

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.

Identification

Your contact information:

Name of Member or non-Member State
(or territorial unit, where applicable): Viet Nam

For follow-up purposes:

Name of contact person:

Name of Authority / Office: Division on Private International Law, Department
of International Law, Ministry of Justice

Telephone number: (+84) 4 62739445

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The information provided are general in nature. If any case occurs, involved parties should seek advice from legal consultants

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

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

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

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

Please insert text here

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

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

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

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

Please insert text here

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

Please insert text here

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

Please insert text here

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

Please insert text here

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

Please insert text here

- (6) Please state any other requirements:

Please insert text here

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

Please insert text here

Effects:

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

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

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

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

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

Please insert text here

- (b) maintenance obligations:

Please insert text here

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

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

Annulment or Dissolution:

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

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

Does your State have a special procedure for **annulment** and / or **dissolution** of the partnership? Please describe the judicial or administrative process. (If your answer depends on the relevant type of registered partnership (*e.g.*, same-sex or opposite-sex), please answer for each of the different types.)

Please insert text here

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

Please insert text here

A.2. PRIVATE INTERNATIONAL LAW

Formation (in situations with an international element):

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

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

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

Yes

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

Please insert text here

No

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

Yes

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

Please insert text here

No

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

Yes

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

Please insert text here

No

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

Yes

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

Please insert text here

No

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

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

Please insert text here

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

Please insert text here

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

7. For all States:

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

Yes

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

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

[Please insert text here](#)

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

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

[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):
[Please insert text here](#)
 - (b) maintenance obligations:
[Please insert text here](#)
 - (c) property:
[Please insert text here](#)
 - (d) inheritance:
[Please insert text here](#)
 - (e) other(s):
[Please insert text here](#)
- (2) children, *e.g.*,
 - (a) parental status:
[Please insert text here](#)
 - (b) parental responsibility:
[Please insert text here](#)
 - (c) child support:
[Please insert text here](#)
 - (d) adoption:
[Please insert text here](#)
 - (e) inheritance:
[Please insert text here](#)
 - (f) assisted reproduction:
[Please insert text here](#)
 - (g) surrogacy:
[Please insert text here](#)
 - (h) other(s):
[Please insert text here](#)

- (3) other financial matters, *e.g.*,
- (a) pensions, including social security benefits:
[Please insert text here](#)
- (b) other(s):
[Please insert text here](#)
- (4) Would the registered partnership constitute an impediment to the conclusion or formation by one of the partners of a marriage or a new partnership with a third person?
- Yes
 No
- (5) Would the surname declared by the partners upon the registration of their partnership be recognised in your State?
- Yes
 No

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

[Please insert text here](#)

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

- (1) The registered partnership must be valid in accordance with the internal law or conflict of law rules of the State in which registration took place.
- Yes
 No
- (2) There is a civil status document proving the (existence and) validity of the registered partnership.
- Yes
 No
- (3) Neither of the partners is married or united in a partnership with a third person.
- Yes
 No
- (4) The partners are not related by marriage, adoption or blood. (In the latter case, what is the accepted degree of blood relationship?)
- Yes
 No
[Please insert text here](#)
- (5) Both partners had attained a minimum age when they formed the partnership.
- Yes
 No
- (6) Both partners had the mental capacity to consent to the partnership.
- Yes
 No

- (7) Both partners had consented freely to the partnership.
 Yes
 No
- (8) The effects of the partnership under the applicable law must be similar to those of a marriage:
 Yes
 No
- (9) The effects of the partnership granted in the State where the partnership was registered should not exceed the effects granted for registered partnerships under your State.
 Yes
 No
 Not applicable (My State does not provide for registration of a partnership.)
- (10) Any other requirements for the recognition of the (existence and) validity of the registered partnership (please explain):
[Please insert text here](#)
- (11) May or must recognition of the (existence or) validity of a registered partnership or its effects be refused if this recognition would be manifestly contrary to public policy? If yes, under which circumstances?
 Yes
[Please insert text here](#)
 No
- d. Would your reply to the previous questions be different when a question regarding the validity or effects of a registered partnership arises as a **preliminary issue** in the context of another question of private international law before the authorities of your State (*e.g.*, about maintenance or inheritance)?
[Please insert text here](#)

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

8. *For all States:*

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

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

Yes

[Please insert text here](#)

No

[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

Please insert text here

No

Please insert text here

Jurisdiction:

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

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

(1) a partnership registered in your State.

