

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”)¹ 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 2017.²

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.³ 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:⁴

- 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 pacts of

¹ 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 > 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.

² 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 > under “Governance” then “Council on General Affairs and Policy”.

³ 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.*

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

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.⁵ Individuals living in unmarried cohabitation are referred to as "unmarried cohabitantes".

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".

⁵ 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 > 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.

The term "State" as used in this Questionnaire should be understood to mean "jurisdiction"

Identification

Your contact information:

Name of Member or non-Member State (or territorial unit, where applicable): [Macao Special Administrative Region of the People's Republic of China](#)

For follow-up purposes:
 Name of contact person: [Cristina Ferreira](#)
 Name of Authority / Office: [Acting Department Head of the International and Inter-Regional Law Department/ Legal Affairs Bureau](#)

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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?
[Currently, the introduction of a registered partnership regime is not being studied or envisaged.](#)

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).

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.

The 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention) is in force in the Macao SAR, so public documents issued abroad under Article 1 of the Apostille Convention may produce effects in the Macao SAR pursuant to Article 3 and following provisions of the said Convention.

However, certain legal requirements are necessary for their recognition in the Macao SAR. Such recognition must be consistent with the Macao legal system. As stated in Article 5 of the Code of Civil Registry, recognition may be prevented if it is deemed contrary to *ordre public*.

The regime to ascertain the registered partnership shall be by analogy the regime of *de facto* union (unmarried cohabitation) established in the Macao Civil Code (CC), under Title VI (Family Law), Chapter II (De facto union).

Pursuant to Article 1471 of the CC, *de facto* union is defined as "a relationship between two persons who voluntarily live in conditions analogous to those of the spouses" (*i.e.*, married couples). Therefore, it is deemed as a *de facto* union a relationship with the fundamental components pertaining communion of bed and board mentioned in Article 1462 where marriage is defined as "The contract made between two persons of different sex who intend to set up a family in full communion of life, according to the provisions in this code."

Pursuant to Article 1472 (1) of the CC ("General relevance conditions"), a *de facto* union is only possible under the following conditions:

- If partners are aged over 18;
- If partners have no impediments as those foreseen for marriage in the CC, including:
 - Notorious dementia, even during awareness intervals (Article 1479 (b));
 - Interdiction or non-qualification due to mental disability (Article 1479 (b));
 - Former non-dissolved marriage, even if it is not yet fully registered (Article 1479 (c));
 - Direct line parenthood or collateral parenthood in second degree (Article 1480).

If partners lived at least for 2 years in a *de facto* union, it is considered the situation described in Article 1471 regarding communion of bed and board (Article 1472 (1) (c) of the CC)

The living-time of a *de facto* union shall be subject to the rules described in Article 1472 (2), as follows:

- If cohabitation was initiated while one or both persons in the relationship was a minor, the aforementioned 2 years period should only be counted from the moment such person attains majority or is no longer a minor;
- If any of the persons has been married, the aforementioned 2 years period should only be counted from the moment such person is under "de facto separation" or materially separated.

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):

As stated, there is a general assumption that in a de facto union partners live in analogous conditions as married couples, thus communion or sharing of bed and board would be typical features of marriage which can also be found in a de facto union, whereby partners would live as a couple, sharing, participating and contributing for a life in common.

Therefore, in the absence of specific provisions regulating certain aspects or legal effects of a de facto union, certain aspects of the marriage regime shall apply *mutatis mutandis* to the de facto union.

In particular, Article 1532 of the CC refers to the principle of equality between partners in the relationship, wherein they plan together their life and common interests. Article 1533 of the CC specifically provides for the reciprocal duties of respect, cohabitation, cooperation and assistance.

Furthermore, Article 1535 of the CC establishes the duty of cooperation that entails the obligations of mutual assistance and help and to jointly take over the responsibilities inherent to family life that partners build together. The duty to provide assistance is defined in Article 1536 of the CC and comprises the duty to provide alimony and to contribute to the family life expenses. Furthermore, pursuant to Article 1537, both partners have the duty to contribute to the family life according to each one's possibilities and any of them may fulfill such duty allocating their resources to the family expenditures and through the work provided to the household or in maintaining and raising their children.

