

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 [Finland](#)  
applicable):

For follow-up purposes:

Name of contact person: [Laura Määttä](#)  
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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?  
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##### *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.)

Yes. The Finnish Marriage Act (234/1929) has been amended to enable same sex marriage. The amendment will enter into force 1 March 2017. Following the amendment, it is no longer possible to register new partnerships as of March 2017. Already existing registered partnerships may either be left as they are or converted into marriage by a notification to the local register office. The law on registered partnerships continues to be applied to those registered partnerships that are not converted into marriages.

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.

Yes (Act on Registered Partnerships, Section 1).

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

Yes. According to Section 2.2. in Act on Registered Partnerships a partnership cannot be registered if the partners have a family relationship which forms an impediment to marriage in accordance with Sections 7, 9 and 9 a of the Marriage Act. Hence, partnership cannot be registered between direct ascendants/descendants or between siblings or half-siblings (Marriage Act, Section 7). Two persons, one of whom is a descendant of the other's brother or sister, shall not intermarry, unless the Ministry of Justice, for special reasons, grants them a dispensation to marry (Marriage Act, Section 9).

These impediments apply even when such family relationship is based on adoption (Marriage Act, Section 9 a).

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

Yes, the minimum age being 18 years (Act on Registered Partnerships, Section 1).

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

Yes. Partnership shall not be registered, if the registering authority if he or she notes that a partner, owing to a disturbed state of mind, obviously cannot understand the significance of the matter. (Act on Registered Partnerships, Section 4.2)

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

Yes. This is a general principle not written in a specific provision.

- (6) Please state any other requirements:

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

The provisions regarding formation of registered partnerships (currently stipulated in chapter I of the Act on Registered Partnerships) will be abolished following the above mentioned amendment of the Marriage Act (see para 2 b above).

**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):

Equivalent to marriage (see subsection 1 (e) below for a general explanation). Each spouse shall participate in the common household of the family and the maintenance of the spouses to the best of his or her abilities. The maintenance of the spouses means the fulfilment of the common needs of the spouses as well as the personal needs of each spouse. (Marriage Act, Section 46)

- (b) maintenance obligations:

Equivalent to marriage (see subsection 1 (e) below for a general explanation). The provisions on maintenance can be found in Marriage Act, Chapter 4.

- (c) property

Equivalent to marriage (see subsection 1 (e) below for a general explanation): Each spouse shall have a marital right to the property of the other spouse. The surviving spouse and the heirs of the deceased spouse, or each of the spouses, shall acquire half of the net property of the spouses at the distribution of matrimonial property (unless the property has been excluded from the scope of the marital right by a marriage settlement, a gift deed or a will). (Marriage Act, Section 35)

- (d) inheritance:

Equivalent to marriage (see subsection 1 (e) below for explanation). A registered partner is equally entitled to inherit the other partner as a spouse.

- (e) other(s):

The registration of partnership shall have the same legal effects as the conclusion of marriage, unless otherwise provided. A provision in an Act or a Decree applicable to marriage applies likewise to a registered partnership, unless otherwise provided. A provision in an Act or a Decree applicable to a spouse applies likewise to a partner in a partnership, unless otherwise provided. (Act on Registered Partnerships, Sections 8.1 and 8.3-4).

There are only a few exceptions (see 2 d and f below) where the legal implications of a registered partnership deviate from those of a marriage.

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

- (a) parental status:

The provisions of the Paternity Act 11/2015; *isyyslaki*) on establishment of paternity on the basis of marriage do not apply in a registered partnership. (Act on Registered Partnerships, Section 9.1)

Legal parenthood of a partner's child is possible only through adoption, see (d) below.

- (b) parental responsibility:

Registered partners may become joint custodians of a child living in their family if it is deemed appropriate with regard to the child's best interests.

- (c) child support:

A parent's obligation to pay child support is independent from his/her civil status.

- (d) adoption:

According to Section 9 in Adoption Law, only spouses may adopt together. However, according to Section 9.2 in Act on registered partnerships, one partner

can adopt the other partner's child.

However, once the legislation on same sex marriage comes into force (1.3.2017), adoption will be available to married same sex couples as well.

(e) inheritance:  
Equivalent to marriage (see subsection 1 (d)-(e) above).

(f) assisted reproduction:  
Registered partners do not have access to assisted reproduction. Currently, fertility treatment can be given to couples of different sex and single women (Act on Assisted Fertility Treatments; 1237/2006). In practise, many of these single women actually live in a registered partnership or in a cohabiting partnership, which is, however, not recognised in the treatment process. (See also 4 b below)

(g) surrogacy:  
Surrogacy is not legalised.

(h) other(s):  
-

- (3) other financial matters, e.g.,
- (a) pensions, including social security benefits:  
Yes.
- (b) other(s):  
-

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

The Finnish Parliament has recently received a citizens' initiative on a Law on Mothership which would, inter alia, stipulate on the right of a female same sex couple (both registered partners and cohabiting partners) to receive assisted reproduction services as a couple in order to ensure the other partner's parenthood/motherhood from the first steps of the process without having to resort to adoption processes. The initiative is based on a draft government proposal from the year 2015 which, however, did not proceed due to the political sensitivity of the matter.

#### **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.)

A registered partnership shall be dissolved when one partner dies or is declared dead, or when it is dissolved by court order. The dissolution of a registered partnership shall be governed by the provisions of the Marriage Act on divorce. (Act on Registered Partnerships, Section 7) Hence, the dissolution procedure is equivalent to a divorce, which is stipulated in Marriage Act, Sections 24-31.

- 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.)

No.

