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France
Family Law

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This country-specific Q&A provides an overview of family laws and regulations applicable in France.

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France: Family Law

1. What are the jurisdictional requirements for divorce and property division?

The divorce petition is filed in court either through a summons or a joint petition if both spouses agree on the principle and consequences of the divorce. The divorce process unfolds in two stages:

1. The provisional measures hearing: this hearing sets the measures that will apply until the divorce is officially granted.
2. The merits hearing: at the end of this hearing, the judge will rule on the principle of the divorce and its effects.

The divorce summons must contain several key details, under penalty of nullity:

- Procedurally: the summons must indicate the location, date, and time of the orientation and provisional measures hearing, as well as provide information regarding family mediation.
- Substantively: The summons must include requests relating to the provisional and final measures of divorce. It must include a proposal for the financial and property settlement of the spouses' interests.

As regards the grounds for the divorce, depending on the grounds chosen by the applicant, it will not always be possible to specify them in the writ of summons. For example, the divorce for fault must be addressed after the provisional measures hearing, during the "merits" stage.

Regarding the division of assets, it is possible, during the provisional measures phase, to request the appointment of a notary to assist the spouses in liquidating their matrimonial regime and agreeing on an amicable division of assets. If an agreement cannot be reached, one of the spouses may ask the divorce judge to rule on the liquidation requests and the division of matrimonial interests, provided they can demonstrate the unresolved disagreements. The judge may then order the liquidation of the matrimonial regime, decide on the liquidation requests, and appoint a notary to draw up the final deed for the division of assets between the parties.

Additionally, the spouses can always submit a request to the judge for approval of an agreement that settles all or part of the consequences of their divorce.

2. In what circumstances (if at all) would your jurisdiction stay divorce proceedings in favour of proceedings in another country?

In France, the suspension of divorce proceedings in favor of divorce proceedings in another country should only occur in cases where the divorce involves elements of foreign law.

- **The first situation will be the examination of international jurisdiction by the French court** :

In all cases involving a foreign element, the French court is required to assess its international jurisdiction to determine if the situation is sufficiently connected for it to pronounce the divorce. If its jurisdiction is not legally established, then the French courts will not have jurisdiction.

- **The second situation is the risk of concurrent jurisdiction with a court from another country** : In such cases, France will apply its private international law rules (international conventions, European regulations, domestic law) to resolve issues of litispendance or related cases.
- When the concurrent jurisdiction is that of a European Union member state, France will apply the Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction ("Brussels II ter"). Article 20 of this regulation specifies that the court seized second must automatically suspend its proceedings until the jurisdiction of the court first seized is established, or not. This is not a discretionary measure, but an obligation that can even lead, if the first court asserts its jurisdiction, to the second court relinquishing its jurisdiction in favor of the first.

Thus, within the framework of EU member states, litispendance and related cases are resolved based on

the timing of the court's seizure.

- Outside the case of intra-European divorces, France is a contracting party to international agreements that enable this type of issue to be settled. For instance, the Franco-Moroccan Convention of August 10, 1981. It provides that the French court seized second is required to stay proceedings if the spouses have a common domicile in Morocco or share Moroccan nationality. It must relinquish jurisdiction if the Moroccan court, seized first, asserts its competence.
- Finaly, in the absence of one of the aforementioned cases the French judge will apply the internal territorial jurisdiction rules (Article 100 of the French Code of Civil Procedure, complemented by the jurisprudence Cass. 1re civ., November 26, 1974, Sté Mignera di Fragne).

Therefore, the French court must stay proceedings if it is seized second and if the conditions for exequatur are met. This means the court first seized has a close connection to the parties' situation and there is no conflict with public policy.

3. Is applicable law relevant in your jurisdiction – when would this apply?

In France, the judge's role in applying conflict of laws rules varies depending on the nature of the disputed rights: available rights or unavailable rights.

Unavailable rights, which typically refer to non-pecuniary matters such as family law (marriage, divorce, child custody) or personal status, require the judge to automatically apply the conflict of laws rule. The judge must determine the content of the designated foreign law, even if the parties do not request it (Civ. 1st, May 26, 1999, No. 97-16.68). The judge also ensures that the foreign law does not contradict French public policy (ordre public), which is particularly important in family law or human rights cases (for example repudiation or prohibition of same sex marriage by foreign law).

In contrast, for **available rights**, the judge has the discretion to apply the conflict of laws rule. If the judge chooses to apply the foreign law, they must determine its content (Civ. 1st, March 2, 1960, Bull. civ. I, No. 143). However, if the judge opts not to apply the rule, the parties may invoke it, in which case the judge is obligated to identify and apply the relevant foreign law.

Additionally, France must comply with **EU regulations** (such as Rome III) and international agreements, which may influence the choice of applicable law. Furthermore, in cases where foreign law is applied, the judge will reject any provisions that conflict with the fundamental principles of French public policy.

4. What are the grounds for divorce and are they fault-based?

In France, the Civil Code distinguishes four types of divorce, each with specific requirements and procedures (Article 229 et seq.). These consist of one extra judiciary divorce and three judicial divorces.

- **Divorce by mutual consent (without a judge):**

The primary condition is that both spouses agree to the principle of divorce and all its consequences, including asset division and custody arrangements.

This type of divorce was fully de-judicialized in 2016. Each spouse must be represented by a lawyer, and a divorce agreement is drafted, signed by both parties, and countersigned by their respective lawyers. The agreement is then filed with a notary, formalizing the divorce without the need for a court appearance.

- **Judicial divorces:**

Judicial divorces can be pronounced on several grounds, which include both **fault-based** and **no-fault** options:

- **Acceptance of the principle of breakdown of the marriage**: In this case, the spouses agree that the marriage has broken down but disagree on ancillary matters. The court then resolves these issues.
- **Definitive alteration of the bond of marriage**: This no-fault ground allows divorce if one of the spouses demonstrates that they have been separated for at least one year at the date of the divorce judgment. This ground simplifies the process for couples who have already separated.
- **Fault**: A fault-based divorce occurs when one spouse proves that the other has committed a serious or repeated violation of marital duties, rendering cohabitation intolerable. Examples of such violations may include infidelity, abuse, or abandonment. This type of divorce may have financial consequences, particularly in view of the principle of equity, and the victim spouse may seek damages.

