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Güterrechtliche Wirkungen eingetragener Partnerschaften

Güterrechtliche Wirkungen eingetragener Partnerschaften

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Property consequences of registered partnerships - Czechia

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

No. Czech legislation recognises only one form of registered partnership: that of the permanent association of two people of the same sex entered into in a manner defined by law.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

The property regime of registered partners is not subject to specific legal treatment. Registered partnerships do not give rise to joint property.

3 How can partners arrange their property regime? What are the formal requirements in this case?

The property regime of registered partners is not subject to specific legal treatment. Their property regime is subject to general rules on ownership, co-ownership and liabilities, irrespective of the fact they are living in a registered partnership.

4 Are there restrictions on the freedom to arrange a property regime?

No, with the exception of the fact that registered partnerships may not give rise to joint property.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

The end of a registered partnership has no effect on the property regime of the former registered partners.

6 What are the effects of death on the property consequences of the registered partnership?

A registered partner is the statutory first- and second-category heir of the deceased. In other respects the death of one of the registered partners has no effect on the property regime of the other.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

The property regime of registered partners is not subject to specific legal treatment. In the event of disputes concerning assets and liabilities, the court has the power to act.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

The property regime of registered partners is not subject to specific legal treatment. Their property regime is subject to general rules on ownership, co-ownership and liabilities, irrespective of the fact they are living in a registered partnership.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

The property regime of registered partners is not subject to specific legal treatment. If the former registered partners have joint ownership of property, or have joint liabilities, standard legal provisions on joint ownership and liabilities apply.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

Legal proceedings establishing or transferring a right in rem to immovable assets, or proceedings amending or revoking such rights, must be in written form. If the transfer involves ownership of immovable assets that are entered in a public register, the change in ownership takes effect by means of an entry in that register.

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Property consequences of registered partnerships - Germany

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

Since the law introducing the right of same-sex persons to marry (*Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts*) came into force on 1 October 2017, it is no longer possible to enter into registered partnerships in Germany. Same-sex couples can now enter into marriage in the same way as opposite-sex couples. Partnerships already registered can be converted into marriages. However, there is no obligation to do this; existing registered partnerships can continue in the same form as before.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of “registered partnership” does it apply?

Under the Law on Registered Partnerships (*Gesetz über die Eingetragene Lebenspartnerschaft*), same-sex couples were able to enter into registered partnerships in Germany from August 2001 to September 2017 inclusive. The legal consequences of a registered partnership were (and still are) largely modelled on the legal consequences of marriage.

3 How can partners arrange their property regime? What are the formal requirements in this case?

Registered partners are subject to the property regime of community of accrued gains (*Zugewinnngemeinschaft*) unless they agree otherwise by means of a registered partnership contract. The provisions on the statutory property regime for marriages apply mutatis mutandis to registered partnerships (Section 6 of the Law on Registered Partnerships). A different property regime (separation of property - *Gütertrennung* - or community of property - *Gütergemeinschaft*) may be established by means of the registered partnership contract (Section 7 of the Law on Registered Partnerships).

4 Are there restrictions on the freedom to arrange a property regime?

The information above concerning property regimes for marriages apply mutatis mutandis to registered partnerships.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

If the registered partners are separated, one of the registered partners can claim maintenance from the other in proportion to the living conditions, earning power and financial circumstances of both registered partners. The provisions on separation maintenance apply mutatis mutandis (Section 12 of the Law on Registered Partnerships). As regards maintenance after the end of the registered partnership, the provisions on post-marital maintenance and pension equalisation (*Versorgungsausgleich*) apply mutatis mutandis (Sections 16 and 20 of the Law on Registered Partnerships).

6 What are the effects of death on the property consequences of the registered partnership?

The statutory right of inheritance of a registered partner is equivalent to that of a spouse (Section 10 of the Law on Registered Partnerships).

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

A Family Court (*Familiengericht*) has the jurisdiction to hear cases concerning the property consequences of registered partnerships. Such cases constitute registered partnership matters, and the provisions governing divorce proceedings apply.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

A person in a registered partnership is typically liable only for his or her own debts and only with his or her own assets, which is also the case under matrimonial property law. This excludes transactions for the reasonable coverage of the family's everyday needs (Section 8(2) of the Law on Registered Partnerships in conjunction with Section 1357 of the Civil Code). The remarks concerning possible restrictions on the right of disposal apply mutatis mutandis.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

The family home and household goods can be divided during separation (Sections 13 and 14 of the Law on Registered Partnerships) or after dissolution of the registered partnership (Section 17 of the Law on Registered Partnerships in conjunction with Sections 1568a and b of the Civil Code).

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

If the partners choose community of property (*Gütergemeinschaft*) as their property regime, they must submit the notarial registered partnership contract to the land registry office and apply for rectification of the land register. In all other cases, that is, if the partners choose a property regime other than community of property, there is no need for land register rectification.

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Property consequences of registered partnerships - Spain

1 Are there different forms of “registered partnerships” in this Member State? Explain the differences between the different forms?

Yes.

