

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 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".

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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 **PARAGUAY**  
applicable):

For follow-up purposes:

Name of contact person: **RUBÉN ORTÍZ**  
Name of Authority / Office: **INTERNATIONAL LAW ADVISER'S OFFICE OF THE  
MINISTRY OF FOREIGN AFFAIRS**  
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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?

##### 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.)

No, currently our State is not envisaging or studying a change in the existing partnership regime.

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.

The Constitution of Paraguay, article 51, establishes that: "The de facto union between one man and woman, without legal impediments to marriage, which satisfies the conditions of stability and uniqueness, produces similar effects to marriage, within the conditions established by law". Article 83 of Law 1/92 establishes that "The de facto union constituted between a man and a woman who voluntarily make life together, in a stable, public and singular, both having the minimum age for marriage and not being affected by diriment impediments will produce the same legal effect under this law".

- (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. Article 83 of Law 1/92, establishes that "The de facto union constituted between a man and a woman who voluntarily make life together, in a stable, public and singular way, both having the minimum age for marriage and not being affected by diriment impediments will produce the same legal effect under this law". Given that the requirements of the de facto union are the same as for marriage, it applies Article 17, Law 1/92 ("Can not marry: (...) b) who is bound by a previous marriage"), and Article 18, Law 1/92 ("Can not marry each other: 1) consanguineous in a matrimonial or extramarital straight line and collateral of the same class to the second degree; 2) the relatives by affinity in direct line; 3) the adopter and his descendants with the adoptee and his descendants. The adopted with the adopter's spouse or the spouse of the latter with the former's spouse. Adopted children of the same adoptive between each other and with the biological children of the adopter;

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

Yes. Article 83 of Law 1/92 stipulates that the man and the woman who constitute a de facto union must have the minimum age for marriage. According to Law 5419/15, the minimum age for marriage is 18 (eighteen) years, except for special cases (special dispensation from the age of sixteen to eighteen, with the consent of parents and/or guardians of both parties, or by the judge in the Juvenile Guardianship, in case of incapacity of both parents).

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

Yes. Constitution of Paraguay and Law 1/92 require that the partners mustn't have legal impediments to marriage. According to the provisions of Article 17, Law 1/92, can't get married "(...) 3) those who suffer from contagious and communicable chronic disease by inheritance; except marriage in extremis or for the benefit of the joint children; 4) those who suffer from chronic mental illness that deprives them of the use of reason, though it is on a temporary basis; and 5) the deaf-mute, blind-deaf and blind-mute

who can not express their will unequivocally.

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

Yes. Article 83 of Law 1/92 says that the man and woman who constitute a de facto union must voluntarily make life together. The procedure established in Article 86, Law 1/92, stipulates the possibility of a joint statement of both cohabitants to the Registrar of Civil Status or the Justice of the Peace of the respective jurisdiction, to register their union, or the possibility that one of them requests registration of marriage. After that the judge will summon the other cohabitant.

- (6) Please state any other requirements:

Article 86, Lay 1/92, stipulates that after 10 (ten) years of de facto union or cohabitation may the partners ask for the registration of the partnership.

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

No, currently our State is not envisaging or studying a change in the present requirements.

#### 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):

The registered de facto union, as stipulated in Constitution and the Law, produces similar effects to marriage.

In this regard, the Law 1/92 in Article 86 provides that the registration of a partnership makes it equivalent to a legal marriage.

- (b) maintenance obligations:

Article 90 provides that, if after the completed cohabitation and separation of property are made, one of the ex-cohabiting persons is left without resources and unable to procure to himself/herself, he/she may request maintenance to the other throughout the emergency.

Besides this situation, there is no otgher specific provision on maintenance obligations in registered partnerships. However, these obligations are equal to the maintenance obligations of a legal marriage.

- (c) property

Article 84 of Law 1/92 stipulates that if a partnership is public, singular and stable, with at least a duration of four years, it will be created between the cohabitants a community of property regime, which may be dissolved in life of both of them or by cause of death; in both cases it must be distributed among marital cohabitants or between the survivor and the heirs of the other, by halves.

Article 87 of Law 1/92 establishes that the common property of the

cohabitants that are acquired by either of them for life together, are affected to meeting the needs of the family and minor children. It is administered by any of them.

Regarding the own/personal goods, which are those they had before marriage or had been acquired during the partnership by their own title, they are under the management and disposition of its respective owner.

Furthermore, Article 88 of Law 1/92 states that the expenditure that each of the cohabitants makes for the benefit of the family as well as the obligations to that effect, enforces both of them and they both must pay with the common goods. If these were not enough, the payment will be done with the property of each of the cohabitants proportionally.