In summary, while France provides mechanisms for both fault-based and no-fault divorces, the specific grounds and procedures vary significantly across the different types, reflecting a balance between judicial oversight and the autonomy of the parties involved.

5. What are the requirements for serving the application for divorce on the Respondent?

In France, a divorce can be initiated by an assignment.

Before serving the assignment to the Respondent, the applicant must follow a specific procedure. First, the applicant must file a draft assignment with the registry of the competent judicial court to request a hearing date. The assignment must be drafted by a lawyer and must include essential information such as the identification of the parties, the subject of the claim, the competent jurisdiction, and the identifying details of the applicant's lawyer.

Once the hearing date is obtained, the assignment must be served to the respondent through a "commissaire de justice" (formerly known as a bailiff) within a legally defined timeframe to ensure the respondent has sufficient time to prepare a defense. The assignment must include, in addition to the previously mentioned information, the date and time of the hearing, along with several mandatory mentions listed in Articles 56, 64, 763, and 1108 of the Code of Civil Procedure. In divorce proceedings, it is also required to mention the provisions of Article 252 of the Civil Code, which relate to participatory case management proceedings, mediation, and the approval of agreements.

The service of the assignment is typically carried out in person by the *commissaire de justice* at the respondent's residence. If the respondent is absent, the *commissaire de justice* may leave the document to a third-party present at the residence or proceed with a deposit at the office, notifying the respondent to retrieve the document. In all cases, the commissaire de justice must send a follow-up notice at the respondent's residence.

A **service report is then drafted by the commissaire de justice**, detailing the date, time, and method of service, along with any additional observations. This report is returned to the applicant as proof of service and must be submitted to the court at least fifteen days before the hearing. If the respondent does not appear on the day of the hearing, the court may proceed with the divorce judgment by default.

6. When is a foreign marriage, and when is a foreign divorce, recognised?

In France, the issue of recognizing a marriage celebrated or a divorce pronounced abroad is governed by the rules of private international law, which can stem from both treaties and domestic law.

Recognition in France of a marriage celebrated abroad

A marriage celebrated abroad is recognized in France if two conditions are met:

- It was celebrated in accordance with the formalities prescribed by the law of the state where the celebration took place (Article 202-2 of the Civil Code);
- The substantive conditions of the marriage comply with the legal requirements of the spouses' national laws (Article 202-1 of the Civil Code). For instance, under French law, the personal appearance of the French spouse at the wedding ceremony is a substantive requirement. However, this system of applying both national laws is limited by public policy considerations. Certain impediments to marriage, known as "bilateral impediments," apply to both spouses if one of them is French. For example, a marriage contracted abroad under bigamy or polygamy by one or both spouses is null and void in France if one of the spouses is a French national.

For a marriage of a French national celebrated abroad to be recognized in France, the foreign marriage certificate must be transcribed in the French civil status registers. This transcription is not mandatory, but without it, the marriage cannot be enforced against third parties and only has legal effects in France between the spouses and regarding their children.

Recognition of a divorce pronounced abroad

The rules for recognizing a divorce pronounced abroad vary depending on the country in which the divorce was granted.

- **For a divorce pronounced in a European Union member state**, the Brussels II ter Regulation provides for the recognition of judgments through the issuance of a certificate by the originating member state.

The grounds for refusal of recognition are strictly limited to manifest conflict with French public order, lack of

proper notification to the defendant of the initial proceedings, and the existence of a conflicting judgment rendered in France (Article 38 of the regulation).

Brussels II ter also addresses the issue of intra-European Union recognition of divorces without a judge, increasingly adopted by European countries (France, Belgium, Spain, etc.). This issue is governed by Articles 64 and following of the Regulation. The ex-spouse seeking recognition of the divorce in another member state must request a certificate from the originating member state (Article 66).

- **For divorces pronounced in a non-EU state**, France applies its own private international law rules through the exequatur procedure:
    - The petitioner must file a summon with the judicial court, with mandatory representation by a lawyer;
    - Exequatur will only be granted if three cumulative conditions are met (Court of Cassation, 1st Civil Chamber, February 20, 2007, 05-14.082):
        1. The foreign judgment was rendered by a competent judicial authority;
        2. It does not violate French international public policy. For instance, if the divorce violates the principle of equality between spouses (unilateral repudiation) or if the right to a fair trial was breached (such as when the defendant spouse was not properly summoned);
        3. The petitioner must not have sought the foreign court's judgment with fraudulent intent (e.g., by turning to a foreign court to obtain a decision that would not have been possible in France).

The public policy exception is by far the most commonly invoked reason by French judges to oppose the recognition of a foreign divorce judgment.

7. Are same sex marriages permitted in your jurisdiction and/or is there another scheme? Do you recognise same sex marriages that have taken place in another jurisdiction?

Opening marriage to Same-sex couples and alternative procedures:

Principle of Acceptance: Same-sex marriage has been legally recognized in France since the "Taubira" law of May 17, 2013. This law allows same-sex couples to marry and consequently adopt children, placing these unions on equal footing with heterosexual marriages in terms of rights and responsibilities.

Prior to this law, same-sex couples could only enter into a PACS (Civil Solidarity Pact), which provided certain legal protections (such as tax reductions and simplified inheritance procedures) but did not grant adoption rights, unlike marriage. The PACS remains an option for couples (both heterosexual and homosexual) who prefer a civil union over marriage.

Recognition of same-sex marriages celebrated abroad by France:

By opening marriage to same-sex couples, France also reaffirmed its stance in support of such unions. The country introduced material rule *in favorem* for same-sex marriages under Article 202-1, paragraph 2 of the Civil code, which allows two people of the same sex to marry when, for at least one of them, either their personal law or the law of the state where they reside or have their domicile permits it. This means that even non-French nationals can marry in France if they live or have a residence there.

However, this progressive step raises questions about the recognition of such marriages in the home countries of the spouses, particularly when those countries prohibit same-sex marriage.

Moreover, the French Court of cassation ruled, in a decision dated January 28, 2015 (Civ. 1ère, No. 13-50.059), that same-sex marriage is now considered a fundamental liberty as part of French international public order. This means that French law will apply even if the foreign law designated by the conflict of laws prohibits same-sex marriage, provided that one of the spouses has a connection to France (such as residency). This protection remains in place even when the conflict of laws rule stems from bilateral agreements between France and countries where same-sex marriage is forbidden (e.g., Morocco, Algeria, Tunisia, etc.).