There is no civil-law regulation of non-marital partnerships (*parejas de hecho*) at state level and as a result most Autonomous Communities have adopted their own – either civil-law or purely administrative – rules governing the establishment of a non-marital partnership, its legal framework, its effects, and the ways and the consequences of ending it. This situation is coupled with the coexistence of different regional civil law systems (*derechos forales*) in Spain alongside general civil law.

Alongside marriage and unregulated partnerships, each Autonomous Community accords different legal recognition to non-marital partnerships. In this regard, these regional differences range from legal recognition based simply on a minimum period of cohabitation or cohabitation with common offspring, to a requirement to register the non-marital partnership or to register it for administrative purposes. There are even four Autonomous Communities (Balearic Islands, Extremadura, Basque Country and Galicia) that have a register used to constitute the partnership or in which registration is mandatory.

It should be pointed out that administrative matters are excluded from the scope of regulation, since this factsheet includes a number of references to purely administrative rules regarding non-marital partnerships and the registering of those partnerships made by certain Autonomous Communities, which otherwise do not have constitutional competence in the field of civil law.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of “registered partnership” does it apply?

The various sets of rules that exist do not contain specific provisions regarding finances or assets with respect to property purchased while the partners are in the non-marital partnership. The rules that apply to marital property do not apply to non-marital partnerships not even by analogy, meaning that, unless the couple in a non-marital partnership has made specific arrangements in an agreement (*convenio*), the relevant provisions will be those set out in the Civil Code (*Código civil*) (or in the regional codes (*códigos forales*)) for situations of common or joint ownership (*condominios* or *comunidades de bienes*) (392 et seq. of the Civil Code as regards general civil law) in the event the property belongs jointly (*en común*) to both members of the couple.

3 How can partners arrange their property regime? What are the formal requirements in this case?

The parties can make their own arrangements regarding their finances and property. To that end, the majority of regional rules have a specific provision regarding the agreements that the parties may enter into. Most laws require such agreements to be in writing, although in some regions verbal agreements are allowed (Balearic Islands and Canary Islands).

For written agreements, the general rule is that public or private documents drawn up for that purpose are acceptable, and the different regional rules also allow the parties to make provision for financial compensation in the event that the relationship ends and there is a financial imbalance between the parties. In some regions, the agreement must be formalised by a notary. This is the case in Aragon, Cantabria, Catalonia, Extremadura, Galicia and Madrid.

4 Are there restrictions on the freedom to arrange a property regime?

Yes, there are restrictions on the freedom of contract. The scope of this restriction varies under the different regional rules. Generally speaking, any agreements that are contrary to mandatory laws or which fail to give each partner equal rights are considered null and void, as are those that are seriously detrimental to one of the partners. Some laws also specifically provide that agreements which have a purely personal subject-matter or which affect the privacy of the cohabitants are invalid. In addition, agreements must not harm third parties.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

The consequences of dissolving a non-marital partnership will depend primarily on any relevant agreements that the parties may have entered into. In some regions, the couple may have been able to make provision for financial compensation in the event of a future break-up where there was a financial imbalance between the partners. In any event, as regards joint property, the general civil and procedural rules will apply to its dissolution and liquidation. Regions such as Catalonia and Aragon require a court to approve financial compensation for one partner's work in the household or work in the financial and professional interests of the other member of the couple.

6 What are the effects of death on the property consequences of the registered partnership?

Some Autonomous Communities allow the surviving partner to inherit from the deceased partner in the same way as a married couple. Furthermore, some Autonomous Communities recognise the right to inherit the shared household effects, to continue to use the shared residence for one year or to take over the rental contract for the residence.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

Judicial authorities have the power to determine the consequences of the separation with regard to property. In any event, no specific power exists by virtue of the existence of the non-marital partnership, as there does in the case of matrimonial property regimes (Articles 769 and 807 of the Code of Civil Procedure). Consequently, since it is a judicial power, distribution is governed by the general rules (Articles 50 et seq. of the Civil Code).

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

Generally speaking, the various regions have specific provisions in place regarding effects on third parties, in addition to the fact that some regions stipulate that non-marital partnerships must not undermine the rights of third parties. It is only in a few Autonomous Communities that both members of a couple are jointly and severally liable vis-à-vis third parties with respect to certain costs (as is the case in Andalusia).

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

No specific procedural rules are in place at national level or in the Autonomous Communities regarding the dissolution and liquidation of property belonging to couples in a non-marital partnership. In general, there will be a matrimonial joint property regime (undivided ownership by both partners) governed by Article 392 et seq. of the Civil Code, without prejudice to the provisions of the various civil law systems existing in Spain, and therefore liquidation will be in accordance with the general rules governing any undivided joint property (Article 400 of the Civil Code).

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

Registration of immovable property requires execution of a public instrument before a notary.

The registration procedure will depend on the provisions laid down in civil law and must be carried out in accordance with those provisions. If a partnership is registered and recognised in the administrative sphere only, without there being any consequences in civil law, the couple will be considered to be in a situation of ordinary co-ownership for registration purposes. In any event, the registration principles that apply to public or authentic documents will need to be observed.

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Property consequences of registered partnerships - France

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

In France, there is only one type of civil partnership: The Civil Solidarity Pact (*pacte civil de solidarité*), or PACS. It is defined in Article 515-1 of the Civil Code (*Code civil*) as 'an agreement entered into by two natural persons of full age, of different sexes or of the same sex, to organise their life in common'.