(d) inheritance:

Article 91 of Law 1/92 provides that if the partnership ends by death of one of the cohabitants, whenever it had lasted at least 4 (four) years, the survivor will receive half of the community of property, and the other half will be distributed among the children of the deceased, if any. If the deceased had own property, the surviving concubine will concur with the children, under equal conditions. The right of representation of the surviving cohabitant extends only to their descendants in the first degree.

Article 92 of Law 1/92 stipulates that if the deceased had no children but leaves ascendants, the surviving concubine will concur with them in the middle of the community of property, in equal part.

Article 93 of Law 1/92 establishes that if the deceased had no descendants or ascendants, the surviving cohabitant will receive all goods, consequently excluding collateral.

Article 94 of Law 1/92 provides that the surviving in de facto union that lasted at least 4 (four) years shall enjoy the same rights to pensions and allowances that were applied to the spouse.

(e) other(s):

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

(a) parental status:

With the registration of the partnership, the common children will be considered matrimonial children (Article 86 of Law 1/92).

(b) parental responsibility:

Article 87 of Law 1/92 establishes that the common property of the cohabitants that are acquired by either of them for life together, are affected to meeting the needs of the family and minor children. However, the parental responsibility is covered by other laws, especially by the Code of Childhood and Adolescence.

(c) child support:

Article 87 of Law 1/92 establishes that the common property of the cohabitants that are acquired by either of them for life together, are affected to meeting the needs of the family and minor children. However, the child support is regulated by other laws, especially by the Code of Childhood and Adolescence

(d) adoption:

Articles 10 and 11 of Law 1136 provides that in the adoption process, preference will be given in equal conditions to marriages, de facto unions and women. The de facto union must have 4 (four) years of cohabitation at least. According to Article 3 of the same law, the adoptive children have the same rights and obligations than biological children.

(e) inheritance:

Article 91 of Law 1/92 provides that if the partnership ends by death of one of the cohabitants, whenever it had lasted at least 4 (four) years, the survivor will receive half of the community of property, and the other half will be distributed among the

children of the deceased, if any. If the deceased had own property, the surviving concubine will concur with the children, under equal conditions. The right of representation of the surviving cohabitant extends only to their descendants in the first degree.

(f) assisted reproduction:

There is no specific provision on assisted reproduction in the legislation of Paraguay.

(g) surrogacy:

Article 91 of Law 1/92 states that the right of representation of the surviving cohabitant extends only to their descendants in the first degree.

(h) other(s):

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

(a) pensions, including social security benefits:

Article 94 of Law 1/92 provides that in case of death, the surviving in de facto union that lasted at least 4 (four) years shall enjoy the same rights to pensions and allowances that were applied to the spouse.

(b) other(s):

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

No, currently our State is not envisaging or studying a change in respect of these effects.

#### **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.)

There isn't a special procedure for annulment or dissolution of the partnership in our State. The Paraguayan Civil Procedure Code (Law 1337/88) stipulates in the Art 619 that the procedure related on dissolution and liquidation of the marital community shall apply in the case of de facto union that meets the requirements established by the Civil Code, prior and duly recognized by judgment. In that sense, the Law 1337/88 provides the procedure about dissolution of the marital community in the following articles:

"Art. 613 - Either spouse or both of compliance, may request, without expression of cause, the dissolution and liquidation of the marital community."

"Art. 614 - Presented the order, the judge, without further procedure:

a) will order the dissolution of the community;  
b) will provide the faction of inventory and appraisal of the property, if requested, proceeding in accordance with the provisions for succession upon death. The bed, clothes and personal belongings of the spouses and their children will not be included on the inventory;

c) will order the publication of banns, calling on all those who have credits or rights to claim against the community, so that at the deadline of thirty days they appear to bring an action under penalty of not being able to do it after that but against property owned by the debtor. Edicts be published for fifteen days in a major newspaper .

This resolution shall be notified to the other spouse in the manner provided in Article 133

"Art 615 - Opposition - Within six days term, the other spouse may oppose to the liquidation of all or certain goods, based on the fact that the liquidation is untimely or harmful. The judge may, in such case, delay, by setting a reasonable period of time, the liquidation of all or certain goods. The opposition is substantiated by the process of the incidents.

Art 616 - Presentation of creditors - Requests for credit recognition or rights that are made under the provisions of Article 614, paragraph c), shall be transferred to the spouses within six days. The opposition will force the creditor to promote appropriate action.