8. What are the substantive financial orders (e.g. capital, property and maintenance) the court can make and how are claims determined?

French courts can issue a range of financial orders during divorce, focusing on asset division based on the applicable matrimonial regime and addressing the financial needs of both spouses. These claims are determined within the framework of the Civil Code, judicial precedents, and the discretion of the Family Court Judge, who considers the specifics of each case. Both parties must provide full financial disclosure, including income, assets, and debts.

Maintenance Order : Alimony (« Devoir de Secours »)

During divorce proceedings, the judge may establish spousal maintenance between the spouses (*"devoir de secours").* The scope of the *devoir de secours* has been broadened by case law, not only to cover the essential needs of the receiving spouse but also **to ensure an equalisation of the respective living standards** of the spouses throughout the divorce proceedings.

The amount is determined by taking into account each spouse's income and expenses, without considering their assets unless those assets generate income. The maintenance amount can be adjusted at any time if the spouses' circumstances change, provided the judge is petitioned for such a modification.

The duty of support is typically fulfilled through **monthly payments**, but it can also take the form of a benefit in kind, such as the free provision of the marital home, or the assumption of joint debts, such as the repayment of a shared loan.

The duty of support may be set as of the provisional measures order *("ordonnance sur mesures provisoires")* or retroactively from the filing for divorce. It **ends with the final divorce decree**, which terminates all mutual rights and obligations between the spouses (Article 270 of the Civil Code).

Capital Order : Post-Divorce Spousal Support (« Prestation Compensatoire »)

At the conclusion of divorce proceedings, the judge may grant compensatory maintenance *("prestation compensatoire").* Divorce can lead to a significant shift in one spouse's standard of living, and compensatory maintenance is designed to **redress this imbalance between their respective living conditions**.

There is no set formula for calculating the amount. It is determined by assessing the difference in the current and future standards of living of the spouses, considering the needs of the recipient and the resources of the paying spouse. The judge evaluates several factors, including the financial circumstances, health, and age of each spouse, as well as their contributions to the marriage, whether financial or non-financial, while also taking into account the standard of living they enjoyed during the marriage.

Compensatory maintenance is usually awarded as a **lump sum**. In exceptional cases, where a lump sum payment is not feasible, it may take the form of the transfer of property or a lifetime or fixed-term annuity.

The request for compensatory maintenance must be made during the divorce proceedings. Once the divorce is final, no further claims can be made. The maintenance becomes **payable as soon as the divorce is legally finalised,** meaning when no further appeals (including to the Supreme Court – *Cour de Cassation*) are possible.

Property Order : Liquidation of Matrimonial Regime

The liquidation of the matrimonial regime aims to **distribute the spouses' assets** by assessing their estate, including real estate, personal property, liabilities, and claims, to **determine the share due to each party**. The rules governing the division depend on the couple's matrimonial regime (see below) and the nature of the assets involved. If the spouses jointly own or co-hold real estate, the involvement of a notary is mandatory to carry out the division process.

The liquidation may occur either **during or after the divorce proceedings**.

During the divorce proceedings, from the moment the case is filed, the spouses are required to propose a resolution of their financial interests. During the hearing on provisional measures, the judge may appoint a notary to prepare a draft liquidation of the matrimonial regime and to divide the assets into shares. Following this, the judge can:

- Approve the spouses' agreement on the division of assets or the notary's proposed plan;
- Resolve any ongoing disputes by ordering the division or by appointing a notary. The judge may also order the sale of jointly held property by auction if necessary.

After the divorce has been pronounced, if an amicable settlement could not be reached, the spouses may refer the matter to the court for a judicial division:

- If the division is straightforward, the judge resolves the disputes and refers the parties to the notary for the drafting of the deed of partition;
- If the financial situation is complex, the judge may appoint a notary, and a judge to supervise the liquidation and division operations. The notary has one year to prepare a liquidation report, establishing the financial accounts between the spouses and proposing two shares for division. The judge may then approve this liquidation report or, in case of continued disagreement, issue a final ruling and, if necessary, order the sale of assets by auction.

9. What orders can be made in relation to pensions and what are the guiding principles?

Obligations for spousal maintenance can arise from the provision of alimony during divorce proceedings, known as *"devoir de secours"*, or from post-divorce support arrangements, referred to as *"prestation compensatoire."*

Alimony ("Devoir de Secours")

During divorce proceedings, a judge may grant alimony to one spouse (Article 255, 6° of the Civil Code). This alimony remains in effect until the spouses obtain an irrevocable divorce decree.

The purpose of this financial support is twofold: to **ensure the recipient spouse's basic needs** are met and to **help maintain a comparable standard of living** between both spouses.

The determination of alimony considers **various factors**, including the needs of the recipient spouse, their standard of living during the marriage, and the financial circumstances of both parties. French law does not prescribe a specific formula for calculating the amount and this decision is left to the discretion of the Family Court Judge.

Post-Divorce Spousal Support ("Prestation Compensatoire")

The aim of post-divorce spousal support is to **minimise the financial disparity that may result from the divorce** (Article 270 of the Civil Code).

The judge assesses the needs of the recipient spouse alongside the financial resources of the other spouse, taking into account their circumstances at the time of divorce and any foreseeable changes.

Several factors influence the assessment of this disparity (Article 271 of the Civil Code):

- The duration of the marriage
- The age and health of both spouses
- Their professional qualifications and employment status
- The impact of professional choices made by one spouse during the marriage, particularly in relation to child-rearing and prioritising their partner's career
- The expected assets of both spouses, including capital and income, following the liquidation of the matrimonial regime
- Their existing and anticipated rights
- Their respective situations concerning retirement pensions

Similar to alimony, French law does not specify a particular calculation method for determining the amount of spousal support, leaving this decision to the Family Court Judge's discretion.

10. Can the court make interim provision (including for legal costs) during the proceedings?

The court may order various interim financial measures during divorce proceedings, in addition to maintenance (see above for alimony).

Provision "ad litem"

If one spouse **lacks sufficient resources to cover legal fees**, they can request the court to order their spouse to provide a *provision ad litem* (Article 255, 6° of the Civil Code). This sum is intended to cover the upcoming costs of the proceedings.