Registered partnerships have property consequences between partners and in relation to third parties. These are less wide-ranging than those of a matrimonial property regime and make allowance for the wishes of the partners.

These property relationships are governed by a set of legal rules concerning powers, property ownership and the rights and obligations of partners during the PACS.

Partners are otherwise subject to a form of mandatory primary regime, regardless of the property regime chosen. In this regard, Article 515-4 of the Civil Code provides that partners commit themselves to cohabitation, as well as to material aid and mutual assistance. In addition, partners are in principle held jointly and severally liable to third parties for debts incurred by one of them for daily needs.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

Under French law, PACS partners can choose between two property regimes.

Firstly, the ordinary law regime (in the absence of a specific agreement), i.e. separation of property together with a presumption of ownership in common in the absence of proof to the contrary. Thus, each partner continues to administer, enjoy and freely dispose of their own assets and each remains solely liable for personal debts incurred before or during the pact (Article 515-5 of the Civil Code). Only if it is proved that the asset is not the property of one of the partners will it be deemed to be owned by them jointly, half each.

Secondly, partners may opt for an agreed regime of joint ownership of after-acquired property. Assets acquired together or separately in the course of the PACS are deemed to be owned by them jointly, half each (Article 515-5-1 of the Civil Code). However, certain assets specified in Article 515-5-2 of the Civil Code remain the exclusive property of each partner, for example monies received by each after the signature of the PACS and not used to acquire property, assets created and their ancillaries, personal assets, assets or portions of assets acquired with monies belonging to a partner before the registration of the initial or amending agreement, assets or portions of assets acquired with monies received by gift or inheritance and, finally, shares of assets acquired in a sale by auction of property owned in common by one of the partners in an undivided estate or from a gift.

For the record, the PACS is the only form of civil partnership in France.

3 How can partners arrange their property regime? What are the formal requirements in this case?

Partners may conclude their PACS agreement before a registrar (*officier de l'état civil*) or before a notary (*notaire*).

Article 515-3 of the Civil Code provides 'that persons entering into a civil solidarity pact shall make a joint declaration to the registrar for the municipality in which they are establishing joint residence, or, where there is a serious impediment to their establishing such residence, before the registrar for the municipality in which one of the partners is resident'. On that occasion the partners present the agreement they have signed to the registrar.

The PACS agreement may also be concluded by notarial act. The notary drawing up the instrument then obtains the joint declaration, registers the pact and arranges the publication formalities (fifth paragraph of Article 515-3 of the Civil Code).

Partners may opt for a joint ownership of after-acquired property arrangement as defined in Article 515-5-1 of the Civil Code. Otherwise they will be governed by the statutory separation of property regime provided for in Article 515-5 of the Civil Code.

In the course of a PACS the partners might decide to amend or change the property regime in an amending agreement, which must be published in the same way as the original pact. This is to be handed over or sent to the registrar or notary who received the original document for registration (sixth paragraph of Article 515-3 of the Civil Code).

4 Are there restrictions on the freedom to arrange a property regime?

Unless otherwise stated in the agreement, the property regime for partners in a PACS is the separation of property regime. However, partners may expressly decide on the joint ownership of after-acquired property arrangement defined in Article 515-5-1 of the Civil Code. 'Partners may opt in the original agreement or an amending agreement for joint ownership of assets they acquire, together or separately, from the time the agreements are registered. Those assets are then deemed to be jointly owned half each, without recourse by one partner against the other for an unequal contribution'.

Whichever regime is chosen, partners are also subject to a mandatory primary regime defining their rights and obligations to each other and to third parties. In this regard, Article 515-4 of the Civil Code provides that partners commit themselves to cohabitation, as well as to material aid and mutual assistance. In addition, partners are in principle held jointly and severally liable to third parties for debts incurred by one of them for daily needs.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

Article 515-7 of the Civil Code provides that the PACS is dissolved by the death of one of the partners or the marriage of the partners or one partner. In that case, the dissolution takes effect on the date of the event. It is also dissolved by joint declaration by the partners or a unilateral decision by one partner.

In the relationship between the partners, dissolution of the PACS takes effect on its date of registration. It is effective against third parties from the day on which the publication formalities have been completed.

Dissolution or annulment of the partnership entails liquidation of the property regime.

According to the tenth paragraph of Article 515-7 of the Civil Code, the partners are responsible for liquidating the rights and obligations arising from the PACS. A judge will only rule on the property consequences of the separation if they fail to reach an agreement.

Each partner recovers his or her personal property.

Jointly owned property is shared half and half, unless different contractual arrangements are made. In particular, there is nothing to prevent former partners continuing to own property in common.

Debts between partners are to be settled.

The provisions on preferential allocation by partition (Articles 831, 831-2, 832-3 and 832-4 of the Civil Code) are applicable between partners.

6 What are the effects of death on the property consequences of the registered partnership?

The death of one of the partners has the effect of dissolving the registered partnership on the day of death and entails liquidation of the property regime in accordance with the same arrangements as above.

Under the French law of inheritance, the surviving partner is not a legal heir. However, he or she may be appointed an heir in a will.

