

NATIONAL REPORT: GREECE
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 In collaboration with
 Sotirios Kotronis and Fotoula Hatzantonis
 August 2008

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A. GENERAL

1. Are there special rules concerning the property relationship between spouses (explaining what is meant by spouses)?

If so, briefly indicate the current sources of these rules.

a. upon marriage

During the betrothal and generally before the marriage or outside the marriage (common law cohabitation), no special rules are provided. Each of the spouses or common law partners has full ownership of and the power of administration over his or her assets. However, this does not prohibit joint ownership on the basis of general provisions/regulations (Art. 785 and Art. 1113 of the Greek Civil Code) or the representation and administration of the assets of one spouse by the other, again based again on general provisions/regulations (Art. 216 and Art. 713 of the Greek Civil Code).

b. during marriage

For the duration of the marriage, but not necessarily while both spouses live together, the Greek Civil Code stipulates two options for the partners:

The first refers to the submission (without any legal act necessary on the part of the spouses) to the so-called legal system of separated property combined with participation in acquisitions (Art. 1400-1402 Greek Civil Code). The other option (even before the marriage takes place) refers to the agreement upon the system of individual rights with respect to their joint ownership of property (Art. 1403-1416 Greek Civil Code),

c. upon separation

In the event of a separation, there is no fundamental change in the administration of the property relationship between the spouses.

However, if the latter option is chosen by the parties (albeit implicitly) and the separation continues for at least three years, each of the spouses has the right to instigate a claim against the other for participation in acquisitions (Art. 1400 para. 2 Greek Civil Code). If, on the contrary, the contractual system of the community of property comes into force, the spouses have the right either to agree on its abolition (Art. 1412 Greek Civil Code) or, if one spouse does not agree, the other has the right to request the court to dissolve the community of property, subject to the legal condition that the separation persists for one year and continues during the hearing before the Judge (Art. 1413 No. 1 Greek Civil Code).

d. upon death

In the event of the death of one of the spouses, if the legal system is in effect, the surviving spouse has the right to demand from the heirs of the deceased spouse that he/she participates in acquisitions, just like any other creditor. If the conventional system of the community of property comes into effect, its dissolution takes place ex nunc (Art. 1411 para. 1 Greek Civil Code).

e. upon divorce

In the event of divorce, subject to the condition that the system of property separation combined with participation in acquisitions has been chosen (albeit implicitly), the claim of the one spouse against the other comes into effect for his or her participation in acquisitions (Art. 1400 para. 1 Greek Civil Code). If the system of community of property has been chosen, its dissolution takes place by right and retroactively from the day of serving the divorce action (Art. 1411 para.1 and 2 Greek Civil Code).

f. upon annulment?

If the marriage is annulled, the same rules and regulations apply as in the case of divorce (Art. 1400 para. 1 and 1411 para. 1-2 Greek Civil Code).

2. Give a brief history of the main developments and most recent reforms of the rules regarding the property relationship between spouses.

The above regulations were introduced into Greek Family Law by Law No. 1329/23-2-1983, in accordance with the constitutional provision of Art. 4 para. 2 of the Constitution, which provides for legal equality between the sexes. It has also been stipulated in Art. 12, para. 2 of Law No. 1649/1986 that the above provisions of the Civil Code also apply in marriages that took place before 1983 and where the cancellation of the claim due to the lapse of time started after 1986.

3. Are there any recent proposals (e.g. parliament, reform bodies, academic community) for reform in this area?

No, the system that has been introduced by Law No. 1329/1983 is simple and successful, and corresponds to the current social and financial conditions in Greece. Up until now there have been no proposals for any reform at any level.

The case law, especially that of the Supreme Court, has supplemented the legal rules. Thus, it is widely accepted that the claim for participation in acquisitions has a monetary value and that the relinquishment of the claim is possible according to a mutual agreement concerning the regulation of the property relationship, especially in the case of an amicable divorce.

If, however, one is talking about a legal intervention, this should be limited, on the one hand, to the abrogation of the contractual system of the community of property, which has failed in practice, and, on the other, to the supplementation of the legal system of property separation with participation in acquisitions, especially in order to fulfil any regulatory gaps uncovered and to reaffirm the solutions provided by the courts.