The spouse ordered to pay the provision must advance these legal costs on behalf of their partner but may **seek reimbursement** once the case concludes. However, if the paying spouse is ultimately responsible for the costs (" les dépens"), the provision will remain their obligation. Conversely, if the spouse who received the provision is found liable for costs, the amount will be deducted from their entitlements during the liquidation of the matrimonial property regime.

Advance on the liquidation of matrimonial property

The court may also grant one spouse an advance on their share of the matrimonial property, which will be allocated during the final liquidation (Article 255, 7° of the Civil

Code). This measure applies when **the applicant is in financial need**, which must be demonstrated, such as being unable to secure alternative housing. The applicant must also **provide evidence of the value of the assets** to be liquidated. This advance will then be deducted from the recipient's final share during the property settlement.

Temporary responsibility for household debts

The court may designate which spouse will be **temporarily responsible for paying household debts** (Article 255, 6° of the Civil Code), often including liabilities such as a mortgage on the family home.

It is crucial for the court to **specify whether the responsibility for the debt is permanent**, as part of the Alimony ("devoir de secours"), or if it will establish **a claim in favor of the paying spouse** during the liquidation of the matrimonial property regime. However, this decision only affects the internal relationship between the spouses and does not alter the rights of creditors. Creditors retain the ability to pursue either spouse for full payment, for joint household debts (Article 220 of the Civil Code) as loans jointly contracted by both spouses.

11. Can financial claims be made after a foreign divorce?

After a divorce granted abroad, the matrimonial property regime can still be liquidated in France if it was not settled by the foreign court. However, post-divorce spousal maintenance *("prestation compensatoire")* cannot be awarded in France following a foreign divorce.

The liquidation of the matrimonial property regime after a foreign divorce

The liquidation of the matrimonial property regime can take place **during or after the divorce proceedings**. If the matrimonial property regime was not settled during the foreign divorce proceedings, it can subsequently be dealt with in France, **provided that the French court has jurisdiction.**

Jurisdiction over the matrimonial property regime in France is determined by Council Regulation (EU) No 2016/1103 of 24 June 2016, commonly known as the "Matrimonial Property Regimes Regulation."

Prospective spouses can **designate the French courts** to deal with the liquidation of their matrimonial property regime if French law applies to their regime or if the marriage took place in France (Article 7).

If the spouses have not designated a competent court, the **jurisdiction of the French courts will be determined based on certain criteria** (Article 6): a) the habitual residence of the spouses is in France; b) the last habitual residence of the spouses was in France, and one of them still resides there; c) the defendant's habitual residence is in France; or d) both spouses hold French nationality.

These criteria are applied in a hierarchical order.

If no court of a member state has jurisdiction, French courts will have jurisdiction as long as immovable property belonging to one or both spouses is **located in France** (Article 10). The jurisdiction will, however, be limited to this property.

Spousal maintenance after a foreign divorce

The French Supreme Court ("*Cour de cassation*") recently ruled (Cass. 1re civ., 7 February 2024, n° 22-11.090) that spousal maintenance **cannot be granted in France after a foreign divorce**, as it must be included in the original divorce judgment.

This decision has drawn **criticism for conflating divorce and spousal maintenance, which are treated separately under private international law**. The European Maintenance Regulation allows maintenance claims to be handled by different courts based on factors like the residence of the parties or their chosen jurisdiction, even if those courts were not involved in the divorce (Article 3(c), 2008 Regulation). By linking spousal maintenance solely to divorce proceedings, the ruling undermines the principle that these matters are governed by distinct regulations with separate rules on jurisdiction and applicable law.

12. What is the process for recognising and enforcing foreign financial orders (including orders relating to pensions situated in your jurisdiction)?

If a foreign decision is issued within the European Union or a country that is a signatory to an international convention on maintenance recovery, the **Maintenance Recovery Office** *("Bureau de Recouvrement des Créances Alimentaires – BRCA")* can first attempt an **amicable resolution**. This involves seeking voluntary payment from the debtor.

Should this amicable phase fail or prove unfeasible, **legal proceedings** may follow. These involve securing enforceability of the foreign court decision in France, enabling the compulsory recovery of the maintenance debt.

Recognition of Foreign Financial Orders

The process for enforcing a foreign court decision in France differs depending on whether the ruling originates from within or outside the European Union.

Recognition of Enforceability for EU Decisions

Within the EU, maintenance claim recovery is streamlined: a decision issued in one EU member state is automatically recognised and enforced in another. All that is needed is **a declaration of enforceability**. This simplified procedure is handled by the court clerk of the Court, who verifies the enforceability of the European decision. The request must include a copy of the foreign judgment and the European Enforcement Order certificate issued by the original court or authority. Legal representation is not required for this process.

Exequatur Procedure for Non-EU Judgments

For judgments issued outside the EU, automatic enforceability does not apply. Instead, an **exequatur procedure** must be initiated, wherein a French judge grants enforceability to the foreign judgment. The French court will grant exequatur if the following conditions are met:

1. The foreign court had proper jurisdiction.
2. The judgment does not violate international public policy.
3. There is no evidence of fraud.

This process requires submitting a summons to the Court, and legal representation by a lawyer is mandatory.

Enforcing financial order in France

In cases of non-payment of both maintenance and compensatory allowances, the creditor spouse can initiate **enforcement procedures** in France.

For unpaid maintenance, the creditor can use a **direct payment procedure**, enabling a bailiff to recover funds directly from the debtor's employer or bank. This can be done as soon as the first payment is missed, recovering up to six months of arrears. For amounts beyond this period, traditional enforcement methods, such as seizing property or garnishing wages, are required. Non-payment is a **criminal offence of family abandonment**, punishable by up to two years in prison and a EUR 15,000 fine.

Similarly, for non-payment of compensatory allowances, recovery can be pursued through actions such as **direct payment, seizure of bank accounts, wage garnishment, or asset attachment**. If the allowance is a lump sum, the creditor has 10 years to enforce payment. If paid in instalments or as an annuity, arrears can be claimed for up to five years. Non-payment also constitutes the criminal offence of family abandonment, potentially leading to imprisonment and fines.

