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Matrimonial property regimes

Lotyšsko

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

In Latvia, matrimonial property regimes are governed by Section I ('Legal matrimonial property regimes'), Sub-Chapter 4 ('Matrimonial property regime'), Part One 'Family law' of the Latvian Civil Law (*Civillikums*), specifically Articles 89-110 of that Law.

Each spouse retains the property that belonged to him or her before their marriage, and the property he or she acquires during their marriage, as their own separate property. Everything acquired during their marriage by the spouses together, or by one of them separately, but using the resources of both spouses or assisted by the other spouse's actions, is the joint property of both spouses; in case of doubt, it is assumed that the property in question belongs to both spouses equally.

For the duration of the marriage, each of the spouses has the right to manage and use all of their own property – both the property they owned before their marriage and the property acquired during their marriage. The spouses manage and dispose of shared matrimonial property jointly, but upon the agreement of both spouses, that property may also be managed by one of them separately. Disposal of this property by one of the spouses requires the consent of the other spouse.

The separate property of each spouse is specifically:

- (1) property owned by a spouse before their marriage, or property the spouses have stipulated in a contract as separate property;
- (2) articles suited to the personal use of one spouse only or required for independent work;
- (3) property acquired during their marriage by one of the spouses free of charge;
- (4) income from the separate property of a spouse which is not transferred to meet the needs of the family and the needs of the joint household;
- (5) property that replaces the property referred to in paragraphs (1)-(4) above.

The burden of establishing that certain specific property is separate falls upon the spouse who asserts that it is. The fact of immovable property being the separate property of one spouse is recorded in the Land Register.

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

Spouses may establish, alter or terminate their property rights by means of a matrimonial property agreement before or during their marriage.

The parties to a matrimonial property agreement may, in place of a legal matrimonial property regime (Articles 89 et seq. of the Civil Law), apply the principle of separate property during marriage (Articles 117 et seq. of the Civil Law) or institute a full community property system (Articles 124 et seq.).

If the matrimonial property agreement establishes a full community property system, the property that belonged to each spouse prior to their marriage and the property acquired by each spouse during their marriage are combined into a joint indivisible whole which, during their marriage, does not belong to either spouse in separate parts. In a matrimonial property agreement establishing a full community property system, the spouses agree on which of them will be the manager of the system (the husband, the wife or both jointly). If the manager of the system is one of the spouses, that spouse may, subject to the limitations set out in Article 128, use the property without accounting for it and dispose of it in his or her own name, and it is that spouse's duty to cover the costs of the family and the costs of the joint household.

If the matrimonial property agreement enshrines the principle of separate property during marriage, each spouse not only retains the property that belonged to them separately prior to their marriage, but may also acquire, use and dispose of it in an individual capacity, independently of the other spouse.

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

A spouse may assign their property or their share of the joint spousal property to be managed by the other spouse, who is obliged to preserve and protect that property using all means at their disposal. If the joint immovable property of the spouses is recorded in the Land Register under the name of one of the spouses, it is presumed that the other spouse has assigned their share of that property to be managed by the spouse under whose name it is recorded.

A spouse managing buildings belonging to the other spouse must not only carry out the requisite repairs, but also make improvements to the extent that income from the assets of the other spouse permits.

The immovable property of one of the spouses may be leased or rented by the other spouse for a period of time not exceeding three years and without the agreement being recorded in the Land Register. For a spouse to be able to dispose of items of the other spouse's property he or she administers in such a way that his or her actions exceed the normal limits of management, that spouse must obtain the consent of the other spouse.

Both spouses have a duty to cover the costs of the family and the costs of the joint household from the joint spousal property. If the joint spousal property is insufficient to support the family, each spouse may require the other to contribute to the costs of the family and the costs of the joint household in a manner commensurate with his or her own separate financial circumstances. If the spouses live separately, one of the spouses may, if necessary, claim from the other spouse resources commensurate with the other spouse's financial circumstances in order to secure the claimant's previous level of welfare.

A dowry given to a woman in the event of marriage by her parents, kin or other persons is the property of the wife, even if it is given to the husband.

The following are considered a spouse's personal property:

- (1) property that already belonged to the spouses before the date of their marriage;
- (2) property received as a gift or inheritance after the date of their marriage;
- (3) property for strictly personal use by each spouse;
- (4) property needed by a spouse to pursue his/her profession;
- (5) property received as compensation for damages, as well as any pension related to a partial or total loss of the ability to work;
- (6) property acquired with the price of the transfer or exchange of personal property, provided that this is explicitly stated at the time of acquisition.

