

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): [Hong Kong Special Administrative Region of the People's Republic of China](#)

For follow-up purposes:

Name of contact person:

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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?

[No, there is no plan to introduce registered partnerships in the Hong Kong SAR.](#)

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.)

N/A

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.

N/A

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

N/A

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

N/A

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

N/A

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

N/A

- (6) Please state any other requirements:

N/A

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

N/A

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):

N/A

- (b) maintenance obligations:

N/A

(c) property
N/A

(d) inheritance:
N/A

(e) other(s):
N/A

(2) children, *e.g.*,
(a) parental status:
N/A

(b) parental responsibility:
N/A

(c) child support:
N/A

(d) adoption:
N/A

(e) inheritance:
N/A

(f) assisted reproduction:
N/A

(g) surrogacy:
N/A

(h) other(s):
N/A

(3) other financial matters, *e.g.*,
(a) pensions, including social security benefits:
N/A

(b) other(s):
N/A

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

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.)

N/A

- 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.)

N/A

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)?

N/A

No

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

Yes

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

N/A

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)?

N/A

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)?

N/A

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)?

N/A

- (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)?

N/A

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

7. For all States:

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

Yes

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

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

[Please insert text here](#)

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

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

[Please insert text here](#)

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):

From the private international law perspective, for a foreign marriage to be considered valid by a Hong Kong court, it must be demonstrated to have both essential and formal validity according to the laws which govern these rules. However, these rules are subject to exceptions and the residual possibility that a capacity or incapacity according to foreign law may be contrary to Hong Kong public policy.

Therefore, the question of whether a foreign marriage would be recognised as valid under Hong Kong law is a matter which depends on the circumstances and the application of conflict of laws rules on a case-by-case basis.

Registered partnership (including same sex civil partnership) is not recognised in the Hong Kong SAR. Partners in a partnership registered overseas are not recognised as having the status of husband and wife and are treated as separate individuals subject to ordinary principles of contract, tort and equity.

Under section 4 of the Marriage Reform Ordinance (Cap.178), marriage is defined as "the voluntary union for life of one man with one woman to the exclusion of all others..." The only means by which a marriage could be lawfully contracted is under the Marriage Ordinance (Cap.181) which imposes the formalities and limitation which the process of marriage and the marriage ceremony itself must comply with.

In the recent judgment *QT v Director of Immigration* [2016] 2 HKLRD 583, the court confirmed the lawfulness of the Director of Immigration's dependency policy under which the applicant's application for a visa to remain in Hong Kong as a dependant spouse of her same sex civil partner was rejected. The relationship was entered into by them in accordance with the laws of the United Kingdom. The existing immigration policy on admission of spouse as a dependant is based on monogamy and the concept of a married couple consisting of one man and one woman. Amongst other matters, the court has reaffirmed the principle that marriage confers a special status on those who enter into it, giving rise to social, personal and legal consequences which could well be different from civil partnerships.

- (b) maintenance obligations:

Under the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap.188), the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319) and the common law, arrears under maintenance orders or maintenance orders made in other jurisdictions may be enforced in the Hong Kong SAR provided that certain conditions are met.

The definition of "maintenance order" under Cap.188 includes an order (including an affiliation order or order consequent upon an affiliation order) which provides for the periodical payment of sums of money towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain.

As mentioned in paragraph 7.b(1)(a) of Part A2 above, civil partnership is not recognised in the Hong Kong SAR. However, there is no reported case in Hong Kong so far in which registration of a foreign maintenance order in favour of a registered partner against the other partner under Cap.188 for enforcement in Hong Kong was considered.

(c) property:

The property of the registered partners is not considered as matrimonial property in the Hong Kong SAR. Any property transfer orders obtained in overseas jurisdictions may be recognised and enforced in accordance with the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319) or the common law.

(d) inheritance:

On the basis that a registered partner is not recognised as a spouse, according to the Intestates' Estates Ordinance (Cap.73), a registered partner cannot share in the estate of his or her partner's estate. However, the Inheritance (Provision for Family and Dependents) Ordinance (Cap.481) provides that any person who immediately before the death of the deceased was being maintained, either wholly or substantially, by the deceased may apply to the court for an order for financial provision from the deceased's estate. It should be noted that the court's power under Cap.481 may only be exercised if the deceased died domiciled in Hong Kong or had been ordinarily resident in Hong Kong at any time within the three years immediately prior to his death. Therefore, subject to the jurisdictional requirements being satisfied, if a registered partner can prove that he or she has been maintained by the deceased partner immediately before the deceased partner's death, he or she can still apply for financial provision from the deceased's estate.