Art 617 - Precautionary measures . Administrator - The judge may order, by the request of a party, precautionary measures, and may appoint as provisional administrator to either spouse or to a third party. If precautionary measures are decreed, counter-measure will not be required.

Art 618 - Partition and adjudication - In the liquidation phase of the community, it will proceed to pay the debts and the partition and allocation of goods, which will be regulated, as appropriate, by the rules of the substantive law and, additionally, by the probate proceedings.

Art.620 - Attraction jurisdiction - The judgment on dissolution of the marital community will have jurisdiction attraction liability in respect of judgments already promoted or to be promoted against the community or against either spouse.

- 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, currently our State is not envisaging or studying a change regarding the annulment or dissolution of a registered partnership.

## 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)?  
As article 83 of Law 1/92 establishes that the de facto union requires a voluntarily "life together" made between a man and a woman, in a stable, public and singular way, both partners must have the same habitual residence.
    - No
  - (2) Neither of the partners are nationals of your State?
    - Yes
    - If yes, are there further requirements (e.g., regarding habitual residence)?  
Not expressly. There is no distinction between nationals and foreigners in terms of possibility of registering a partnership.
    - 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)?



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)?

The internal law governs a general formal requirement of registration in Paraguay: The procedure established in Article 86, Law 1/92, stipulates that after 10 (ten) years of de facto union or cohabitation may the partners ask for the registration of the partnership, by a joint statement of both of them to the Registrar of Civil Status or the Justice of the Peace of the respective jurisdiction or the possibility that one of them requests registration as marriage. In this last case, the judge will summon the other cohabitant and after hearing the arguments of both parties will decide shortly and summarily.

- (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)?

The substantive requirements for registration of de facto union in Paraguay are established in Article 83 of Law 1/92.

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

#### 7. For all States:

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

Yes

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

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

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

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

The validity of the de facto union registered abroad can be recognised by the procedure of the recognition of foreign judgments, if the registration has been made by a judgment in a State with a valid treaty of this subject with Paraguay.

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 validity of the de facto union registered abroad is recognised

by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(b) maintenance obligations:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(c) property:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(d) inheritance:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(e) other(s):

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

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

(a) parental status:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(b) parental responsibility:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(c) child support:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(d) adoption:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(e) inheritance:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(f) assisted reproduction:

There is no specific provision on assisted reproduction in the legislation of Paraguay.

(g) surrogacy:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(h) other(s):

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

(a) pensions, including social security benefits:

If the validity of the de facto union registered abroad is recognised by the procedure of the recognition of foreign judgments, through a valid treaty, that partnership has the same effects than a partnership registered in Paraguay.

(b) other(s):

(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?

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

(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):
- (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
- 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 the annulment or dissolution of a de facto union registered abroad can be recognised by the procedure of the recognition of foreign judgments, if the annulment or dissolution has been made by a judgment in a State with a valid treaty of this subject with Paraguay.

No

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

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

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

Yes

The validity of the annulment or dissolution of a de facto union registered abroad can be recognised by the procedure of the recognition of foreign judgments, if the annulment or dissolution has been made by a judgment in a State with a valid treaty of this subject with Paraguay.

No

**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.

Law 1/92, partially amending the Civil Code of Paraguay, provides in this respect as follows:

Article 86.- After ten years of union or concubinage under the expressed conditions may cohabitants claim by a joint statement to the Registrar of Civil Status or the Justice of the Peace of the respective jurisdiction, to register their union, which shall be equated to a legal marriage, including hereditary effects and children will be considered marital. If one of the cohabitants requests registration of marriage, the judge will summon the other cohabitant and after hearing the arguments of both parties will decide shortly and summarily.

(2) a partnership registered in a foreign State.

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.

There isn't a special procedure for annulment or dissolution of the partnership in our State. The Paraguayan Civil Procedure Code (Law 1337/88) stipulates in the Art 619 that the procedure related on dissolution and liquidation of the marital community shall apply in the case of de facto union that meets the requirements established by the Civil Code, prior and duly recognized by judgment.

(2) a partnership registered in a foreign State.

**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.

The Paraguayan Civil Code provides in Chapter VI - Dissolution of Marriage, as

follows:

Article 163 (as amended by Law No. 45/91): The valid marriage celebrated in the Republic is dissolved by the death of one spouse or by divorce. Also it dissolved in case of marriage held by the spouse of the declared as presumably death.

Article 164: A marriage celebrated abroad will not be dissolved in Paraguay, if the spouses are domiciled in it, but as provided by this Code.

