

CIVIL CODE

159

STATUTORY MATRIMONIAL PROPERTY REGIME

The statutory matrimonial property regime (in the absence of a different agreement concluded pursuant to Article 162, according to which marital agreements must be concluded by authentic instrument under penalty of nullity, the choice of the separation regime may also be declared in the marriage ceremony, the agreements may be concluded at any time) shall be community of property governed by artt. 177 ff.

CIVIL CODE

160

MANDATORY RIGHTS

The spouses can not waive either their rights or their duties under the law as a result of marriage.

CIVIL CODE

161

GENERAL REFERENCE TO LAWS OR CUSTOMS

The spouses can not agree in a general way that their property relationships shall be governed in whole or in part by laws to which they are not subject or by custom, but must set out in concrete terms the content of the agreements by which they intend to regulate these relationships.

CIVIL CODE

162

FORM OF MARRIAGE AGREEMENTS

Marriage agreements [artt. 159, 167 ff., 215 ff.] must be concluded by authentic instrument under penalty of nullity.

The choice of separation [215] may also be declared in the marriage celebration.

Conventions may be concluded at any time, subject to the provisions of Article 194.

Marriage agreements can not be enforced against third parties when the date of the contract, the notary who drew up the contract and the particulars of the contracting parties, or the choice referred to in the second paragraph, are not recorded in the margin of the marriage certificate.

CIVIL CODE

163

AMENDMENT OF AGREEMENTS

Amendments to marriage agreements, whether before or after the marriage, have no effect unless the authentic instrument is drawn up with the consent of all the persons who were parties to the agreements, or their heirs.

If one of the spouses dies after having given his or her consent by authentic instrument to the modification of the agreements, the latter produces its effects if the other parties also subsequently express their consent, subject to the approval of the court. The homologation may be requested by all the persons who participated in the amendment of the agreements or by their heirs.

The agreed amendments and the homologation are effective towards third parties only if an annotation to that effect is made in the margin of the marriage certificate.
The annotation must also be made in the margin of the transcription of the marriage agreements where this is required.

CIVIL CODE

164

SIMULATION OF MARRIAGE AGREEMENTS

Evidence of the simulation of marriage agreements is allowed to third parties.

Written counter-declarations may have effect in relation to those between whom they were made, only if they were made with the presence and simultaneous consent of all the persons who were parties to the marriage agreements.

CIVIL CODE

166-BIS

PROHIBITION OF THE ESTABLISHMENT OF A DOWRY

Any agreement that in any way aims at the establishment of assets as a dowry is null and void.

CIVIL CODE

167

CONSTITUTION OF A MATRIMONIAL PROPERTY FUND

Either or both spouses, by public deed, or a third party, including by will, may set up a property fund, allocating certain assets, whether real or movable property, entered in public registers or securities, to meet the family's needs.

The constitution of the matrimonial property fund by deed between living persons, carried out by the third party, is perfected by the acceptance of the spouses. Acceptance may be made by a subsequent public deed.

The constitution may also be made during marriage.

Debt securities must be pledged by making them registered with a note of the pledge or in another adequate manner.

CIVIL CODE

168

USE AND ADMINISTRATION OF THE FUND

Ownership of the property constituting the matrimonial property fund belongs to both spouses, unless otherwise stipulated in the deed of constitution.

The fruits of the assets constituting the patrimonial fund are used for the needs of the family.

The administration of the property constituting the matrimonial property fund is governed by the rules on the administration of legal community.

CIVIL CODE

169

ALIENATION OF FUND PROPERTY

Unless expressly allowed in the deed of constitution, assets of the matrimonial property fund can not be alienated, mortgaged, pledged

or otherwise bound except with the consent of both spouses and, if there are minor children, with the authorisation granted by the court, by order made in chambers, in cases of obvious necessity or utility

CIVIL CODE

170

EXECUTION ON FUND PROPERTY

Execution on the fund's property or its fruits can not be levied for debts which the creditor knew to have been contracted for purposes extraneous to the needs of the family.

CIVIL CODE

171

TERMINATION OF THE FUND

The destination of the fund terminates upon annulment or dissolution or cessation of the civil effects of the marriage.

If there are minor children the fund lasts until the last child comes of age. In such a case the court may, at the request of any interested party, lay down rules for the administration of the fund. Having regard to the economic conditions of the parents and the children and any other circumstances, the court may also assign to the children, in enjoyment or ownership, a share in the property of the estate.

If there are no children, the provisions on the dissolution of legal community apply.