The following property also falls under the community of property regime:

- (1) the profits earned by each spouse, received and not spent at the time the community is dissolved;
- (2) the proceeds from the separate activities of each spouse, if not spent at the time the community is dissolved;
- (3) any businesses managed jointly by the spouses and established after the date of their marriage.

The management of community property and representation in legal proceedings in respect of acts regarding community property are the responsibility of each spouse separately, whereas they are jointly responsible for acts of extraordinary management.

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

Legal property relations between spouses are terminated:

(1) on the basis of an agreement between the spouses;

(2) if one of the spouses dies;

(3) when divorcing or within an existing marriage – on the basis of a request from one of the spouses, if the debts of the other spouse exceed the value of his or her separate property or if, as a result of his or her actions, the property is at risk of significant reduction or dissipation.

When dividing up joint spousal property, all of the spouses' property not recognised as the separate property of one of the spouses is taken into account, namely movable and immovable property with all appurtenances, as well as the spouses' claims and obligations.

Joint spousal property is divided up on the basis of the general provisions underpinning the procedures for the division of an estate (Article 731 et seq.).

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

If the spouses' legal property relations are terminated by the death of one of the spouses, then, once the share of the surviving spouse has been separated out, the share of the deceased spouse passes to his or her heirs.

The surviving spouse inherits from the deceased regardless of the form of property relationship in effect between the spouses during their marriage.

The spouse receives the child's share if the number of children who have expressed the intent to inherit is less than four, but a quarter share if there are four or more children who have expressed the intent to inherit.

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

Judicial authorities have jurisdiction in accordance with the general rules.

7 What are the effects of the matrimonial property regime on legal relationships between a spouse and a third party?

Spouses are held liable for the obligations they have entered into jointly to meet the needs of the family or the needs of the joint household to the extent of their joint property, and each to the extent of their separate property, if the joint property is insufficient.

A spouse is held liable for obligations he or she has entered into individually to meet the needs of the family or the needs of the joint household to the extent of his or her own property, if the spouses' joint property is insufficient. The other spouse is held liable for these obligations to the extent of his or her own property only if the consideration received pursuant to his or her obligation has been used to meet the needs of the family or the needs of the joint household.

A spouse is held liable for obligations arising from his or her wrongful acts firstly to the extent of his or her separate property, but, if that is insufficient, to the extent of his or her share in the spouses' joint property.

A spouse is held liable for obligations entered into on his or her own account or without the consent of the other spouse firstly to the extent of his or her separate property, but, if that is insufficient, to the extent of his or her share in the spouses' joint property.

The property of one spouse is not used to satisfy the obligations of the other spouse. If, in respect of the debts of one of the spouses, recovery proceedings are initiated against the separate property of the other spouse, the other spouse may request that such property be released from the recovery proceedings.

If, in respect of the debts of one of the spouses, recovery proceedings are initiated against the spouses' joint property, the other spouse may request that the property be divided and his or her share be released from the recovery proceedings.

The division of matrimonial property does not deprive the spouses' creditors of their rights. Rights acquired by third parties remain in effect.

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

If, in an existing marriage, the spouses' joint property has been divided, provisions enshrining the principle of separate property during marriage are applied to their property relations (Article 117 et seq.).

If the matrimonial property agreement enshrines the principle of separate property during marriage, each spouse not only retains the property that belonged to them separately prior to their marriage, but may also acquire, use and dispose of it in an individual capacity, independently of the other spouse.

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

For matrimonial property agreements to have binding effect vis-à-vis third parties, they must be registered in the Matrimonial Property Regimes Register and, where immovable property is concerned, also in the Land Register.

The burden of establishing that certain specific property is separate falls upon the spouse who asserts that it is. The fact of immovable property being the separate property of one spouse is recorded in the Land Register.

The fact of immovable property falling under a community of property regime is recorded in the Land Register. Each of the spouses may request that immovable property rights included in the community of property regime be entered in the Land Register under the names of both spouses.

If, in an existing marriage, the spouses' joint property has been divided, provisions enshrining the principle of separate property during marriage are applied to their property relations. Contracts and court judgments acquire binding effect against third parties after they are recorded in the Matrimonial Property Regimes Register or, in the case of immovable property, after they are recorded in the Land Register.

Extracts of records in the Matrimonial Property Regimes Register are published for information without delay in the official gazette, and notices regarding the immovable property are communicated to the Land Registry Office for recording in the Land Register.

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