

Asset Planning without Borders

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Foreign legal forms of cohabitation

(presentation of your own system from the perspective of your own country)

The Croatian legal system recognizes formal and informal forms of cohabitation.

Formal cohabitations are marriage and life partnership.

- marriage considered to be the union of the life of a man and a woman and
- life partnership is a community of family life of two persons of the same sex concluded before a competent body.

Foreign legal forms of cohabitation

(presentation of your own system from the perspective of your own country)

Informal cohabitations are extramarital union and informal life partnership.

- extramarital union is considered to be a life union of an unmarried woman and an unmarried man lasting at least three years or less if a joint child was born in that union, and
- informal life partnership is considered to be a community of family life of two persons of the same sex who have not entered into a life partnership, and the community lasts longer than three years.

Croatian laws recognize and attach equal inheritance, taxation and property effects to all aforesaid cohabitations.

Foreign registers in the field of property law (from the perspective of your own country)

The Croatian Land Registry Law provides that a registration has a constitutive effect for the acquisition of rights in immovable property.

This ensures the erga omnes effect and brings legal certainty.

How your country defines property law systems if there is no property agreement between the spouses / partners

The Croatian law system recognises matrimonial property regime and separate property regime.

Spouses may regulate property relations by property agreement.

If they do not regulate it by the agreement, then the rules of the Law will apply.

By the Law, matrimonial property is considered to be property acquired by the spouses through work during the marriage or originating from that property. It is co-owned by the spouses in equal parts.

How your country defines property law systems if there is no property agreement between the spouses / partners

The spouse's own property is considered property acquired before marriage or during the marriage acquired by inheritance or gift.

The rules of Croatian private international law referring to the matrimonial property regime indicated the application of the Regulation No. 2016/1103 of matrimonial property regime.

Bilateral international agreement taken over by the Republic of Croatia by succession is Agreement on the regulation of legal relations in civil family and criminal matters between the SFRY and the Czechoslovak Republic of 20.1.1964.

How does the existence of a property agreement affect the law applicable to property relations in countries that apply the regulations and also in those that do not?

Regulation No 2016/1103 of matrimonial property regime should enable spouses to know in advance which law will apply to their matrimonial property regime and that law should apply even if it is not the law of a Member State.

In Croatia, spouses must be able to organise their matrimonial property regime in advance by matrimonial agreement. According to Croatian Family Law, spouses may not choose the applicable foreign law if both spouses are Croatian citizens.

How does the existence of a property agreement affect the law applicable to property relations in countries that apply the regulations and also in those that do not?

In Croatia, The Regulation 2016/1103 of matrimonial property regimes should apply in the context of matrimonial property regimes having cross-border implications, that is to say, if the spouses have property or habitual residence or citizenship in different States. This Regulation should be binding in its entirety and directly applicable in the Republic of Croatia which participate in enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples.

How does the existence of a property agreement affect the law applicable to property relations in countries that apply the regulations and also in those that do not?

The Regulation No 2016/1103 of matrimonial property regime authorise spouses to choose the law applicable to their matrimonial property regime among the laws with which they have close links because of habitual residence or their nationality. This choice may be made at any moment, before the marriage, at the time of conclusion of the marriage or during the course of the marriage by matrimonial property agreement. For reason of legal certainty applicable law should govern the matrimonial property as a whole, that is to say, regardless of whether the assets are located in another Member State or in a third State.

The rules on the formal validity of a matrimonial property agreement requires that the agreement should be at least expressed in writing, dated and signed by both spouses.

How does the existence of a property agreement affect the law applicable to property relations in countries that apply the regulations and also in those that do not?

By Croatian Family Law the signatures of both spouses should be certified by notary, which is additional formal rule and that rule should be complied with.

The form of an authentic instrument, i.e. agreement written by the notary is optional in general, but it is obligatory for persons deprived of legal capacity.

As an exception from the contractual form, spouses are allowed to apply together to Land Registry to register their shares on real estate which was registered previously as sole ownership.

**In the light of the above,
can the matrimonial property situation be better planned in countries that
are party to the agreement than in those that are not?**

For reasons of legal certainty and in order to avoid the fragmentation of the matrimonial property regime, the law applicable to a matrimonial property regime should govern that regime as a whole, that is to say, all the property covered by that regime, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third state. Therefore, in my opinion, the matrimonial property regime can be better planned in the States participating in the Regulations.

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