CIVIL CODE

177

OBJECT OF COMMUNITY

The goods of the communion are:

- (a) property acquired by the spouses together or separately during the marriage, except for personal goods;
- (b) the fruits of the property belonging to each of the spouses, received and not consumed at the dissolution of community;
- (c) the fruits of a spouse's personal activities provided that, at the time of the dissolution of the community of property, they still exists;
- (d) companies managed by both spouses and established after the marriage.

In the case of companies owned by one of the spouses before the marriage but managed by both, community only concerns profits and increases.

CIVIL CODE

178

ASSETS INTENDED FOR THE OPERATION OF BUSINESS

Assets intended for the operation of the enterprise of one of the spouses set up after the marriage and the assets of the enterprise set up even earlier are considered to be goods of community only if they exist at the time of its dissolution.

CIVIL CODE

179

PERSONAL PROPERTY

They do not constitute objects of community and are personal property of the spouse:

- (a) property owned by the spouse before the marriage or had a right in rem to enjoy;
- (b) property acquired after marriage by way of gift or inheritance, where it is not specified in the gift deed or will that it is to be allocated to the community;
- (c) property for the strictly personal use of each spouse and its accessories;
- (d) property used in the exercise of the spouse's profession, except property used for the purpose of running a business forming part of the community;
- (e) property obtained by way of damages as well as the pension relating to the partial or total loss of the capacity to work;
- (f) goods acquired with the price of the transfer of the personal property listed above or by exchange thereof, provided that this is expressly stated at the time of purchase.

The acquisition of real property, or of movable property listed in Article 2683, made after the marriage, shall be excluded from community of property, within the meaning of points (c), (d) and (f) of the preceding paragraph, where such exclusion is apparent from the deed of acquisition if the other spouse was also a party to it.

CIVIL CODE

180

ADMINISTRATION OF COMMUNITY PROPERTY

The administration of the community property and the representation in court for acts relating thereto belong separately to both spouses.

The performance of acts beyond ordinary administration, as well as the conclusion of contracts granting or acquiring personal rights of enjoyment and the representation in court for related actions are jointly entitled to both spouses.

CIVIL CODE

181

REFUSAL OF CONSENT

If one of the spouses refuses to give consent for the conclusion of an act of extraordinary administration or for other acts for which consent is required, the other spouse may apply to the court to obtain authorisation if the conclusion of the act is necessary in the interest of the family or the business which, in accordance with Article 177(d), forms part of the community.

CIVIL CODE

182

ADMINISTRATION ENTRUSTED TO ONLY ONE OF THE SPOUSES

In the event of the distance or other impediment of one of the spouses, the other, in the absence of a power of attorney⁽²⁾ from the former evidenced by a public document or by an authenticated private contract, may, with the authorisation of the court and subject to such precautions as the court may prescribe, carry out

the necessary acts for which the consent of both spouses is required under Article 180.

In the case of joint management of a business, one of the spouses may be delegated by the other to perform all acts necessary for the business.

CIVIL CODE

183

EXCLUSION FROM ADMINISTRATION

If one of the spouses is a minor or cannot administer or has mismanaged, the other spouse may ask the court to exclude him/her from the administration.

The spouse deprived of the administration may apply to the court for reinstatement if the grounds for exclusion have ceased to exist.

The exclusion takes effect as of right with regard to the disqualified spouse and remains in force until the disqualification ceases.

CIVIL CODE

184

ACTS PERFORMED WITHOUT THE NECESSARY CONSENT

Acts performed by one spouse without the necessary consent of the other spouse and not validated by the latter are voidable if they concern real property or movable property listed in Article 2683 (i.e., 1) ships and floating vessels registered in the registers indicated in the Code of Navigation

2) aircraft entered in the registers indicated in the same code; 3) motor vehicles entered in the public register of motor vehicles).

The action may be brought by the spouse whose consent was required within one year of the date on which he/she became aware of the act and in any event within one year of the date of transcription. If the act has not been transcribed and the spouse did not have knowledge of it before the dissolution of the community, the action may not be brought later than one year after the dissolution of the community.

If the acts relate to movable property other than that referred to in the first paragraph(3), the spouse who has performed them without the consent of the other is obliged, at the latter's request, to restore the community in the state in which it was before the act was performed or, if this is not possible, to pay the equivalent in accordance with the current values at the time of the restoration of community

CIVIL CODE

185

ADMINISTRATION OF A SPOUSE'S PERSONAL PROPERTY

The provisions of the second, third and fourth paragraphs of Article 217 apply to the administration of property not forming part of a community of property or an estate [167-171 of the Civil Code].

