

## **NATIONAL REPORT: POLAND**

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### **A. General**

- 1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.**

All kinds of relationships are regulated by Polish legislation, in particular by the Polish Civil Code. But there are no specific provisions, e.g. a separate chapter of the Polish Family Code. Cohabitation is tolerated and can be the source of rights and obligations. The partners in an informal relationship can freely create contractual obligations between themselves as well as acquire common property and decide on mutual relationships.<sup>1</sup>

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

There is no specific legislation, in particular defining such relationships more precisely and governing the division of property for unmarried couples upon the breakdown of their relationship.

- 3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases.**

There are no universal rules indicating how and under which specific provisions of the code the property of partners should be divided. However, it is clear that partners in an informal relationship should not be treated similarly to spouses upon the dissolution of their relationship in terms of the division of property and the provisions governing the division of marital property should therefore not apply to them (judgment of the Supreme Court of 16 May 2000, IV CKN 32/2000; judgment of the Supreme Court of 5 October 2011, IV CSK 11/2011).

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<sup>1</sup> On the legal situation of partners in an informal relationship see: M. NAZAR, 'Rozdział XI. Konkubinat. Związek partnerski', in: T. SMYCZYŃSKI (ed.), *System Prawa Prywatnego T. 11, Prawo rodzinne i opiekuńcze*, C.H. Beck, Warsaw, 2014, at p. 982-1043.

**4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?**

The term *concubinage* is commonly used to describe a factual common life of a woman and a man, similar to those of a married couple. The law does not use the term *concubinage*, but describes what is commonly perceived as a *concubinage*, for example by using the expression of a 'factual common life'. As the law does not use the term *concubinage*, any efforts aimed at defining it are for academic purposes only. An interpretation and application of law that may concern partners to an informal relationship requires finding a meaning of the following terms: 'common life', 'factual common life' or 'a close person'. The doctrine suggests that there are arguments to support the standpoint that terms 'common life' or 'a close one' encompass also 'life' or 'closeness' of same-sex partners (see for example Question 49).

**5. Where informal relationships between a couple have legal effect:**

- a. **When does the relevant relationship begin?**
- b. **When does the relevant relationship end?**

Depending on the factual circumstances of the case, the courts adopt different approaches to dividing property for unmarried couples. Some courts have tried to employ provisions concerning a civil partnership agreement (Art. 860 et seq. Polish Civil Code), but the majority of the courts adopt a division of co-ownership (Art. 212 et seq. Polish Civil Code) or an unjust enrichment (Art. 405-414 Polish Civil Code) approach. The above-mentioned provisions also apply to same-sex couples.

**6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?**

Partners in an informal relationship cannot be treated similarly to spouses upon the dissolution of their relationship in terms of the division of their property. The provisions governing the division of marital property should therefore not apply to them (judgment of the Supreme Court of 16 May 2000, IV CKN 32/2000; judgment of 5 October 2011, IV CSK 11/2011).

**7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?**

Both of these legal instruments are relevant to the legal position of informal relationships between partners.

**8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate**

**the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.**

There have been no recent legal reforms.

- 9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?**

There have been no recent legal proposals.

**B. Statistics and estimations**

- 10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.**

Detailed data not available.

- 11. How many couples are living in an informal relationship in your jurisdiction? Where possible, indicate trends.**

Detailed data not available.

- 12. What percentage of the persons living in an informal relationship are:**
- a. Under 25 years of age?**
  - b. Between 26-40 years of age?**
  - c. Between 41-50 years of age?**
  - d. Between 51-65 years of age?**
  - e. Older?**

Detailed data not available.

- 13. How many couples living in an informal relationship enter into a formal relationship with each other:**
- a. Where there is a common child?**
  - b. Where there is no common child?**

Detailed data not available.

- 14. How many informal relationships are terminated:**
- a. Through separation of the partners?**
  - b. Through the death of one of the partners?**

Detailed data not available.

- 15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?**

Detailed data not available.

- 16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.**

Detailed data not available.

- 17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?**

Detailed data not available.