(e) other(s):

Protection from domestic violence - on the basis that the registered partners have a cohabitation relationship as defined in the Domestic and Cohabitation Relationships Ordinance (Cap.189), same as paragraph 15.a(5) in Part B relating to "Unmarried Cohabitation"

(2) children, *e.g.*,
(a) parental status:

On the basis that registered partnership is not recognised in Hong Kong and registered partners are not married, the parental rights of the partners are governed by the Guardianship of Minors Ordinance (Cap.13) which allows the father of an illegitimate child to be granted certain parental rights by a court in respect of his child, and empowers the court to make orders of custody and maintenance of both legitimate and illegitimate minors (see answer to (b) below).

Generally speaking, where the woman giving birth to a child in Hong Kong is not married, the man who has been registered as the father of the child by an entry made after 19 June 1993 in any register of births kept by the Registrar of Births and Deaths will be regarded as the legal father of the child (section 5(1)(b) of the Parent and Child Ordinance) (Cap.429).

In the case of an illegitimate child, a putative father can be registered as the father of the child in the following circumstances:

i) at the joint request of the mother and the person stating himself to be the father of the child;

ii) at the request of the mother on production of a declaration made by the mother stating that that person is the father of the child; and a statutory declaration made by that person stating himself to be the father of the child;

iii) at the request of that person on production of a declaration by that person stating himself to be the father of the child; and a statutory declaration made by the mother stating that that person is the father of the child; or

iv) at the request of the mother or that person on production of a certified copy of a judicial order whereby the court has determined or declared him to be the father of the child and if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father. (section 12 of the Births and Deaths Registration Ordinance (Cap.174))

(b) parental responsibility:

In Hong Kong, the parental rights of unmarried couples are governed by the Guardianship of Minors Ordinance (Cap.13). As registered partners in a registered partnership are not married, under Cap. 13, the mother of the child has all the parental rights and authority regarding the child's custody and upbringing, while the father does not have automatic parental rights. To enjoy parental rights, the father must make an application for a court order under section 3 of Cap.13. (see also answer to (a) above)

(c) child support:

Although registered partnership is not recognised in Hong Kong, a parent may claim financial provision from the other parent for the maintenance of the child under the Guardianship of Minors Ordinance (Cap.13).

(d) adoption:

Since registered partnership is not recognised in Hong Kong as valid marriage, registered partners cannot apply for adoption as a married couple and they can only apply for adoption as single individuals.

For registered partners who have adopted a child overseas, section 17(1) of the Adoption Ordinance (Cap.290) provides that, where a person has been adopted in any place outside Hong Kong according to the law of that place, and the adoption satisfies the requirements specified in section 17(2), then the adoption shall have the same effect as an adoption order validly made in accordance with the provisions of Cap.290. In brief, the requirements are that the adoption was valid in that country, and that the effect of the adoption in that country was to give the adoptive parents greater rights than natural parents. An adoption under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993 is dealt with under Part 5 of Cap.290.

As mentioned, civil partnership is not recognised in Hong Kong as valid marriage. However, there is no reported case in Hong Kong so far concerning recognition of overseas adoption by registered partners (whether as a couple or by one of them) under section 17(1) of Cap.290.

(e) inheritance:

Although registered partnership is not recognised in Hong Kong as a legally valid marriage, a child of a person has same rights to intestate succession from the estate of a deceased parent as a child of married couples.

(f) assisted reproduction:

The Human Reproductive Technology Ordinance (Cap.561) only allows reproductive technology procedure to be provided to married couples. Since registered partnership is not recognised as valid marriage in Hong Kong, registered partners are not allowed to have access to these treatments or services in Hong Kong.

(g) surrogacy:

The Human Reproductive Technology Ordinance (Cap.561) only allows married couples to have access to non-commercial surrogacy. Since registered partnership is not recognised as valid marriage in Hong Kong, registered partners are not allowed to have access to these services in Hong Kong.