- (b) maintenance obligations:

As mentioned above, *mutatis mutandis*, the obligations provided for in Articles 1533, 1536 and 1537 of the CC regarding the reciprocal duty of cooperation and assistance as well as the duty to contribute to family life which is specifically provided for in Article 1537 of the CC shall be applied *mutatis mutandis* to a de facto union.

In case of break-up of a de facto union, differently from married couples in a de facto separation or divorce situation where one of the spouses is found guilty of the separation, there is no alimony liability towards the former partner (Articles 1536 (2) and (3), Articles 1850 (1) (a) and 1857 of the CC), partners have no alimony obligations towards the former partner for the breaking up of the union.

However, according to Article 1862 of the C, the partner of a deceased person who is in a de facto union lasting at least 4 years at the time of death, has the right to alimony to be paid from the income derived from the partner's inheritance and as long as, at the time the partner died, the person who is claiming the alimony was not married nor effectively separated for more than 4 years. Article 1862 (2) of the CC further specifies that his/her right shall be ranked after the rights of the partner's children and his/her spouse, if he/she was married when he/she died.

On the other hand, pursuant to Article 1860 of the CC, a former spouse entitled to alimony loses his/her right if the other person marries again or starts a relationship in a de facto union.

- (c) property:

Property relations of de facto union partners shall be governed by the legal regime for co-ownership set forth in Article 1299 and following provisions of the CC under Chapter IV ("Co-ownership").

According to Article 1299 of the CC, co-ownership is defined as the co-ownership or common property of two persons when both persons simultaneously hold the property right over the same asset and there is a presumption that the rights of the co-owners are quantitatively the same, unless it is otherwise specified in the document proving the property right (although they might be qualitatively or quantitatively different).

- (d) inheritance:

The CC has specific provisions for inheritance rights regarding de facto union, including those providing for inheritance rights pertaining the legally established quota that cannot be alienated with prejudice to the heirs by including persons living in a de facto union in the rank defined (Article 1973 (“Successors ranking”) of the CC).

According to this provision, those in a de facto union shall be called to the succession in third place (Article 1973 (1) (c) of the CC). Spouses and descendants are in first place followed by spouses and ascendants. In the absence of the spouse, descendants and ascendants of the partner of a de facto union may be entitled to the inheritance. However, relationship must have lasted at least 4 years at the time of death of the deceased partner (Articles 1973(1) and 1985 of the CC), as previously mentioned.

De facto partners may also be heirs under a will or testament (a unilateral and revocable act concerning the disposition of property after a person’s death under Articles 2016 (1) and 2029 of the CC).

(e) other(s):

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

(a) parental status:

In the Macao SAR, the establishment of parenthood does not depend on the parents’ relationship status. Regardless of the conception or birth circumstances, the powers and duties are inherent to both parents (Article 1649 of the CC).

As regards the recognition and establishment of filiation, mother status results from birth (Articles 1657 (1) to 1684 of the CC). As regards the father, paternity has to be recognized (Articles 1657 (2) and 1701 of the CC), either by declaration or by judicial decision.

Where a judicial proceeding aimed at paternity investigation is initiated against a man who, during the legally presumed period the child was conceived has lived in a de facto union with the child’s mother, his paternity shall be presumed (Article 1720 (2) (c) of the CC).

In case of assisted reproduction, there is a presumption of paternity of the male partner (Article 1725 of the CC).

(b) parental responsibility:

Within the Macao SAR legal system, the exercise of parental responsibility is perceived simultaneously as a power and a duty.

Taking into consideration the interests of children, parents must pay close attention to their child’s safety, health and provide them with education as well as any daily needs. While doing so, parents should consider their children’s views on important family matters and allow them to organize their lives independently, in conformity with their maturity (Article 1733 of the CC and following provisions). Children are subject to parental power till majority (18 years old) or emancipation (16 years old).

Article 1733 stipulates *inter alia* that parents are responsible, in the interest of their children, to support them financially and to represent them, even before birth, as well as to manage their property. Parental rights and the duties therein cannot be waived (Article 1737 of the CC).

The aforementioned power to represent children within parental authority (power of representation) comprises the power to act on their behalf for the exercise of their rights and duties, except in the cases of “pure personal acts”, as well as those which children have the right to perform by their and acts regarding the their assets which administration is not to be performed by the parents. If there is any conflict of interests (between parents and children or between children, even if any of them has attained majority), which resolution depends on a public authority decision, the minors shall be represented by a curator designated by the court (Article 1736 of the CC). While

administering their assets or property, parents should do so with the same care and diligence as they do for their own (Article 1752 of the CC).