## 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)?

Partnership may be registered in Finland if at least one of the partners is a Finnish citizen and habitually resident in Finland (Act on Registered Partnerships, Section 10.1.1). In the application of this provision citizenship of a foreign state whose legislation allows for the registration of partnership with mainly the same legal effects as provided in Act on Registered Partnerships shall correspond to Finnish citizenship. Such foreign states shall be designated by Governmental Decree (Section 10.2). Following states are designated in the Decree: Belgium, Canada, Denmark, Germany, Iceland, The Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, Switzerland and United Kingdom.

This provision will be abolished as of 1 March 2017.

No

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

Yes

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

Both parties have to have been habitually resident in Finland for two years immediately before the registration. (Act on Registered Partnerships, Section 10.1.2)

This provision will be abolished as of 1 March 2017.

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)?

See para 6 a (1) above.

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)?

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)?

Act on Registered Partnerships, Section 11: The right to the registration of partnership before a Finnish authority shall be determined in accordance with the laws of Finland. This applies to both formal and substantive requirements.

- (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)?

Act on Registered Partnerships, Section 11: The right to the registration of

partnership before a Finnish authority shall be determined in accordance with the laws of Finland. This applies to both formal and substantive requirements.

### 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).

The only factor preventing recognition would be *ordre public*.

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.

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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):

If the registered partnership is recognised in Finland, the legal effects of the partnership are equivalent to the ones following registration of a partnership in Finland. This applies to the entire question b.

(b) maintenance obligations:

See b (1) a above.

(c) property:

See b (1) a above.

(d) inheritance:

See b (1) a above.

(e) other(s):

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

(a) parental status:

See b (1) a above.

(b) parental responsibility:

See b (1) a above.

(c) child support:

See b (1) a above.

(d) adoption:

See b (1) a above.



(e) inheritance:  
See b (1) a above.

(f) assisted reproduction:  
See b (1) a above.

(g) surrogacy:  
See b (1) a above.

(h) other(s):  
-

(3) other financial matters, *e.g.*,  
(a) pensions, including social security benefits:  
See b (1) a above.

(b) other(s):  
See b (1) a above.

(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?

The registered partnership that has been registered in a foreign state shall be valid in Finland if it is valid in the state where it was registered Act on Registered Partnerships, Section 12).

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

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- (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):

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- (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

There is a general provision in the Marriage Act (Section 139.2) according to which a provision in the law of a foreign state shall be disregarded, if its application would have an outcome contrary to Finnish public policy (ordre public). Hence both "yes" and "no" boxes are ticked above in 3 and 5-7.

The circumstances under which the ordre public provision is applied are not laid down in the law. According to the preparatory documents regarding Section 139.2 merely the fact that applying a foreign provision would result in an outcome that deviates considerably from Finnish law does not in itself justify application of Section 139.2 if the outcome is not contrary to Finnish public policy.

 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

The validity of a decision on the dissolution of registered partnership issued in a foreign state shall be governed by the provisions in Sections 121 and 122 of the Marriage Act on the validity in Finland of a decision on the dissolution of marriage issued in a foreign state. (Act on Registered Partnerships, Section 14)

Sections 121 and 122 in Marriage Act read as follows:

"Section 121

A judgment concerning divorce or separation or a declaration that a marriage is void or annulled issued in a foreign state is recognised in Finland without any separate validation.

A judgment issued in a foreign state is not, however, recognised if:

(1) the competence of the authority having issued the judgment has not been based on the domicile or habitual residence or citizenship of either of the spouses;

(2) the recognition would be manifestly incompatible with the public policy of Finland;

(3) the judgment has been issued against an absent defendant and the application for a summons or another corresponding document has not been served on the defendant in sufficiently good time and in a manner that would have enabled the defendant to prepare for a response in the matter, unless the defendant is unambiguously considered to have accepted the judgment;

(4) the judgment is incompatible with such a judgment issued in Finland that has been rendered in judicial proceedings between the same parties; or

(5) the judgment is incompatible with an earlier judgment issued between the same parties in another state and this earlier judgment meets the prerequisites set for the recognition of a judgment in Finland.

Section 122

Helsinki District Court may confirm, upon application, whether a judgment issued in a foreign state is recognised in Finland.

The District Court must give the other spouse an opportunity to be heard, if hearing is necessary in order to settle the case and the whereabouts of the spouse can be ascertained without difficulty."

No

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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

See para 8 above.

No

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**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.

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(2) a partnership registered in a foreign State.

The provisions in Marriage Act on jurisdiction of Finnish authorities as regards the validity of marriages are applied. According to Marriage Act, Section 117.1, a matter pertaining to the validity of a marriage may be ruled admissible in Finland, if a matter pertaining to the divorce of the spouses would under Section 119 § (see below, para 10 (b)(2)) be admissible in Finland.

If the resolution of a matter depends on the validity of a marriage, a Finnish authority may determine the validity in connection with the resolution of the said matter, even if the matter of validity would otherwise be inadmissible under paragraph (1). (Marriage Act, Section 117.2)

- 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.

A matter pertaining to the dissolution of a registered partnership may be ruled admissible in Finland, if the partnership has been registered in Finland (Act on Registered Partnerships, Section 13.1)

(2) a partnership registered in a foreign State.

A matter pertaining to the dissolution of a registered partnership may [also] be ruled admissible in Finland, if the partner has such a connection to Finland that a Finnish court would have jurisdiction in divorce proceedings as provided in Section 119 of the Marriage Act. (Act on Registered Partnerships, Section 13.2)

Section 119 of the Marriage act reads as follows:

"A matter pertaining to divorce may be ruled admissible in Finland, if:

(1) either spouse is domiciled in Finland; or

(2) the petitioner has been domiciled in Finland or otherwise has a close link to Finland and he or she cannot institute divorce proceedings in the foreign state where either spouse is domiciled, or this would cause unreasonable inconvenience to the petitioner, and the admissibility of the matter in Finland is justified in view of the circumstances.