4. Briefly explain whether or not the rules regarding the property relationship between spouses also apply to registered or civil partnerships?

The above rules regarding the property relationship between the spouses do not apply to partnerships outside marriage that are not yet recognized and regulated by the Greek Law in any form.

5. Are the rules concerning the matrimonial property relationship between spouses exclusive or are there other mechanisms of property law, such as joint ownership, which also play a role in relation between spouses?

Within the legal system, the spouses can, of course, be co-proprietors with whatever percentage of participation that has been agreed upon for the assets that they acquire according to the general rules. Moreover, one spouse can mandate the other to manage/administer his or her assets, as stated in Art. 1399 Greek Civil Code.

Even within the contractual system of community of property, the spouses are allowed to specify the magnitude that the common property will cover (Art. 1405 Greek Civil Code), and therefore the remainder of the property is either separate or in joint ownership on the basis of the percentage to be agreed upon or which will result (e.g. if the spouses inherit property from a third party in even or uneven parts).

In the second case there will be a parallel application of both systems.

6. What is the relationship, if any, between the law regarding the property relationship between spouses and the law of succession?

In Greek Law there are no special rules that regulate the property relationship between the spouses in conjunction with an inheritance, as is the case in German Law. Thus, the general rules of succession come into force; for example, the spouse who demands participation in the other's acquisitions, and dies in the meantime, will be treated as a common creditor of the inheritance.

However, one could also mention the special provision of Art. 1401 Greek Civil Code. According to this rule the right of one spouse against the other to demand participation in the acquisitions is a strict personal right, meaning that it cannot be inherited if the beneficiary spouse has died before claiming it, except if it had already been either contractually recognized or a lawsuit had been brought against the other spouse. On the other hand, if the spouse dies, his or her beneficiaries are under an obligation to the surviving spouse or his or her heirs (in the aforementioned special case) to satisfy the claim.

7. Are there distinct rules concerning general rights and duties of the spouses (as referred to in section B) that are independent of the specific property relationship of the spouses (matrimonial property regimes as referred to in section C)?

Yes. The regulations for participation in covering family expenses (Art. 1389-1390) are applicable irrespective of the matrimonial property regime. The same principle applies to the rules concerning spousal support in the event of a separation (Art. 1391-1392 Greek Civil Code) or a divorce (Art. 1442-1445 Greek Civil Code).

B. GENERAL RIGHTS AND DUTIES OF SPOUSES CONCERNING HOUSEHOLD EXPENSES, TRANSACTIONS IN RESPECT TO THE MATRIMONIAL HOME AND OTHER MATTERS IRRESPECTIVE OF THE SINGLE MATRIMONIAL PROPERTY REGIME

8. What, if any, are the obligations of spouses to contribute to the costs and expenses of the family household? In answering this question, briefly explain what your system understands by "costs and expenses of the family household".

Art. 1390 Greek Civil Code is very important in this case. Both spouses are obliged by law to contribute to spousal support, child support, and support for the family household.

In accordance with the references made in the relevant bibliography and also those in practice, the terms "spousal support" and "child support" include expenses for food, clothing, entertainment, education, medical care etc. The costs and expenses of the family household include the purchasing or renting of real estate; heating, electricity, and water supplies; housekeeping; the purchasing of domestic appliances; and paying for utilities (e.g. television, internet services) etc. Agreements between spouses regarding their individual contributions are allowed subject to the provision that the proportionality (each according to his or her financial capability) and the mutuality are not affected.

9. Is one spouse liable for the household debts incurred by the other? And if so, to what extent?

Due to the enforcement of the constitutional provision concerning equality between the sexes, as laid down in Law No. 1329/1983, the old provision (the power of the keys - *Schlüsselgewalt*) in Art. 1389 Greek Civil Code has been repealed.

Each spouse acts according to his or her own discretion, unless he/she acts as a representative of the other, having the relevant power to represent according to the general rules. If he/she acts without having the power of representation, he/she will be considered as a *falsus procurator* in accordance with Art. 229-231 Greek Civil Code.

10. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of the matrimonial/family home irrespective of the matrimonial property regime? In answering this question, briefly explain what your system understands by "matrimonial/family home".