It is also worth mentioning that parental rights regarding their education include the duty to promote their physical, intellectual and moral development, providing for appropriate general and professional teaching and training, considering their abilities and preferences inasmuch as possible, in particular for children with special physical or mental needs or disabilities (Article 1739 of the CC). Parents also have the ability to decide over their children's religious education until they attain the age of 16 (Article 1740 of the CC).

Pursuant to Article 1765 (1) of the CC, when filiation or parental status is established regarding both parents and they have not married after the minor's birth, the exercise of parental responsibility belongs to the progenitor who has the guardianship of the child/ holds the child's custody. For this purpose, there is a presumption that the mother holds the guardianship of the child; such presumption is only rebuttable through court litigation (Article 1765 (2) of the CC).

Paragraph 3 of the same provision specifies that, when the progenitors live in a de facto union, parental responsibility shall belong to both parents when they declare, before the civil registry officer, that it is their will (in this scenario Articles 1756 to 1759 shall be applicable). Article 1766 of the CC states that the norms established in Articles 1759 to 1763 to regulate the exercise of parental power shall be applicable with the necessary adaptations to parents that live in a de facto union.

In case of break-up of a de facto union, guardianship shall belong to the parent to whom parental responsibility is entrusted pursuant to Article 1761 (1) of the CC. Nevertheless, parents may agree to have a shared guardianship, deciding together the issues pertaining their child's life in the same conditions as if they were together, or that certain matters or the administration of the child's assets are not decided by the parent to whom the guardianship was entrusted. The parent to whom the guardianship was not entrusted has the right to monitor the education and life conditions of the child (Article 1761 (2), (3) and (4) of the CC).

If there is a separation of partners who were exercising their parental responsibility together and an agreement cannot be reached to have the shared guardianship, any one of the parents may appeal to the court, which will try to reach reconciliation. If this is not possible, the court will hear the child if he/she is over 12 years of age, except if specific circumstances advise against such a hearing (article 1756 (2)) ex vi 1765 (3) of the CC).

If one of the parents cannot exercise his/her parental authority due to absence, temporary incapacity, or another impediment, or in case of death of one of them, the other shall exercise such authority (Articles 1758 and 1759 ex vi 1765 (3) of the CC).

The child's custody, the maintenance obligations due to him/her and the way it is paid are ruled by an agreement between both parents subject to court approval. The approval is refused if the agreement does not correspond to the best interests of the child. In the absence of an agreement, the court will decide according to the child's best interests. The custody of the child may be given to any of the parents or, in case of risk of the child's security, health, moral formation or education, to a third person or to an institution (Articles 1760 and 1762 (1) of the CC).

Moreover, Article 1763 establishes that, if the security, health, moral upbringing or education of a minor is endangered, while regulating the child's custody, the court may decide that, in case of death of one of the parents, custody shall not be transferred to the other parent, being instead entrusted to a third person or to an institution, even if the prerequisites for prohibition of parental authority are not fulfilled (Article 1763 of the CC).

Prohibition to exercise parental authority includes situations where parents have been convicted for a crime punishable with such a penalty, or those declared as mentally disabled by a court decision (Article 1767 of the CC).

The court can also prohibit the exercise of parental authority if any of the parents violates duties towards the child or when any parent is not in a condition to fulfil those duties owing to inexperience, sickness, absence or other reasons. The court's decision for the inhibition of the exercise of parental authority may only be revoked when the original causes for such cease to exist (Articles 1769 and 1770 of the CC).

Moreover, the court may also deprive parents of their parental authority when the security, health, moral upbringing or education of that minor is endangered, ordering appropriate measures accordingly, and may consequently order that the minor be entrusted to a third person, a family, or an institution. In this case, parents continue to exercise parental authority in all issues that are compatible with the entrustment and still have the right to visit the child unless it is against the child's interests (Articles 1772 and 1773 of the CC).

Furthermore, if the child's assets or property are not properly administered by the parents, the court may order protective measures as deemed appropriate considering the value of the assets, even if the prerequisites for prohibition of parental authority are not fulfilled (Article 1774 of the CC).