The survivor may claim a right to temporary possession for one year of the property actually occupied as his or her main residence on the date of death (as provided for in the first and second paragraphs of Article 763).

However, that right is not public policy and the deceased person may deprive the survivor of it in a will.

The survivor may also apply for preferential allocation of the family home when the deceased has made express provision for that in his or her will (second paragraph of Article 515-6 of the Civil Code).

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

The family court judge (*juge aux affaires familiales*, JAF) has jurisdiction for co-ownership between partners in a PACS or cohabitants (Law No 2009-506 of 12 May 2009 on simplification of the law (*loi n° 2009-506 du 12 mai 2009 sur la simplification du droit*), Decree No 2009-1591 of 17 December 2009 on proceedings before the family court judge relating to matrimonial property regimes and ownership in common (*décret n° 2009-1591 du 17 décembre 2009 relatif à la procédure devant le juge aux affaires familiales en matière de régimes matrimoniaux et d'indivisions*), Circular CIV/10/10 of 16 June 2010 on the powers of the family court judge in respect of liquidation (*circulaire CIV/10/10 du 16 juin 2010 sur les compétences du juge aux affaires familiales en matière de liquidation*)).

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

According to the second paragraph of Article 515-4 of the Civil Code, which is applicable regardless of the property regime chosen by the partners, partners are held jointly and severally liable to third parties for debts incurred by one of them for daily needs. However, such joint and several liability shall not apply to expenditure that is manifestly excessive. Nor shall it apply if such debts were not incurred with the consent of both partners for hire purchase or loans, unless these are for small sums necessary for daily needs and the cumulative amount of the sums, in the case of multiple loans, is not manifestly excessive in the light of the household's lifestyle.

According to the third paragraph of Article 515-5 of the Civil Code, the partner who individually owns a movable asset shall be deemed, in respect of a third party acting in good faith, to have the power to carry out any act of administration, enjoyment or disposal in respect of that asset.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State

According to the tenth paragraph of Article 515-7 of the Civil Code, on dissolution of a PACS the partners are responsible for liquidating the rights and obligations arising from the PACS. A judge will only rule on the property consequences of the separation if they fail to reach an agreement.

The partition may be by amicable settlement or through the courts. With an amicable settlement, a partition agreement is drawn up between the partners.

This will be in the form of a notarial act if it relates to property requiring land registration. Partition will be arranged through the courts if the parties fail to reach agreement on the liquidation or distribution of property. The judge will rule on applications for continued joint possession or preferential allocation (Article 831 of the Civil Code).

If the partners were subject to the ordinary law property regime, i.e. separation of property, all assets that the partners were able to prove were owned by one or other partner will revert to their owner. Similarly, a partner's personal debts will remain personal. On the other hand, assets that have not been proved to be the property of one or other partner are deemed to be jointly owned, half each.

If the partners had opted for an agreed regime of joint ownership of after-acquired property, the jointly owned assets are deemed to belong to each partner, half each. Accordingly, the jointly owned assets will be divided half and half between the partners, subject to the assets that remain the property of each (see above and Article 515-5-2 of the Civil Code).

The provisions on preferential allocation by partition (Articles 831, 831-2, 832-3 and 832-4 of the Civil Code) are applicable between partners.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

In the case of partition by amicable settlement of property subject to land registration (in other words immovable property), the deed of liquidation and partition must be received in notarised form.

Article 710-1 of the Civil Code stipulates that, 'in order to give rise to land registration formalities, any act or right must be based on a notarised act received by a notary practising in France, a court decision or an authentic instrument from an administrative authority'.

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Property consequences of registered partnerships - Luxembourg

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

There is only one registered partnership regime (*régime de partenariat enregistré*) in Luxembourg, introduced by the Law of 9 July 2004 on the legal effects of certain partnerships (*loi du 9 juillet 2004 relative aux effets légaux de certains partenariats*) (hereinafter referred to as 'the Law'). The Law was subsequently supplemented.

This Law defines partnership as a cohabitation between two people of different genders or of the same gender who live together as a couple and have made a declaration to the civil registrar (*officier de l'état civil*) of the municipality in which they have their joint residence (*domicile*) or home.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

Pursuant to Article 10 of the Law, *separation of property* constitutes the ordinary regime, in the absence of a specific agreement. Each of the partners therefore retains the (movable and immovable) property that they can prove they own, the benefits and income from their property and the proceeds of their work. A presumption of co-ownership applies to property in respect of which neither partner can prove ownership.

The partners may derogate from the legal regime by specifying the property consequences of the partnership in an agreement to be registered.

Furthermore, the Law provides for a primary legal regime that applies to all partnerships. The provision of mutual material assistance (*apport mutuel d'une aide matérielle*) in proportion to the partners' respective means is therefore essential. Furthermore, each partner remains solely liable for personal debts incurred prior to or during the partnership. Finally, the partners may not individually dispose of the rights by which the joint home is secured nor of its furnishings.

Partners enjoy the same social protection as married persons under the Law, e.g. they are entitled to a survivor's pension and benefit from the same tax relief as married persons, including as regards registration fees, inheritance tax and direct taxes.

The legal regime applies to the one form of registered partnership available in Luxembourg.