CIVIL CODE

186

OBLIGATIONS ON COMMUNITY ASSETS

The community property is liable for:

- (a) all weights and burdens imposed on them at the time of their acquisition;
- (b) all burdens of administration;
- (c) expenses for the maintenance of the family and for the education and upbringing of the children and any obligations incurred by the spouses, even separately, in the interests of the family
- (d) any obligation contracted jointly by the spouses [192].

CIVIL CODE

187

OBLIGATIONS CONTRACTED BY SPOUSES BEFORE MARRIAGE

Except as provided in Article 189, community property are not be liable for obligations contracted by either spouse before the marriage.

CIVIL CODE

188

OBLIGATIONS ARISING OUT OF GIFTS OR SUCCESSION

With the exception of obligations contracted after the marriage by one of the spouses, the community property are not be liable for obligations burdening gifts and successions obtained by the spouses during the marriage and not attributed to the community.

CIVIL CODE

189

OBLIGATIONS CONTRACTED SEPARATELY BY THE SPOUSES

The community property, up to the value corresponding to the obligated spouse's share, are liable, when creditors cannot be satisfied on personal property, for obligations incurred, after the marriage, by one of the spouses for the performance of acts exceeding ordinary administration without the necessary consent of the other.

The particular creditors of one of the spouses, even if the claim arose prior to the marriage, may be satisfied on a subsidiary basis on the community property, up to the value corresponding to the share of the obligated spouse. If unsecured, the community creditors have preference over them.

CIVIL CODE

190

SUBSIDIARY LIABILITY OF PERSONAL PROPERTY

Creditors can take subsidiary action on the personal property of each of the spouses, up to half of the debt, when the community property is insufficient to satisfy the debts of the community.

CIVIL CODE

191

DISSOLUTION OF COMMUNION

Communion is dissolved by declaration of absence or presumed death of one of the spouses, annulment, dissolution or termination of the civil effects of the marriage, legal separation, judicial separation of property, conventional change of property regime, bankruptcy of one of the spouses.

In the case of legal separation, the community of property between

the spouses is dissolved at the time when the president of the court authorises the spouses to live separately, or on the date of the signing of the minutes of the consensual separation of the spouses before the president, provided that they have been approved. The order by which the spouses are authorised to live separately is communicated to the civil registrar for the purposes of recording the dissolution of the community of property.

In the case of companies managed by both spouses and established after the marriage (art 177 lett. d), the dissolution of community may be decided by agreement of the spouses, observing the form provided for in Article 162, or by public deed or by declaration in the marriage certificate.

CIVIL CODE

192

REFUNDS AND RETURNS

Each of the spouses is liable to reimburse to the community any sums taken out of the community property for purposes other than the performance of the obligations provided for in Article 186.

The spouse is also obliged to reimburse the value of community property referred to in Art. 189 unless, being an act of extraordinary administration performed by the spouse, he/she proves that the act was beneficial to the community or satisfied a need of the family.

Either spouse may claim restitution of sums withdrawn from the personal assets (art. 179) and used for expenses and investments of the common property.

Refunds and restitutions are made at the time of the dissolution of the community; however, the court may authorise them at an earlier time if the interests of the family so require or permit.

A spouse who is a creditor may request to take common property up to the amount of his or her claim. In the event of dissent, the fourth paragraph applies. Withdrawals are made on money, then on furniture and finally on real property.

CIVIL CODE

193

JUDICIAL SEPARATION OF ASSETS

Judicial separation of property may be pronounced in the event of interdiction or incapacitation of one of the spouses or maladministration of the community.

It may also be pronounced when the disorder of the affairs of one of the spouses or the conduct of one of the spouses in the administration of property endangers the interests of the other or of the community or the family, or when one of the spouses does not contribute to the latter's needs in proportion to his or her substance and capacity for work.

Separation may be requested by one of the spouses or his or her legal representative.

The judgment pronouncing the separation runs from the day on which the application was made and shall have the effect of establishing the separation of property regime regulated in Section V of this Chapter, without prejudice to the rights of third parties.

The judgment is noted in the margin of the marriage certificate and

on the original of the marriage agreements.

CIVIL CODE

194

DIVISION OF COMMUNITY PROPERTY

The division of community property is performed by dividing the assets and liabilities equally.

The court, in relation to the needs of the children and their custody, may constitute in favour of one of the spouses the usufruct on a part of the property due to the other spouse.

CIVIL CODE

195

REMOVAL OF MOVABLE PROPERTY

In the division, the spouses or their heirs are entitled to take movable property that belonged to the spouses before the community or that came to them during the community by inheritance or gift. In the absence of proof to the contrary, movable property is presumed to be part of the community.