A public prosecutor in Finland may bring an action, as referred to in section 27(2), for the divorce of the spouses, if:

(1) the marriage ceremony has been performed by a Finnish authority; and

(2) either spouse is domiciled in Finland.

Moreover, a public prosecutor in Finland may bring an action for the divorce of the spouses if they have married while a prior marriage or registered partnership of either spouse has been in force and the prior marriage or registered partnership has not yet dissolved, provided that both spouses are domiciled in Finland.

A request for the end of cohabitation may be ruled admissible in Finland, if the spouses make their common home here.

The provisions of subsections 1–3 apply only if not otherwise provided by the Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and

enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, or any international treaty binding on Finland."

**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.

There are no conflict of law rules in the Act on Registered Partnerships (apart from Section 11 which concerns registration of partnership). Thus, in accordance with Act on registered Partnerships, Section 8, provisions in Marriage Act will be applied.

For English translation of the relevant provisions of the Marriage Act (Sections 120–138), see attachment.

- 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.*)

See above, para 11 a.

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.)

No.

**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.

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- 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.

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**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

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No

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

Yes

The Act on the Dissolution of the Household of Cohabiting Partners (26/2011) applies to the dissolution of the household of cohabiting partners when the partnership ends. The Act covers both same-sex and opposite sex relationships. In the context of this Act, cohabiting partner refers to partners who live in a relationship in a shared household and who have lived in a shared household for at least five years or who have, or have had, a joint child or joint parental responsibility for a child. A person who is married or in a registered partnership shall not be deemed a cohabiting partner. Cohabiting partners are generally free to derogate from the provisions laid down in the Act through an agreement.

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 cohabitees 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 cohabitees, *e.g.*,
- (1) personal obligations and duties of unmarried cohabitees (*e.g.*, duty of care of unmarried cohabitees):

No.

- (2) maintenance obligations:

No obligation. Voluntary agreements can be made.

- (3) property relations:

The Act on the Dissolution of the Household of Cohabiting Partners (26/2011) contains a provision on the duty to carry out the separation of property, which cannot be waived prior to separation (Sections 2 and 4), a provision on the principle that when the property is separated each cohabiting partner will keep his or her own property unless otherwise has been agreed upon (Section 5), an obligation to dissolve joint ownership on demand (Section 5), presumption of co-ownership of movable assets unless title can be proven (Section 6), a right to apply for an estate distributor from the District Court to separate the property, if agreement on the separation cannot be reached (Section 7), and a right to apply for compensation from the other partner, if the dissolution of the household according to ownership would result in unjust enrichment at the expense of the other because of his or her contributions to the shared household (Sections 8 and 9).

- (4) inheritance:

No rights of inheritance (only through a will).

The Code of Inheritance (40/1965) entails provisions according to which the surviving cohabitee may receive support from the estate of the deceased cohabitee in

the form of money, other property or as a usufruct (käyttöoikeus/nyttjanderätt), if his or her livelihood has been compromised by the death of his or her partner and the support is necessary to secure it. The surviving partner is only entitled to the support, if the partners had lived in a common household for a minimum of five years or had a common child.

In addition to the support according to the Code of Inheritance, the surviving partner is entitled to the same compensation based on unjust enrichment as he or she is entitled in the case of separation, if the separation of property according to ownership would result in an unfair distribution of property taking into account of the contributions for the benefit of the shared household by both partners. The grounds for this compensation are based on Section 8 of the Act on the Dissolution of the Household of Cohabiting Partners.

(5) other(s):

-

b. children, *e.g.*,

(1) parental status:

-

(2) parental responsibility:

-

(3) child support:

-

(4) inheritance:

-

(5) adoption:

Cohabitees may not adopt together, nor may a cohabitee adopt the other cohabitee's child.

(6) assisted reproduction:

It is currently being discussed in conjunction with the citizen's initiative on Act on Motherhood (referred to in para 4 b above) whether female registered couples and female cohabiting couples should be allowed to have access to infertility treatments as a couple in the same manner as married couples and cohabiting couples of different sex. Currently, fertility treatment can be given to couples of different sex and single women. In practise, many of these single women actually live in a registered partnership or in a cohabiting partnership, which is, however, not recognised in the treatment process.

(7) surrogacy:

Surrogacy is illegal in Finland.

(8) other(s):

-

c. other financial matters, *e.g.*,

(1) pensions, including social security benefits:

-

(2) other(s):

-

## 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?
- 
- 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)?
- 

**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.

No specific rule. General rules on jurisdiction apply.

**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.

No specific rule. General choice of law rules apply.

**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.
- 
- 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.



**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?

No.

**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;

According to Statistics Finland there were in total 2608 registered partnerships in 2015. Of these 1023 were male and 1585 female partnerships. The trend has been rising since 2002 when the Act on Registered Partnerships came into force. However, after 1.3.2017 partnerships can no longer be registered as same sex marriage will be allowed.

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

According to Statistics Finland there are in total 338 277 cohabiting non-married couples. Of these couples 215 620 do not have children. The statistics does not include the number of same sex cohabiting partners.

The trend is rising.

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

According to Statistics Finland, there were in total 407 adoptions in Finland in 2015. The number of internal adoptions within families of registered partnerships was 128 (in 2014: 115).

Neither registered partners nor unmarried cohabitees may adopt a child together. Surrogacy is not permitted.

