

Questionnaire

(E)

### About this Questionnaire

1. Couples cohabiting outside marriage may face legal uncertainties when they leave the State where the registered partnership or unmarried cohabitation was formed and become subject to a foreign legal system that does not necessarily recognise their status in relation to one another, or in relation to their (adopted) children, or third parties. Even if they do not leave the State wherein their relationship originated, issues may arise abroad concerning the validity or effects of their relationship or aspects thereof.

2. The Hague Conference on Private International Law (“Hague Conference”) has been monitoring the legal situation of cohabiting couples and registered partners, focusing on the private international law implications, since 1987. In March 2015, the Permanent Bureau presented an “[u]pdate on the developments in internal law and private international law concerning cohabitation outside marriage, including registered partnerships” (“2015 Update on cohabitation outside marriage”)<sup>1</sup> at the Council on General Affairs and Policy of the Hague Conference (“the Council”). The Council subsequently asked the Permanent Bureau to prepare a Questionnaire to seek further information on private international law issues relating to cohabitation outside marriage, including registered partnerships. It requested that a report on the results from this survey be presented to the Council in 2017.<sup>2</sup>

3. In line with the mandate provided by the Council, the **objective** of this Questionnaire is to gather information from various national legal systems about aspects of internal and private international law relating to cohabitation outside marriage (e.g., information about the recognition of partnerships registered abroad or the applicable law in cross-border situations). The information gathered will facilitate a better understanding of the issues that registered partners and unmarried cohabitants may face in a cross-border situation.

4. Terms used to describe cohabitation outside marriage differ widely.<sup>3</sup> For this reason, and in order to facilitate the survey, it is suggested that the **terminology** as described in the “2015 Update on cohabitation outside marriage” be applied in this Questionnaire:<sup>4</sup>

- The term **“cohabitation outside marriage”** encompasses “unmarried cohabitation” and “registered partnerships”.
- The term **“registered partnerships”** refers to a form of cohabitation outside marriage which, under the domestic law of the State where it originates, requires the fulfilment of certain formalities, specifically registration in a central registry. The term as used here has a wide meaning and thus also covers, *inter alia*, “domestic partnerships”, “civil partnerships”, “civil unions”, “permanent couple unions”, “statutory cohabitation”, registered “de facto relationships” and “civil

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<sup>1</sup> Prel. Doc. No. 5 of March 2015 for the attention of the Council on General Affairs and Policy of March 2015, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Projects” then “Legislative Projects” and “Cohabitation outside marriage”. This document was completed pursuant to the mandate given by the Council in April 2013, which invited the Permanent Bureau to continue to follow developments in this area and, resources permitting, to update its “Note on developments in internal law and private international law concerning cohabitation outside marriage, including registered partnerships”, Prel. Doc. No. 11 of March 2008 for the attention of the Council on General Affairs and Policy of April 2008.

<sup>2</sup> See the Conclusions and Recommendations adopted by the Council of 2015 (24-26 March 2015), para. 10, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Governance” then “Council on General Affairs and Policy”.

<sup>3</sup> For an explanation of the terminology, see, e.g., Prel. Doc. No. 11 of 2008 (*op. cit.* note 1), paras 10 *et seq.*, paras 18 *et seq.* and paras 72 *et seq.*

<sup>4</sup> See Prel. Doc. No. 5 of March 2015 (*op. cit.* note 1), paras 7-10.

pacts of solidarity". Individuals in a registered partnership are referred to as "registered partners".

- The term "**unmarried cohabitation**" refers to *concubinage* or *de facto* union without this union having been registered with an authority, formed by the parties' actual cohabitation.<sup>5</sup> Individuals living in unmarried cohabitation are referred to as "unmarried cohabitants".

5. The **structure** of the Questionnaire reflects the situation that most legal systems which allow for the registration of a partnership draw a distinction between unmarried cohabitation and registered partnerships. For this reason, the questions for each of these (legal) institutions are addressed in different sections of the Questionnaire accordingly (Part A: Registered Partnerships, Part B: Unmarried Cohabitation).

6. The Questionnaire further distinguishes between aspects that are **purely domestic** – aspects of internal law – and those that have an **international connection** – issues of private international law.

