

NATIONAL REPORT: POLAND

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<b>A. General</b>	<b>Questions 1-7</b>	<b>p.</b>
<b>B. General rights and duties of spouses concerning household expenses, transactions with respect to the matrimonial home and other matters irrespective of the single matrimonial property regime</b>	<b>Questions 8-14</b>	<b>p.</b>
<b>C. Matrimonial property regimes</b>		
C.1. General issues	<b>Questions 15-19</b>	<b>p.</b>
C.2. Specific regimes		
<i>I. Community of property</i>	<b>Questions 20-56</b>	<b>p.</b>
<i>II. Community of accrued gains/Participation in acquisitions</i>	<b>Questions 57-90</b>	<b>Not relevant</b>
<i>III. Deferred community</i>	<b>Questions 91-128</b>	<b>Not relevant</b>
<i>IV. Separation of property</i>	<b>Questions 129-160</b>	<b>Not relevant</b>
<i>V. Separation of property with distribution by the competent authority</i>	<b>Questions 161-190</b>	<b>Not relevant</b>
<b>D. Marital agreements</b>	<b>Questions 191-201</b>	<b>p.</b>

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- 1. Are there special rules concerning the property relationship between spouses (explaining what is meant by spouses) a) upon marriage and/or b) during marriage and/or c) upon separation and/or d) upon death and/or e) upon divorce and/or f) upon annulment? If so, briefly indicate the current sources of these rules. If so, briefly indicate the current sources of these rules.**

Polish law only recognizes marriage as a union between a man and a woman. This rule, laid down in Art. 14 Constitution of the Republic of Poland 1997, was intended to prevent the institutionalization of same-sex marriages. 'Spouses' therefore mean a man and a woman who have made a declaration that they are entering into a marriage. This declaration can be made before a registrar, or before a minister of a religious community who has been given such competence by the law regulating the relationship between the state and the respective religious community. The first of the above described forms of concluding a marriage was introduced into Polish law in 1945 and the latter in 1998.

A marriage certificate is the sole evidence of a marriage having been concluded and such a certificate is produced by entering the respective information in the marriage registry kept by the registrar's office. The non-observance of some of the provisions regulating the conclusion of a marriage results in the marriage not being concluded (*matrimonium non existens*) or being voidable. Since 1999 a court may declare a judicial separation between the spouses, which brings about the same results as a divorce, unless otherwise provided under the law. (Art. 61<sup>1</sup> para. 1 Polish Family and Guardianship Code).

Matrimonial property matters are currently regulated in the Polish Family and Guardianship Code (a statutory law of 25<sup>th</sup> February 1964, in force since 1<sup>st</sup> January 1964). This Code is currently most commonly perceived as being a formally separate part of the Polish Civil Code. Provisions on the property relationship between spouses are included in the first of the three Titles ("Marriage" - Art. 1-61<sup>6</sup>), which make up the Code, and more precisely in Section II ("Rights and obligations of the spouses" - Art. 23-30) and Section III ("Matrimonial property regimes" - Art. 31-54) thereof. Section III is subdivided into three chapters: I. "Statutory matrimonial property regime" (Art. 31-46), II, Contractual matrimonial property regimes (Art. 47-51<sup>5</sup>), III "Compulsory matrimonial property regime" (Art. 52-54). The above-mentioned provisions apply to lasting marriages; the property consequences of divorce, a declaration of marriage being void and separation are regulated separately, respectively in Art. (???)

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

Until the end of 1946 Poland had no uniform regulation of the matrimonial property regime. There were various provisions in force in respective parts of the territory, as introduced after the loss of state independence, namely: under Austrian law (*Allgemeines Bürgerliches Gesetzbuch* of 1811), German law (*Bürgerliches Gesetzbuch* of 1896), Russian law (*Svod Zakonov* of 1832), and in central Poland the Polish Civil Code of the Polish Kingdom of 1825, inspired by French law. Work on a uniform draft law for the matrimonial property regime for the whole state was started in 1920, but up until 1939 no concrete results were realised. Several drafts were completed during that time and all of them were based on the rule of equality between the spouses, with various methods of regulation (separation of property, community of property, separation of acquisitions, a community of acquisitions in the case of the