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

Number of dissolved registered partnerships (Statistics Finland 2006-2015):

2006: 30

2007: 67

2008: 45

2009: 53

2010: 64

2011: 85

2012: 103

2013: 101

2014: 109

2015: 133

Total: 790

- 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:

Not available.

f. any other relevant statistics:

-

## Si 206\_eng Act on the Dissolution of the Household of Cohabiting Partners 14.1.2011/26

Toim. huom. Tämä on epävirallinen käännös. Muutoksia on seurattu säädöskokoelman numeroon 26/2011 asti. This is an unofficial translation. Amendments up to 26/2011 included.

### Chapter 1. General provisions

**1 §. Scope.** This Act applies to the dissolution of the household of cohabiting partners when the partnership ends.

**2 §. Non-mandatory nature of provisions.** Derogation from the provisions of this Act is allowed by agreement.

However, the cohabiting partner or the heir of a deceased cohabiting partner may not validly waive his or her right to demand the separation of property referred to in Section 4 or his or her right to apply for an estate distributor to be appointed as referred to in Section 7, Subsection 2.

**3 §. Definitions of cohabiting partner and cohabiting partnership.** In the context of this Act, cohabiting partner refers to partners who live in a relationship (*cohabiting partnership*) in a shared household and who have lived in a shared household for at least five years or who have, or have had, a joint child or joint parental responsibility for a child. However, a person who is married shall not be deemed a cohabiting partner.

### Chapter 2. Separation of property

**4 §. Separation of property.** If a cohabiting partner or the heir of a deceased cohabiting partner so demands, a separation of the cohabiting partners' property shall be carried out when the cohabiting partnership ends.

**5 §. Property of cohabiting partners.** When the property is separated, each cohabiting partner shall keep his or her own property. If the cohabiting partners have joint property, co-ownership must be dissolved on demand.

**6 §. Presumed co-ownership.** If, when separating the property, the agreement between the cohabiting partners or the circumstances otherwise do not indicate and it cannot be proved which cohabiting partner a moveable object belongs to or that it is joint property, the partners are deemed as having acquired it jointly with equal rights.

**7 §. Carrying out separation of property.** Separation of property can be agreed by making a separation deed of the property as provided by the Code of Inheritance (40/1965), Chapter 23, Section 9.

The cohabiting partner or the heir of a deceased cohabiting partner can also apply to the district court to appoint an estate distributor to separate the property. An estate distributor is appointed and he or she separates the estate in accordance with the provisions governing the distribution of inheritance.

### Chapter 3. Compensation for contributions for the benefit of a shared household

**8 §. Compensation criteria.** A cohabiting partner is

entitled to compensation if, through contributions for the benefit of the shared household, he or she has assisted the other cohabiting partner in accumulating or retaining his or her property so that dissolution of the household, solely on the basis of ownership, would result in unjust enrichment at the expense of the other.

Contributions for the benefit of a shared household are deemed as being:

- 1) work done by one cohabiting partner for the benefit of the shared household or property owned by the other;
- 2) use of funds for the shared household;
- 3) investment of funds by one cohabiting partner in property owned by the other; or
- 4) any other similar contribution.

No right to compensation exists, if the unjust enrichment arising from a contribution for the benefit of a shared household can, given the circumstances, be deemed as insignificant.

**9 §. Claiming compensation.** Compensation can be agreed upon or a claim for compensation can be made to the estate distributor appointed to separate the property. Unless application has been made to appoint an estate distributor, claim for compensation can be submitted by filing an action in the district court.

The right to compensation lapses if compensation was not claimed when the property was separated or an action for compensation brought within six months of the separation of the property.

If separation of the property has not been carried out, the right to compensation nevertheless lapses unless a claim for compensation has been brought or unless an application to appoint an estate distributor has been made within three years of the death of the cohabiting partner or within three years of the partners having moved permanently apart.

### Chapter 4. Certain provisions and entry into force

**10 §. Appealing the decision made by the estate distributor.** A cohabiting partner or the heirs of a deceased cohabiting partner may dispute the separation of the property carried out by the estate distributor and the decision made by the estate distributor as a result of the claim for compensation as provided by the Code of Inheritance (40/1965), Chapter 23, Section 10.

**11 §. Recovery.** If, when separating the property or paying the compensation referred to in Section 8, a cohabiting partner has given his or her cohabiting partner or the heirs thereof considerably more of his or her property than he or she would have been liable to give, separation of the property or compensation can be recovered to a bankruptcy estate as provided by the Act on the Recovery of Assets to a Bankruptcy Estate (758/1991).

In order for the cohabiting partner or the heirs of a cohabiting partner who have obtained property in the manner referred to in Paragraph 1 can obtain protection against the claims of recovery lodged by the creditors of the other cohabiting partner in bankruptcy and enforcement, the property separation deed or the agreement or some other document concerning compensation must be

submitted to the local register office for registration as provided by the Act on Certain Personal Registers at Local Register Offices (57/2005).

**12 §.** *Entry into force and transitional provision.* This Act enters into force on 1 April 2011.

This Act shall not apply to cohabiting partnerships that have ended before the Act enters into force.

Measures necessary for the implementation of this Act may be taken before the Act enters into force.

## **Si 208\_eng** **Act on Registered Partnerships 9.11.2001/** **950**

Toim. huom. Tämä on epävirallinen käännös. Muutoksia on seurattu säädöskokoelman numeroon 1229/2001 asti. This is an unofficial translation. Amendments up to 1229/2001 included.

### **Chapter 1. Registration of partnership**

**1 §.** The partnership of two persons of the same sex and over 18 years of age may be registered as provided in this Act.

**2 §.** Partnership shall not be registered, if:

1) a partner already is in a registered partnership, or is married; or

2) the partners have a family relationship which forms an impediment to marriage in accordance with sections 7–9 of the Marriage Act (234/1929; avioliittolaki).