There are no such rules.

11. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of household goods irrespective of the matrimonial property regime? In answering this question, briefly explain what your system understands by "household assets".

There are no such rules.

12. To what extent, if at all, are there other rules governing transactions entered into by one spouse irrespective of the matrimonial property regime (e.g. entering into guarantees, incurring debts...)?

There are no such rules in Greek law. However, if, for example, one spouse incurs debts, enters into guarantees etc. in order to financially harm the other spouse, the relevant legal act could be considered invalid because it is deemed to be immoral (Art. 178 Greek Civil Code). Additionally, a claim for compensation on behalf of the claimant spouse in accordance with tort law could be possible (Art. 919 Greek Civil Code).

13. To what extent, if at all, are there specific rules concerning one spouse acting as agent for the other?

There are no special rules. However, according to Art. 1399 Greek Civil Code, and applicable in the case of the legal matrimonial property regime with a claim to the acquisitions, one spouse can transfer to the other the power of administering his or her property. Any release from the right to revoke this power of representation is invalid.

14. What restrictions or limitations, if any, are there concerning transactions between spouses irrespective of the matrimonial property regime (e.g. gifts...).

According to Greek Law, gifts or any other transactions between the spouses are generally permitted. Gifts to the spouses presented by third parties are also permitted.

C. MATRIMONIAL PROPERTY REGIMES

C.1. General issues

15. Are spouses entitled to make a contract regarding their matrimonial property regime?

Yes, provided that the spouses are in accordance with the contractual system of community of property as stated in Art. 1403 Greek Civil Code.

16. What regime is applicable, using the list below,¹ if spouses have not made a contract (default regime) or are not allowed to make a contract or are not allowed to make a contract with binding effect?

Participation in acquisitions combined with separation of property. See the relevant Art. 1400 para. 1 and Art. 1403 para. 1 Greek Civil Code.

I.	Community of property	Communauté des biens	Gütergemeinschaft
II.	Community of accrued gains/Participation in acquisitions	Participation aux acquêts	Zugewinnngemeinschaft/ Errungenschaftsbeteiligung
III.	Deferred community of property	Communauté différée des biens	Aufgeschobene Gütergemeinschaft
IV.	Separation of property	Séparation de biens	Gütertrennung
V.	Separation of property with distribution by the competent authority	Séparation de biens avec une distribution des biens par l'autorité compétente	Gütertrennung mit behördlicher Vermögensverteilung

17. Using the list above, are there other alternative matrimonial property regimes regulated by statute for which spouses can opt besides the default regime (where applicable)?

Yes. Before marriage or during the conjugal relationship, the spouses can on the basis of Art. 1403 para. 1 Greek Civil Code choose the system of community of property, specifying which assets of each spouse will be common property. Thus, they can include the entirety of their present as well as future property.

If there is no such relevant contractual provision, the law defines the magnitude of the common property in Art. 1405 Greek Civil Code. Thus, if there is no contractual provision regarding the common property, all assets acquired by the spouses during the marriage will be added to the common property.

Revenues from property owned prior to the marriage are not included in the common property (Art. 1405 para. 1 Greek Civil Code).

With regard to the mandatory rule of Art. 1405 para. 1 ed. 2 para. 1-3 Greek Civil Code, the assets that are excluded from the common property are those which are strictly intended for personal or professional use, intellectual property rights, and everything the spouse acquires with the disposition of assets of his or her personal property. If the spouses choose to restrict the community of property to specific assets only, the legal system will come into force for participation in acquisitions. Thus, both systems will function simultaneously. This is theoretically possible, but has not been put into practice until now.

18. Briefly describe the regimes indicated in the answers to:

- a. Question 16.
- b. Question 17.