termination of marriage). The last of these drafts, completed in 1937, was used after the Second World War to prepare a decree of 22<sup>nd</sup> May 1946 on Matrimonial property law, which entered into force on 1<sup>st</sup> October 1946. This draft prescribed a complex regulation of both the statutory regime and various kinds of contractual regimes. The decree did not remain in force for very long, as already on 2<sup>nd</sup> June 1950 the Family Code was issued and it entered into force on 1<sup>st</sup> October 1950. The regulation of matrimonial property in this code was rather simple. Apart from a statutory community regime, including acquisitions by both spouses, the conclusion of a contract was allowed in order to limit or widen the scope of the statutory regime or to modify the way of managing the common property. The Family Code remained in force until the introduction of the current Polish Family and Guardianship Code of 1964, (*Kodeks rodzinny i opiekuńczy*). This Code entered into force on 1<sup>st</sup> January 1964, together with the Polish Civil Code and the Code of Civil Procedure. The regulation in the Code is based upon similar foundations as its predecessor, but is more detailed and complex. In line with the primary draft Code on the community of property, the acquisitions of both spouses (Art. 31-46) remained as the central institution, but the provisions of the Polish Family and Guardianship Code allowed for a modification to or the exclusion of the community through a contract concluded by the spouses (Art. 47-51 Polish Family and Guardianship Code), as well as for the possibility that the community is terminated during the duration of a marriage (Art. 52-54). Some of those provisions were amended in 1975.

After the political upheaval of 1989 and the resulting economic changes, amendments to the regulations on matrimonial property law were necessary. A proposal was put forward to introduce the statutory division of property with a community of accrued gains/participation in acquisitions as the statutory regime, but it did not gain the necessary support. The law amending the Polish Family and Guardianship Code of 17<sup>th</sup> June 2004, in force since 20<sup>th</sup> January 2005, brought about substantial changes to the regulations. They concern a different regulation of the management of common property and a widening of the scope of spouses' competences to contractually shape their property relationship.

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

Due to the fact that there was a recent amendment in 2004, currently there are no major suggestions for any changes in that respect. A draft which had been placed before Parliament during the previous term of office, but was not reviewed due to the anticipated parliamentary elections, provided for a minor change to the provisions on the separation of property imposed by the court (Art. 52 Polish Family and Guardianship Code). Currently the draft is again being considered by Parliament.

There is also a proposal to amend the Civil Code, which would embrace family law matters, but no final decisions have been taken in that respect.

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

Polish law does not recognize registered partnerships and no such regulation is currently planned. There is an assumption that introducing such partnerships would be a breach of Article 14 of the Constitution, prescribing that a marriage is a union between a man and a woman. Polish law also does not regulate concubinage (cohabitation outside marriage) as a relationship between persons of different sex and the case law points to the conclusion that the legal provisions on marriage cannot be applied by analogy to concubinage.

**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?**

The regulation included in the Polish Family and Guardianship Code does not have a holistic character and it invokes the provisions of the Polish Civil Code in a number of cases (e.g. after the expiry of the statutory community property, the property previously included in the statutory community and its distribution is governed by the Polish Civil Code provisions on the community of succession property and its division).

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

The provisions on matrimonial property regimes in the Polish Family and Guardianship Code and the provisions on succession in the Polish Civil Code are of a complementary nature. The death of a spouse results in his or her property being ex lege inherited by one or more persons as either statutory or testamentary successors. If, at the moment of death, the deceased person was subject to a matrimonial community of property regime, a respective part of the common property is included in the succession (as a rule, half) and the surviving spouse has sole rights to the other part. The situation of the surviving spouse as a statutory successor is regulated by the Polish Civil Code regulations on statutory succession.