Minors whose parents have deceased, have been withdrawn their parental responsibility in taking any decisions concerning their child, have been forbidden to exercise their right to parental responsibility for over six months or are unknown, are legally subject to guardianship (Article 1778 of the CC). The guardian will be the person chosen by the parents, subject to court approval, or the person designated by the court (Articles 1784, 1789 and 1791 of the CC).

Regarding de facto union in particular, it is worth noting that partners in a de facto union with someone who had a litigation with the minor or with parents within a period of less than 5 years before cannot be a guardian (Article 1789 (1) g) of the CC).

(c) child support:

As already mentioned, the regulation of child support is enshrined in the exercise of parental responsibility (Article 1733 of the CC). Parents are responsible, in the interest of their children, inter alia, to support them financially and to manage their assets and their property. For further details, please refer to section "b) Parental responsibility" supra.

Under Article 1729 of the CC, parents and children have the reciprocal duty to provide assistance between them. The obligation to provide alimony and to contribute during their life together, according to their own resources, to the family household expenses is clearly stated. In this regard, it should be mentioned that the prohibition to exercise parental authority does not preclude the parent's duty of alimony to their children (Article 1771 of the CC).

Parents must provide for their children's livelihood or living expenses, including livelihood and education expenses, till they can support their own expenses with their own income, work or other resources (Article 1734 of the CC). However, such obligation may subsist to the extent it is deemed reasonable in order to ensure the completion of the children's education. Pursuant to Article 1735 of the CC, education expenses shall be borne even if the children have attained majority or became emancipated while they have not completed their education, as long as it is reasonable to require it from the parents, and taking into consideration the time usually necessary for education to be complete.

(d) adoption:

Partners that are in a de facto union and wish to adopt a child must follow the general regime for adoption.

Adoption always requires a judicial decision, which may only be rendered based on the principle of the best interests of the child, i.e. when there is a concrete and real benefit for the child, and it is reasonable to assume that a bond similar to a parent-child relationship will be established between the adopter and the adoptee.

To take place, it is necessary for the adoptee to have been under the care of the adopter for a sufficient period of time to allow a proper evaluation of the advantages of the adoption. The prospective adopter can only take the adoptee under his/her care, in view of a future adoption, by means of a judicial or an administrative entrustment (Articles 1825 to 1827 of the CC).

Accordingly, the whole adoption process is subject to a previous verification of the adoption requirements. Adoption cannot be decreed unless several circumstances are demonstrated, such as those related to the age of the prospective adopters, the duration of the adopting partner's relationship and the establishment of mutual bonds of affection between the child and the prospective adopters.

Age is a main legal condition governing eligibility to adopt. A child can only be adopted (Article 1828 of the CC):

- by a person who is more than 28 years of age and less than 60 (at the time of the adoptee's entrustment);
- if the adoptee is the child of the person with whom the adopter has been living in a de facto union for more than three years or the spouse of the adopter, the adopter is merely required to be over the age of 25;
- an age difference between the adopter and the child is also required: more than 18 years and less than 50 years, except when significant reasons can be given otherwise.

Articles 1830 and 1831 of the CC establish who can be adopted and when the adoption can take place (general requirement: minors till 16). If the conditions imposed by those two provisions are not fulfilled, the child is considered unadoptable.

It is worth noting that Article 1830 (1) (b) of the CC expressly states that adoption of the children of the person with whom someone lives in a de facto union is admitted regardless of the child's age as long as the child was already entrusted to their care before reaching that age.

Indeed, partners in a de facto union can make a joint adoption and the CC provides certain provisions in this regard. As mentioned, according to Article 1828 (1), it is required for the de facto union relationship to last for more than 3 years (not only 2 years) and both persons should be over 25 years old. Also, as provided for in Article 1831 (4) of the CC, if the adopter is in a de facto union with one of the child's progenitors and the other progenitor has died, the adoptee's consent is always required for the adoption, even if he's under 12 years old (which is different from the general rule whereby such consent is only required if the child is over 12 years old, pursuant to Article 1833 (1) (d) of the CC).

Furthermore, Article 1832 (1) of the CC clarifies that the rule whereby there cannot subsist two adoptions regarding the same adoptee does not apply when the adopters are two persons who live together in a de facto union.