Notwithstanding an impediment to registration based on a family relationship, the Ministry of Justice may grant a dispensation for the registration of partnership observing, correspondingly, the provisions in sections 8 and 9 of the Marriage Act on the granting of a dispensation.

**3 §.** The State Local Office shall examine that there is no statutory impediment to the registration of partnership. In other respects, the examination of impediments to registration shall be governed by the provisions in sections 11–13 of the Marriage Act on the examination of impediments to marriage.

**4 §.** Partnership shall be registered by an authority entitled to perform civil marriage ceremonies.

Partnership shall not be registered, if the authority referred to in subsection (1) is aware of a circumstance preventing registration, or if he or she notes that a partner, owing to a disturbed state of mind, obviously cannot understand the significance of the matter.

The authority referred to in subsection (1) shall before the registration of partnership make sure that the impediments to registration have been examined as provided in section 3. If the certificate of the examination of impediments has been issued more than four months earlier, partnership shall not be registered on the basis of that certificate.

**5 §.** Partnership shall be registered by way of the partners jointly signing the partnership document in the presence of the authority referred to in section 4(1) and that authority verifying the same with a countersignature.

**6 §.** The registration of partnership shall be void if it has not taken place as provided in section 5 or if it has not been registered by an authority referred to in section 4(1).

For extremely weighty reasons, the President of the Republic may decide that a registration that is void under subsection (1) is nevertheless to be considered valid. The petition to this effect may be filed by either partner or, if one of them has died, his or her heirs.

### **Chapter 2. Dissolution of a registered partnership**

**7 §.** A registered partnership shall be dissolved when one partner dies or is declared dead, or when it is dissolved by court order.

The dissolution of a registered partnership shall be governed by the provisions of the Marriage Act on divorce.

### **Chapter 3. Legal effects of the registration of partnership**

**8 §.** The registration of partnership shall have the same legal effects as the conclusion of marriage, unless otherwise provided.

The dissolution of a registered partnership shall have the same legal effects as the dissolution of marriage, unless otherwise provided.

A provision in an Act or a Decree applicable to marriage applies likewise to a registered partnership, unless otherwise provided.

A provision in an Act or a Decree applicable to a spouse applies likewise to a partner in a partnership referred to in this Act, unless otherwise provided. Partners who intend to register their partnership shall be subject to the provisions applicable to engaged persons, unless otherwise provided.

**9 §.** The provisions of the Paternity Act (700/1975; isyyslaki) on the establishment of paternity on the basis of marriage do not apply in a registered partnership, nor do any other provisions applicable to a spouse exclusively by virtue of his or her sex.

The provisions of the Adoption Act (153/1985; laki lapseksiottamisesta) on the right of a spouse to adopt do not apply in a registered partnership, nor do the provisions of the Names Act (694/1985; nimilaki) on the family name of a spouse.

### **Chapter 4. Rules of private international law**

**10 §.** Partnership may be registered in Finland only if:

1) at least one of the partners is a Finnish citizen and habitually resident in Finland; or

2) both parties have been habitually resident in Finland for two years immediately before the registration.

In the application of subsection (1), citizenship of a foreign state whose legislation allows for the registration of partnership with mainly the same legal effects as provided in this Act shall correspond to Finnish citizenship. Such foreign states shall be designated by Governmental Decree.

**11 §.** The right to the registration of partnership before a Finnish authority shall be determined in accordance with the laws of Finland.

**12 §.** The registered partnership of two persons of the same sex that has been registered in a foreign state shall be valid in Finland if it is valid in the state where it was registered.

**13 §.** (13.12.2001/1229) A matter pertaining to the dissolution of a registered partnership may be ruled admissible in Finland, if:

1) the partnership has been registered in Finland; or

2) the partner has such a connection to Finland that a Finnish court would have jurisdiction in divorce proceed-

dings as provided in section 119 of the Marriage Act.

**14 §.** (13.12.2001/1229) The validity of a decision on the dissolution of registered partnership issued in a foreign state shall be governed by the provisions in sections 121 and 122 of the Marriage Act on the validity in Finland of a decision on the dissolution of marriage issued in a foreign state.

**15 §.** Notwithstanding the provisions in section 8 on the legal effects of the registration of partnership, the Stockholm Convention between Finland, Iceland, Norway, Sweden and Denmark containing rules of private international law regarding marriage, adoption and guardianship (TrS 20/1931) and the Act on the adoption

and implementation of the said Convention (413/1931) do not apply to a registered partnership.

#### **Chapter 5. Miscellaneous provisions**

**16 §.** Where necessary, more detailed provisions on the implementation of this Act shall be issued by Governmental Decree.

**17 §.** This Act enters into force on 1 March 2002.

## **MARRIAGE ACT (234/1929), Finland**

### **PART V: RULES OF PRIVATE INTERNATIONAL LAW (Sections 108–142; unofficial translation)**

#### **Chapter 1. Conclusion of marriage**

##### **Right to marry**

###### **Section 108**

The right of a woman and a man to marry before a Finnish authority shall be determined in accordance with the law of Finland.

If neither the woman nor the man is a Finnish citizen and if neither is habitually resident in Finland, they have the right to marry before a Finnish authority only if the marriage is permissible under the law of Finland and if each of them has the right to marry in accordance with the law of the state whose citizen he or she is or where he or she is habitually resident, or in accordance with the law applicable in one of these states on the examination of impediments to marriage. An engaged person shall present a credible account of his or her right to marry under the law of a foreign state.

If no information can be obtained on the legislation of a state that, under paragraph (2), would govern the right of an engaged person to marry, owing to a state of war or other comparable unstable conditions prevailing in that state, the right of the engaged person to marry may be examined under the law of Finland notwithstanding the provisions in paragraph (2), if the engaged person so requests and if marriage in Finland can be deemed justifiable in view of the links that the engaged persons have to Finland.