**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)?**

Such situations are regulated in Art. 27-30 Section II Title I Polish Family and Guardianship Code. In line with those provisions:

- each spouse is required to fulfill the needs of the family, depending on the spouse's abilities;
- if a spouse does not fulfill this obligation, it can be ordered by the court that the salary or other dues shall be paid in total or partially to the other spouse (this does not apply in situations where the spouses do not remain in marital cohabitation);
- a spouse is entitled to use the household goods belonging to the other spouse;
- if the spouses remain in marital cohabitation, and there is a temporary impediment concerning only one of them, the other spouse may act in matters of regular management on behalf of the impeded spouse; in particular, he or she is entitled to collect dues without a specific power of attorney/authorization from the other spouse, unless the spouse concerned objects to this;
- the spouses are jointly responsible for debts incurred by one of them in matters resulting from fulfilling the standard needs of the family;
- the Civil Code's provisions on leasehold property include a specific regulation on the spouses' right to living premises which serve the needs of the family (they do not apply to apartments being occupied not through a lease). Separate provisions regulate the spouses' responsibilities under public law.

**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".**

Each spouse is required, depending on the spouse's abilities and capacity, to fulfil the needs of the family created by marriage. This contribution may result from taking personal care of the children or working in the common household (Art. 27 Polish Family and Guardianship Code).

Code). The notion of 'needs of a family' is not legally defined. It is assumed that apart from child care and maintenance it also embraces the individual as well as the common needs of both spouses, if in an individual situation catering for those needs is justified by the interest of the family and this is in line with the condition that an equal standard of living should be enjoyed by all members of the family.

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

The spouses are jointly responsible for debts incurred by one of them in matters resulting from fulfilling the standard needs of the family (Art. 30 para. 1 Polish Family and Guardianship Code). The rules on joint responsibility are prescribed in the Civil Code. This responsibility cannot be excluded by the spouses. Nevertheless, a court may, at the request of one of the spouses, order that only a spouse who has entered into a given obligation is responsible for its performance (Art. 30 para. 2 sentence 1 Polish Family and Guardianship Code). The grounds for issuing such an order are not prescribed by the law. Should circumstances change, the court order is subject to amendment (Art. 39 para. 2 sentence 2 Polish Family and Guardianship Code). The exclusion of joint responsibility is effective with regard to third parties, provided they have knowledge of such a limitation. In practice, court orders concerning the exclusion of joint responsibility are very rare.

**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".**

Art. 28<sup>1</sup> sentence 1 Polish Family and Guardianship Code (added in 2004, in line with the preceding case law) concerns a situation where only one of the spouses is entitled to living premises. The other spouse is granted the right to use the premises to cater for family needs. This provision concerns both an apartment and a house.

Apart from these regulations there is a specific provision concerning the spouses' rights to living premises leased during the time of the marriage to accommodate the family; in this situation both spouses are the tenants of the living premises, irrespective of the matrimonial property regime between them (Art. 680<sup>1</sup> Polish Civil Code). Until 2001 this regulation also concerned apartments, where the right to an apartment resulted from membership of a residential community.

There are specific regulations governing the succession to a right to use an apartment in the case of the death of a spouse whose right to the apartment resulted from a lease contract or from a membership of a residential community.

**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".**

Art. 28<sup>1</sup> sentence 2 Polish Family and Guardianship Code authorizes a spouse to use the household goods belonging to the other spouse. The notion of 'household goods or assets' is not legally defined. There are no specific rules concerning the transfer of ownership of such assets.

**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 rules to that effect in Polish law.

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

If the spouses remain in marital cohabitation, and there is a temporary impediment concerning only one of them, the other spouse may act for the impeded spouse; in particular, he or she is entitled to collect dues without a specific power of attorney/authorization from the other spouse. The impeded spouse may object to this and such an objection shall be valid with regard to third parties, provided they knew of the objection.

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

The Polish Family and Guardianship Code does not provide for any such limitations. It is assumed that spouses may undertake legal acts resulting in the mutual transfer of ownership of specific objects; such acts are not regulated by the provisions on matrimonial property regimes.

**C. MATRIMONIAL PROPERTY REGIMES**

**C.1. General issues**

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

Yes, they are entitled to do so, but the contents of such a contract are prescribed by law.

**16. What regime is applicable, using the list below, 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?**

In that situation the community of property is applicable.

**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)?**

Through a contract the spouses may adopt one of the following regimes:

- a community of property which is widened with regard to the statutory community of property;
- a community of property which is limited with regard to the statutory community of property;
- separation of property;
- a community of accrued gains/participation in acquisitions.