13. Are matrimonial property regimes recognised and if so, in what circumstances?

Spouses have the freedom to select their matrimonial regime. The rules governing the liquidation of these various regimes are set out in the Civil Code, and the court does not have the authority to redistribute or reallocate assets or resources upon divorce.

The Legal Matrimonial Regime

If spouses do not explicitly choose a matrimonial regime, they will automatically be subject to the **legal regime of community property** *("communauté réduite aux acquêts")* (Articles 1400 to 1491 of the Civil Code). While selecting this legal regime does not preclude the establishment of a prior contract, spouses may choose to draft one to incorporate specific adjustments, if desired.

This regime encompasses two categories of assets:

- **Common or acquired property**: This includes assets acquired jointly or separately by the spouses during the marriage, as well as their incomes and the profits from their separate assets (Article 1401 of the Civil Code). By default, any property acquired during the marriage is deemed to be common property (Article 1402 of the Civil Code).
- **Separate assets**belonging to each spouse, whether they were owned before the marriage or acquired through donation or inheritance.

Upon liquidation of the matrimonial regime, **compensation claims** ("récompenses") may be assessed. The community owes compensation to one spouse when it has benefited from that spouse's separate property (Article 1433 of the Civil Code). Conversely, the community is entitled to compensation when it has borne an expense for the personal benefit of one spouse (Article 1437 of the Civil Code). The assessment methods for these compensations are outlined in the Civil Code.

Conventional Matrimonial Regimes

To establish a contractual regime, spouses must draw up a **marriage contract**, which must be completed before the marriage ceremony and notarised (see below). Spouses may choose from several standard regimes provided by

law:

- **Separation of assets** ("séparation de biens") (Articles 1536 to 1543 of the Civil Code);
- **Participation in acquisitions** ("participation aux acquêts") (Articles 1569 to 1581 of the Civil Code);
- **Conventional communities** ("communautés conventionnelles") (Articles 1497 to 1526 of the Civil Code).

Additionally, spouses can elect for a separate regime while creating a limited community enclave for one or more assets ("société d'acquêts").

Furthermore, spouses may modify certain rules of existing regimes. In conventional communities regimes, they can establish "**matrimonial advantages**" *("avantages matrimoniaux")* to alter:

- The composition of the common mass – for example, a provision to convert separate property into common property ("clause d'ameublissement");
- Rules regarding compensations ("recompenses"), including their principles or evaluation;
- Asset distribution upon death to favour the surviving spouse – for instance, a clause allowing complete allocation of assets to the survivor ("clause d'attribution intégrale").

14. How are pre and post nuptial agreements treated? Is it different if the prenuptial or post nuptial agreement was concluded in your jurisdiction (as opposed to another jurisdiction)?

French Marriage Contract: Conditions and Purpose

Before the Marriage

In French law, the marriage contract is subject to very strict **formal requirements**. To avoid absolute nullity, it must be executed in the form of a **notarial deed** (Article 1394, al. 1 of the Civil Code). Furthermore, the contract must be concluded **prior to the marriage** ceremony and only takes effect on the date of that ceremony (Article 1395 of the Civil Code). The **consent of both parties** is essential for the validity of the contract: the spouses must agree simultaneously, and the signatures cannot be made on different dates.

It is also important to note that, under French law, the validity of a marriage contract does not require the parties to receive independent legal advice, nor is there any obligation for financial disclosure prior to its execution. The absence of these formalities can create challenges when it comes to the international recognition of French marriage contracts, particularly in Common Law jurisdictions where such requirements are standard.

Additionally, unlike certain foreign marriage contracts, French marriage contracts cannot preemptively regulate financial or spousal support arrangements in the event of a divorce (see below). The primary purpose of the marriage contract is to allow the spouses to **choose their matrimonial property regime** and to make any adjustments permitted within the framework of these regimes. If no contract is made, the couple will automatically be subject to the legal regime of *community of property* (see above for details on matrimonial regimes).

In a French marriage contract, prospective spouses can also **opt for a foreign matrimonial regime** by selecting the law applicable to their regime. However, this choice is restricted: they may only choose the law of a country of which one spouse holds nationality or the law of their habitual residence at the time of the choice (Article 22 of EU Regulation No. 2016/1103 of 24 June 2016). The spouses must also ensure that the effects of the chosen regime, particularly any clauses stipulated in the contract, do not contravene French international public policy (see below).

During the Marriage

At any time after their marriage, couples may change **their matrimonial regime** (Article 1397 of the Civil Code). This amendment must be formalised through a **notarial deed** and, if necessary, include the liquidation of the previous regime to avoid invalidity. The change must also be made "in the interest of the family" and will only have effect for the future.

During the course of the marriage, the change of matrimonial regime can also result from a **modification of the applicable law** and the adoption of a regime permitted by this new law (see below, Article 22 of EU Regulation No. 2016/1103 of 24 June 2016). In France, such a change must be executed in the form of an **authentic act before a notary**. Generally, the modification will only have prospective effect, unless the spouses choose to apply it retroactively from the date of their marriage.

The Fate of Foreign Prenuptial and Postnuptial Agreements in France

Unlike contracts governed by French law, prenuptial agreements regulate not only the financial relations

between spouses but also financial and spousal support arrangements in the event of a divorce. In accordance with the softened effect of international public policy, such marriage contracts, established abroad in compliance with foreign law, are **deemed valid in France**.

However, **this does not mean that all clauses of these agreements are enforceable in France**. Even if a foreign contract is validly concluded, its provisions may be subject to limited application in France, or even result in the entire contract being voided.

This is particularly the case for **certain non-financial clauses**, such as those stipulating a vasectomy, or conditions for repudiation, which are contrary to international public policy.

Conversely, **certain financial clauses,** such as the pre-determination of the amount of spousal support or a waiver of any maintenance, could be upheld, even though such provisions would not be accepted under French law. Nevertheless, **several protective mechanisms** may render these financial clauses unenforceable.

It is essential that the law of the contract permits these provisions and that this **law has been validly chosen by the spouses** (Article 8(1) of the Hague Protocol regarding the laws that may be selected by the parties). Moreover, regardless of the chosen law, it is the law of the habitual residence of the maintenance creditor that determines whether a waiver of maintenance is possible (Article 8(4) of the Hague Protocol).