- 18. How many children are adopted within an informal relationship:**
- a. By one partner only?**
  - b. Jointly by the couple?**
  - c. Where one partner adopted the child of the other?**

Detailed data not available.

- 19. How many partners in an informal relationship have been in a formal or an informal relationship previously?**

Detailed data not available.

**C. During the relationship**

- 20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:**
- a. Where there are no children in the household?**

There is no legal duty to support each other if there are no common children in the household.

- b. Where there are common children in the household?**

In accordance with Art. 87 of the Polish Family and Guardianship Code, parents and children have a duty to respect and support each other. This duty does not depend on the marital status of the parents. It encompasses both spiritual and material support. The duty to provide material support is regulated in detail by the provisions on maintenance obligations. Partners have maintenance obligations towards their common child (but not towards each other) when that child is not able to maintain herself/himself on his/her own, unless the income derived from this child's estate

suffices to cover the costs of maintenance and upbringing (Art. 133 § 1 Polish Family and Guardianship Code). Exceptionally, partners may waive this duty when it concerns an adult child if continuing the maintenance would result in excessive harm to them or if the child does not make any effort to be able to maintain him/herself (Art. 133 § 3 Polish Family and Guardianship Code).

**c. Where there are other children in the household?**

There is no legal duty to support each other if there are no common children in the household.

**21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?**

Partners in an informal relationship are not subject to any general duty to contribute to the costs and expenses of their household.

**22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?**

In principle, a partner in an informal relationship has no right to remain in the home against the will of the partner who is the owner or the sole tenant of the home (see Question 23).

**23. Are there specific rules on a partner's rights of occupancy of the home:  
a. In cases of domestic violence?**

In accordance with Art. 2 sec. 1 of the Polish Law dated of 29 July 2005 on the combating of domestic violence, a family member means a person who is 'close' within the meaning of Art. 115 § 11 of the Polish Penal Code (e.g. a spouse, a child, a parent), as well as other persons who live or run a household together (i.e. partners). If a family member (a partner) makes living together particularly burdensome due to his or her behaviour consisting of the use of violence, a person affected by this violence (the other partner) may request a court to oblige him/her to move out of the home (Art. 11a sec. 1 of the Polish Law on combating domestic violence). The court will hear the case in non-contentious proceedings. The verdict is issued after the hearing, which should take place no later than after 1 month from the filing of the request. The verdict becomes enforceable at the moment of its issuance. It may be modified or lifted if circumstances change (Art. 11a sec. 2-3 of the Polish Law on combating domestic violence). An order to move out of the home contained in the verdict does not entail the loss of the legal title to the home, but only temporarily limits the owner's right to use it. However, the law does not provide for a maximum period of time during which the order may remain in force.

**b. In cases where the partner owning or renting the home is absent?**

There is no particular regulation with respect to the situation in which a partner, who is an owner or a tenant of a home, is absent, whereas the other partner continues to live there. A possibility to remain in such a home depends on the consent of the partner who owns or rents the home.

**24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:**

**a. Where the home is jointly owned by the partners?**

If a home is jointly owned by the partners the general provisions on co-ownership apply.

In accordance with these rules, a partner may dispose of his or her share in a home without the consent of the other partner (Art. 198 Polish Civil Code).

When it comes to the management of an asset which is subject to co-ownership, the law makes a distinction between: 1) acts within the scope of ordinary management, and 2) acts which exceed the scope of ordinary management.

‘Acts within ordinary management’ (e.g. the renting out of an apartment and the collection of rental payments) require the consent of the majority of the co-owners. Such a majority is calculated on the basis of the size of their respective shares. Hence, if one partner’s share in the co-ownership of a home exceeds one half he/she is entitled to perform all acts within ordinary management on his or her own. If in such a case a partner decides to perform an act which is glaringly contrary to the principles of proper management, the other partner may request a court to issue a decision in that respect (Art. 202 Polish Civil Code). If the partners shares are equal and one of the partners does not consent to a particular act of management, the other partner may request a court for an authorization to proceed with the act of management (Art. 201 Polish Civil Code).