Article 1838 of the CC expressly states that with the adoption the family status is equivalent or analogous to any blood family relationship thus it will have the same marriage impediments as established in Articles 1480 and 1481 of the CC. In addition, if one of the partners living in a de facto union adopts the other's child, the family relations shall subsist between the adoptee and the person in a de facto union with his adopter (who is in a de facto union with his progenitor) and his relatives.

(e) inheritance:

Regarding the succession to estates of deceased persons, the Macao law establishes that all persons born or conceived at the time of the deceased's death have the capacity to inherit. The descendants of the deceased, regardless of being marital or non-marital children, are legal heirs (Articles 1873 et seq. of the CC).

Children of a de facto union shall be called to the succession in first place, within the first relevant category of successors (where "descendants" are included) preferring accordingly over other heirs pursuant to Article 1973 (1) (a) of the CC.

The CC establishes their inheritance rights pertaining a legally established quota that cannot be alienated with prejudice to certain categories of heirs, which includes the deceased's children (Articles 1994 and 1997). Children may also inherit from their parents under a will or testament from the available quota for such purpose (Articles 1994 and 2016 of the CC).

It is worth noting, however, that if an heir has been convicted for a crime with a penalty over 6 months, of false testimony or slander, or against the deceased person's partner in a de facto union or such person's assets or honor, he/she may be deprived of the inheritance quota (Article 2003 (1) (a) of the CC).

(f) assisted reproduction:

Articles 1723 to 1728 of the CC regulate assisted reproduction under Section III. A specific provision for de facto union is set forth in Article 1725, which stipulates the presumption of paternity in a de facto union in case of a medically assisted reproduction. In particular, it states that the partner of a person in a de facto union who has given his consent for the use of medical assistance methods on his partner is considered as the father of the child who has been conceived during such treatment, regardless of the minimum time period of two years living together (Article 1725, jointly read with Article 1472 (1) (c) of the CC).

(g) surrogacy:

Pursuant to Article 1726 of the CC, surrogacy agreements are null, regardless of the relationship between the parties.

(h) other(s):

-

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

(a) pensions, including social security benefits:

The "Statute of Public Administration Employees" (SPAЕ), approved by Decree-Law 87/89/M of 21 December, establishes specifically in its Article 5 that the said rules related to duties and benefits shall be applicable *mutatis mutandis* to whoever lives in a de facto union for more than two years in conditions similar to a married couple. To that end, the worker shall provide a formal declaration upon his/her honour that he/she lives in a de facto union together with the available evidence (documents or witnesses).

Law 8/2006 on the "Provident Fund Scheme for Workers in the Public Services") states that those who have the status as the worker's spouse pursuant to "SPAЕ", which includes persons living in a de facto union, have the right to opt for a retirement or survival pension if the contributing worker with whom they live in a de facto union is deceased. The partner of the deceased is ranked in fifth place, after the deceased person's spouse; their children suffering from permanent and absolute incapacity to work; their children who are entitled to the right to family allowance; their ascendants who are entitled to the right to family allowance (Article 18).

(b) other(s):

According to Article 5 (2) of Administrative Regulation 3/2005 ("Regime for set up of Temporary Residence for Investors, Managers and Technical Experts") regarding temporary residence permits, persons living with an applicant in a de facto union are considered as part of the applicant's family unit for the purpose of obtaining a residence permit in the Macao SAR.

(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 refer to A. 7. a supra.

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

As mentioned in A.2.7.a supra, impediments as foreseen for marriage in the CC also apply mutatis mutandis to the de facto union, including: i) a former non-dissolved marriage, even if it is not yet fully registered (Article 1479 (c)), ii) a direct line parenthood or collateral parenthood in second degree (Article 1480).

A de facto union with an adoptee is also inadmissible under Article 1838 (1) of the CC where the adoptee enjoys legal status equivalent to a natural child and therefore becomes a descendant of the adopter in the family with all effects therein.

- (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):

Apart from what was stated in relation to A.2.7.a, it may be added that (as a general principle) when further requirements may be deemed necessary authentic or private documents issued outside Macao in conformity with the law of the place where they were issued have the same legal value as documents of the same nature issued in Macao. However, and unless otherwise provided for, when a court has serious doubts concerning the authenticity of a document or the authenticity of its recognition, the court shall freely appraise the legal value of the document (Article 358 of the CC).