The judge also has the power to set aside the chosen law in favour of the law of the spouses' habitual residence if the designated law leads to ***« manifestly inequitable or unreasonable consequences »*** for either party, unless the parties were fully informed and aware of the consequences of their choice (Article 8(5) of the Hague Protocol).

Finally, the chosen law may be disregarded in favour of the law of the spouses' habitual residence if its provisions are **contrary to international public policy** (Article 13 of the Hague Protocol). This was confirmed by a ruling of the French Court of Cassation, which held that the waiver of all spousal support under German law, or any other law, in a prenuptial agreement concluded in Germany was manifestly contrary to French international public policy (Civ. 1re, 8 July 2015, no 14-17.880).

15. How is maintenance for a child dealt with in your jurisdiction?

Maintenance can be set either by agreement between the parents (parental agreement or divorce by mutual consent) or by a court order if the parents are unable to agree on the principle or the amount of maintenance.

Criteria for maintenance

The amount of maintenance is set according to the needs of the children and parents' income (article 371-2 paragraph 1 of the Civil Code). French judges take into account the age of the children, their lifestyle since childhood and their mode of residence. In France, maintenance payments do not automatically cease when the child reaches the age of majority (18) but continue until the child is financially independent (article 371-2 paragraph 2 of the Civil Code).

Changes to maintenance payments

When one of the parents wishes to request a change to the maintenance set out in a court order or agreement, he or she must demonstrate the existence of a new element in the children's needs or the parents' resources. Otherwise, the application is deemed inadmissible.

Financial intermediation

Since January 2023, financial intermediation applies to all maintenance payments for minor children set out in an enforceable title, judgment or agreement between the parents (article 373-2-2 of the French Civil Code). The principle is as follows :

- The debtor parent pays the amount of the maintenance allowance monthly to ARIPA (“Agence de Recouvrement des impayés de la pension alimentaire”), which is the CAF (“Caisse des allocations familiales”) ;
- ARIPA then pays the maintenance to the creditor parent.

The parents may decide by mutual agreement not to use financial intermediation or to discontinue it, except in cases of domestic violence.

Revaluation of maintenance payments

The creditor parent may request that the maintenance allowance be revalued each year based on a defined index and on a specific date (for example, every January). Normally, maintenance payments are adjusted in line with the household consumer price index.

Taxation

The parent who pays the maintenance can deduct it from

his or her income, and conversely, the maintenance is taxable in the name of the parent who receives it.

If the children live alternately, the parents each receive an increase in the number of shares in their tax household (which will reduce tax), but the maintenance payments are not deductible.

16. With the exception of maintenance, does the court have power to make any orders for financial provision e.g. housing and/or capital sums for a child? If so, in what circumstances?

It may be stipulated in a judgment or agreement that one of the parents will be directly responsible for the costs incurred for the children (for example: unreimbursed health expenses or school fees); this is fairly common practice. It is also possible to provide for the contribution to take the form of a right of use and habitation, but this is less common.

These types of contribution may be in addition to traditional maintenance payments (article 373-2-2 of the French Civil Code).

17. Are unmarried couple relationships recognised (eg. as a civil partnership?)

In France, there are several legal forms for couples other than marriage: cohabitation and the 'Civil Solidarity Pact' (PACS). These unions are recognised for adults of different sexes or of the same sex.

There are no special rules for cohabitation.

However, the PACS is a contract between two people of legal age to organise their life together, involving mutual rights and duties. Like marriage, a PACS is recorded in the margin of each partner's birth certificate.

18. What financial claims, if any, do unmarried couples have when they separate and how are such claims determined i.e. what are the guiding principles?

Cohabitation has no financial consequences for the couple.

On the other hand, signing a PACS has consequences:

- Between the partners: people entering into a PACS commit to living together. They have reciprocal obligations such as material aid or mutual assistance, which involves sharing material expenses and joint responsibility for household costs and debts.
- Assets: by default, and unless specified otherwise in the PACS agreement, the couple will be governed by the separation of property regime. They may also opt for joint ownership;
- Tax matters: the partners will file a joint tax return. In the event of death, the PACS partner is exempt from inheritance tax on assets bequeathed to him or her by the partner's will.

If the partners break up, their property regime will be liquidated (either separation of property or joint ownership). Unlike marriage, there is no alimony for one of the partners.

A PACS may be dissolved for various reasons : separation (a request to dissolve the PACS may be made by one or both partners), marriage; or death.

19. What is the status of separated parents in relation to their children? Does it make a difference if the parents were never married?

Impact of parental separation on the relationship with the children

Parental separation has no impact on a parent's rights and duties towards their children. The French Civil Code states that each parent must maintain a personal relationship with the child and respect the child's ties with the other parent (article 371-4 of the Civil Code). In principle, therefore, parents exercise parental authority jointly. However, if the interests of the child so require, the judge may decide to entrust the exercise of parental authority to one of the two parents.

Difference between married and unmarried parents

The fact that the parents are married or not has no impact on parental rights, apart from the establishment of filiation. For a heterosexual married couple, paternal filiation is established automatically by the presumption of paternity (article 312 of the Civil Code). For unmarried parents, paternal filiation is not established automatically: the father must recognize the child before or after birth, at the town hall.

20. What are the jurisdictional requirements for child arrangements/child custody?

Firstly, the court seized must have **jurisdiction**.

The Brussels II Ter Regulation, which came into force on 1 August 2022, sets out the criteria for jurisdiction in matters of parental responsibility.

- **Principle** : Jurisdiction lies with the court of the State in which the child is **habitually resident** (article 7). This concept has been clarified by the Court of Justice of the European Union, which defined habitual residence as 'the *place which reflects a certain integration of the child into a social and family environment*' (CJEU, 2 April 2009, 'A', Case C-523/07). The factors considered include the duration and conditions of residence, the reasons for moving, nationality, schooling, language skills and social and family relations
- **Exceptions**:
    - **Former habitual residence** (Article 8): The court of the State of the child's former habitual residence retains jurisdiction for **3 months after the move**, solely to modify access rights previously granted. The person to whom access rights have been granted must continue to reside in the State of the child's former residence.
    - **Close link** (Article 10): The court of a State with which the child has a close link (nationality, former residence, residence of a parent) may have jurisdiction, provided that the parents agree and that this is in the best interests of the child.
    - **Place of presence** (article 11): If habitual residence cannot be established, the competent court is that of the place where the child is present.