Please insert text here

(2) a partnership registered in a foreign State.

Please insert text here

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

(1) a partnership registered in your State.

Please insert text here

(2) a partnership registered in a foreign State.

Please insert text here

Applicable law (conflict of laws):

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

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

Please insert text here

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

Please insert text here

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

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

Please insert text here

Legal and practical problems:13. *For all States:*

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

Firstly, given that the partnerships, which are registered abroad, the legal effects of registered partnership cannot take place in Viet Nam. This may cause inconvenience in daily life.

Secondly, registered partners cannot enjoy the same rights that husband, wife and their children legitimately have in Viet Nam, for example: statutory inheritance right regardless of testamentary will (for husband/ wife, parents and immature children or mature children having no ability to work) in accordance with Article 644 Civil Code 2015.

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

At least, they cannot initiate a case to vacate or cease their partnerships in another country. Their children might not be recognized as the common children but children of only one partner, so the other loses their parental status.

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

Cohabitation established before the 3rd January 1987- the date of entry into force of Law on Marriage and Family 1986- is recognized as registered marriage. Article 44 (2) of Decree No. 123/2015/ND-CP dated the 15th November 2015 guiding on some provisions and implementation measures of Law on Civil Status provides that "In the case that a man and a woman cohabited with each other like husband and wife before the 3rd January 1987 but have not registered marriage are encouraged and facilitated to do so. Marriage is recognized since the date of starting cohabitation. Competent authority and process to register conforms with Articles 17 and 18 Law on Civil Status."

Letter a paragraph 4 Article 2 Joint circular 01/2016/TTLT-TANDTC-VKSNDTC-BTP dated the 6th January 2016 guiding some provisions of Law on Marriage and Law, the cohabitants in this case are considered married people if their partner is still alive or they have not divorced.

For other cohabitation, there are some provisions in Law on Marriage and Family 2014 to deal with legal effects of this relationship, as follows:

"Article 14. Settlement of consequences of men and women cohabiting as husband and wife without marriage registration

1. A man and woman eligible for getting married under this Law who cohabit as husband and wife without registering their marriage have no rights and obligations between husband and wife. Rights and obligations toward their children, property, obligations and contracts between the partners must comply with Articles 15 and 16 of this Law.

2. For a man and woman who cohabit as husband and wife under Clause 1 of this Article and later register their marriage in accordance with law, their marriage relation shall be established from the time of marriage registration.

Article 15. Rights and obligations of parents and children for men and women cohabiting as husband and wife without marriage registration

Rights and obligations between a man and woman cohabiting as husband and wife and their children must comply this Law's provisions on rights and obligations of parents and children.

Article 16. Settlement of property relations and obligations and contracts between men and women cohabiting as husband and wife without marriage registration

1. Property relations, obligations and contracts between a man and woman cohabiting as husband and wife without marriage registration shall be settled under the partners' agreement. In case there is no agreement, they shall be settled in accordance with the Civil Code and other relevant laws.

2. The settlement of property relations must ensure lawful rights and interests of women and children. Housework and other related work to maintain the cohabitation shall be regarded as income-generating labor."

Paragraph 2 Article 8 Law on Marriage and Family 2014 stipulated that " the State shall not recognize marriage between persons of the same sex". Thus, under no circumstances, same sex cohabitation can be recognized legal effect as registered marriage. Before the entry into force of Law on Marriage and Family 2014, same sex marriage was banned in Viet Nam.

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 cohabitees have under the law of your State? Are there any requirements which have to be fulfilled before such rights or obligations arise?