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

**Question 16**

The statutory community of property involves assets acquired by both spouses or by one of them during the time of the marriage. Other assets belong to the personal property of either spouse. Therefore three categories of assets exist: the common property of both spouses, the property of the husband and the property of the wife.

Each of the spouses is entitled to possess assets belonging to the common property and to use them in a manner that does not infringe the equivalent rights of the other spouse. For the

duration of the community of property the spouses have no specific shares in the common property and neither can they demand a distribution of that property.

**Question 17**

Provisions on the statutory community of property apply to the regime and the only difference concerns the contractual community of property between spouses. The only difference lies in the contents of the common property. The community of property which is widened by means of a contract cannot comprise all the assets of both spouses, since all assets listed in Art. 49 para. 1 Polish Family and Guardianship Code always remain as the personal property of either spouse.

In the regime of separation of property each spouse retains his or her property, irrespective of when individual assets were acquired.

The community of accrued gains/participation in acquisitions regime is based on a comparison of the acquisitions of both spouses, defined as the increase in the value of the property of each spouse since the conclusion of the contract introducing this regime. Upon the termination of the separation of property, each spouse may demand the settlement of their acquisitions through a transfer of rights. In the case of the death of one of the spouses, a settlement (levelling) is made between the surviving spouse and the successors of the deceased.

**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 is only fragmentary data available for the years 1978–2006. They show that the number of concluded contracts regarding matrimonial property regimes increased during this period, although they are still relatively low in comparison to the number of marriages concluded. E.g. in 1978, 688 contracts were concluded, in 1989 - 2654, in 1999 - 22,422, in 2006 - 34,890. Before 1990 contracts widening the statutory community prevailed. Since then it seems that contracts introducing a separation of property tend to prevail. They are mostly concluded by persons conducting business activities. There are no statistics as to the number of contracts introducing the regime of a community of accrued gains/participation in acquisitions; presumably the awareness as to such a possibility is not that widespread among interested parties.

*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

#### I.1. Categories of assets

##### 20. Describe the system. Indicate the different categories of assets involved.

A community of property arises when a marriage is concluded. It comprises assets acquired by both spouses or one of them during the time of the marriage (Art. 31 para. 1 Polish Family and Guardianship Code). They are the common property of both spouses. In particular, common property comprises: the acquired work and the earned income of either spouse, income from the common property and income from the personal property of both spouses. The assets which do not belong to the common property make up the personal property of either spouse. The contents of the personal property are exhaustively listed in Art. 33 Polish Family and Guardianship Code and comprise e.g. assets acquired before the conclusion of the marriage, assets inherited during the time of the marriage, assets serving exclusively for personal needs, intellectual property rights and assets acquired to substitute assets belonging to personal property.

##### 21. What is the legal nature of the different categories of assets, in particular the community?

All property assets have the same status, irrespective of their character (e.g. property rights versus debts).

##### 22. What do the personal assets of each spouse comprise?

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

Assets acquired to substitute assets belonging to personal property belong to the personal property and not to the common property (Art. 33 point 10 Polish Family and Guardianship Code). It applies to both movables and immovables.

##### 24. Is investment of personal assets governed by specific rules? Distinguish where necessary between movables and immovables.

No.

##### 25. What assets does the community comprise? Are there special rules governing the spouses earnings?

According to Art. 31 para. 1 sentence 1 Polish Family and Guardianship Code the community property comprises assets acquired during the time of the statutory community regime by both spouses or by either spouse. Art. 31 para. 2 Polish Family and Guardianship Code refers to some examples of assets belonging to the common property. Acquired salaries and earnings from work belong to the common property (Art. 31 para. 2 point 2 Polish Family and

Guardianship Code), but salaries and earnings which are due but have not yet been acquired belong to personal property (Art. 33 point 7 Polish Family and Guardianship Code).

**26. To which category of assets do pension rights and claims and insurance rights belong?**

Assets gathered in a pension fund of either spouse and a pension due to a spouse due to his or her loss or limitation of his or her ability to work belong to the common property (Art. 31 para. 2 point 3 and Art. 33 point 6 Polish Family and Guardianship Code).