Internal territorial jurisdiction is determined by Article 1070 of the Code of Civil Procedure:

- **Parents living together**: jurisdiction lies with the court for the place where **the family has its residence**.
- **Separated parents**:
    - If the parents exercise parental authority jointly, the competent court is that of the place of residence of the parent with whom the child habitually resides.
    - If only one parent exercises parental authority, the competent court is that of the place of residence of that parent.
- **In other cases** *(alternating residence, for example):* the court with jurisdiction is that of the place of residence of the parent who did not initiate the proceedings.
- **Joint application**: The parties may choose between the court of the place of residence of one or the other.

Admissibility of the claim

If a judgment has been handed down and one of the parents wishes to change the arrangements for exercising parental authority, he or she must show that the change is in the child's best interests.

However, in the case of maintenance payments, if one of the parents wishes to change the amount set by the judgment, he or she will have to prove a new factor.

In addition, many French courts check whether the parents have tried to resolve their disagreements amicably, for example through mediation.

Hearing the child

Minors capable of discernment must be informed by their parents of their right to be heard and to be assisted by a lawyer in proceedings concerning them (article 338-1 of the Civil Code). Judges tend to consider that a child is capable of discernment when he or she is over 10 years old.

Judges must therefore ensure that the child has been informed of his or her right to be heard if he or she is capable of discernment and does not wish to be heard. *See question 21.*

Transmission of birth certificates

For all applications concerning children, the court must be provided with a full copy of the birth certificates, which must be less than 3 months old, by the day of the hearing at the latest. Failing this, the judges may decide to strike out the case.

21. What types of orders can the court make in relation to child custody/a child's living arrangements and what are the guiding principles? What steps are followed to hear the

voice of the child?

Intervention of the Family Judge ("Juge aux affaires familiales")

If these issues are referred to the judge, he or she must rule on the exercise of parental authority, the child's residence, visiting and accommodation rights and maintenance. The question of how parental authority should be exercised may be referred to the Family Court on various occasions:

- As part of divorce proceedings: when the judge is seized of an application for divorce, he must rule on the arrangements for exercising parental authority where there are minor children:
    - In the interim measures order, which sets out the measures applicable during the divorce proceedings;
    - In the divorce judgement.

- Outside divorce proceedings: the judge may be called upon at any time by either parent to rule on the arrangements for exercising parental authority. If it is shown to be urgent, the judge will give a ruling within a short period of time.

  In the two cases described above, the judge may always issue a judgment of homologation when he is seized of an application for homologation of the parents' agreement on the exercise of parental authority. This agreement may form part of an overall agreement on the divorce and its consequences. Outside divorce proceedings, the parents may ask the judge to approve a parental agreement.

Court decisions relating to the exercise of parental authority can always be modified if a new factor arises.

Intervention of the children's judge ("Juge des enfants")

The Juge des enfants is primarily responsible for protecting children in danger; this is what distinguishes him from the Juge aux affaires familiales.

In this respect, he can take all necessary measures to protect the child. The main measures are judicial investigation, open educational assistance and placement.

The guiding principles

All decisions relating to children are guided by the child's best interests.

With regard to parental authority, the principle is that parental authority is exercised jointly by the father and mother. With regard to residence, the judge will take into consideration previous practice, the child's ability to maintain his or her bearings, the geographical distance between the homes of the two parents, and their ability to communicate. If the judge deems it necessary, he or she may order a medical-psychological assessment and set interim measures while the expert's report is obtained. With regard to maintenance, please see question 15.

Hearing the child

The judge must take into account the feelings expressed by the minor child when deciding how to exercise parental authority. The child must be informed when the proceedings concern him or her. In the absence of a request for a hearing and if the decision is to be enforced in another European State, it is important to be able to demonstrate that the child has been informed of his or her right to be heard (Article 21 of Brussels II ter). Otherwise, the decision may not be recognised.

If the minor requests a hearing, it is automatically granted. If it is requested by one of the parties, the judge may refuse if he considers that the hearing is unnecessary or if it is contrary to the interests of the child.

In all cases, the minor must be capable of discernment in order to be heard. There is no minimum age laid down in the legislation, and discernment is assessed on the basis of the minor's maturity.

Once the judge has decided to hear the child, he or she is summoned. A lawyer may be appointed by the President of the Bar to assist the child, but this is not compulsory. The record of the hearing may be consulted by the parties' lawyers.

22. What are the rules relating to the relocation of a child within and outside your jurisdiction and what are the guiding principles?

In the event of a child being moved, a distinction must be made between three situations.

- **'Lawful' removal**

A parent may apply to the court for permission to move

with the child, either in France or abroad. As this move necessarily infringes the parental rights of the other parent, authorization from either the other parent or the judge is required for it to be lawful.

The judge will rule in the child's best interests. In practice, this means

- Take into account the child's geographical and emotional bearings;
- Take into account the existence of siblings;
- Hear the child if an application is made;
- Check that the child's living conditions in the new place of residence are in his or her best interests;
- Check that the child's relationship with the other parent will be maintained. To do this, it relies in particular on previous practice and on the parents' ability to talk to each other.

- **Unlawful removal of a child from France to another country**

In the event of a child being removed from France to a third country by one of the parents, the other parent with 'custody' rights, within the meaning of the Hague Convention of 25 October 1980, may apply to the French central authority for the child's return if the country of 'refuge' is a member of the Hague Convention of 25 October 1980.

The French central authority will then contact its foreign counterpart in the country of 'refuge', which will result in the matter being referred to the foreign court.

For the removal to be considered unlawful, there must have been a breach of 'custody rights', which were being exercised effectively at the time of the removal; in other words, in France, the other parent must be exercising parental authority jointly. In addition, the applicant must not have agreed to or acquiesced in the removal. The 1980 Hague Convention provides for exceptions, notably if the child has settled into a new environment, if he or she opposes his or her return, or if he or she would be in danger in France.

The Brussels II ter Regulation stresses the need for the procedure to be swift. The courts of the Member States must give their decision within 6 weeks for each level of court (first instance, appeal).