3 How can partners arrange their property regime? What are the formal requirements in this case?

The partners may decide not to conclude any property regime agreement whatsoever. In this case, the legal regime will apply to their partnership.

Alternatively, they may conclude an agreement in which they specify the property consequences of their partnership.

The existence of such an agreement must be declared to the civil registrar **when the partnership is declared**. At the request of the civil registrar, the agreement is then transmitted to the Public Prosecutor's Office (*Parquet Général*) within three working days, where it will be registered and kept in the civil register (*Répertoire Civil*). Registration in the civil register renders the declaration of partnership enforceable against third parties.

Partners are free to amend or change their property regime by means of an **amending agreement** (*convention modificative*), to be submitted to the civil registrar who received the initial instrument. The Public Prosecutor's Office must be notified of each subsequent amendment by means of the same formalities.

4 Are there restrictions on the freedom to arrange a property regime?

The freedom to arrange a registered partnership is subject to limitations. Every partnership is subject to a primary legal regime relating to certain property consequences from which there can be no derogation by agreement.

The partners must therefore provide each other with material assistance. Both partners must contribute to the expenses of the partnership in proportion to their respective means. The partners are jointly and severally liable to third parties for debts incurred for the purpose of providing for the day-to-day needs of their household or for the joint home, even after the partnership has ended. However, joint and several liability (*solidarité*) does not apply to expenditure that is manifestly excessive, taking into account the partners' lifestyle, the usefulness or otherwise of the transaction or the good or bad faith of the contracting third party. In the case of purchases on credit, joint and several liability only applies if both partners consent to the purchase.

Moreover, as regards the joint home and its furnishings, the partners may not dispose of them independently. A partner who has not consented to the disposal may request its annulment (*annulation*).

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

A registered partnership automatically ends in the event of the **marriage** or **death** of one of the partners, with effect from the date of the event.

A registered partnership may also be ended by a **joint declaration** (*déclaration conjointe*) or a **unilateral declaration** (*déclaration unilatérale*).

Dissolution (*dissolution*) takes effect on the date of its registration, as regards the relationship between the partners. It is enforceable against third parties from the time of their registration in the civil register.

The dissolution of a registered partnership entails the liquidation (*liquidation*) of the property regime. Unless otherwise contractually agreed, each partner recovers their personal property and the jointly owned property is shared equally between them.

However, the former partners may continue to jointly own property (*rester en indivision*) if they so wish.

The end of the partnership entails the cessation of mutual material assistance, unless otherwise agreed by the partners or decided by the court.

The family court may exceptionally award maintenance (*aliments*) to one of the partners or order urgent and interim measures (*mesures urgentes et provisoires*) justified by the end of the registered partnership.

Luxembourg law does not recognise the annulment of registered partnerships.

6 What are the effects of death on the property consequences of the registered partnership?

The death of one of the partners results in the dissolution and liquidation of the partnership.

Partners are not legal heirs to each other, unless they are named in a will drawn up according to the ordinary rules.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

Article 1007-1 of the New Code of Civil Procedure provides that the family court hears applications concerning contributions to the expenses of the registered partnership, in addition to providing for interim measures in the event of the termination of the registered partnership.

For all other matters, ordinary law applies.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

Both partners are held jointly and severally liable, even after the end of the partnership, to third parties for debts incurred by them or by one of them during the partnership to provide for the day-to-day needs of their household and for expenses relating to the joint home.

However, joint and several liability does not apply to expenditure that is manifestly excessive, taking into account the partners' lifestyle, the usefulness or otherwise of the transaction or the good or bad faith of the contracting third party. Nor does it apply to obligations arising from instalment purchases, unless they are concluded with the consent of both partners.

Subject to the aforementioned rules, each partner remains solely liable for personal debts incurred prior to or during the partnership.

Moreover, as regards the joint home and its furnishings, the partners may not dispose of them independently. A partner who has not consented to the disposal may request that it be set aside.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

Subject to the ordinary property regime, each partner recovers their own property and personal debts. The joint property will be divided either by amicable arrangement (*à l'amiable*) or by the courts, if the parties fail to reach an agreement.

The ordinary provisions relating to joint ownership and division are applicable (Article 815 et seq. of the Civil Code).

For all matters relating to the maintenance of joint property and preferential allocation, the sale by auction of joint property and the effects of division, reference is made to the provisions on 'Inheritance' (Articles 718 et seq. of the Civil Code).

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

In any event, any *inter vivos* instruments (*actes entre vifs*), whether free of charge or for payment, transferring rights in rem in immovable property (*droits réels immobiliers*) other than preferential rights (*privilèges*) or mortgages (*hypothèques*), will be transcribed at the office of the mortgage registry (*Bureau de la Conservation des Hypothèques*) of the jurisdiction in which the property is located.

The provisions of the amended Law of 25 September 1905 on the transcription of rights in rem in immovable property (*loi modifiée du 25 septembre 1905 sur la transcription des droits réels immobiliers*) are applicable.