CIVIL CODE

196

REIMBURSEMENT OF VALUE IN CASE OF LACK OF THINGS TO BE WITHDRAWN

If movable property which the spouse or his or her heirs are entitled to take under the preceding Article is not found, they can reclaim the value thereof, proving the amount also by affidavit, unless the lack of that property is due to consumption for use or loss or other cause not attributable to the other spouse.

CIVIL CODE

197

LIMITS TO LEVY AGAINST THIRD PARTIES

The levy authorised by the preceding Articles can not be made, to the prejudice of third parties, if the individual ownership of the property is not evidenced by a deed bearing a certain date. This shall be without prejudice to the right of the spouse or his or her heirs to have recourse to the community property due to the other spouse or to his or her other property.

CIVIL CODE

210

CONVENTIONAL CHANGES TO LEGAL COMMUNITY OF PROPERTY

The spouses may, by means of an agreement concluded in accordance with Article 162, i.e. by public instrument or by declaration in the marriage certificate, modify the rules governing community of property, provided that the agreements are not contrary to the provisions of Article 161, i.e. the spouses can not stipulate in a general manner that their property relationships shall be governed in whole or in part by laws to which they are not subject or by custom.

The property referred to in points (c), (d) and (e) of Article 179, i.e. property for the strictly personal use of each spouse and its accessories, property used in the exercise of the spouse's profession, except for property used to run a business forming part

of the community, and property obtained by way of compensation for damage as well as the pension relating to the partial or total loss of the capacity to work cannot be included in the contractual community.

The rules of legal community of property regarding the administration of community property and the equality of shares limited to the property that would be the subject of legal community of property cannot be derogated from.

CIVIL CODE

211

OBLIGATIONS OF SPOUSES CONTRACTED BEFORE MARRIAGE

The community property are liable for obligations contracted by one of the spouses before the marriage limited to the value of the property owned by that spouse before the marriage which, by agreement entered into, became part of the community of property.

CIVIL CODE

215

SEPARATION OF PROPERTY

The spouses may agree that each of them shall retain sole ownership of the property acquired during the marriage.

CIVIL CODE

217

ADMINISTRATION AND USE OF PROPERTY

Each spouse has the enjoyment and administration of the property of which he or she is the sole owner.

If one spouse has been granted power of attorney to administer the other spouse's property with the obligation to account for the fruits, he or she is obliged to the other spouse according to the rules of the mandate.

If one of the spouses has administered the property of the other by power of attorney without being obliged to account for the fruits, he and his heirs shall, at the request of the other spouse or at the dissolution or termination of the civil effects of the marriage, be obliged to deliver the existing fruits and shall not be liable for those consumed.

If one of the spouses, notwithstanding the opposition of the other, administers the latter's property or otherwise performs acts relating to that property, he or she is liable for damages and for the loss of income.

CIVIL CODE

218

OBLIGATIONS OF THE SPOUSE ENJOYING THE PROPERTY OF THE OTHER SPOUSE

The spouse who enjoys the property of the other spouse is subject to all the obligations of the usufructuary.

CIVIL CODE

219

PROOF OF OWNERSHIP OF PROPERTY

The spouse may prove exclusive ownership of a property by any means against the other.

Property that neither spouse can prove sole ownership of is owned equally by both spouses.

CIVIL PROCEDURE CODE

784

COMPULSORY JOINDER

Applications for the division of the estate or the dissolution of any other community must be made against all heirs or joint-heirs and opposing creditors, if any.

CIVIL PROCEDURE CODE

785

RULING ON THE APPLICATION FOR DIVISION

If no dispute arises as to the right to the division, it shall be ordered by order of the examining magistrate; otherwise, the latter shall proceed in accordance with Article 187, i.e. in the event that issues arise that are prejudicial to the implementation of the division, the examining magistrate refers the case for decision and resolve such preliminary issues with a non-final judgment establishing the right to the division (ruling on the existence of the right) and then continue the proceedings by means of a special order limited to the determination of the shares due to the individual sharers (ruling on the quantum).

CIVIL PROCEDURE CODE

786

DIRECTION OF OPERATIONS

Division operations are directed by the examining magistrate, who may delegate the direction of the division to a notary even during the division.

CIVIL PROCEDURE CODE

787

SALE OF MOVABLE PROPERTIES

When it is necessary to proceed with the sale of movable property, tenements or annuities, the examining magistrate or notary proceeds in accordance with Articles 534 et seq. i.e. by sale by auction, if no dispute arises as to the necessity of the sale.

If a dispute arises, the sale can only be ordered by a court judgement.