If there is an enforceable judgment ruling on measures of organization of parental authority, it may be more effective to apply for its enforcement if the country – known as the 'country of refuge' – is subject to Council Regulation (EU) No 2019/1111 of 25 June 2019. This solution can also work with States bound by the 1996 Hague Convention. If the child has been moved to the USA, it is possible to rely on the Uniform Child Custody Jurisdiction and Enforcement Act (1997) to obtain recognition and enforcement of a French court order.

If the 'safe haven' country is not a party to the Hague Convention or Council Regulation (EU) no. 2019/1111 of 25 June 2019, it is necessary to check whether there is a bilateral agreement between France and the safe haven country. In practice, it is often useful to contact a local lawyer if the place where the child is being removed is known.

- **Unlawful removal of a child from another country to France**

In the event of the unlawful removal or retention of a child in France, the person with 'custody rights' has two options:

- File a request for return with the French Central Authority or the State of habitual residence of the child, on the basis of article 8 of the 1980 Hague Convention. In France, the Public Prosecutor, informed by the Central Authority, may order any action necessary to locate the child and attempt to obtain voluntary return.

If the child is not returned voluntarily, the Public Prosecutor may summon the person who removed the child to appear before the family court to request the child's return. The parent who is the 'victim' of the removal may also apply to the competent French court to order the child's return. The hearing is scheduled within a short period of time.

The holder of custody rights may then appear voluntarily before the judge to support the Public Prosecutor's application.

- Apply directly to the competent family court for the child to be returned to the State of habitual residence. In this case, the French Central Authority and the Public Prosecutor are not obliged to intervene in support of the applicant, except as part of the enforcement of the decision.

23. What is the process for recognising and enforcing foreign orders for contact/custody of

children? Does your court operate a system of mirror orders?

When it comes to recognizing and enforcing a foreign decision on parental responsibility, a distinction must be made between two situations:

- Decisions handed down in a Member State of the European Union: under Council Regulation (EU) No 2019/1111 of 25 June 2019, decisions on parental responsibility can be enforced immediately, without the need to go through a specific procedure. However, judgments that do not concern rights of access or the return of an abducted child may be the subject of an application for refusal of enforcement before the judge, on the basis of the various grounds for non-recognition provided for in the Regulation.
- Decisions given in a State outside the European Union but a contracting party to the 1996 Hague Convention: decisions are recognized by operation of law. If the recognition of a decision is debated before the court, the Convention provides for a limited list of grounds for non-recognition. For the enforcement of decisions, the rules of exequatur under ordinary law must be applied.
- Decisions handed down in a third country that is not bound to France by an international convention cannot be recognized and enforced in France until they have been granted exequatur by the court, subject to compliance with three conditions: the indirect jurisdiction of the foreign court that handed down the decision, based on the connection of the dispute to the court seized, compliance with international public policy in terms of substance and procedure, and the absence of fraud. The procedure is initiated by a writ of exequatur issued to the public prosecutor of the court of the applicant's domicile.

24. What is the status of surrogacy arrangements and are surrogates permitted to be paid?

In France, an agreement concerning surrogate motherhood or surrogate procreation is prohibited on the basis of the principle of the unavailability of the human body.

Nevertheless, it is possible to have the filiation between the intended parents and a child born as a result of surrogate motherhood carried out abroad recognised in France. The foreign birth certificate can be partially transcribed into French civil status registers, but only for filiation with the biological parent. The other (intended) parent will be able to establish his or her filiation through an action for adoption of his or her spouse's child. Furthermore, if filiation between the parents and the child has been established abroad by means of a judgment, it is possible to bring exequatur proceedings in France to have the judgment, and hence the filiation, recognised and enforced.

25. What forms of non-court dispute resolution (including mediation) are available in your jurisdiction?

There are several non-court dispute methods available in France. However, if the parents manage to reach a parental agreement, it is strongly recommended that it be approved by the competent family court.

Family mediation

Family mediation consists of enabling the parties, with the help of an impartial family mediator who has special training, to re-establish dialogue and try to reach an agreement.

Mediation takes place either at the initiative of the parties, before, during or after a dispute (conventional mediation), or at the request of the judge, at any stage of the proceedings, when the parties agree (judicial mediation).

In some jurisdictions, a mandatory attempt at family mediation has been imposed since 2016 on an experimental basis for applications to modify the arrangements for exercising parental authority or the contribution to child maintenance. If the parties fail to comply with this obligation, their application will be declared inadmissible. This compulsory attempt is in force in 11 pilot courts (Bayonne, Bordeaux, Cherbourg-en-Cotentin, Évry, Nantes, Nîmes, Montpellier, Pontoise, Rennes, Saint-Denis and Tours).

Conciliation

Conciliation is less common in family disputes, where mediation is often preferred. Unlike mediation, the court conciliator has a more directive role and can propose solutions to the parties. In addition, conciliation is free, unlike mediation.

Collaborative law

The collaborative process is one in which the parties, each assisted by a lawyer, try to find a solution to their

dispute in good faith and with complete transparency, during four-way meetings.

Lawyers must have undergone training in the collaborative process before using this amicable method, which includes learning the main tools (interest-based negotiation, active listening, reformulation).

If no agreement is reached, the lawyers undertake contractually not to represent their clients in litigation.

Participatory procedure

The parties sign an agreement in which they undertake to work together in good faith to resolve their dispute amicably or to put their case on an equal footing.

Unlike the collaborative process, this amicable method can be used in the context of legal proceedings. Moreover, lawyers can continue to represent their clients in court if no agreement is reached.

Out-of-court settlement hearing ("audience de règlement amiable")

The amicable settlement hearing is an amicable method introduced in November 2023 for resolving legal disputes.

Under this system, a judge – who is not the judge who will rule on the case – is given the task of helping the parties to find a solution to the conflict between them during a hearing lasting several hours. In particular, the judge may remind the parties of the applicable principles of law, take note of the submissions and documents exchanged, and hear the parties separately.

The amicable settlement hearing may be held at the request of one of the parties or be decided by the judge of his or her own motion (article 774-1 of the Code of civil procedure). For the time being, this amicable procedure is only provided for in the context of written proceedings, which therefore excludes disputes over the child's residence and contribution arrangements outside divorce.

If the parties reach an agreement, the judge will formalize it in a report that will be enforceable.

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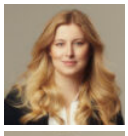

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