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

- a. relationship between unmarried cohabitees, *e.g.*,

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

They have no rights and obligations between husband and wife (Article 14 Law on Marriage and Family 2014)

- (2) maintenance obligations:

They have no rights and obligations between husband and wife (Article 14 Law on Marriage and Family 2014)

- (3) property relations:

Property relations will be determined and settled by their agreement. If there is no such property relations agreement between cohabitees, it will be settled by general provisions of Civil Code on common and individual property and other relevant regulations.

- (4) inheritance:

They have no rights and obligations between husband and wife (Article 14 Law on Marriage and Family 2014). It means that they cannot be statutory heir of each other. They can only be the heir by testamentary will.

(5) other(s):

b. children, *e.g.*,

(1) parental status:

It is not affected by the marriage status of parents if they are a couple of a man and a woman. It means the couple have the same parental status as registered couple. However, the status of children and parental status of the couple are uncertain if children are born under assisted reproduction and their parents are same-sex couple. Because children's parents have no marriage registration, so they have to fulfill the procedure of recognition of maternity or paternity in accordance with Articles 24, 25, 43, 44 Law on Civil Status, Article 19 Decree No. 123/2015/ND-CP, Articles 11, 12, 13 Circular 15/2015/TT-BTP dated 16/11/2015. According to the abovementioned provisions. The recognition of maternity or paternity is unnecessary if (i) the parents have written agreements about their parental status or (ii) if the mother left and the father registers the birth of the child, in this case the father bears the responsibility for his information submission.

(2) parental responsibility:

It is not affected by the marriage status of parents if they are a couple of a man and a woman. It means the couple have the same parental responsibility (Article 15 Law on Marriage and Family 2014). However, the parental responsibility are uncertain if children are born under assisted reproduction and their parents are same-sex couple.

(3) child support:

It is not affected by the marriage status of parents if they are a couple of a man and a woman. It means the couple have the same responsibility relating to child support (Article 15 Law on Marriage and Family 2014). However, the child support of both cohabittees are uncertain if children are born under assisted reproduction and their parents are same-sex couple (eventhough children can be recognized as children of one side).

(4) inheritance:

It is not affected by the marriage status of parents if they are a couple of a man and a woman (Article 15 Law on Marriage and Family 2014). It means children have the right to inherit their parents' property. However, the status of children and parental status of the couple are uncertain if children are born under assisted reproduction and their parents are same-sex couple.

(5) adoption:

Paragraph 3 Article 8 of Law on Adoption 2010 provides that a person can only become adoptee of one single person or two persons who are husband and wife. Thus, both two unmarried cohabittees cannot adopt one child. In the case that the cohabittees are recognized as husband and wife, they still have the right to adopt one child together. However, it is always recommended to have a registered marriage to keep legal certainty.

(6) assisted reproduction:

Decree no. 10/2015/ND-CP dated 28/01/2015 providing for in-vitro fertilization and conditions for surrogacy for humanitarian purposes (amended by Decree 98/2016/ND-CP dated 01/7/2016) sets forth that an infertile couple or a single woman can apply for assisted reproduction. Thus, if cohabittees want to be assisted in reproduction, the woman can do that as a single woman.

(7) surrogacy:

Pursuant to Article 95 Law on Marriage and Family 2014 and Decree No. 10/2015/ND-CP dated 28/01/2015 providing for in- vitro fertilization and conditions for surrogacy for humanitarian purposes (amended by Decree 98/2016/ND-CP dated 01/7/2016), only infertile couples can ask for surrogacy for humanitarian purposes. Therefore, an unregistered couple cannot use this method to give birth to their babies.

(8) other(s):

Please insert text here

- c. other financial matters, *e.g.*,
- (1) pensions, including social security benefits:
No provision regarding this issue exists. Each cohabitee receives his or her own pensions and social security benefits.
 - (2) other(s):
Please insert text here

B.2. PRIVATE INTERNATIONAL LAW

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

16. *For all States:*

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

- a. Would the **validity** of the legal regime for unmarried cohabitation of State X be recognised in your State?
 Yes
 No
- b. Would any of the **effects** which the unmarried cohabitation has under the laws of State X be recognised in your State?
 Yes
 No
- c. If the answer to a. or b., is "yes", what are the requirements (*substantive and / or formal* requirements) for the recognition of the legal regime or of its effects?