CIVIL PROCEDURE CODE

788

SALE OF REAL ESTATE

When it is necessary to proceed with the sale of a real property, the examining magistrate makes an order pursuant to Article 569(3) authorising the sale, if no dispute arises as to the necessity of the sale.

If a dispute arises, the sale can not be ordered except by a decision of the panel.

The sale shall take place before the examining magistrate. Articles 570 et seq. relating to the sale by auction shall apply.

When the operations are entrusted to a professional, the professional shall carry out the sale directly, in accordance with the provisions of this article.

CIVIL PROCEDURE CODE

789

DIVISION PLAN AND OBJECTIONS

The examining magistrate prepares a division plan, which he lodges at the registry, and fixes by decree the hearing for the discussion of the plan, ordering the appearance of the sharers and intervening creditors.

The decree is communicated to the parties.

If no dispute arises, the examining magistrate, by means of an order that cannot be appealed against, declares the project enforceable, otherwise he shall proceed in accordance with article 187, i.e. he shall refer the case to the court for decision after any necessary preliminary investigation.

In any case, the examining magistrate makes the necessary arrangements for the drawing of lots by order.

CIVIL PROCEDURE CODE

790

DIVISION OPERATIONS BEFORE THE NOTARY

If a notary has been delegated to direct the division operations, he gives notice, at least five days in advance, to the joint parties and the intervening creditors of the place, day and hour at which the operations will commence.

The proceedings take place in the presence of the parties, assisted, if they so request and at their own expense, by their attorneys.

If any dispute arises in the course of the transactions, the notary draws up minutes and transmit them to the examining magistrate.

The examining magistrate fixes by decree a hearing for the appearance of the parties, to whom the decree shall be communicated by the Registrar.

The court decides on the objections by order.

CIVIL PROCEDURE CODE

791

DIVISION PROJECT DRAWN UP BY THE NOTARY

The notary draws up single minutes of the transactions carried out. Having drawn up the draft of the shares and lots, if the parties do not agree on it, the notary transmits the minutes to the examining magistrate within five days of their signature.

The judge proceeds as in the penultimate paragraph of the preceding article to set the hearing for the parties' appearance and then issue the measures within his jurisdiction pursuant to article 187. Lots may not be extracted except by order of the court made pursuant to the last paragraph of Article 789 or by a final judgment.

CIVIL PROCEDURE CODE

791-BIS

DIVISION ON JOINT APPLICATION

When there is no dispute on the right to the division nor on the shares or other prejudicial issues, the heirs or joint owners and

any creditors and successors in title who have notified or transcribed the opposition to the division may, by a joint appeal to the court with territorial jurisdiction, request the appointment of a notary public or a lawyer established in the district to whom the division operations is entrusted. The signatures on the appeal may be authenticated, when the parties so request, by a notary public or a lawyer. If it concerns real property, the appeal must be transcribed in accordance with Article 2646 of the Civil Code.

Proceedings are carried out pursuant to Articles 737 et seq. of this Code or by appeal, with a ruling pronounced in chambers in the form of a reasoned decree. The judge, by decree, appoints the professional appraiser indicated by the parties, if any, and, at the latter's request, appoints an expert appraiser.

Where it appears that one of the parties referred to in the first paragraph has not signed the application, the appointed professional shall refer the documents to the judge who, by decree, shall declare the application inadmissible and order the cancellation of the relevant transcription. The decree can be appealed against pursuant to Article 739.

The appointed professional, after hearing the parties and any creditors registered with or having title to one of the parties who have acquired rights over the property, prepares, within the time limit assigned in the decree of appointment, the division plan or order the sale of the property that cannot be conveniently divided and shall give notice to the parties and the other interested parties of the plan or the sale. The provisions relating to the delegated professional referred to in Book III, Title II, Chapter IV, Section III, paragraph 3-bis shall apply, mutatis mutandis, to the sale of assets. Within thirty days of payment of the price, the appointed professional prepares the draft division plan and give notice thereof to the parties and other interested parties.

Any of the parties or other interested parties may appeal to the Tribunal within a peremptory period of thirty days from the receipt of the notice to oppose the sale of property or contest the division draft. The court shall proceed on the opposition in accordance with the provisions of Book IV, Title I, Chapter III-bis; the provisions of the second and third subparagraphs of Article 702-ter do not apply. If the opposition is upheld, the judge shall make the necessary arrangements for the continuation of the division operations and shall refer the parties to the appointed professional.

Once the time limit referred to in the fourth paragraph has elapsed without opposition having been filed, the appointed professional shall deposit the project with the registry with proof of the notices served. The judge declares the project enforceable by decree and remits the documents to the appointed professional for the subsequent steps.