7. Moreover, while certain questions are **for all States to complete**, others are **relevant only to specific States**, *e.g.*, those whose internal domestic law provides for the possibility to register a partnership or have a special regime for cohabitation (or attach certain legal effects to cohabitation). Whether a question is to be answered by all or only specific States is indicated at the beginning of each question.

8. Furthermore, if the answer to any of the questions depends on the relevant **type of registered partnership or unmarried cohabitation** (*e.g.*, same-sex or opposite-sex), Members and non-Member States are kindly requested to answer the questions for each of the different types.

9. Finally, while the focus of the Questionnaire lies on the **legal aspects** of cohabitation outside marriage, the final section of the Questionnaire (Part C) asks for **statistical data** which Members and non-Member States are kindly requested to provide to the extent available.

### Instructions for completion

10. In this Questionnaire the term "State" is used to cover any jurisdictional unit having competence to regulate the subject matter. Members and non-Member States are invited to complete the Questionnaire for each jurisdictional unit, if applicable.

11. Members and non-Member States are kindly invited to complete the Questionnaire (in either English or French) at their earliest convenience, but in any event by no later than **Friday 16 September 2016**.

12. In order to allow the Permanent Bureau to extract parts of the Questionnaire for a compilation and analysis of the responses, please **use this Word version** of the document, and please **do not return a PDF version** of the completed Questionnaire.

13. The Permanent Bureau would also appreciate it if a copy of, or a link to, any **legislation** mentioned in the response (preferably in English or French) could be provided, as well as relevant **case law** on private international law issues in relation to cohabitation outside marriage, including registered partnerships, if available.

14. The completed Questionnaire, as well as additional information on legislation and case law, should be sent by e-mail to < **secretariat@hcch.net** > to the attention of Ms Kerstin Bartsch, Senior Legal Officer, with the subject line: "Questionnaire – Cohabitation outside marriage".

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<sup>5</sup> Since in most legal systems this term is not defined, this is simply a working definition. For an explanation of the terminology, see Prel. Doc. No 11 of 2008 (*op. cit.* note 1), paras 10 *et seq.*

## Publication of responses

15. The Permanent Bureau will place all responses to this Questionnaire on the Hague Conference website < [www.hcch.net](http://www.hcch.net) > unless expressly asked not to do so. A report summarising the results of this consultation will also be made available on the Hague Conference website.

## Identification

Your contact information:

Name of Member or non-Member  
State (or territorial unit, where applicable): [Republic of Korea](#)

For follow-up purposes:

Name of contact person: [KWON Sunkeon](#)  
Name of Authority / Office: [Director of Judicial Procedure, National Court Administration](#)  
Telephone number: [82-2-3480-1679](#)  
E-mail address: [pandas7@scourt.go.kr](mailto:pandas7@scourt.go.kr)

## PART A: REGISTERED PARTNERSHIPS

The term "**registered partnership**" refers to a form of cohabitation outside marriage which, under the domestic law of the State where it originates, requires the fulfilment of certain formalities (*i.e.*, registration). The term as used here has a wide meaning (see *supra* para. 4).

### A.1. INTERNAL LAW

#### Formation:

##### 1. *For all States:*

- a. Does the law of your State provide for the possibility of registering partnerships?  
 Yes  
 No
- b. If the answer is "No", is the introduction of registered partnerships being envisaged or studied by your State?  
[yes](#)

##### 2. *For States that provide for the possibility to register a partnership:*

- a. Who can register a partnership in your State?
- (1) Only opposite-sex couples  
 Yes  
 No
- (2) Only same-sex couples  
 Yes  
 No
- (3) Both opposite-sex and same-sex couples  
 Yes  
 No

- b. If the answer is “Yes” to questions (1) or (2), does your State envisage or study a change in the existing partnership regime? (If yes, please explain.)

Please insert text here

3. *For States that provide for the possibility to register a partnership:*

- a. What are the requirements regarding the formation of a registered partnership? (If the answer depends on the relevant type of registered partnership (*e.g.*, same-sex or opposite-sex), please answer the question for each of the different types.)

In particular, does the law of your State include the following requirements?