Concerning the matter of property separation with participation in acquisitions, each spouse retains his or her private/individual assets without any restriction regarding the

¹ For an explanation of this list, see the document: CLASSIFICATION OF MATRIMONIAL PROPERTY REGIMES PROPOSED BY THE CEFL.

administration or disposition thereof. In other words, a spouse does not depend in any way on the other spouse. If the said spouse so desires, he/she has the right to give the other spouse the legal power of representation and management/administration of his or her property subject to the conditions under Art. 1399 Greek Civil Code, as previously mentioned. In this case, the spouse (the representative administrator) will not be obligated to report or submit any income he/she has acquired. In the event of a separation of more than three years, or if the marriage is annulled, or in the case of divorce, each spouse can claim against the other (in a mutually agreed upon manner) the right to participate in the augmentation of the property which may have occurred between the marriage (or more generally at the time of the commencement of the institution) and the dissolution, annulment, or upon the completion of the three-year separation. According to Art. 1400 para. 3 Greek Civil Code, assets that each spouse may have acquired as a result of an inheritance or gift are not considered to augment the property *ex lege*. If the beneficiary spouse cannot prove the extent of his or her contribution to the augmentation of the property of the other spouse, the law comes to his or her aid by providing him/her with a rebuttable presumption (Art. 1400 para. 1 ed. 2 Greek Civil Code). According to this presumption, 1/3 of the property augmentation is attributed to his or her personal contribution, and as such he/she is in a position to claim at least that amount. In practice, there has been extensive use of this concept.

According to the system of community of property, the spouses may choose a system of property distribution through a special contract, which is signed before a notary public (Art. 1412 Greek Civil Code) and registered in a public register.

There is only one public register for the whole country and this is kept by the Court of first instance in Athens (Presidential Decree No. 411/1989).

If the spouses choose a system of community of property, the constituting property is divided evenly. The spouses are free to determine which assets will be considered part of the common property (and which will remain part of the individual/personal property) as well as the method of administering the common assets. If an agreement is not reached, there are special regulations that provide additional guidance for this process (Art. 14053 Greek Civil Code).

19. Indicate the frequency of the use made of the regimes (where possible by reference to statistical data) referred to in Questions 16 and 17.

There are no official statistical data. If we use as a guideline the number of contracts regulating the community of property that have been registered, then according to my unofficial information provided by a notary public, it is noteworthy that since 1989 no more than 20-30 contracts have been registered in the whole of Greece. Therefore the percentage of spouses who choose the community of property system is extremely small: less than 1%. In practice, the community of property system has not come into effect in Greece. There is no legislation regarding this issue, which means that no such cases have been brought before the courts.

Please answer the following specific questions ONLY with regard to the following two regimes: (1) the default regime and (2) a regime, whether or not regulated by statute, which next to the default regime is most frequently used.

C.2. Specific regimes

I. Community of property

Not relevant.

II. Community of accrued gains/Participation in acquisitions

II.1. Categories of assets

57. Describe the system. Indicate the different categories of assets involved.

The answer has been more or less provided above. Each spouse retains full authority over all of his or her assets without any exception. The law does not describe any separation of the assets. The only exception concerns the assets that are acquired during the marriage from an inheritance, gift, or from the sale thereof. These assets are not taken into consideration in the augmentation of the property.

58. What is the legal nature of the different categories of assets?

There is no answer.

59. What assets comprise the separate property of the spouses?

All assets of each spouse, without any exception, comprise the separate property of the spouses; namely, whatever belongs to the spouse, e.g. movable and immovable property, intangible assets, intellectual property rights, contractual or property rights etc.

60. Can spouses acquire assets jointly? If so, what rules apply?

Yes, certainly. Spouses can acquire assets jointly. The common rules of Contract Law and Property Law regarding, for example, rights of ownership etc. will apply.

61. Is substitution of assets (e.g. barter agreement) governed by specific rules? Distinguish where necessary between movables and immovables.

Not necessarily. The only case of substitution is the one referred to in Art. 1400 para. 3 Greek Civil Code concerning the assets acquired from an inheritance or gift. Similar is the regulation in the case of the community of property according to Art. 1406 Greek Civil Code.

62. What is the position of pension rights and claims and insurance rights?

There is no relevant regulation.

63. Can a third party stipulate in e.g. a gift or a will to what category of assets a gift or bequest will belong?

No.

64. How is the categorisation of the assets proved as between the spouses? Are there rebuttable presumptions?

In accordance with Art. 1398 para. 2-3 Greek Civil Code, movable assets in the possession of the spouses can be disputed and ownership can be attributed to each spouse at 50 percent. If it concerns movable assets earmarked for personal use, then it is presumed that they belong to the spouse who uses them for that purpose. This second stipulation cannot only be enforced against the other spouse, but also against the creditors of both spouses. This stipulation can be disputed by the spouses and is valid even in the case of separation.