###### **Section 109**

A Finnish authority may grant a dispensation to marry regardless of an impediment to marriage, as referred to in sections 4, 8 and 9, if at least one of the engaged persons is a Finnish citizen or habitually resident in Finland.

###### **Section 110**

If a marriage is to be concluded before a Finnish authority in a foreign state, and the examination of impediments to marriage has not been carried out in Finland, the authority performing the ceremony shall examine that there are no statutory impediments to marriage.

If the marriage referred to in paragraph (1) is to be concluded in a foreign state whose law requires that its impediments to marriage or some of them are to be taken into account or that its provisions on banns are to be taken into account when the authority of another state is performing a marriage ceremony there, the provisions of that foreign state shall apply as well.

###### **Section 111**

If a Finnish citizen or a foreign citizen habitually resident in Finland wishes to conclude marriage before an authority of a foreign state abroad or in Finland, he or she shall have the right, upon request, to receive a certificate from an examiner of impediments to marriage to the effect that he or she has the right to conclude the said marriage under the law of Finland.

However, such a certificate shall not be issued, if the information needed for the examination of impediments to marriage is not available in the Population Information System and if the person requesting the certificate does not present any other credible account of the same.

## **Right of diplomatic representatives and certain clergy to perform marriage ceremonies**

### **Section 112**

The Ministry for Foreign Affairs may grant a public official serving in a Finnish diplomatic mission abroad the right to perform marriage ceremonies where at least one of the engaged persons is a Finnish citizen.

The Ministry of Education may, upon request and after having obtained an opinion from the Ministry for Foreign Affairs, grant a person who is competent to perform a marriage ceremony in a Finnish religious community the right to perform marriage ceremonies in a foreign state, where at least one of the engaged persons is a Finnish citizen. The right may be connected to a given office, position or commission, or granted to the person in question in his or her own right.

The Ministry for Foreign Affairs and the Ministry of Education may set restrictions or conditions to the right to perform marriage ceremonies, as is necessary on the basis of the legislation of the foreign state in question or the circumstances affecting the need for a right to perform marriage ceremonies.

### **Section 113**

The Ministry of Foreign Affairs may, upon request, grant a diplomatic or consular representative of a foreign state in Finland a license to perform marriage ceremonies in Finland in accordance with the formal requirements of that state, where the engaged persons are foreigners and at least one of them is a citizen of the state which the performing official represents.

The Ministry of Education may, upon request and after having obtained an opinion from the Ministry for Foreign Affairs, grant a member of the clergy of a foreign religious community operating in Finland a license to perform marriage ceremonies in accordance with the formal requirements of the foreign state in question, where at least one of the persons to be married is a citizen of that state. The license to perform marriage ceremonies may be connected to a given office, position or commission of the clergy, or granted to the said member of the clergy in his or her own right.

A marriage ceremony referred to in paragraphs (1) and (2) shall not be performed, if the performing authority is aware of a circumstance constituting an impediment to marriage under section 6 or 7.

### **Section 113 a**

A decision on the right to perform marriage ceremonies referred to in section 112 or 113 above may be complied with even if the decision is not yet final.

Information on the right to perform marriage ceremonies must be entered into the register as provided in the Act on the right to perform marriage ceremonies.



## **Celebration of marriage**

### **Section 114**

A marriage ceremony before a Finnish authority in Finland or in a foreign state shall be performed in accordance with the formal requirements in the law of Finland.

## **Chapter 2. Recognition of a foreign marriage**

### **Prerequisites for recognition**

#### **Section 115**

A marriage concluded by a woman and a man in a foreign state before an authority of that state shall be valid in Finland, if it is valid in the state where it was concluded or in a state whose citizen either spouse was or where either spouse was habitually resident at the conclusion of the marriage.

A marriage performed in another foreign state or, under a license referred to in section 113, in Finland, by the diplomatic or consular representative of a foreign state, a member of the clergy of a religious community of a foreign state or another person entitled by a foreign state to perform marriage ceremonies in another state, shall be valid in Finland, if it is valid in the state which the performing authority represents or in state whose citizen either spouse was or where either spouse was habitually resident at the conclusion of the marriage.

#### **Section 116**

A marriage that has been concluded in a foreign state after the death of one engaged person or without one engaged person being present in person at the conclusion of the marriage, or that has been concluded merely by practice and without a ceremony or other formality, shall be valid in Finland only if:

- (1) it is valid in a state referred to in section 115(1); and
- (2) there is a special reason why the marriage should be deemed valid in Finland.

In the assessment of whether a marriage referred to in paragraph (1) is to be deemed valid, special attention shall be given to the links of the engaged persons to the state where the marriage was concluded and to the duration of the cohabitation of the spouses.

## **Jurisdiction of Finnish authorities as regards the validity of marriages**

### **Section 117**

A matter pertaining to the validity of a marriage may be ruled admissible in Finland, if a matter pertaining to the divorce of the spouses would under section 119 be admissible in Finland.

If the resolution of a matter depends on the validity of a marriage, a Finnish authority may determine the validity in connection with the resolution of the said matter, even if the matter of validity would otherwise be inadmissible under paragraph (1).

### **Section 118**

For especially weighty reasons, the President of the Republic may decide that a marriage concluded in a foreign state and not recognised under section 115 or 116 is nevertheless to be deemed valid. A petition to this effect may be filed by either of the married persons or, if one of them is dead, by that person's heirs.

## **Chapter 3. Dissolution of marriage**

### **Jurisdiction of Finnish courts**

#### **Section 119**

A matter pertaining to divorce may be ruled admissible in Finland, if:

(1) either spouse is domiciled in Finland; or

(2) the petitioner has been domiciled in Finland or otherwise has a close link to Finland and he or she cannot institute divorce proceedings in the foreign state where either spouse is domiciled, or this would cause unreasonable inconvenience to the petitioner, and the admissibility of the matter in Finland is justified in view of the circumstances.