- (1) Neither of the partners must be married or united in a partnership with a third person.

Please insert text here

- (2) The partners must not be related by marriage, adoption or blood. (In the latter case, what is the accepted degree of blood relationship?)

Please insert text here

- (3) Both partners must attain a minimum age in order to form a partnership. (If yes, what is the minimum age?)

Please insert text here

- (4) Both partners must have the mental capacity to consent to the partnership.

Please insert text here

- (5) Both partners must consent freely to the partnership.

Please insert text here

- (6) Please state any other requirements:

Please insert text here

- b. Does your State envisage or study any changes regarding the present requirements? (If yes, please explain.)

Please insert text here

**Effects:**

4. *For States that provide for the possibility to register a partnership:*

- a. What **rights** and **obligations** do registered partners have under the internal law of your State?

Please answer this question by taking into account the following subject matters and provide the legal basis (*i.e.*, legal rules or case law). (If your answer depends on the relevant type of registered partnership (*e.g.*, same-sex or opposite-sex), please answer for each of the different types.)

- (1) relationship between partners, *e.g.*,
- (a) personal obligations and duties of partners (*e.g.*, duty of care of partners):

Please insert text here

- (b) maintenance obligations:

Please insert text here

- (c) property  
Please insert text here
- (d) inheritance:  
Please insert text here
- (e) other(s):  
Please insert text here
- (2) children, *e.g.*,
  - (a) parental status:  
Please insert text here
  - (b) parental responsibility:  
Please insert text here
  - (c) child support:  
Please insert text here
  - (d) adoption:  
Please insert text here
  - (e) inheritance:  
Please insert text here
  - (f) assisted reproduction:  
Please insert text here
  - (g) surrogacy:  
Please insert text here
  - (h) other(s):  
Please insert text here
- (3) other financial matters, *e.g.*,
  - (a) pensions, including social security benefits:  
Please insert text here
  - (b) other(s):  
Please insert text here

- b. Does your State envisage or study any changes in respect of these effects? (If yes, please explain.)  
Please insert text here

#### **Annulment or Dissolution:**

##### *5. For States that provide for the possibility to register a partnership:*

- a. Consider the situation where a couple has registered their partnership in your State.

Does your State have a special procedure for **annulment** and / or **dissolution** of the partnership? Please describe the judicial or administrative process. (If your

answer depends on the relevant type of registered partnership (e.g., same-sex or opposite-sex), please answer for each of the different types.)

Please insert text here

- b. Does your State envisage or study any changes regarding the conditions or procedures for annulment or dissolution of a registered partnership? (If yes, please explain.)

Please insert text here

## A.2. PRIVATE INTERNATIONAL LAW

### Formation (in situations with an international element):

#### 6. For States that provide for the possibility to register a partnership:

- a. Does the law of your State provide for the possibility of registering a partnership if:

- (1) One partner is a national of your State and the other partner is not?

Yes

If yes, are there further requirements (e.g., regarding habitual residence)?

Please insert text here

No

- (2) Neither of the partners are nationals of your State?

Yes

If yes, are there further requirements (e.g., regarding habitual residence)?

Please insert text here

No

- (3) One partner is habitually resident in your State and the other partner is not

Yes

If yes, are there further requirements (e.g., regarding nationality)?

Please insert text here

No

- (4) Both partners have their habitual residence in a State other than your State?

Yes

If yes, are there further requirements (e.g., regarding nationality)?

Please insert text here

No

- b. If the response to any of these questions is "Yes":

- (1) Does the internal law of your State govern the **formal requirements for registration** in your State, or does, under the conflict of law rules of your State, the internal law of another State apply and, if so, what law(s)?

Please insert text here

- (2) Does the internal law of your State govern the **substantive requirements for registration** in your State, or does, under the conflict of law rules of your State, the internal law of other State(s) apply and, if so, what law(s)?

Please insert text here

### Recognition of the validity and effects of a partnership registered abroad:

#### 7. For all States:

- a. Would the **validity** of a partnership registered abroad be **recognised** in your State?

Yes

Yes, except for situations where there is a substantial link to my State.

Please indicate what connecting factor(s) would prevent recognition (*e.g.*, no recognition if one or both partners are nationals of or habitually resident in your State).