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Property consequences of registered partnerships - Malta

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

The form of "civil partnership" provided for in Maltese law is that of the "civil union" according to the Civil Unions Act - Chapter 530 of the Laws of Malta. The registration of the partnership as a civil union is permissible between two persons of the same sex or of different sex. Once registered, the civil union has the corresponding effects and consequences in law of civil marriage. Partners in a civil union contracted prior to the coming into force of the Marriage Act Other laws (Amendment) Act, 2017 may, within 5 years from 1 September 2017, convert their civil union into marriage. Where a civil union is converted into marriage, the civil union shall end upon conversion, and the resulting marriage shall be deemed to have been in existence from the date when the civil union was formed.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

Since a civil union and a civil marriage produce the same legal effects, even property regimes are the same. The Maltese State allows parties who would like to enter into a civil union under Maltese law the freedom to choose the regime that will regulate their property. However, the principal matrimonial property regime in Malta is that of the Community of Acquests.

This regime operates by default by law in every union, unless the parties who have already contracted or are about to contract a union choose to have their matrimonial property regulated by another regime that does not go against the spirit of Maltese law. This other regime must be set up by means of a public deed.

Other types of matrimonial property regimes which exist in Malta and which also apply to civil unions are the Separation of Estates and the Community of Residue under Separate Administration.

The Community of Acquests as a statutory matrimonial property regime in Malta, provides that everything that is acquired by the parties after the partnership, forms part of the Community of Acquests and therefore belongs to both of them in equal shares. Maltese law specifically provides what shall form part of the Community of Acquests, and excludes donations, inheritances and the paraphernal property of each party.

The Separation of Estates, as another matrimonial property regime that the parties can choose instead of the Community of Acquests, provides that each party has the right to have absolute control over and administer property acquired before and after the union, without requiring the consent of the other party.

The Community of Residue under Separate Administration as another matrimonial property regime that the parties can choose instead of the Community of Acquests, provides that each party to the partnership has the right to acquire, maintain and administer property bought in his or her own name as exclusive owner of the said property. However, under this regime, the parties are not precluded from acquiring property together, which property would have to be administered jointly by the parties.

3 How can partners arrange their property regime? What are the formal requirements in this case?

Under the **Community of Acquests regime**, the general rule is that both parties are obliged to regulate and administer their matrimonial property jointly. However, with regard to this particular regime, Maltese law distinguishes between ordinary administration, that is those acts which can be carried out by one of the partners in the partnership on his or her own, and extraordinary administration, that is acts that are carried out by the parties jointly. Maltese law lists only acts of extraordinary administration, therefore that which is not expressly mentioned by law, must be considered to constitute an act of ordinary administration. Therefore a formal requirement that must always be complied with for the good operation of the regime of the Community of Acquests, is the consent of both parties to the partnership. In cases where the consent of the parties for a deed of transfer or of creation of a real or personal right over movable and immovable property was not given, the deed may be annulled on the request of the party withholding its consent.

Under the **Separation of Estates regime**, the general rule is that each party in the partnership has the right to regulate and administer the property in his or her name without the consent of the other party.

Under the **Community of Residue under Separate Administration regime**, the general rule is that when one of the parties to the partnership chooses to acquire alone, he or she may do so without first having to obtain the consent of the other party, and the former will have the right to regulate and administer

said acquisition on his or her own. Whereas when both parties to the partnership make a joint purchase, both would have given their consent and therefore both have the right to regulate and administer said purchase jointly.

4 Are there restrictions on the freedom to arrange a property regime?

Under the **Community of Acquests regime**, the partners are obliged to act jointly. Therefore they are not free to regulate and administer alone, except for those acts of ordinary administration that do not require the consent of both parties.

On the other hand, under the **Separation of Estates regime**, each partner is free to do as he or she sees fit with the property in his or her name without any interference from the other party.

Under the **Community of Residue under Separate Administration regime**, where one of the parties to the agreement makes a purchase without the consent of the other, the acquiring party is free to regulate the regime without restrictions. However, if the parties acquire property jointly, they can only act jointly where the joint purchase is concerned.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

Under the **Community of Acquests regime**, the law clearly provides that this regime becomes effective from the date of marriage and ends upon death of one of the spouses or upon the dissolution of the marriage. The law also provides that in case of personal separation of the spouses, the legal division of the estate may be requested.

Under the **Community of Residue under Separate Administration regime**, the law stipulates that it terminates, amongst others, upon the dissolution of the marriage and the legal separation of the spouses.

However, under the **Separation of Estates regime**, where the spouses have ended their marriage, separated or annulled their marriage, they continue to regulate and administer the assets acquired in their own name.

This also applies in case of registered partnerships.

Therefore the effects of divorce, separation or annulment on matrimonial property are such that all that was acquired during the marriage is divided between the parties either by way of an amicable settlement or via a judgement of the competent Court.

6 What are the effects of death on the property consequences of the registered partnership?

Upon death of one of the parties, Maltese succession law will only apply if Malta has jurisdiction and the main factor to be taken into consideration is whether the party died testate or intestate.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

The competent authority to decide on matters regarding matrimonial property regimes is the Civil Court (Family Section).

