses on the matrimonial property regime?

The death of one of the spouses dissolves the community of property. A dual liquidation is necessary: the liquidation of the statutory or contractual matrimonial property regime, and then the inheritance rights of the surviving spouse.

Unless otherwise provided and where the deceased leaves children or descendants of those children, the surviving spouse is entitled to inherit either the minimum amount that a legitimate child is legally entitled to receive, which must amount to at least a quarter of the estate, or to the enjoyment of the property jointly inhabited by the spouses and its furnishings, provided that the property was owned by the deceased in its entirety or jointly by the deceased and the survivor (Article 767-1 of the Civil Code).

Where the deceased leaves neither children nor descendants of those children, the surviving spouse is entitled to full ownership of the entire estate unless otherwise provided for in the will (Article 767-2 of the Civil Code).

6 Which authority has the competence to decide in a case relating to a matrimonial property regime?

The provisions of the Law of 27 June 2018 establishing the family court and reforming divorce and parental authority (*loi du 27 juin 2018 instituant le juge aux affaires familiales, portant réforme du divorce et de l'autorité parentale*), which came into force on 1 November 2018, are applicable:

<https://legilux.public.lu/eli/etat/leg/loi/2018/06/27/a589/jo>

The family court hears applications relating to matrimonial property regimes.

An amicable, out of court division is possible. However, the involvement of a notary is only necessary when a property is subject to land registration (*publicité foncière*).

Only contentious 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, which applies irrespective of the matrimonial property regime, establishes a presumption of joint and several liability between spouses and third parties with regard to household debts, whereas *each of the spouses has the power to enter into contracts alone for the upkeep of the household or the education of children; any debt thus incurred by one is jointly and severally binding on the other.*

However, joint and several liability shall not apply to expenditure that is manifestly excessive taking into account the household's lifestyle, the usefulness or otherwise of the transaction, or the good or bad faith of the contracting third party.

Nor shall it apply to obligations arising from instalment purchases, unless they were concluded with the consent of both spouses.

Another effect of the matrimonial property regime on the legal relationship between a spouse and a third party concerns the change of matrimonial property regime, which takes effect with regard to third parties three months after being entered in the civil register. However, in the absence of this entry, the change is nonetheless binding on third parties if, in the instruments concluded with them, the spouses declare that they have amended their matrimonial property regime.

With regard to third parties, the divorce ruling only takes effect from the date of the entry or transcription. If one of the spouses is a trader, any marriage contract and any instrument amending or changing the matrimonial property regime must be transmitted within one month to the Commercial Register.

8 A short description of the procedure for the division, including partition, distribution and liquidation, of matrimonial property in this Member State.

The marriage contract has no further effect once it has been dissolved.

The liquidation of the jointly owned property is based on various calculations that determine the proportion of the joint property to be divided, and the assets and liabilities of each spouse.

The spouses each regain possession of their separate property. A compensation statement (*compte des récompenses*) is then established, showing both the compensation due to each spouse from the community of property, and the compensation owed by the spouses to the community of property.

The division is subsequently carried out on an equal basis, in principle, unless otherwise agreed.

The matrimonial property regime can be liquidated by amicable arrangement. The division of property subject to land registration is carried out by notarial act. When the spouses do not agree on the liquidation and division of the matrimonial property regime, a notary, previously appointed by the family court for that purpose, draws up a report on the difficulties and respective declarations of the spouses. The court, sitting as a bench, decides upon the remaining disputes between the spouses and refers them to the notary in order to draw up the final scheme of division (*l'état liquidatif*).

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

Any division affecting an instrument subject to land registration is carried out by notarial act.

In any event, any *inter vivos* instruments (*actes entre vifs*), whether free of charge or for payment, transferring rights in rem in immovable property (*droits réels immobiliers*) other than preferential rights (*privilèges*) or mortgages (*hypothèques*), must be transcribed at the office of the mortgage registry (*bureau de la conservation des hypothèques*) of the jurisdiction in which the property is located.

The provisions of the amended Law of 25 September 1905 on the transcription of rights in rem in immovable property (*loi modifiée du 25 septembre 1905 sur la transcription des droits réels immobiliers*) are applicable: <https://legilux.public.lu/eli/etat/leg/loi/1905/09/25/n1/jo>

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