Article 130 Law on Marriage and Family provides that "In case of receiving requests for settlement of the application of the agreed matrimonial property regime; or relations of men and women co-living as husband and wife without marriage registration involving foreign elements, competent Vietnamese agencies shall apply the provisions of this Law and other relevant Vietnamese laws to settle these requests." As stated before, the recognition of unregistered cohabitation in Viet Nam depends on the time of establishment of this relationship, so it is hard to say in which manner the provision of recognition and legal effects of this domestic relationship in Viet Nam is applied for foreign-related cases. However, if the unregistered couple has a decision/ award from court or competent agencies of foreign country affirming that the couple are husband and wife, the relationship between them may be recognized through the procedure of recognition and enforcement of foreign decisions in accordance with Civil Procedure Code and/or Law on Civil Status.

- 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.

Based on which legal effects that cohabitantes want to recognize in Viet Nam, different authorities are identified to solve the case:

Law on Marriage and Family 2014

Article 123. Competence to settle cases and matters of marriage and family involving foreign elements

1. The competence to register civil status related to marriage and family relations involving foreign elements must comply with the law on civil status.

2. The competence to settle cases and matters of marriage and family involving foreign elements at court must comply with the Civil Procedure Code.

3. District-level People's Courts of localities where Vietnamese citizens reside are competent to cancel illegal marriages, settle divorce cases, disputes over the rights and obligations of husband and wife, parents and children, recognition of parents, children, child adoption and guardianship between Vietnamese citizens residing in border areas and citizens of neighboring countries living in areas bordering on Vietnam in accordance with this Law and other Vietnamese laws.

Article 128. Identification of parents and children involving foreign elements

1. Vietnamese civil status registration agencies are competent to settle the identification of parents and children without any disputes between Vietnamese citizens and foreigners or between Vietnamese citizens at least one of whom settles abroad, or between foreigners at least one of whom permanently resides in Vietnam in accordance with the law on civil status.

2. Competent Vietnamese courts shall settle the identification of parents and children involving foreign elements in the cases prescribed in Clause 2 of Article 88, Articles 89, Article 90, Clauses 1 and 5 of Article 97, Clauses 3 and 5 of Article 98, and Article 99 of this Law; and other cases involving disputes.

Article 129. Support obligation involving foreign elements

1. The support obligation must comply with the law of the country where the requester for support resides. In case the requester for support has no place of residence in Vietnam, the law of the country of his/her citizenship shall apply.

2. Agencies competent to settle written requests for support of the persons prescribed in Clause 1 of this Article are agencies of the country of residence of the requester.

Civil Procedure Code 2015 (Articles 469 and 470)

The Vietnamese courts are competent to deal with foreign related cases when one of parties of the case has their domicile/residence in Viet Nam or when the relationship between parties was established, altered or ceased in Viet Nam, or the object of relationship is a property in Viet Nam or activities to be conducted in Viet Nam.

Law on Civil Status 2014 stipulates that Civil status registration agencies (district level) are competent to undertake birth registration, parentage registration, guardianship registration and other civil status registration when the case involving foreign elements, except for cases relating to neighbour countries bordering on Viet Nam (the authority belongs to commune level).

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.

Only Article 130 Law on Marriage and Family mentioned the applicable law on cohabitation. Other effect relating to this relationship will be settled by other provisions on applicable law in Part V Civil Code 2015 and Chapter VIII Law on Marriage and Family 2014, as follows:

Law on Marriage and Family 2014

Chapter VIII

MARRIAGE AND FAMILY RELATIONS INVOLVING FOREIGN ELEMENTS

Article 121. Protection of lawful rights and interests of parties to marriage and family relations involving foreign elements

1. In the Socialist Republic of Vietnam, marriage and family relations involving foreign elements shall be respected and protected in accordance with Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.

2. In their marriage and family relations with Vietnamese citizens, unless otherwise provided by Vietnamese law, foreigners in Vietnam have the same rights and obligations like Vietnamese citizens.

3. The Socialist Republic of Vietnam State shall protect lawful rights and interests of Vietnamese citizens abroad in their marriage and family relations in accordance with Vietnamese law, the host country's law and international laws and practices.