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

Once the matrimonial property regime takes effect over the partnership, it gives rise to a legal relationship between the partners and third parties, where applicable. Third parties have the right to exercise their legal rights against both partners jointly or separately, as the case may be, depending on with whom they entered into a contract or incurred a debt.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

The procedure for division of property normally takes place at the stage where the parties have initiated separation or divorce proceedings. Before having recourse to the competent Court, these types of procedures require the parties to start mediation proceedings, where the mediator is tasked with trying to reconcile the parties,

If the mediation is successful, the partners may separate in an amicable way where they agree on their reciprocal rights, on their rights over the children and concerning the division of matrimonial property, via a public deed that is scrutinised by the competent Court which makes sure that the rights of the parties are balanced. After being approved by the competent Court this contract is notarised and registered for legal effect for all intents and purposes, including with regard to third parties,

If the mediation is not successful and the parties do not come to an amicable agreement, they must initiate the appropriate proceedings before the competent Court, where they plead for the dissolution of the matrimonial property regime so that the matrimonial estate may be divided between them. Once the judgement of the competent Court becomes *res judicata*, said judgement is registered for legal effect, for all intents and purposes at law, including with regard to third parties.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

For immovable property to be registered in Malta, the Notary Public who drew up the contract presents a note of notarisation to the Public Registry for this purpose. As soon as the note of notarisation is entered, the immovable property is registered and the contract is legally binding on the parties to the contract as well as *vis-à-vis* third parties.

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Property consequences of registered partnerships - Austria

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

In addition to the institution of marriage, in Austria there is also the institution of registered partnership under the Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*, EPG).

In its judgment of 4 December 2017, the Constitutional Court abolished the differing regulations for opposite- and same-sex couples. Since 1 January 2019, same-sex couples can enter into a marriage in Austria. Similarly, opposite-sex couples can now enter into a registered partnership (previously reserved for same-sex couples).

The rules governing registered partnerships differ only slightly from the rules for marriages, e.g. as regards the minimum age (18 years; 'certificate of no impediment to marriage' not required from the age of 16) and as regards dissolution (permitted once the partners have been separated for three years; for marriages, a six-year period is provided for in exceptional cases).

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

As is the case for marriage, the default property regime for registered partnerships is separation of property (*Gütertrennung*) (Section 1217(2) in conjunction with Section 1233 of the Austrian Civil Code, *Allgemeines Bürgerliches Gesetzbuch*). Each registered partner retains the property he or she brought into the partnership and is the sole owner of the property he or she acquires. Each registered partner is also the sole creditor to his or her debtors and the sole debtor to his or her creditors.

3 How can partners arrange their property regime? What are the formal requirements in this case?

Partners in a registered partnership can regulate their property regime by means of a registered partnership agreement under the same conditions as married couples. The parties can choose a different property regime from the default one by means of a contractual agreement. Such agreements require a notarial deed in order to be valid (Section 1 of the Notarial Deed Act, *Notariatsaktsgesetz*).

4 Are there restrictions on the freedom to arrange a property regime?

In terms of substance, the rules are the same as those governing marriage.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

In terms of substance, the rules are the same as those governing marriage (Sections 24 et seq. of the Registered Partnership Act).

6 What are the effects of death on the property consequences of the registered partnership?

In terms of substance, the rules are the same as those governing marriage (Sections 24 et seq. of the Registered Partnership Act).

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

In terms of substance, the rules are the same as those governing marriage.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

In terms of substance, the rules are the same as those governing marriage.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

In terms of substance, the rules are the same as those governing marriage.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

An application for entry of the property right in the land register must be filed with the District Court in whose jurisdiction the immovable property to be registered is located.

The application must be filed in writing and signed by the applicant. In principle, the signature need not be certified unless a registration declaration (*Aufsandungserklärung*) is included in the application.

A public or private document containing the legal grounds for acquisition of the property (e.g. a purchase contract) and bearing the certified signatures of the parties must accompany the application. In addition to the exact details of the property, private documents must include a registration declaration (*Aufsandungserklärung*).

The registration declaration is an explicit declaration of consent to registration (entry in the land register) by the person whose right is being restricted, encumbered, nullified or transferred to another person (the seller, in the case of a purchase contract). The registration declaration must be certified by a court or notary and signed by the contracting party. The registration declaration can also be submitted as part of the application for entry of the property right in the land register. In this case, the signatures on the application must be certified by a court or notary.

A tax compliance certificate (*steuerrechtliche Unbedenklichkeitsbescheinigung*) in line with Section 160 of the Federal Tax Code (*Bundesabgabeordnung*) must also accompany the application. The certificate constitutes confirmation from the Tax Authority that there are no obstacles to entry of the property right in the land register in terms of taxes due.

If the application is drafted by a lawyer or a notary, it must be filed electronically. In this case, the enclosures must be placed in an electronic document archive. The tax compliance certificate from the Tax Authority can then be replaced by a self-assessment declaration drafted by the lawyer or notary.

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Property consequences of registered partnerships - Portugal

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

The Portuguese legal system does not make provision for registered partnerships.

However, Law No 7/2001, as updated by Law No 71/2018 of 31 December 2018, lays down certain measures to protect de facto partnerships. These measures are set out in Article 3 of the above Law and they include the right to use the family home and to receive a pension if one of the partners in a non-marital partnership dies. In addition, Article 2020 of the Portuguese Civil Code (*Código Civil*) makes provision for a maintenance allowance to be paid from the assets of the deceased partner if one of the partners dies.