Disposing of the home (e.g. selling it) or performing other ‘acts which exceed the scope of ordinary management’ require the consent of all co-owners (hence both partners). In the absence of such consent, one of the partners may apply to the court for authorization. Such an authorization may be issued after taking into consideration the purpose of the intended act and the interest of both co-owners (Art. 199 Polish Civil Code).

Each co-owner may request the court to appoint an administrator if the co-owners having equal shares cannot agree on essential matters within the scope of ordinary management, or if the co-owner whose share exceeds one half acts contrary to the principles of proper management or in a way that harms the other co-owner (Art. 203 Polish Civil Code).

**b. Where the home is owned by one of the partners?**

If a home is owned by one partner, only this partner has a right to dispose of the home.

**c. Where the home is jointly rented by the partners?**

If a home is rented jointly by the partners, they have a joint right to dispose of the tenancy.

**d. Where the home is rented by one of the partners?**

If a home is rented by one partner, only this partner has a right to dispose of the tenancy right. With respect to the consequences of the death of this partner for the tenancy rights see the answer to Question 49(c).

**25. Under what circumstances and to what extent can one partner act as an agent for the other?**

A partner may represent the other partner in accordance with the general rules on the representation of individuals provided for in the Polish Civil Code (Art. 98 et seq. Polish Civil Code). When it comes to representation in course of a proceeding the situation of partners differs from the situation of a married couple, for example in accordance with Art. 87 § 1 Polish Code of Civil Procedure a power of attorney may be granted to inter alia an advocate and legal counsel, as well as to a parent, a spouse and a sibling. The list does not encompass a partner in an informal relationship.

**26. Under what circumstances can partners in an informal relationship become joint owners of assets?**

Partners in an informal relationship may become joint owners of assets in accordance with general civil law rules (for example, if they acquire an asset jointly via a sale or donation). In such a case, the provisions on joint property apply (Art. 195 et seq. Polish Civil Code).

**27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.**

There are no specific provisions with respect to household goods used by partners in their common household. 'Household goods' include furniture and fittings, appliances, electrical consumer goods etc. Art works, antiques and items forming a collection do not constitute 'household goods'.

**28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?**

No. Partners in an informal relationship may become joint owners of assets in accordance with the general rules of civil law (for example, if they acquire an asset

jointly via a sale or donation). In such a case, the provisions on joint property apply (Art. 195 et seq. Polish Civil Code).

**29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?**

There are no specific rules on proving the ownership of assets as between partners in an informal relationship. In accordance with the general rules of civil law, a rebuttable presumption that the shares of joint owners (including partners) are equal applies (Art. 197 Polish Civil Code).

**30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?**

There are no specific rules on proving the ownership of assets as between the partners in an informal relationship and third parties. In accordance with the general rules of civil law, a rebuttable presumption that the shares of joint owners (including partners) are equal applies (Art. 197 Polish Civil Code).

**31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?**

Partners may become jointly liable for debts as provided for in the general rules of civil law. In accordance with Art. 369 Polish Civil Code, the liability of partners may be joint and several (i.e. the creditor may claim the whole performance or a part of it from all debtors, from some of them or all of them, and the satisfaction of the creditor by any of the debtors frees the remaining debtor) if it results from a statute (e.g. if partners jointly cause damage as a result of a delict<sup>2</sup>) or a legal act (e.g. a contract).

**32. On which assets can creditors recover joint debts?**

If partners jointly contract an obligation, creditors may demand that each of the partners duly performs. In case of the joint and several liability of the partners (See Question 31), the creditor may demand the whole or part of the performance from both of them or each of them, and the satisfaction of the creditor by one of the debtors frees the remaining debtor. Both debtors remain liable until the complete satisfaction of the creditor (Art. 366 § 1-2 Polish Civil Code).

**33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.**

If an asset is jointly owned by the partners the general provisions on co-ownership apply.

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<sup>2</sup> Article 441 § 1 Polish Civil Code.

In accordance with these rules, a partner may dispose of his/her share in an asset without the consent of the other (Art. 198 Polish Civil Code).