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

Assets acquired through succession, a bequest (legacy) or donation belong to the personal property, although the testator or donor may stipulate otherwise (art. 33 point 2 Polish Family and Guardianship Code). The exception to that rule is ordinary household assets, serving both spouses, which belong to the common property, even if inherited or donated, although the testator or donor may stipulate otherwise (Art. 34 Polish Family and Guardianship Code)

**28. How is the categorisation of personal or community assets proved as between the spouses? Are there rebuttable presumptions of community property?**

Nowadays there are no presumptions as to an asset belonging to common or personal property. It should be borne in mind, however, that common property is defined in a general manner and complemented with a list containing examples of assets whose attributes as property might otherwise be doubtful, whereas assets belonging to personal property are exhaustively listed.

There are no specific rules, therefore whether a given asset belongs to the common or personal property may be proved by all available means of evidence.

**29. How is the categorisation of personal or community assets proved as against third parties? Are there rebuttable presumptions of community property?**

There are no specific rules, therefore whether a given asset belongs to the common or personal property may be proved by all available means of evidence.

**30. Which debts are personal debts?**

The law does not distinguish between 'personal debts' and 'common debts'; it is prescribed from which category of property the creditor may demand that the debt be satisfied. To this end, it is of significance whether the debt results from an act under the law or from other event, and if it results from a legal act, whether this act was performed with the consent of the other spouse.

**31. Which debts are community debts?**

The creditor may demand the satisfaction of a debt from the common property if the debt was incurred by the spouses acting together or if one of the spouses acted with the consent of the other (Art. 41 para. 1 Polish Family and Guardianship Code).

**32. On which assets can the creditor recover personal debts?**

There is a specific regulation of debts concerning personal property and which were incurred before the establishment of the community of property regime. If the debt was incurred before the establishment of the community of property regime or if it concerns personal

property, the creditor may demand satisfaction not only from the personal property, but from the specified assets from the common property, i.e. salary from employment, earnings from another activity and income from copyrights, related author's rights and intellectual property rights (Art. 41 para. 3 Polish Family and Guardianship Code).

**33. On which assets can the creditor recover community debts?**

If the debt was incurred by the spouses acting together or if one of the spouses acted with the consent of the other, the creditor may demand the satisfaction of a debt from the common property or from the personal property of the spouse who incurred the debt.

If a spouse has incurred a debt without the other spouse's consent or if the debt does not result from a legal act, the creditor may only demand satisfaction from the personal property of the debtor or from the specified assets from the common property, i.e. salary from employment debtor, earnings from another activity and income from copyrights, related author's rights and intellectual property rights (Art. 41 para. 3 Polish Family and Guardianship Code). If a debt was incurred in relation to business activities, it may also be satisfied from the assets belonging to the enterprise (Art. 41 para. 1 and 2 Polish Family and Guardianship Code)

**I.2. Administration of assets**

**34. How are personal assets administered?**

Each spouse personally administers his or her property.

**35. How are community assets administered?**

The spouses shall cooperate in administering the common property (Art. 36 para. 1 Polish Family and Guardianship Code). Each of the spouses may solely administer that property; administering the common property comprises acts concerning assets belonging to the common property (Art. 36 para. 2 Polish Family and Guardianship Code).

Each spouse may refuse an act envisaged by the other spouse, apart from matters belonging to minor acts concluded in everyday life, acts aimed at fulfilling the regular needs of the family or acts taken within educational activities. The refusal is valid with regard to third parties, if they knew about this refusal before the act was performed.

For important reasons, a court may, at the request of one of the spouses, deny the other spouse's independent right to administer the common property. The court might also prescribe that its consent is required before a certain act is performed, which would otherwise require the spouse's consent (Art. 40 Polish Family and Guardianship Code). As for acts requiring the consent of the other spouse, see the answer to question 37.

**36. Can one spouse mandate the other to administer the community assets and /or his or her personal assets?**

For the administration of personal property the general rules on mandate are applicable. For the administration of common property, the question does not arise.