4. The Government shall detail the settlement of marriage and family relations involving foreign elements in order to protect lawful rights and interests of the parties and guarantee the implementation of Clause 2, Article 5 of this Law.

Article 122. Application of laws to marriage and family relations involving foreign elements

1. Unless otherwise provided by this Law, the legal provisions of the Socialist Republic of Vietnam concerning marriage and family are applicable to marriage and family relations involving foreign elements.

In case a treaty to which the Socialist Republic of Vietnam is a contracting party contains provisions different from those of this Law, the provisions of such treaty prevail.

2. In case this Law and other legal documents of Vietnam refer to the application of a foreign law, such foreign law shall apply, provided such application does not contravene the fundamental principles laid down in Article 2 of this Law.

In case a foreign law refers back to the Vietnamese law, Vietnam's marriage and family law shall apply.

3. In case a treaty to which the Socialist Republic of Vietnam is a contracting party refers to the application of a foreign law, such foreign law shall apply.

Article 123. Competence to settle cases and matters of marriage and family involving foreign elements

1. The competence to register civil status related to marriage and family relations involving foreign elements must comply with the law on civil status.

2. The competence to settle cases and matters of marriage and family involving foreign elements at court must comply with the Civil Procedure Code.

3. District-level People's Courts of localities where Vietnamese citizens reside are competent to cancel illegal marriages, settle divorce cases, disputes over the rights and obligations of husband and wife, parents and children, recognition of parents, children, child adoption and guardianship between Vietnamese citizens residing in border areas and citizens of neighboring countries living in areas bordering on Vietnam in accordance with this Law and other Vietnamese laws.

Article 124. Consular legalization of papers and documents on marriage and family

Papers established, granted or certified by competent foreign agencies for use in the settlement of cases and matters of marriage and family shall be consularly legalized, except cases eligible for exemption from consular legalization under treaties to which the Socialist Republic of Vietnam is a contracting party or on the principle of reciprocity.

Article 125. Recognition and writing of judgments and decisions of foreign courts and competent foreign agencies on marriage and family

1. The recognition of judgments and decisions on marriage and family of foreign courts with request for enforcement in Vietnam must comply with the Civil Procedure Code.

2. The Government shall prescribe the writing in civil status registers of matters of marriage and family according to judgments and decisions of foreign courts without request for enforcement in Vietnam or without request for non-recognition in Vietnam; and decisions on marriage and family of other competent foreign agencies.

Article 126. Marriage involving foreign elements

1. For marriages between Vietnamese citizens and foreigners, each party shall comply with his/her country's law on marriage conditions; if their marriage is conducted at a competent Vietnamese state agency, the foreigner shall also comply with this Law's provisions on marriage conditions.

2. Marriages between foreigners permanently residing in Vietnam at competent Vietnamese agencies must comply with this Law's provisions on marriage conditions.

Article 127. Divorce involving foreign elements

1. Divorce between a Vietnamese citizen and a foreigner or between two foreigners permanently residing in Vietnam shall be settled at a competent Vietnamese agency in accordance with this Law.

2. In case a partner being a Vietnamese citizen does not permanently reside in Vietnam at the time of request for divorce, the divorce shall be settled in accordance with the law of the country where the husband and wife permanently co-reside; if they do not have a place of permanent co-residence, the Vietnamese law shall apply.

3. The settlement of a divorced couple's immovables in a foreign country must comply with the law of the country where such immovables are located.

Article 128. Identification of parents and children involving foreign elements

1. Vietnamese civil status registration agencies are competent to settle the identification of parents and children without any disputes between Vietnamese citizens and foreigners or between Vietnamese citizens at least one of whom settles abroad, or between foreigners at least of one of whom permanently resides in Vietnam in accordance with the law on civil status.

2. Competent Vietnamese courts shall settle the identification of parents and children involving foreign elements in the cases prescribed in Clause 2 of Article 88, Articles 89, Article 90, Clauses 1 and 5 of Article 97, Clauses 3 and 5 of Article 98, and Article 99 of this Law; and other cases involving disputes.