[Please insert text here](#)

Yes, with exceptions (*e.g.*, where there is no substantial connection of partners with my State, or: no connection between the partners and the State of registration).

Please provide details of any such exceptions to recognition by your State.

[This is our comment for "No"; there is no space to put the text below:](#)

[Although there is no case law that either explicitly denied or recognized the validity or effects of a partnership registered abroad, the case law at the lower courts characterizes the unilateral dissolution of de facto marriage as a tort \(\*e.g.\*, Seoul Family Court decision, 4 December 1970, 69de1030\). This case law does not exclude nor explicitly mention the possibility that this treatment would also apply to a partnership registered abroad. This possibility is the only context in which recognition may be given to the validity and effects of a partnership registered abroad.](#)

No

- b. Would any of the following **effects** of the partnership registered abroad be **recognised** in your State?

(1) relationship between partners, *e.g.*,

(a) personal obligations and duties of partners (*e.g.*, duty of care of partners):

[Please insert text here](#)

(b) maintenance obligations:

[Please insert text here](#)

(c) property:

[Please insert text here](#)

(d) inheritance:

[Please insert text here](#)

(e) other(s):

[Please insert text here](#)

(2) children, *e.g.*,

(a) parental status:

[Please insert text here](#)

(b) parental responsibility:

[Please insert text here](#)

(c) child support:

[Please insert text here](#)

(d) adoption:

[Please insert text here](#)

(e) inheritance:

Please insert text here

(f) assisted reproduction:

Please insert text here

(g) surrogacy:

Please insert text here

(h) other(s):

Please insert text here

(3) other financial matters, *e.g.*,

(a) pensions, including social security benefits:

Please insert text here

(b) other(s):

Please insert text here

(4) Would the registered partnership constitute an impediment to the conclusion or formation by one of the partners of a marriage or a new partnership with a third person?

Yes

No

(5) Would the surname declared by the partners upon the registration of their partnership be recognised in your State?

Yes

No

c. If your response to a. is "Yes" or "Yes, except for situations where there is a substantial link to my State", what are the **requirements for recognition** of the **validity** of the registered partnerships?

Please insert text here

In particular, does the law of your State require any of the following?

(1) The registered partnership must be valid in accordance with the internal law or conflict of law rules of the State in which registration took place.

Yes

No

(2) There is a civil status document proving the (existence and) validity of the registered partnership.

Yes

No

(3) Neither of the partners is married or united in a partnership with a third person.

Yes

No

(4) The partners are not related by marriage, adoption or blood. (In the latter case, what is the accepted degree of blood relationship?)

Yes

No

Please insert text here



- (5) Both partners had attained a minimum age when they formed the partnership.
- Yes
- No
- (6) Both partners had the mental capacity to consent to the partnership.
- Yes
- No
- (7) Both partners had consented freely to the partnership.
- Yes
- No
- (8) The effects of the partnership under the applicable law must be similar to those of a marriage:
- Yes
- No
- (9) The effects of the partnership granted in the State where the partnership was registered should not exceed the effects granted for registered partnerships under your State.
- Yes
- No
- Not applicable (My State does not provide for registration of a partnership.)
- (10) Any other requirements for the recognition of the (existence and) validity of the registered partnership (please explain):
- [Please insert text here](#)
- (11) May or must recognition of the (existence or) validity of a registered partnership or its effects be refused if this recognition would be manifestly contrary to public policy? If yes, under which circumstances?
- Yes
- [Please insert text here](#)
- No

- d. Would your reply to the previous questions be different when a question regarding the validity or effects of a registered partnership arises as a **preliminary issue** in the context of another question of private international law before the authorities of your State (*e.g.*, about maintenance or inheritance)?

[Please insert text here](#)

### Recognition of the annulment or dissolution of a partnership registered abroad:

#### 8. *For all States:*

Consider the situation where the partners have registered their partnership in State X. Subsequently, their partnership has been dissolved or annulled in that State or in a third State.

Would the **annulment** or **dissolution** of the partnership be **recognised** in your State? If so, under what conditions?