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

Consent by the other spouse is required for acts concerning common property (Art. 37 para. 1 Polish Family and Guardianship Code):

1. acts leading to the disposal of, indebting, or acquisition of immovable property for payment, providing immovable property for use or usufruct
2. acts leading to the disposal of, indebting, or acquisition of property for payment concerning a building or living premises;
3. acts leading to the disposal of, indebting, or acquisition for payment or leasing of a farm or an enterprise;
4. usual donations, apart from minor donations.

There are no limitations regarding legal acts concerning personal property.

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

No.

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

Yes, this duty encompasses the provision of information as to the condition of the common property, its administration and dues indebting the common property (Art. 36 para. 1 Polish Family and Guardianship Code).

**40. How are disputes between spouses concerning the administration of personal or community assets resolved?**

If an act requires the consent of the other spouse and this consent is denied, the spouse wishing to perform the act may apply to the court for permission to perform the act. The court shall grant permission if the welfare of the family so requires (Art. 39 Polish Family and Guardianship Code). Identical regulations apply when one of the spouses objects to a certain act being performed by the other spouse with regard to the common property (Art. 361 para. 3 Polish Family and Guardianship Code).

For important reasons, a court may, at the request of one of the spouses, deny the other spouse's independent right to administer the common property.

**41. What are the possible consequences when a spouse violates the rules governing the administration of personal and community assets? What are the possible consequences in other cases of maladministration of the assets?**

A contract concluded by one spouse without the required consent of the other spouse shall be effective, if subsequently confirmed by the spouse. The other party to the contract may impose a time-limit for such confirmation; after the time-limit has elapsed the other party is freed from its obligations. Apart from that, the general provisions on liability for damage apply.

**42. What are the possible consequences if a spouse is incapable of administering his or her personal assets and the community assets?**

There are no specific regulations in that respect. As far as common property is concerned, in cases where the consent of the other spouse is required and there are significant obstacles to obtaining that consent, a court may, at the request of the spouse wishing to perform a certain act, grant permission for that act if the welfare of the family so requires (Art. 39 Polish Family and Guardianship Code).

**I.3. Distribution of assets upon dissolution**

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

The statutory community of property is terminated upon:

- a) the death of one of the spouses,
- b) divorce,
- c) a declaration that the marriage is void (the divorce regulations concerning the spouses' property will be applied in this case)
- d) a judicial separation (a separation of property is therefore established between the spouses)
- e) one of the spouses becoming incapacitated (*ex lege*, Art. 53 para. 1 Polish Family and Guardianship Code)
- f) one of the spouses is declared bankrupt (*ex lege*, Art. 53 para. 1 Polish Family and Guardianship Code)
- g) a court establishes a regime of separation of property at the request of one of the spouses (Art. 52 Polish Family and Guardianship Code)
- h) the conclusion of a marital agreement (Art. 47 Polish Family and Guardianship Code).

**44. What date is decisive for the dissolution of the community property? Distinguish between the different grounds mentioned under Q 43. At what date are the community assets determined and valued? Is the fact that the spouses are living apart before the dissolution of the marriage relevant?**

- Ad 43 a) the moment of death.
- Ad 43 b - f) the date when the Court decision becomes final.
- Ad 43 g) the date indicated in the court's decision. The Court may indicate a prior date, in particular when the spouses started living separately ("factual separation").
- Ad 43 h) the date when the contract is concluded.

The dissolution of the community of property does not result in a change to the contents of the property in question. The condition and contents of the property are established by its condition at the time when the community is dissolved.

**45. What happens if community assets have been used for investments in the personal property? What happens if personal assets have been used for investments in the community property? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?**

Expenses and investments from the common property for the benefit of the personal property should be returned. This does not apply to necessary expenses and investments in assets resulting in a profit (Art. 45 para. 1 Polish Family and Guardianship Code). They are to be returned during the distribution of the common property, although the court may order an earlier return if the welfare of the family so requires. There are no specific provisions on valorization, and nominal value is a general rule.