A public prosecutor in Finland may bring an action, as referred to in section 27(2), for the divorce of the spouses, if:

(1) the marriage ceremony has been performed by a Finnish authority; and

(2) either spouse is domiciled in Finland.

Moreover, a public prosecutor in Finland may bring an action for the divorce of the spouses if they have married while a prior marriage or registered partnership of either spouse has been in force and the prior marriage or registered partnership has not yet dissolved, provided that both spouses are domiciled in Finland.

A request for the end of cohabitation may be ruled admissible in Finland, if the spouses make their common home here.

The provisions of subsections 1–3 apply only if not otherwise provided by the Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, or any international treaty binding on Finland. (1154/2004)

### **Choice of law**

#### **Section 120**

The law of Finland applies to a matter pertaining to divorce or the end of cohabitation.

### **Recognition of foreign judgments**

#### **Section 121**

A judgment concerning divorce or separation or a declaration that a marriage is void or annulled issued in a foreign state is recognised in Finland without any separate validation.

A judgment issued in a foreign state is not, however, recognised if:

(1) the competence of the authority having issued the judgment has not been based on the domicile or habitual residence or citizenship of either of the spouses;

(2) the recognition would be manifestly incompatible with the public policy of Finland;

(3) the judgment has been issued against an absent defendant and the application for a summons or another corresponding document has not been served on the defendant in sufficiently good time and in a manner that would have enabled the defendant to prepare for a response in the matter, unless the defendant is unambiguously considered to have accepted the judgment;

(4) the judgment is incompatible with such a judgment issued in Finland that has been rendered in judicial proceedings between the same parties; or

(5) the judgment is incompatible with an earlier judgment issued between the same parties in another state and this earlier judgment meets the prerequisites set for the recognition of a judgment in Finland.

## **Section 122**

Helsinki District Court may confirm, upon application, whether a judgment issued in a foreign state is recognised in Finland.

The District Court must give the other spouse an opportunity to be heard, if hearing is necessary in order to settle the case and the whereabouts of the spouse can be ascertained without difficulty.

**[Sections 123 and 124 have been abolished.]**

## **Section 125**

The provisions of sections 121 and 122 apply only if not otherwise provided by the Council Regulation referred to in section 119(5) or any international treaty binding on Finland.

## **Chapter 4. Legal relations of spouses**

### **Jurisdiction of Finnish courts**

#### **Section 126**

A matter pertaining to the personal legal consequences of marriage may be ruled admissible by a Finnish court, if the defendant is domiciled or habitually resident in Finland.

A Finnish court competent in a matter pertaining to divorce may at the same time hear an ancillary matter pertaining to the personal legal consequences of marriage, if the resolution of the matter is necessary owing to the divorce.

The provisions of the Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations apply, however, to competence in matters relating to maintenance obligations.

#### **Section 127**

A matter pertaining to matrimonial property may be ruled admissible by a Finnish court, if:

(1) the defendant is domiciled or habitually resident in Finland;

(2) the plaintiff is domiciled or habitually resident in Finland and the law of Finland is to apply on the matter pertaining to matrimonial property;

(3) the last common domicile or habitual residence of the spouses was in Finland, and one of the spouses still is, or at the time of his or her death still was, domiciled or habitually resident here;

(4) the property to which the matter pertains is located in Finland; or

(5) the defendant accepts that the matter be admissible in Finland or undertakes to defend his or her substantive position without entering a plea of inadmissibility.

A Finnish court shall always be competent in a matter pertaining to measures undertaken by an estate distributor appointed by a Finnish court.

A Finnish local register office may register a marriage settlement or an agreement designating the law applicable to matrimonial property regime, even if a Finnish court under subsection 1 were not competent to rule a matter pertaining to matrimonial property admissible. (929/2002)

(4) In a petitionary matter, the provisions of subsection 1 on the plaintiff and the defendant apply to the petitioner and the opposing party.

## **Choice of law applicable to the personal legal consequences of marriage**

### **Section 128**

The law of the state where both spouses are domiciled applies to the personal legal consequences of marriage. If the spouses are not domiciled in the same state, the law of the state where both spouses last were domiciled during the marriage applies, if one of them is still domiciled there. In situations other than those referred to above, the applicable law is the law of the state to which, taking all pertinent circumstances into account, the spouses have the closest link.

However, in a matter pertaining to the right to maintenance, the applicable law is the law of the state designated in the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations.

## **Choice of law applicable to matrimonial property regime**

### **Section 129**

Unless otherwise agreed in accordance with the procedure laid down in section 130, the law of the state which became the state of domicile of both spouses after the conclusion of the marriage applies to their matrimonial property matters.

If the spouses have later moved their domicile to another state, the law of that state applies, if the spouses have resided there for at least five years. However, the law of that state applies immediately upon the spouses becoming domiciled there, if they have earlier during the marriage been domiciled there or if both are citizens of that state.

The law applicable to matrimonial property regime shall not change by virtue of paragraph (2), if:

(1) the spouses have agreed to designate the law applicable to matrimonial property regime in accordance with the procedure laid down in section 130; or

(2) owing to the dissolution of the marriage, separation or the pendency of divorce proceedings, a spouse has gained the right to demand the distribution of matrimonial property before the time when the law of the other state would become applicable.

If no state has become the state of domicile for both spouses, the applicable law is the law of the state to which, taking all pertinent circumstances into account, the spouses have the closest link.

## **Section 130**

Engaged persons and spouses are entitled to designate the law applicable to matrimonial property regime, as provided in paragraph (2). The agreement shall be in writing in order to be valid.