Article 165: The dissolution of a marriage abroad held in the Republic, will not enable any of the spouses to remarry in this, but according to the rules of this Code.

Article 166: The law of conjugal domicile governs the separation of spouses , the dissolution of marriage and the effects of the invalidity thereof.

- 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.*)

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, currently our State is not envisaging or studying a change in relation to the conflict of law rules and other private international law aspects of registered partnerships.

**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.
- 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.

**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

In the Title X, Paraguayan Civil Code establishes the legal provisions regarding the "de facto union or concubinage", whose articles are amended mostly by Law 1/92 and

other laws.

No

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

Yes

Please insert text here

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):

- (2) maintenance obligations:

Article 90 provides that, if after the completed cohabitation and separation of property are made, one of the ex-cohabiting persons is left without resources and unable to procure to himself/herself, he/she may request maintenance to the other throughout the emergency.

Besides this situation, there is no other specific provision on maintenance obligations in unmarried cohabitations.

- (3) property relations:

Article 84 of Law 1/92 stipulates that in the partnership made public, singular and stable, which had at least a duration of four years, it will be created between the cohabitants a community of property regime, which may be dissolved in life of both of them or by cause of death; in both cases it must be distributed among marital cohabitants or between the survivor and the heirs of the other, by halves.

Article 87 of Law 1/92 establishes that the common property of the cohabitants that are acquired by either of them for life together, are affected to meeting the needs of the family and minor children. It is administered by any of them, either.

Regarding the own/personal goods, which are those they had before marriage or had been acquired during the partnership by their own title, they are under the management and disposition of its respective owner.

Furthermore, Article 88 of Law 1/92 states that the expenditure that each of the cohabitants makes for the benefit of the family as well as the obligations to that effect, enforces both of them and they both must pay with the common goods. If these were not enough, the payment will be done with the property of each of the cohabitants proportionally.

- (4) inheritance:

Article 91 of Law 1/92 provides that if the partnership ends by death of one of the cohabitants, whenever it had lasted at least 4 (four) years, the survivor will receive half of the community of property, and the other half will be distributed among the children of the deceased, if any. If the deceased had own property, the surviving concubine will concur with the children, under equal conditions. The right of representation of the surviving cohabitant extends only to their descendants in the first degree.

Article 92 of Law 1/92 stipulates that if the deceased had no children but leaves ascendants, the surviving concubine will concur with them in the middle of the community of property, in equal part.

Article 93 of Law 1/92 establishes that if the deceased had no descendants or ascendants, the surviving cohabitant will receive all goods, consequently excluding collateral.

Article 94 of Law 1/92 provides that the surviving in de facto union that lasted at least 4 (four) years shall enjoy the same rights to pensions and allowances that were applied to the spouse.

(5) other(s):

b. children, *e.g.*,

(1) parental status:

(2) parental responsibility:

Article 87 of Law 1/92 establishes that the common property of the cohabitants that are acquired by either of them for life together, are affected to meeting the needs of the family and minor children. However, the parental responsibility is covered by other laws, especially by the Code of Childhood and Adolescence.

(3) child support:

Article 87 of Law 1/92 establishes that the common property of the cohabitants that are acquired by either of them for life together, are affected to meeting the needs of the family and minor children. However, the child support is regulated by other laws, especially by the Code of Childhood and Adolescence

(4) inheritance:

Article 91 of Law 1/92 provides that if the partnership ends by death of one of the cohabitants, whenever it had lasted at least 4 (four) years, the survivor will receive half of the community of property, and the other half will be distributed among the children of the deceased, if any. If the deceased had own property, the surviving concubine will concur with the children, under equal conditions. The right of representation of the surviving cohabitant extends only to their descendants in the first degree.

(5) adoption:

Articles 10 and 11 of Law 1136 provides that in the adoption process, preference will be given in equal conditions to marriages, de facto unions and women. The de facto union must have 4 (four) years of cohabitation at least. According to Article 3 of the same law, the adoptive children have the same rights and obligations than biological children. Please insert text here

(6) assisted reproduction:

There is no specific provision on assisted reproduction in the legislation of Paraguay.

(7) surrogacy:

Article 91 of Law 1/92 states that the right of representation of the surviving cohabitant extends only to their descendants in the first degree.

(8) other(s):

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

(1) pensions, including social security benefits:

Article 94 of Law 1/92 provides that in case of death, the surviving in de



facto union that lasted at least 4 (four) years shall enjoy the same rights to pensions and allowances that were applied to the spouse. Please insert text here

(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)?

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.

### 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.

### 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, currently our State is not developing a modification or introduction of a legal regime of cohabitation.

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