**46. What happens if community assets have been used for payment of personal debts? What happens if personal assets have been used for payment of community debts? Is there a rule of compensation? And if so, how is compensation calculated?**

If a debt incurred by a spouse has been satisfied from the common property, the provisions on investments from the common property in the personal property are applicable (Art. 45 para. 3). This means that the sum used to satisfy the debt is to be returned. It is to be returned during the distribution of the common property, although the court may order an earlier return if the welfare of the family so requires

**47. What is the priority order between compensation rights and community debts?**

There are no provisions on priority.

**48. How are community assets administered after dissolution but before division?**

This property is the object of joint ownership by both spouses. Each of the spouses has a share in the property, defined by a fraction (an „ideal share“). Each of the spouses or former spouses administers his or her property which consists of previous personal property and a share in the previous common property (as a general rule, half). Each of the spouses may demand that a different share be determined, based on the spouse’s contribution to the property. In some specific situations also the successors of a deceased spouse may demand such a determination. The level of personal commitment to child care and work in the common household is taken into account. The rules on inheritance by multiple successors are applied in this case, as prescribed by the Polish Civil Code (with reference to the provisions on joint ownership in fractional shares included in the same Code).

**49. Briefly explain the general rules governing the division of the community assets.**

The division may be made through a contract between the spouses or by a court decision issued in non-contentious proceedings. It can also be done in the decision on divorce, separation or declaring a marriage void, provided that the distribution does not excessively prolong the proceedings. In the case of death, the division is made during the proceedings on the division of the inheritance. A division can also be made by an arbitration court. A friendly settlement by the parties is possible during court proceedings. Any division by the court shall comprise the whole property, but a division through a contract may be limited to only a share of the entire. There are no time-limits and provisions on the division of an inheritance will apply.

**50. How are the community debts settled?**

As far as debts incurred before the dissolution of the community of property are concerned, the responsibility for such debts therefore depends on whether they were incurred 1) by both spouses, 2) by one spouse without the consent of the other, 3) by one spouse with the consent of the other. In the first case: the dissolution of the community of property does not affect the responsibility of each spouse for his or her property. In the second case: the responsibility is borne by the spouse who incurred the debt in question. In the third case: the debtor’s spouse cannot be held liable for the debt. This does not apply to situations where an execution order was issued.

**51. Do the spouses have preferential rights over the matrimonial/family home and/or the household’s assets?**

The regulation of the family home is only included in the regulation of divorce (Art. 58 para. 2 and 4). While making a decision on the matrimonial home, the court shall bear in mind the needs of the children and the spouse who has the parental authority over them. In the case of the death of a spouse who had sole rights to the matrimonial home where the other spouse used to live, the surviving spouse may use the premises subject to the previous conditions for three months (Art. 923 Polish Civil Code), which does not infringe the spouse’s rights under the law of succession.

**52. Do the spouses have preferential rights over other assets?**

No.

**53. To what extent, if at all, does the division of community property affect the attribution of maintenance?**

It has no effect. The amount of the maintenance due depends on the needs of the entitled party and the capacity of the obliged party.

**54. To what extent, if at all, does the division of community property affect the pension rights and claims of one or both spouses?**

It does not affect them.

**55. Can the general rules of division (above Q 49) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority?**

No.

**56. Are there besides the rules of succession specific rules for the division of community assets if one of the spouses dies? If so, describe briefly.**

No.

**II. Community of accrued gains/Participation in acquisitions**

Not relevant.

**III. Deferred community**

Not relevant.

**IV. Separation of property**

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

The separation of property consists of each of the spouses retaining his or her whole property acquired before entering into the marriage and during the time of the marriage and he or she administers his or her property independently. There is no common property of both spouses.

A separation of property might result from a contract concluded by the spouses (Art. 47 para. 1 sentence 1 Polish Family and Guardianship Code) or it can be imposed by a court at the request of one of the spouses or ex lege in cases where one of the spouses is incapacitated, is declared bankrupt or where a judicial separation is declared by the court (Arts 52–54 Polish Family and Guardianship Code). In the last-mentioned case, a separation of property might be the result if the separation ceases.

**130. What assets comprise the separate property of the spouses?**

The separate property of the spouses may comprise all kinds of assets, there are no specific limitations.

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

Spouses can acquire assets jointly, under general regulations regarding legal acts performed jointly by more persons. If the spouses acquire an asset in this way, it becomes an object under their joint ownership in fractional shares.