(h) other(s):

Nil.

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

(a) pensions, including social security benefits:

Registered partners are not recognised as married couples in Hong Kong. That said, the administration of social security benefits falls within the discretion of the Social Welfare Department. The overall objective of social security in Hong Kong is to provide for the basic and special needs of the members of the community who are in need of financial or material assistance -

(http://www.swd.gov.hk/en/index/site_pubsvc/page_socsecu/sub_introducti/).

(b) other(s):

On the basis that the registered partners are cohabitants, then a cohabitee is entitled to employees' compensation as a "member of the family" under the Employees' Compensation Ordinance (Cap.282) (see sections 3 and 6A). A cohabitee is also eligible for compensation under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap.360) (see sections 2, 16 and 17) and relief payment under the Employees Compensation Assistance Ordinance (Cap.365) (see sections 2 and 20A).

Further, unmarried cohabitants are treated as connected entities and associates of their cohabiting partner under the Companies Ordinance (Cap. 622) (see sections 484, 486, 666 and 667) for regulatory purposes.

(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?

N/A

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
- N/A
- (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):
- N/A
- (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
- N/A

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

Please insert text here

No

Please insert text here

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

N/A

No

N/A

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.

N/A

(2) a partnership registered in a foreign State.

N/A

- 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.

N/A

- (2) a partnership registered in a foreign State.

N/A

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.

N/A

- 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.*)

N/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.)

N/A

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.

Nil.

- 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.

As mentioned in the answer to question 7.b(1)(a) of Part A2 above, in the recent judgment *QT v Director of Immigration* [2016] 2 HKLRD 583, the court confirmed the lawfulness of the Director of Immigration's dependency policy under which the applicant's application for a visa to remain in Hong Kong as a dependant spouse of her same sex civil partner was rejected. The relationship was entered into by them in accordance with the laws of the United Kingdom.

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

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 domestic law attaches certain legal effects to cohabitation)

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 cohabitants 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):

In Hong Kong, apart from marriage, the only other form of union of a man and a woman recognised by law is concubinage. However, concubinage after 7 October 1971 will not be recognised in Hong Kong. Concubinage will only be recognised in Hong Kong before 7 October 1971 - see section 5 of the Marriage Reform Ordinance (Cap.178). On or after 7 October 1971, no man may take a concubine and no woman can acquire the status of a concubine. Therefore, concubinage after 7 October 1971 will not be recognised.

Unmarried cohabitants are not recognised as having the status of husband and wife and are treated as separate individuals subject to ordinary principles of contract, tort and equity.

- (2) maintenance obligations:

Unmarried cohabitants (not including a concubine before 7 October 1971) do not have any legal obligation to make maintenance payment to each other and no such claims could be raised against each other upon breakdown of their relationship.

- (3) property relations:

There is no legislation in Hong Kong providing for the division of property for unmarried couples (not including concubinage before 7 October 1971) upon the breakdown of their relationship.

(4) inheritance:

On the basis that an unmarried cohabitee is not recognised as a spouse, according to the Intestates' Estates Ordinance (Cap.73), he or she is not entitled to share in his or her partner's estate upon intestacy. However, the Inheritance (Provision for Family and Dependants) Ordinance (Cap.481) provides that any person who immediately before the death of the deceased was being maintained, either wholly or substantially, by the deceased may apply to the court for an order for financial provision from the deceased's estate. It should be noted that the court's power under Cap.481 may only be exercised if the deceased died domiciled in Hong Kong or had been ordinary resident in Hong Kong at any time within the three years immediately prior to his death. Therefore, subject to the jurisdictional requirements being satisfied, if an unmarried cohabitee can prove that he or she has been maintained by the deceased partner immediately before the deceased partner's death, he or she can still apply for financial provision from the deceased's estate.

(5) other(s):

Cohabitees are protected from violence in their relationship under the Domestic and Cohabitation Relationships Violence Ordinance (Cap.189). The applicant may seek injunctions to restrain the respondent from molesting the applicant and a child of the applicant or respondent or a child living with the applicant and to prohibit the respondent from entering or remaining in the applicant's residence.

b. children, *e.g.*,
(1) parental status:

In Hong Kong, the parental rights of unmarried couples are governed by the Guardianship of Minors Ordinance (Cap.13). For unmarried cohabitees, the mother of the child has all the parental rights and authority regarding the child's custody and upbringing, while the father does not have automatic parental rights. To enjoy parental rights, the father must make an application for a court order under section 3 of Cap.13.