65. How is the categorisation of the assets proved as against third parties? Are there rebuttable presumptions?

According to Art. 1398 para. 1 Greek Civil Code, which favours the creditors of each spouse, it is stipulated that movable objects in possession of each spouse continue to belong to them. This stipulation has limited application, since it can be used by the spouses' creditors, assuming that the spouses have not incurred an interruption in their cohabitation. Moreover, this stipulation is not valid before the wedding or after the dissolution of the marriage. The conflict between the above-mentioned presumptions during the enforcement of the claim is resolved through the equal payment of the creditors, according to the application of Art. 977 para. 2 ed 1 Greek Code of civil procedure).

66. Which debts are personal debts?

There is no special regulation/provision. The general rules apply.

67. Which debts are joint debts?

There is no special regulation/provision. The general rules apply.

68. On which assets can the creditor recover personal debts?

As a rule, the creditor can seize all the assets of the debtor spouse except the assets which are exempt from seizure according to Art. 953 para. 3 Greek Code of civil procedure (e.g. assets for the personal use of the debtor or his or her family which are necessary for basic survival). Maintenance claims by the debtor which are covered by the law or are outlined in a will/testament or through salary claims, pensions or insurance benefits are not subject to seizure according to Art. 982 para. 2 Greek Code of civil procedure.

69. On which assets can the creditor recover joint debts?

There is no relevant regulation. Therefore, the above-mentioned will apply to each debtor spouse.

II.2. Administration of assets

70. How are the different categories of assets administered?

There are no special categories.

71. Can one spouse mandate the other to administer the assets?

Yes. This answer has already been provided. The law also contains a special regulation in Art. 1399 Greek Civil Code which supplements the general rules, e.g. those of Art. 216 et seq., 681 et seq., and 713 et seq. Greek Civil Code.

72. Are there important acts concerning assets (e.g. significant gifts, disposal of the matrimonial/family home or other immovable property) that require the consent of the other spouse?

No.

73. Are there special rules for the administration of professional assets?

No.

74. Is there a duty for one spouse to provide information to the other about the administration of the assets?

The Law as outlined in Art. 1399 Greek Civil Code excludes the spouse who manages the assets of the other spouse from being held accountable. This is in contrast to what is laid down in Art. 718 Greek Civil Code. This regulation is a non-mandatory rule, however. Thus, if the spouses conventionally exclude this regulation, the relevant information should be provided on the basis of the general rules, e.g. in Art. 303 and 718 Greek Civil Code. If each of the spouses manages his or her assets on his or her own, then he/she is not obliged to provide information to the other spouse. Such a relevant obligation to provide information only exists after the divorce, as this is necessary for the assessment of the amount of maintenance according to Art. 1455 Greek Civil Code. This regulation can respectively come into force for estimating the augmentation of the assets within the framework of the property self-sufficiency system when there is a claim for participation in acquisitions.

75. How are disputes between the spouses concerning the administration of assets resolved?

They are resolved with a special action before the court. In this case the special rules of Art. 473 et seq. of the Greek Civil Code^P come into effect. This solution may only be used if one spouse manages the assets of the other spouse.

76. What are the possible consequences when a spouse violates the rules governing the administration of assets? What are the possible consequences in other cases of maladministration of the assets?

No special rules exist. If, for example, the power to administer or manage the assets of the other spouse results from a pre-existing contract (Art. 713 et seq. Greek Civil Code) the special rules for the liability of the authorized party will apply as usual.

77. What are the possible consequences if a spouse is incapable of administering the assets?

If a spouse, for some reason, is incapable of managing his or her assets, he/she can assign their administration to the other spouse subject to the conditions of Art. 1399 Greek Civil Code, or to a third party, e.g. a parent, adult child, or other relative. In that case, the general rules regarding the power to represent another person (i.e. the power of attorney) will exclusively apply. If the spouse is incapable of doing this, he should seek the court's assistance according to Art. 1666 Greek Civil Code.