Article 129. Support obligation involving foreign elements

1. The support obligation must comply with the law of the country where the requester for support resides. In case the requester for support has no place of residence in Vietnam, the law of the country of his/her citizenship shall apply.

2. Agencies competent to settle written requests for support of the persons prescribed in Clause 1 of this Article are agencies of the country of residence of the requester.

Article 130. Application of the agreed matrimonial property regime; settlement of consequences of the co-living of men and women as husband and wife without marriage registration involving foreign elements

In case of receiving requests for settlement of the application of the agreed matrimonial property regime; or relations of men and women co-living as husband and wife without marriage registration involving foreign elements, competent Vietnamese agencies shall apply the provisions of this Law and other relevant Vietnamese laws to settle these requests.

Part V Civil Code 2015

Article 678

1. Establishment, exercise, modification and termination of the ownership rights and property- related rights shall be determined in accordance with the law of the country in which the property is situated, except for the second paragraph of this Article.

2. Ownership rights and property- related rights with respect to movable in transportation is determined in accordance with the law of the country of destination, unless otherwise agreed.

Article 680 Succession

1. Succession shall be determined in compliance with the law of the country which the deceased person has nationality at the time right before his death.

2. Exercising the right of inheritance to immovable shall be determined in compliance with the law of the country in which the immovable is situated.

Article 686 Testamentary will

1. The capacity to establish, modify or terminate testamentary will shall be determined in compliance with the law of the country which the deceased person has nationality at the moment the testament was established, modified or terminated.

2. The form of testament shall be determined in compliance with the law of the country in which the testamentary will is made. It is also recognized in Viet Nam if it complies with laws of one of the following countries:

a) The country which the deceased is habitually resident at the moment when the testamentary will is made or when the deceased dies;

b) The country which the deceased has nationality when the testamentary is made or when the deceased dies;

c) The country in which the immovable is situated if the estate is an immovable.

Article 682 Guardianship

Guardianship shall be determined in compliance with the law of the country where the person under the guardianship has his domicile/residence.

Article 683

1. The parties in contract relation may agree to choose the applicable law to contract, except for situations in paragraphs 4,5 and 6 of this Article. In the case that the parties has no agreement to choose applicable law, the law of the country which has the closest relationship to the contract shall be applied.

...

7. The form of contract shall be determined in compliance with the applicable law to the contract. In the case that the form of the contract is inconsistent with the form of the applicable law in accordance to the first paragraph of this Article, but complies with the form of contract in accordance with the law of the country in which the contract is concluded or Vietnamese law, the form of contract is recognized in Viet Nam.

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.

Firstly, because unmarried cohabitation where there are international elements involved is recognized in Viet Nam in very limited situation, consequently, its legal effects are uncertain in Viet Nam. This will cause inconvenience in daily life.

Secondly, if not being recognized, unmarried couple cannot enjoy some rights that husband, wife and their children legitimately have in Viet Nam such as: statutory inheritance right regardless of testamentary will (for husband/ wife, parents and immature children or mature children having no ability to work) in accordance with Article 644 Civil Code 2015, personal income tax immunity when transfer properties between husband and wife in accordance with Article 4 Law on personal income tax.

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

At least, they cannot initiate a case to vacate or cease their relationship established in another country. Their children might not be recognized as the common children but children of only one cohabitee if the other does not agree on parentage or there is no evidence to prove the relationship between them.

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?

Until now, there is no foreseen development in the near future. However, there are some positive signals due to achievements of Law on Marriage and Family 2014 comparing to Law on Marriage and Family 2000, which abolishes prohibition of same-sex marriage set forth in Law on Marriage and Family 2000 and supplements 3 provisions dealing with unmarried cohabitation (Art. 14, 15, 16) and 1 provision dealing with applicable law to unmarried cohabitation with foreign elements (Art.130).

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;
No statistical data available
- b. the (estimated) number of couples who are cohabiting without being married in your State and any trend in this regard:

No statistical data available

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

No statistical data available

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

No statistical data available

- 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:

No statistical data available

- f. any other relevant statistics:

Please insert text here