



LIMITED COMMUNITY OF PROPERTY

Advisory Handbook 2025



If you are an entrepreneur who married after 1 January 2018 without a prenuptial agreement, the limited community of property regime applies to you. However, it is advisable for an entrepreneur to establish a prenuptial agreement with his or her future spouse or registered partner.

If you married before 1 January 2018 and did not draw up a prenuptial agreement, the previous statutory regime still applies—namely, the general community of property.

THE LIMITED COMMUNITY OF PROPERTY

As of 1 January 2018, a general community of property only applies if specifically agreed upon in a prenuptial agreement. If no arrangements are made, the limited community of property applies automatically.

This is subject to the condition that Dutch law applies to your situation. For example, if you hold multiple nationalities, have a different nationality, or moved abroad immediately after marriage, Dutch law may not apply. In such cases, seek appropriate legal advice to determine whether Dutch matrimonial property law is applicable.

Tip!

Even in these situations, a prenuptial agreement can offer a solution, as it allows you to explicitly opt for Dutch matrimonial property law. This can help avoid lengthy disputes or uncertainty later on.

Note!

Consult an expert in good time to properly assess the implications if your situation involves any international elements.

THREE SEPARATE ESTATES

The core principle of the current statutory limited community of property regime is that there are three estates rather than one joint estate. These are: the private estate of one spouse, the private estate of the other spouse, and the joint estate. The joint estate comprises all jointly owned assets and liabilities that the spouses held before marriage, and all assets and liabilities acquired or incurred from the start of the marriage until its dissolution, excluding inheritances, gifts, or assets of a personal nature (such as personal injury compensation). Private assets and personal liabilities existing before the marriage fall outside the joint estate.

MORE PRIVATE ASSETS

Having three separate estates by default means that reimbursement rights arise more frequently. This includes situations where private funds, such as an inheritance, are used to acquire a jointly owned asset, like the marital home. In such cases, the joint estate must reimburse the private estate. Under the old law, this only applied if the inheritance included an exclusion clause—i.e. the deceased had explicitly stated in a will that the inheritance was not to be included in any community of property.

Note!

Under the limited community of property, a testator is no longer required to include an exclusion clause. However, it remains possible to include an inclusion or community clause if the testator wishes the heir's partner to inherit as well.

BUSINESS OWNERSHIP

Business assets acquired before the marriage do not fall within the community of property. Therefore, if you are an entrepreneur and marry, your business will remain outside the limited community of property. However, a point of contention can arise regarding a reasonable remuneration for knowledge, skills, and labour associated with the pre-marital business. This remuneration must be paid to the joint estate.

This requirement is relevant where no equivalent benefit has already accrued to both spouses in another form. Case law on this matter has since developed, although challenges remain in determining how similar individual cases are, what constitutes a “reasonable remuneration”, and how it should be calculated.

In late 2023, the Court of Appeal in The Hague clarified that the principle behind this provision is that the joint estate should benefit in a manner comparable to a situation where the spouse were employed and receiving a salary. In the specific case, the court concluded—based on the evidence and the parties’ positions—that all income from the business during the marriage had already been shared between both spouses and used for household expenses. No additional reasonable remuneration was therefore due.

In April 2023, the District Court of Amsterdam awarded a reasonable remuneration. The court held that the amount must be determined based on the specific circumstances. This can result in the entire increase in value being attributed to the joint estate. In this instance, the woman failed to provide sufficient supporting arguments and did not meet her obligation to substantiate her claim. However, this did not mean she was not entitled to part of the increase in the company’s value. The man acknowledged that two-thirds of the increase in value belonged to the joint estate. The woman therefore received half of that amount.

In 2024, the District Court of Gelderland issued an important ruling on reasonable remuneration. The case involved a man who owned a business prior to marriage. The woman claimed reasonable remuneration. The court considered that the man could determine his own income and that the company’s equity had increased. The man argued on the basis of the statutory minimum salary for a director and major shareholder, while the woman based her claim on half of the profits earned. The court accepted neither position. It ruled that the concept of reasonable remuneration is an open standard; business profits may influence but do not determine the amount. The court held that €140,000.00 per year of marriage was a reasonable remuneration, based on the salary the man would have earned in a comparable business or under similar circumstances as an entrepreneur. The court also considered amounts already received by the joint estate and deferred tax liabilities.

Tip!

Before entering into marriage, make arrangements in the prenuptial agreement to define “reasonable remuneration” or agree to deviate from the statutory provision.

Parliamentary records suggest that this reimbursement right can be determined based on the increase in the value of the private estate. It is also important to establish a clear starting point: what was the value of the business at the time of marriage? On what basis was this valuation conducted? Was the valuation carried out by a professional both spouses trusted?

Tip!

To avoid legal uncertainty arising from this aspect of the limited community of property, it is wise to draw up a prenuptial agreement.

Tip!

Accurately record the value of the business and the private assets of both parties before the marriage.

NB! UNEQUAL DIVISION OF MARITAL PROPERTY COMMUNITY AND SETTLEMENT CLAUSES TO BE ADDRESSED

The current government plans to address the tax implications of unequal divisions of marital property communities and unequal settlement clauses. The trigger was a Supreme Court ruling in early 2024, where two spouses amended their prenuptial agreements shortly before the anticipated death of one of them. The Court held that the unequal division—allocating 90% to the surviving spouse—did not contravene the law. The cabinet now intends to amend the legislation.

STRUCTURE

This structure involves spouses, anticipating death (for example, in the event of terminal illness), amending their prenuptial agreements to allocate a greater portion of the marital property community to the likely surviving spouse. Amending a settlement clause in the surviving partner's favour has the same effect. As a result, the surviving partner inherits less, and less inheritance tax is payable than under an equal (50-50) division.

PROPOSED LEGISLATIVE AMENDMENT

The government seeks to prevent this structure. However, the proposal goes beyond prenuptial agreements amended in anticipation of death. It proposes imposing gift or inheritance tax on every dissolution of a marital property community or execution of a settlement clause where one partner receives more than half of the community or the amount to be settled. This would apply to all prenuptial agreements resulting in unequal division.

WHAT DOES THE LEGISLATIVE AMENDMENT MEAN?

If enacted unchanged, the proposal would mean:

- Upon death, if one spouse is allocated more than half of the marital property community or under a settlement clause, the excess will be treated as an acquisition under inheritance law. Inheritance tax will be due on the excess, depending on the amount and any other inheritances.
- Upon divorce, if one spouse is allocated more than half of the marital property community or under a settlement clause, the excess will be treated as a gift. Gift tax will be due on the excess, depending on the amount and any other gifts.

RETROACTIVE EFFECT FROM 18 APRIL 2025

Although the proposal has not yet been formally drafted as a bill or passed by the House of Representatives and the Senate, the current draft provides for retroactive effect from 18 April 2025.

Note!

All prenuptial agreements entered into or amended on or after 18 April 2025 will be fully subject to this measure. This includes agreements amended for reasons unrelated to unequal division. Any change to a prenuptial agreement on or after 18 April 2025 will void the exemption.

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