- (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 refer to A.2.7.a supra). In addition, it should be noted that the ordre publique constraints enshrined in the Macao Legal System pertaining to the nature of the couple's relationship in the family context shall be applied mutatis mutandis for a de facto union, such as the prohibition of incest. As mentioned in Article 20 of the CC foreign provisions cannot be recognised or applied when incompatible with the ordre public of Macau.

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)?
- No.

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

For annulment or dissolution of registered partnerships, the same reasoning applies to the recognition of registered partnerships pursuant to the Apostille Convention. Please refer to A.2.7.a, supra.

No

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.

At this stage, there is nothing to mention in this regard.

- 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.

At this stage, there is nothing to mention in this regard.

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 refer to A.2.7.a, *supra*

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 cohabitantes 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 cohabitants, *e.g.*,
 - (1) personal obligations and duties of unmarried cohabitants (*e.g.*, duty of care of unmarried cohabitants):
Please refer to A.2.7.a and A.2.7.b.1.a supra.
 - (2) maintenance obligations:
Please refer to A.2.7.a and A.2.7.b.1.b supra.
 - (3) property relations:
Please refer to A.2.7.a and A.2.7.b.1.c supra.
 - (4) inheritance:
Please refer to A.2.7.a and A.2.7.b.1.d supra.
 - (5) other(s):
-

- b. children, *e.g.*,
 - (1) parental status:
Please refer to A.2.7.a and A.2.7.b.2.a supra.
 - (2) parental responsibility:
Please refer to A.2.7.a and A.2.7.b.2.b supra.
 - (3) child support:
Please refer to A.2.7.a and A.2.7.b.2.c supra.
 - (4) inheritance:
Please refer to A.2.7.a and A.2.7.b.2.e supra.
 - (5) adoption:
Please refer to A.2.7.a and A.2.7.b.2.d supra.
 - (6) assisted reproduction:
Please refer to A.2.7.a and A.2.7.b.2.f supra.
 - (7) surrogacy:
Please refer to A.2.7.a and A.2.7.b.2.g supra.
 - (8) other(s):
-

- c. other financial matters, *e.g.*,
 - (1) pensions, including social security benefits:
Please refer to A.2.7.a and A.2.7.b.3.a supra.
 - (2) other(s):
Please refer to A.2.7.a and A.2.7.b.3.b supra.

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?

The substantive or formal requirements for the recognition of a de facto union are the ones established in Articles 1471 and 1472 of the CC as previously mentioned.

In circumstances that the law requires the production of evidence of a de facto union in order for partners to benefit some rights equivalent to the ones provided for married couples, de facto partners must provide a document (civil registry or notary) or a witness declaration of their de facto union relationship. Public documents issued abroad may produce effects in Macao in accordance with the Apostille Convention, as described in A.2.7.a supra.

- 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)?
 No.

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.

The Macao courts will apply the law of the forum (*lex fori*) to all procedural matters and assess the factors that connect or link the legal issues to the laws of potentially relevant states and applies the laws that have the greatest connection. The Macao law determines that the law that shall be applicable for the personae status, *capacitas*, family relations and succession is the personal law (general principle) (Article 24 of the CC).

According to Article 30 of the CC, the personal law is the law of the habitual residence of the person (*lex domicilii*). Habitual residence means the place where the person lives is life in a stable and effective manner. For those living in the Macao SAR that have the Macao ID card, the *lex domicilii* is presumed to be the Macao SAR. In case of two places of residence, the competent personal law is the law of the Macao SAR.

A special provision is provided for de facto union in Article 58 of the CC.

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.

Article 58 of the CC determines that the prerequisites and effects of a de facto union are regulated by the law of habitual residence of the partners (*lex domicilii*). In the absence of the link with the habitual residence, the applicable law shall be the one with which the de facto union has a closest connection.

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.

At this stage, there is nothing to mention in this regard.

- 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.

At this stage, there is nothing to mention in this regard.

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?

At the moment, there are no developments foreseen regarding those matters.

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;
N/A
- b. the (estimated) number of couples who are cohabiting without being married in your State and any trend in this regard:
N/A
- c. the (estimated) birth / adoption / surrogacy rates for registered partners and unmarried cohabitants in your State and any trends in this regard:
N/A
- d. the (estimated) number of registered partnerships that have been annulled or dissolved in your State:
N/A

- 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:
N/A
- f. any other relevant statistics:
-