Yes

Please insert text here

No

This is our comment for "Not applicable"; there is no space to put the text below:

The only existing case law is that of the lower courts that characterizes the unilateral dissolution of de facto marriage as a tort (e.g., Seoul Family Court decision, 4 December 1970, 69de1030). However, this does not necessarily mean that the unilateral dissolution by one partner may be recognized as affecting the family law relationship between the partners.

Not applicable (My State would not recognise the validity or certain effects of the partnership.)

9. *For States that provide for the possibility to register a partnership:*

Consider the situation where partners have registered their partnership in your State. Subsequently the partnership has been dissolved or annulled in a *foreign* State. Would that **dissolution** or **annulment** be recognised in your State? If so under what conditions?

Yes

Please insert text here

No

Please insert text here

**Jurisdiction:**

10. *For States that provide for the possibility to register a partnership:*

a. Please state any specific rule applying in your State concerning the **jurisdiction** of the authorities of your State regarding the **validity** of

(1) a partnership registered in your State.

Please insert text here

(2) a partnership registered in a foreign State.

Please insert text here

b. Please state any specific rule applying in your State concerning the **jurisdiction** of the authorities of your State regarding the **annulment** and **dissolution** of

(1) a partnership registered in your State.

Please insert text here

(2) a partnership registered in a foreign State.

Please insert text here

**Applicable law (conflict of laws):**

11. *For States that provide for the possibility to register a partnership:*

a. Please state any specific conflict of law rule(s) applying in your State concerning the validity or any of the effects, or the dissolution or annulment of a registered partnership.

Please insert text here

- b. In particular, please explain your State's approach to determine the applicable law, *e.g.*, application of, exclusively, domestic law to the effects of the partnership; application of the law of the common habitual residence of the partners, application of the law where the partnership was registered (*lex loci registrationis* rule). (See Prel. Doc. No 5 of March 2015, paras. 49 *et seq.*)

Please insert text here

12. *For States that provide for the possibility to register a partnership:*

Does your State envisage or study any changes in relation to the conflict of law rules and other private international law aspects of registered partnerships (*e.g.*, in relation to the formation of a partnership, the recognition of the validity and effects of a partnership registered abroad or the recognition of the annulment or dissolution of a partnership)? (If yes, please explain.)

Please insert text here

**Legal and practical problems:**

13. *For all States:*

- a. Do you know of any legal and / or practical problems that have arisen in your State in the context of registered partnerships where there are international elements involved? If so, please describe briefly.

Not until now

- b. In particular, do you know of any situation where registered partners lost rights they had acquired under the law of the State where they had registered their partnership after moving to another State? If so, please describe briefly.

No

**PART B: UNMARRIED COHABITATION**

The term "**unmarried cohabitation**" refers to *concubinage* or *de facto* union without this union having been registered with an authority, formed by the parties' actual cohabitation (see *supra*, para. 4).

**B.1. INTERNAL LAW**

**Legal regime and effects:**

14. *For all States:*

- a. Does the national law of your State establish a **specific legal regime** for cohabitation? (If yes, please explain.)

Yes

Please insert text here

No

- b. If not, does the national law of your State attach **certain legal effects** to (aspects of) cohabitation? (If yes, please explain.)

Yes

No

15. *For States that establish a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:*

What **rights** and **obligations** do unmarried cohabittees have under the law of your State? Are there any requirements which have to be fulfilled before such rights or obligations arise?

Please answer both questions by taking into account the following subject matters and provide the legal basis (*i.e.*, legal rules or case law). (If the answer depends on the type of unmarried cohabitation (*e.g.*, whether the couple is of the same-sex or opposite-sex), please answer the question for each type):

- a. relationship between unmarried cohabittees, *e.g.*,
  - (1) personal obligations and duties of unmarried cohabittees (*e.g.*, duty of care of unmarried cohabittees):  
Please insert text here
  - (2) maintenance obligations:  
Please insert text here
  - (3) property relations:  
Please insert text here
  - (4) inheritance:  
Please insert text here
  - (5) other(s):  
Please insert text here
- b. children, *e.g.*,
  - (1) parental status:  
Please insert text here
  - (2) parental responsibility:  
Please insert text here
  - (3) child support:  
Please insert text here
  - (4) inheritance:  
Please insert text here
  - (5) adoption:  
Please insert text here
  - (6) assisted reproduction:  
Please insert text here
  - (7) surrogacy:  
Please insert text here
  - (8) other(s):  
Please insert text here
- c. other financial matters, *e.g.*,
  - (1) pensions, including social security benefits:  
Please insert text here