Up-to-date versions of the legislation referred to above can be viewed in Portuguese on the following websites:

 [Law No 7/2001](#)

 [Portuguese Civil Code](#)

Notice: This factsheet contains general information; it is not exhaustive and has no binding effect on the Contact Point, the European Judicial Network in Civil and Commercial Matters, the courts or any other user. The most up-to-date version of the applicable law must always be consulted. This information is not a substitute for taking legal advice from a legal professional.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

The answer to this question is determined by the answer to question 1.

3 How can partners arrange their property regime? What are the formal requirements in this case?

The answer to this question is determined by the answer to question 1.

4 Are there restrictions on the freedom to arrange a property regime?

The answer to this question is determined by the answer to question 1.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

The answer to this question is determined by the answer to question 1.

6 What are the effects of death on the property consequences of the registered partnership?

The answer to this question is determined by the answer to question 1.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

The answer to this question is determined by the answer to question 1.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

The answer to this question is determined by the answer to question 1.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

The answer to this question is determined by the answer to question 1.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

The answer to this question is determined by the answer to question 1.

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Property consequences of registered partnerships - Slovenia

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

Registered partnerships do not form part of the Slovenian legal system.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

/

3 How can partners arrange their property regime? What are the formal requirements in this case?

/

4 Are there restrictions on the freedom to arrange a property regime?

/

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

/

6 What are the effects of death on the property consequences of the registered partnership?

/

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

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8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

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9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

/

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

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Property consequences of registered partnerships - Finland

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

In Finland there is only one type of registered partnership. People in same-sex relationships were able to register their partnerships until 2017.

The amendments to the Marriage Act and the Act on Registered Partnerships came into force in early March 2017. As a consequence it is no longer possible to register partnerships in Finland, but people in same-sex relationships can marry.

Couples in registered partnerships can, if they so wish, convert their partnership into a marriage if the partnership was registered in Finland. However, there is no obligation to convert registered partnerships into marriages, and couples may remain in a registered partnership if they so wish.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

The same provisions apply to the property regimes of registered partnerships as to those of marriage.

3 How can partners arrange their property regime? What are the formal requirements in this case?

Partners in registered partnerships may conclude a matrimonial property agreement before the registration of the partnership or during the registered partnership. The conversion of a registered partnership into a marriage does not affect the validity of a matrimonial property agreement concluded before the registration of the partnership or during the registered partnership.

4 Are there restrictions on the freedom to arrange a property regime?

The same provisions apply to the property regimes of registered partnerships as to those of marriage.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

Division of property resulting from the dissolution of a registered partnership is handled in the same way as the division of property resulting from a divorce. The division or partition of property may take place during the cooling-off period for the dissolution of the registered partnership, as soon as the case is brought before the District Court. Either of the partners in a registered partnership may request that the division of property be carried out.

6 What are the effects of death on the property consequences of the registered partnership?

Divisions in the event of the death of either registered partner are handled in the same way as in the event of the death of a spouse, and a surviving partner has the same rights as a widowed spouse.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

In Finland, the authorities do not start proceedings on their own initiative. If the parties do not come to an agreement on the division, the District Court [*Käräjäoikeus*] appoints, on application, an executor to divide the assets.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

The effects of the property regimes of a registered partnership on legal relationships between a partner and a third party are the same as the property regimes of a marriage on such legal relationships.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

Divisions carried out following the dissolution of a registered partnership take the same form as those carried out following the dissolution of a marriage.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

Ownership of a property is registered by applying for registration of title. The registration of title is entered in the public title and mortgage register. Thereafter the owner is shown on the certificate of title.

If ownership of a property changes because of its division or partition, the original of the agreement to divide or partition the property, an explanation of the grounds for the division (such as notification from the District Court that a case involving the dissolution of the partnership has been brought before it), and any receipt of payment of transfer tax, must be sent to the National Land Survey of Finland [*Maanmittauslaitos*] for the purposes of applying for registration of title.

The period for registration of title of property divided because of the dissolution of a registered partnership begins when the division takes effect. The registration period is six months.

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Property consequences of registered partnerships - Sweden

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

No, there is only one form of registered partnership – for same-sex couples. However, the possibility of registering partnerships was abolished in 2009, following amendments to the Swedish Marriage Code enabling same-sex couples to marry under the same conditions as different-sex couples. The provisions of the Marriage Code apply equally to both same-sex and different-sex couples. But partnerships registered before 2009 remain valid until dissolved by the parties or, upon the request of the parties, converted into a marriage.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

The same rules apply to registered partnerships as to married couples.

3 How can partners arrange their property regime? What are the formal requirements in this case?

The same rules apply to registered partnerships as to married couples.

4 Are there restrictions on the freedom to arrange a property regime?

The same rules apply to registered partnerships as to married couples.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

The same rules apply to registered partnerships as to married couples.

6 What are the effects of death on the property consequences of the registered partnership?

The same rules apply to registered partnerships as to married couples.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

The same rules apply to registered partnerships as to married couples.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

The same rules apply to registered partnerships as to married couples.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

The same rules apply to registered partnerships as to married couples.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

The same rules apply to registered partnerships as to married couples.

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