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

No.

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

Pension rights and claims and the insurance rights of a spouse belong to his or her property.

**134. How is the ownership of the assets proved as between the spouses? Are there rebuttable presumptions.**

Not applicable. No specific rules in this context.

**135. How is the ownership of the assets proved as against third parties? Are there rebuttable presumptions?**

Not applicable. No specific rules in this context.

**136. Which debts are personal debts?**

Not applicable. No specific rules in this context.

**137. Which debts are joint debts?**

Not applicable. No specific rules in this context.

**138. On which assets can the creditor recover personal debts?**

Not applicable. No specific rules in this context.

**139. On which assets can the creditor recover joint debts?**

Not applicable. No specific rules in this context.

#### **IV.2 Administration of Assets**

**140. How are assets administered?**

Each spouse administers his or her property independently.

**141. Can one spouse mandate the other to administer the assets?**

Each spouse can mandate the other spouse to administer his or her property under the general regulations on mandate.

**142. 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.

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

No.

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

No.

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

There are no specific rules in this context.

**146. 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?**

Not applicable.

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

If a spouse cannot conduct his or her affairs due to absence, a curator may be appointed by the court (Art. 184 Polish Family and Guardianship Code). A guardian will be appointed for an incapacitated spouse if it involves complete incapacity. The other spouse may serve as a guardian. In the case of a partial incapacity, a curator is appointed (Art. 176 Polish Family and Guardianship Code). The other spouse may serve as a curator (Art. 181 Polish Family and Guardianship Code).

#### **IV.3 Distribution of Assets upon Dissolution**

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

**149. What date is decisive for the dissolution of the matrimonial property regime? Distinguish between the different grounds mentioned under Q 148.**

**150. What are the consequences of the dissolution of the matrimonial property regime regarding the separate or joint property of the spouses?**

**151. 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 spouses' property and debts related to that property, pension rights and claims and insurance rights taken into account?**

**152. 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?**

**153. What happens if one spouse's assets are used for investments in the other spouse's assets? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?**

**154. What happens if one spouse's assets have been used for payment of a debt of the other spouse? Is there a rule of compensation? And if so, how is compensation calculated?**

155. Do the spouses have preferential rights over the matrimonial/family home and/or the household's assets?
156. Do the spouses have preferential rights over other assets?
157. To what extent, if at all, does the dissolution of the matrimonial property regime affect the attribution of maintenance?
158. 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?
159. Can the general rules (above Q 150) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority?

No distribution of assets is possible upon the dissolution of the separation of property regime, due to its character in Polish law. Therefore QQ. 148 - 159 are not applicable and there are no rules to that effect.

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

No.

**V. Separation of property with distribution by the competent authority**

Not relevant.

#### 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?**

A contract on the matrimonial property regime may also be concluded by future spouses. Its validity is subject to the subsequent conclusion of a marriage. Polish law does not recognize the institution of a legally binding engagement to marry.

- 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?**

The spouses may conclude a contract at all times. They can also change or terminate a previously concluded contract.

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

The contract must be concluded in the form of a notarial act, under pain of nullity.

- 194. What formal requirements must the pre- and/or post-nuptial agreement 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.**

A spouse may invoke the contract on the matrimonial property regime before third parties if the conclusion of the contract and its contents were known to the third party in question. There is no register of contracts on matrimonial property regimes.

- 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?**

There are no specific provisions on the notary's obligation concerning the conclusion of a contract on the matrimonial property regime. In the general regulations on drafting notary deeds, the notary is obliged to ensure that persons who perform a legal act in this form have a complete understanding of its contents and significance and that the act is in accordance with their free will.

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

No official data available.

- 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?**

The spouses may only select one of the regimes prescribed in the law and they cannot modify it.

**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:**

No modifications are possible, see the answer to Question 198.

**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?**

No modifications are possible, see the answer to Question 198.

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

Under the general regulations, an act is void if it contradicts legal requirements or the rules on cohabitation in society. On that basis, it is assumed that a contract on the matrimonial property regime would be void if it infringes the rule on equality between the spouses.