- (2) other(s):  
Please insert text here

## B.2. PRIVATE INTERNATIONAL LAW

### Recognition of the validity of a special legal regime for, or of certain legal effects of, unmarried cohabitation:

#### 16. For all States:

Consider the situation where a couple has acquired certain rights and obligations under a special legal regime for unmarried cohabitation in State X, or the couple has acquired certain rights and obligations because the laws of State X attach certain legal effects to their unmarried cohabitation.

- a. Would the **validity** of the legal regime for unmarried cohabitation of State X be recognised in your State?  
 Yes  
 No
- b. Would any of the **effects** which the unmarried cohabitation has under the laws of State X be recognised in your State?  
 Yes  
 No
- c. If the answer to a. or b., is "yes", what are the requirements (*substantive and / or formal* requirements) for the recognition of the legal regime or of its effects?  
 Please insert text here
- d. Would the reply to the previous questions be different when a question regarding the validity or effects of the unmarried cohabitation arises as a **preliminary issue** in the context of another question of private international law before the authorities of your State (*e.g.*, about maintenance or inheritance)?  
 Please insert text here

#### Jurisdiction:

#### 17. For States that provide for a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:

Please state any specific rules applying in your State concerning the **jurisdiction** of the authorities of your State regarding the specific legal regime for cohabitation or its effects.

Please insert text here

#### Applicable law (conflict of laws):

#### 18. For States that provide for a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:

Please state any specific conflict of law rules applying in your State concerning the legal regime for cohabitation or concerning the legal effects attached to (aspects of) cohabitation.

Please insert text here

#### Legal and practical problems:

#### 19. For all States:

- a. Do you know of any legal and / or practical problems that have arisen in your State in the context of unmarried cohabitation where there are international elements involved? If so, please describe briefly.

No

- b. In particular, do you know of any situation where unmarried cohabitants lost rights they had acquired under the law of the State where they had cohabited after moving to another State? If so, please describe briefly.

No

### Future developments:

#### 20. For all States:

Are any developments foreseen in your national law, *e.g.*, modification or introduction of a legal regime for cohabitation or of certain legal effects of cohabitation? Are any developments foreseen in relation to private international law aspects of cohabitation outside marriage?

In Korea, a member of National Assembly tried to propose a legislative bill providing legal protections to cohabitation outside marriage. However, the proposal was withdrawn due to strong opposition before it even had chance to be discussed in the Gender Equality and Family Committee within the National Assembly because it intended to give legal effect to same-sex couples as opposite-sex couples while Korean Civil Law does not allow same-sex marriage. In 2015 Ministry of Justice and Ministry of Health and Welfare started to draft a policy and law which prohibit discrimination against cohabitants outside marriage according to the 3<sup>rd</sup>(2016-2020) plan of Presidential Committee on Ageing Society and Population Policy. It will take a while to draw a public consensus on such matters as a considerable number of Korean population takes opposing views.

Concerning the developments of private international law aspects of cohabitation outside marriage, there has not been a discussion.

### **PART C: Statistics**

#### 21. For all States:

Please provide any statistics relating to registered partnerships and unmarried cohabitation where applicable, if available, *e.g.*,

- a. the (estimated) number of registered partners in your State and any trend in this regard;

Please insert text here

- b. the (estimated) number of couples who are cohabiting without being married in your State and any trend in this regard:

Please insert text here

- c. the (estimated) birth / adoption / surrogacy rates for registered partners and unmarried cohabitants in your State and any trends in this regard:

Please insert text here

- d. the (estimated) number of registered partnerships that have been annulled or dissolved in your State:

Please insert text here

- e. the (estimated) number of international couples (*i.e.*, at least one partner is not a national of or habitually resident in your State) and any trends in this regard:

Please insert text here

- f. any other relevant statistics:

Please insert text here