Further, where the woman giving birth is not married, the man who has been registered as the father of the child by an entry made after 19 June 1993 in any register of births kept by the Registrar of Births and Deaths will be regarded as the father of the child (section 5(1)(b) of the Parent and Child Ordinance (Cap.429)).

In the case of an illegitimate child, a putative father can be registered as the father of the child in the following circumstances:

i) at the joint request of the mother and the person stating himself to be the father of the child;

ii) at the request of the mother on production of a declaration made by the mother stating that that person is the father of the child; and a statutory declaration made by that person stating himself to be the father of the child;

iii) at the request of that person on production of a declaration by that person stating himself to be the father of the child; and a statutory declaration made by the mother stating that that person is the father of the child; or

iv) at the request of the mother or that person on production of a certified copy of a judicial order whereby the court has determined or declared him to be the father of the child and if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father.

(section 12 of the Births and Deaths Registration Ordinance (Cap.174))

(2) parental responsibility:

As set out in the answer to (a) above, for unmarried cohabitees, the mother of the child has all the parental rights and authority regarding the child's custody and upbringing, while the father does not have automatic parental rights. To enjoy parental rights, the father must make an application for a Court Order under section 3 of the Guardianship of Minors Ordinance (Cap.13).

(3) child support:

Under the Guardianship of Minors Ordinance (Cap.13), an unmarried parent may claim financial provision from the other parent for the maintenance of the child.

(4) inheritance:

An illegitimate child has same rights to intestate succession from the estate of a deceased parent as a child of married couples.

(5) adoption:

Unmarried cohabitees in a cohabitation relationship cannot apply for adoption as a married couple and they can only apply for adoption as single individuals.

For unmarried cohabitees who have adopted a child overseas, section 17(1) of the Adoption Ordinance (Cap.290) provides that, where a person has been adopted in any place outside Hong Kong according to the law of that place, and the adoption satisfies the requirements specified in section 17(2), then the adoption shall have the same effect as an adoption order validly made in accordance with the provisions of Cap.290. In brief, the requirements are that the adoption was valid in that country, and that the effect of the adoption in that country was to give the adoptive parents greater rights than natural parents. An adoption under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993 is dealt with under Part 5 of Cap.290.

As mentioned, unmarried cohabitees are not recognised as married couples in Hong Kong. However, there is no reported case in Hong Kong so far concerning recognition of overseas adoption by cohabitees (whether as a couple or by one of them) under section 17(1) of Cap.290.

(6) assisted reproduction:

The Human Reproductive Technology Ordinance (Cap.561) only allows reproductive technology procedure to be provided to married couples. Unmarried cohabitees are not allowed to have access to these treatments or services in Hong Kong.

(7) surrogacy:

The Human Reproductive Technology Ordinance (Cap.561) only allows married couples to have access to non-commercial surrogacy. Unmarried cohabitees are not allowed to have access to these services in Hong Kong.

(8) other(s):

Nil.

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

(1) pensions, including social security benefits:

The administration of social security benefits falls within the discretion of the Social Welfare Department.

(2) other(s):

A cohabitee is entitled to employees' compensation as a "member of the family" under the Employees' Compensation Ordinance (Cap.282) (see sections 3 and 6A). A cohabitee is also eligible for compensation under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap.360) (see sections 2, 16 and 17) and relief payment under the Employees Compensation Assistance Ordinance (Cap.365) (see sections 2 and 20A).

Further, unmarried cohabitees are treated as connected entities and associates of their cohabiting partner under the Companies Ordinance (Cap.622) (see sections 484, 486, 666 and 667) for regulatory purposes.

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?
N/A
- 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.

N/A

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.

N/A

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.

Nil.

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.

Nil.

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?

There is no plan to recognise cohabiting relationships in the Hong Kong SAR.

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;

Not applicable

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

Not available

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

Not applicable/available

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

Not applicable

- 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 applicable
- f. any other relevant statistics:
Nil