The law of the state where one spouse or both spouses are domiciled or whose citizen a spouse is at the time of the agreement may be designated as the law applicable to matrimonial property regime. If the domicile of one or both spouses has moved to another state during the marriage, also the law of the state where both spouses last were domiciled may be designated as the applicable law.

An agreement on the amendment or cancellation of an agreement referred to in paragraph (1) shall be in writing in order to be valid.

## **Section 131**

Especially the following shall be resolved by reference to the law applicable to matrimonial property regime:

- (1) issues pertaining to the distribution of matrimonial property after the dissolution of the marriage or during the marriage;
- (2) issues pertaining to transactions concerning matrimonial property and entered into by the spouses or the engaged persons;
- (3) the right of a spouse to administer property; and
- (4) the liability of a spouse for the debts of the spouses.

A change of the law applicable to matrimonial property regime shall not affect the validity of a transaction concluded before the change. However, the validity of provisions in a marriage settlement or an agreement on the future distribution of property shall be assessed in accordance with the law applicable to matrimonial property matters at the time when the issue becomes relevant.

In addition, a transaction concerning matrimonial property and entered into by the spouses or the engaged persons shall be deemed formally valid if it meets the formal requirements in the law of the state where the transaction was concluded or where the spouses were domiciled at the time of conclusion of the transaction. However, if spouses domiciled or habitually resident in Finland conclude a marriage settlement, the provisions in sections 43-44 shall always be observed for the agreement to be valid.

## **Restrictions in the application of foreign law**

### **Section 132**

In a matter pertaining to the assessment of maintenance or a change in assessed maintenance, the assessment shall always be based on the need for support of the person entitled to the maintenance and the means of the person liable to provide maintenance, notwithstanding any provisions in the applicable law.

### **Section 133**

The provisions in sections 38-40 and 86 on the need for a consent or a permission where a spouse is making a conveyance or entering into another transaction apply even if the matrimonial property regime is governed by the law of a foreign state, if the property in question is located in Finland.

## **Section 134**

A distribution of matrimonial property may be adjusted in accordance with section 103 b(1) even if the distribution is otherwise governed by the law of a foreign state.

In a distribution of matrimonial property carried out owing to the death of one spouse, the surviving spouse shall have the right to retain possession of the common home of the spouses in Finland, or other housing and furniture in Finland belonging to the estate, as provided in chapter 3 of the Code of Inheritance, even if the distribution is governed by the law of a foreign state, provided that the same is to be deemed reasonable in view of the assets of the surviving spouse and the property that the spouse will acquire in the distribution or by way of inheritance or a will.

## **Section 135**

A provision in the law of a foreign state to the effect that the right of a spouse to incur debt or to administer his or her property is more restricted than what is provided in this Act shall be without effect as against a third party, if:

- (1) a transaction pertains to the administration of real property located in Finland or the right of use over such property; or
- (2) the spouse who entered into the transaction and the third party were in Finland when the transaction was concluded and the third party was not aware and should not have been aware of the restriction.

An agreement by which the spouses have designated the law of a foreign state as applicable to matrimonial property regime shall be without effect as against the creditors of a spouse, if the spouses are domiciled or habitually resident in Finland, unless the agreement has been submitted to a local register office for registration as provided in the Act on Certain Personal Registers of Local Register Offices. (58/2005)

If the spouses are domiciled or habitually resident in Finland, a marriage settlement concluded before both spouses became habitually resident in Finland shall be without effect as against the creditors of a spouse, except if the agreement has been submitted for registration as provided in subsection 2.

The registration referred to in subsections 2 and 3 shall be without effect as against a creditor whose claim against the spouse has arisen before the registration of the agreement in question.

## **Distribution of matrimonial property on the basis of separation**

### **Section 136**

If a foreign judgment on separation has been issued for spouses whose matrimonial property matters are governed by the law of Finland, a distribution of matrimonial property may be carried out on the basis of the separation. In this event, a spouse shall not have a marital right over property that the other spouses acquires after the judgment on separation, and any setting aside of property to cover debts shall be carried out in accordance with the conditions prevailing at the time when the judgment on separation was issued.

The provisions in paragraph (2) do not apply if the spouses resume cohabitation after the issue of the judgment on separation.

## **Distribution procedure**

### **Section 137**

Even if the law of a foreign state is applicable to matrimonial property matters, a distribution of matrimonial property may be carried out by agreement between the spouses or by an estate distributor, as provided in the law of Finland.

A distribution of matrimonial property shall comprise all of the property of the spouses regardless of its location, unless the spouses agree otherwise. When determining the property that is to devolve on one spouse, the provisions of the law applicable to matrimonial property matters may be derogated from, if necessary in order to secure a lawful share of the property to the spouse.

## **Separation of the property of the spouses**

### **Section 138**

The provisions in this chapter on the distribution of matrimonial property apply also to the separation of the property of the spouses.

## **Chapter 5. Miscellaneous provisions**

### **Section 139**

Unless specifically otherwise provided, a reference in this part to the law of a foreign state does not cover the provisions of Private International Law in the law of that state.

A provision in the law of a foreign state shall be disregarded, if its application would have an outcome contrary to Finnish public policy (*ordre public*).

### **Section 140**

The provisions in this part apply only in so far as not otherwise provided in another Act or the international obligations binding on Finland.

### **Section 141**

The Ministry for Foreign Affairs and the Ministry of Education may revoke a license granted on the basis of section 112 or 113, if the person in question violates the license conditions or otherwise breaks the law of Finland, or if there otherwise is a reason to do so.

### **Section 142**

Where necessary, more detailed provisions on the implementation of this part may be issued by Decree of the Government.