



Matrimonial Property Regime

Matrimonial Property Regime is a broad term referring to rules incorporated into the law of a given jurisdiction that govern the ownership and management of assets belonging to a couple during marriage. It is essential that each union have a clear understanding of the interests and needs of the couple in order to distinguish between transmissible possessions: those that are exclusively in the domain an individual from those that they share in common.

When both spouses (or only one of them) are married under Portuguese law or are Portuguese nationals, legislation provides for the following types of marital asset regimes:

1. Community property;
2. General ownership;
3. Separate assets;
4. Another that the couples agrees to, within the limits of the law.

If the spouses do not enter into a prenuptial agreement, the marriage is considered by default to have *community property*. If they wish a different regime, they must enter into a premarital contract, either at the Civil Registry or recorded via public deed in a notary's office.

Community Property (“*Comunião de Adquiridos*”)

Any assets acquired over the course of marriage are considered to be *community property*. The union is seen as *one* couple (*a community*), not *two* distinct spouses. Any assets possessed individually prior to marriage and those which follow after marriage, either by succession or gift, are considered to be the property of each of the spouses. According to Portuguese law, it is not possible for the couple, during the marriage, to proceed with the separation of their common property. They can do so only after separation or divorce.



Common Property (“*Comunhão Geral de Bens*”)

The Common Property Regime consists of all present and future assets of both spouses, whether acquired for consideration or free of charge, before or after marriage. This regime can not be chosen when the spouses already have children from previous marriages.

Separate Assets (“*Separação de Bens*”)

In this regime, there is no common holding of any property, whether acquired for consideration or gratuitously, either before or after marriage. Each spouse retains full ownership of all of his/her possessions, both present and future.

The law imposes a mandatory regime of *separation of assets* when the marriage has been entered into without organising the preliminary marriage process or when one or both of the spouses has already reached 60 years of age.

Couples wishing to get married - whether the union be civil, Catholic or civil under religious form - need to organise a process to publicise this intention. The organisation of the marriage process may be requested by the bride and groom or by power of attorney that grants specific powers. When making the declaration for marriage, the couple should choose either the civil, catholic or civil modality in the religious form, indicating the place where they intend to marry and the desired marital property regime.

Other regimes

Portuguese law allows spouses to choose a different regime, stipulating what they understand, within the limits of the law, being able to combine characteristics of the different types of regimes described above. Beyond Portugal, there are other marital property regimes in the European context. Not only are the choices different but semantic similarities may be deceiving. It is important to seek appropriate legal counsel if the couple is contemplating going beyond conventional domestic options.



Immutability of the Marital Property Regime

After the celebration of a marriage, neither the prenuptial agreement nor the statutory property regimes can not be altered (Article 1714 of the Civil Code). This is the so-called principle of the *immutability of the matrimonial property regime*. Due to this principle, contracts of sale and purchase between spouses are not valid nor is the sharing of assets valid in the marriage. For example, if a husband and wife married under the *community property regime* are shareholders of a company, they are seen to be one shareholder, not two.

Within the EU, Portugal is exceptional in applying this *immutability principle*. Most countries allow change, either approved by the court or through declarations to a local notary.

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