II.3. Distribution of assets upon dissolution

78. What are the grounds for the dissolution of the matrimonial property regime, e.g. change of property regime, separation, death of a spouse or divorce?.

In accordance with Art. 1400 para. 1,3 and 1403 para.1 Greek Civil Code, the dissolution of the property self-sufficiency system by a claim for participation in acquisitions exclusively takes place in cases of death, divorce, annulment, the completion of three years' separation, as well as when the community of property system has been chosen.

79. What date is decisive for the dissolution of the matrimonial property regime? Distinguish between the different grounds mentioned under Q 78.

In the first case it is the date of the death of the spouse. In the case of divorce and annulment there is a timeframe in which the relevant court decision becomes irreversible, meaning that it cannot be brought before the court again according to Art. 1438 ed. 2 and 1381 Greek Civil Code. The last case is that of the completion of a three-year separation according to Art. 1400 Greek Civil Code.

80. What is the spouses' position with regard to each others' acquisitions and gains?

There is no specific answer. In order to find a substantial claim for the other spouse for participation in acquisitions, the profits of each spouse are added to his or her property since they increase its overall value. It goes without saying that if the gains of the spouse derive from luck (e.g. lottery winnings etc.), according to the above prevailing opinion they shall not be taken into account since the element of the participation of the other spouse is absent.

81. How are assets determined and valued? Are e.g. premarital assets and debts, assets acquired by gift, will or inheritance and debts related those assets, the increase in value of the separate property and debts related to that property taken into account?

There is no special legal provision in Greek Law. The only regulation is that outlined in Art. 1400 para. 3 Greek Civil Code, according to which whatever each spouse acquired as a gift (even from the other spouse, although there is strong controversy regarding this theory) or through inheritance cannot be taken into account for the augmentation of the property. When the law refers to property that increases in value, it is referring to net property (that which results when all the debts are settled). Greek case law accepts this interpretation,² which derives from the implementation of the regulations of the law of succession, specifically from Art. 1831 and 1832 Greek Civil Code.

82. What are the relevant dates for the determination and valuation of assets? E.g. is the fact that the spouses are living apart before the dissolution of the marriage relevant?

In order to evaluate the augmentation of the property, two criteria are assessed: one is the initial value of the property at the time of the marriage, and the other is the value of the property at the time of the death of the spouse, or at the time of divorce, in which case the decision becomes irreversible and cannot be changed in a court of law.³ An alternate viewpoint is that a crucial timeline should emanate from the beginning of the divorce proceedings, since it is improbable that after their completion there will be an increase in the value/amount attributed/owed to the other spouse. In the case of a separation of three years, the crucial timeline comes into force from the beginning of the proceedings. The augmentation continues, however, until the dissolution or annulment of the marriage. This means that at a later date a supplemental claim can be filed showing the increase in the value of the property. In this case it is unlikely that there is a genuine contribution by one spouse to the augmentation of the assets of the other, since they no longer live together. Thus, the

² See Supreme Court - Areios Pagos judgment No. 1568/2001, Court of second instance/ Court of Appeals of Athens - Efeteio Athinon judgment No. 2614/2000.

³ See Supreme Court - Areios Pagos judgment No. 1658/2001, 668/2001, 1387/1999. Court of second instance/Court of Appeals of Thessaloniki-Efeteion Thessalonikis, judgment No. 564/2001.

rebuttable legal presumption of a contribution to the augmentation of the property will come into effect at a rate of 1/3.

83. What happens if assets belonging to one category have been used for investments in the assets belonging to another category? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?

There can be no doubt, *stricto sensu*, that both spouses share equal rights in claiming, against one another, participation in the acquisition of assets, e.g. where there has been an increase in the property of both spouses. The claims are thus made separately. However, the filing of a joint claim cannot be ruled out.

84. What happens if assets belonging to one category have been used for payment of debts belonging to another category of assets? Is there a rule of compensation? And if so, how is compensation calculated?

There is no answer. There is no rule concerning compensation.

85. Do the spouses have preferential rights over the matrimonial/family home and/or the household's assets?

The sole provision here is related, in principle, to the use of the matrimonial home exclusively by one of the spouses during the separation, especially if this spouse has guardianship or custody of minor children. Permission to use the matrimonial home is granted by a court order (Art. 1393 Greek Civil Code).

If both spouses had joint ownership of the matrimonial home and resided there, and one of them dies, the law grants the right to the surviving spouse to go before the courts to retain possession, thus bypassing the heirs of the deceased so that he/she may carry on living there as specified in Art. 1889 Greek Civil Code.

86. Do the spouses have preferential rights over other assets?

No.

87. To what extent, if at all, does the dissolution of the matrimonial property regime affect the attribution of maintenance?

The dissolution of the matrimonial property regime does not directly affect the matter of spousal support. However, since the dissolution of the regime is a result of divorce, the husband has a claim for participation in acquisitions that he collects according to Art. 1400 para. 1 Greek Civil Code. This will influence his claim for spousal support after the divorce, since according to Art. 1442 Greek Civil Code it is a requirement that the spouse entitled to spousal support is not able to use his own income or that of his property to support himself.

88. To what extent, if at all, does the dissolution of the matrimonial property regime affect the pension rights and claims of one or both spouses?

The dissolution of the matrimonial property regime does not affect the pension rights and related claims of the spouses.

89. Can the general rules (above Q 80) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority? To what extent, if at all, can the competent authority order the transfer of assets to the creditor spouse?

The spouse who has a right of participation in the acquisitions can choose not to exercise his or her right or minimize his or her share. This can be the result of an agreement between the spouses.

The claim for participation in acquisitions is monetary.⁴ The court can, however, use the general rule of Art. 297 Greek Civil Code to order the return of the augmentation in kind, e.g. the return of specific assets, the percentage of co-ownership, etc.⁵

90. Are there besides the rules of succession specific rules applicable if one of the spouses dies?

No.

III. Deferred community

Not relevant.

IV. Separation of property

Not relevant.

V. Separation of property with distribution by the competent authority

Not relevant.

⁴ See Supreme Court – Areios Pagos judgment Nos. 28/1996, 1658/2001, 430/2002.

⁵ See Supreme Court – Areios Pagos judgment Nos. 28/1996, 251/2002.

D. MARITAL AGREEMENTS

191. Are future spouses permitted to make a pre-nuptial agreement regulating their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?

Future spouses can enter into an agreement regulating their choice of system for the community of property, and they can even stipulate, if they so wish, which assets shall be included in the common property. This is outlined in Art. 1403 para. 1 Greek Civil Code. Should the spouses not reach an agreement, the property self-sufficiency system with a claim for participation in acquisitions will come into force ex lege. In practice, future spouses do not enter into any relevant agreement (except in the matter regarding the surname of their children in which case they are obliged by law to make an explicit declaration, see Art. 1505 para. 1 Greek Civil Code. In the event that the spouses fail to make such a declaration, or in the case of a possible disagreement, Art. 1505 para. 3 Greek Civil Code states that the children shall bear the surname of the father). Theoretically speaking, the law does not rule out a possible prenuptial agreement regulating the property relationship of the future spouses. The option of a prenuptial agreement, however, is deemed unnecessary because it does not offer anything beyond the relevant regulations (Art. 1400-1402 Greek Civil Code), which are considered as mandatory rules and future spouses must not differ contractually therefrom.

Only when one spouse mandates the other to administer the assets must both spouses categorically agree that the rules of Art. 1399 para. 1 Greek Civil Code will not come into force. Consequently, that spouse is obliged to provide information to the other about the administration of the assets and to repay any income which he/she has collected. However, it is understood that they cannot waive their right to withdraw the power of administration. This comes into force because the related rule (Art. 1399 para. 2 AK) is a mandatory rule.

192. Are spouses permitted to make a post-nuptial agreement regulating or changing their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?

Yes. The spouses are permitted to make a post-nuptial agreement in which they can specify the details concerning the common property and what it includes as well as determining how the property/estate will be administered. They can also, without any restriction, make a post-nuptial agreement that nullifies a previous one, and enter into the property self-sufficiency system with a claim for participation in acquisitions. They can also later choose the community of property system in its original or a revised form (e.g. with less or more common property assets etc.). For the remainder of their assets the property self-sufficiency system with a claim for participation in acquisitions will come into force. For both spouses, those agreements have a legally binding nature based on the general rules. In order to bind third parties, the agreements have to be registered in a public register (Art. 1403 para. 2 Greek Civil Code).

193. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid as between the spouses?

The law only requires a document, signed by the parties before a notary public, if it concerns the community of property. However, the law in general does not prohibit other agreements from being drafted in a notarial form, since in this way they will be more legally binding. Nevertheless, they can choose a simple private document, unless the law requires a notarial document. Thus, for example, within the framework of the legal system, if one spouse mandates the other spouse to manage his or her assets, he/she will choose the notarial document, unless the specific administrative act is dictated by the general rules which require a notarial document.

- 194. What formal requirements must the pre- and/or post-nuptial agreements fulfil to be valid in relation to a third party? Is there a system of registration of pre- and/or post-nuptial agreements? If so describe briefly the system and its effect.**

This has already been answered above.

- 195. Is full disclosure of the spouses' assets and debts necessary for the making of a pre- and/or post-nuptial agreement?**

No.

- 196. If the agreement has to be made before an official (e.g. a notary), is that official obliged to inform the spouses about the content and the consequences of the pre- and/or post-marital agreement? If so, what happens if the official does not fulfil his or her obligation?**

The obligation of the notary public is derived from specifically drafted legislation (Art. 5 No. 2 Law No. 2830/2000). Should the notary public not fulfil his or her obligation, he/she is then subject to a disciplinary hearing (Art. 42 pp. Law No. 2830/2000). However, the contract does not become invalid in the event of such a hearing.

- 197. Provide statistical data, if available, regarding the making of pre- and/or post-nuptial agreements.**

No statistical data are available for this specific question.

- 198. May spouses through pre- and/or post-nuptial agreements only choose, where applicable, a statutory matrimonial property regime and/or do they have the freedom to modify such a regime or even create their own regime?**

In Greek Law things are relatively simple. Future spouses or spouses can choose only between the property self-sufficiency system with a claim for participation in acquisitions (this is usually an implied matter between the spouses) or the community of property system in accordance with the aforementioned criteria (a notarial document and registration in a public register). If they choose the community of property system, the law then prohibits any mention in the contract of rules that are a result of custom, abolished law, or even foreign law.

- 199. If spouses can modify through pre- and/or post-nuptial agreements a statutory regime or create their own regime, can those modifications be made to:**

a. categories of assets;

This can only occur within the contractual regime of the community of property according to Art. 1404 Greek Civil Code.

b. administration of assets;

This can occur both within the regime of the community of property (Art. 1404 Greek Civil Code) as well as within the regime of property separation combined with participation in acquisitions (Art. 1399 Greek Civil Code).

c. distribution of assets;

The distribution of assets can take place independently from the matrimonial property regime, but in the case of separation it is limited to only movable assets (Art. 1395 Greek Civil Code).

A distribution can only be agreed upon within the regime of the community of property.

d. depend upon the ground of dissolution of the marriage?

No. The way in which the marriage was dissolved and the reasons for the divorce have no bearing on the method for distributing the assets. Naturally, depending on the outcome of the divorce, the spouses can, according to the general rules, determine any adjustment they want. Often, in the last few years, they reach an agreement regarding the amount of spousal support due for the time after the divorce. They also tend to mutually waive the claim to participate in the acquisitions especially if the divorce was amicable.

200. Are there typical contractual clauses used in practice to modify essential elements of the matrimonial property regime, where applicable, or to achieve a certain result, e.g. that certain rights are excluded only upon divorce but not on death of a spouse?

Apart from waiving the claim to participate in the acquisitions and the regulation regarding spousal support or matters concerning the children and the use of the matrimonial home, no other typical perennial conditions in agreements exist.

201. Can the competent authority override, modify or set aside pre- and/or post-nuptial agreements on account of unfairness or any other ground?

The only competent authority under Greek Law is the Court. It controls ex post when the action or other legal means is initiated, if a contractual clause is valid, or if the parties have ignored a legal rule.

Its power is limited to declaring the invalidity of the relevant clause, for example due to immorality, according to Art. 178-178 Civil Code.⁶

⁶ See also Supreme Court – Areios Pagos, judgment No. 668/2001.