When it comes to the management of an asset which is subject to co-ownership, the law makes a distinction between: 1) acts within the scope of ordinary management, and 2) acts which exceed the scope of ordinary management.

'Acts within ordinary management' require the consent of the majority of the co-owners. Such a majority is calculated on the basis of the size of their respective shares. Hence, if one partner's share in the co-ownership of an asset exceeds one half he/she is entitled to perform all acts within ordinary management on his/her own. If in such a case a partner decides to perform an act which is glaringly contrary to principles of proper management, the other partner may request a court to issue a decision in that respect (Art. 202 Polish Civil Code). If the partners' shares are equal and one of the partners does not consent to a particular act of management, the other partner may request a court for an authorization to proceed with the act of management (Art. 201 Polish Civil Code).

Disposing of an asset (e.g. selling it) or performing other 'acts which exceed the scope of ordinary management' require the consent of both partners. In the absence of such consent, one of the partners may apply to the court for authorization. Such an authorization may be issued taking into consideration the purpose of the intended act and the interests of both co-owners (Art. 199 Polish Civil Code).

Each co-owner may request the court to appoint an administrator if the co-owners having equal shares cannot agree on essential matters within the scope of ordinary management, or if the partner whose share exceeds one half acts contrary to the principles of proper management or in a way that harms the other co-owner (Art. 203 Polish Civil Code).

#### **D. Separation**

#### **34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?**

The law does not grant maintenance to former partners in an informal relationship upon separation.

#### **35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:**

- a. **The creditor's needs and the debtor's ability to pay maintenance?**
- b. **The creditor's contributions during the relationship (such as the raising of children)?**
- c. **The standard of living during the relationship?**
- d. **Other factors/circumstances (such as giving up his/her career)?**

Not applicable following answer to Question 34.

**36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?**

Not applicable following to Question 34.

**37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?**

Not applicable following answer to Question 34.

**38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?**

Not applicable following answer to Question 34.

**39. Is the maintenance claim extinguished upon the claimant entering:**

- a. Into a formal relationship with another person?**
- b. Into an informal relationship with another person?**

Not applicable following answer to Question 34.

**40. How does the creditor's maintenance claim rank in relation to:**

- a. The debtor's current spouse, registered partner, or partner in an informal relationship?**
- b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**
- c. The debtor's children?**
- d. The debtor's other relatives?**

Not applicable following answer to Question 34.

**41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?**

The law does not provide for a property regime between partners as it arises between spouses (a default matrimonial property regime is community of property). As a result, the law does not provide for specific rules on the ownership or division of assets acquired by partners during their relationship.

General rules of civil law apply to the determination of the ownership of assets acquired during an informal relationship. In accordance with civil law two persons (partners) may acquire assets in their respective 'separate' estates or they may acquire such assets jointly (for example, via a sale or donation). In the latter case, the provisions on joint property apply (Art. 195 et seq. Polish Civil Code).

**42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?**

The question of mutual settlements between partners after their separation is not specifically regulated; however, in practice claims based on the existence of an informal relationship are brought before the courts. Various civil law institutions are indicated as a potential legal basis for such settlements, for example: the matrimonial property regime and its liquidation, joint property and its division, civil partnership or unjust enrichment.

Case law has held that the provisions on the matrimonial property regime and its liquidation may not be applied to former partners in an informal relationship. Provisions relating to the matrimonial property regime and its liquidation may not be applied to settlements between former partners, because it would mean the equalization of marriage with an informal relationship in certain respects without any existing legal basis (see resolution of the Supreme Court of January 30, 1986: III CZP 79/85).

Case law has underlined that the courts should first verify what legal relationships the partners decided to create in their relationship and then to subsequently apply the provisions on adequate legal institutions. The above applies to all informal relationships, including same-sex relationships (see the verdict of the Supreme Court of December 6, 2007: IV CSK 301/07).

In the resolution of January 30, 1970 (III CZP 62/69), the Supreme Court stated that a) when it comes to claims relating to jointly acquired assets (including real estate), as well as expenditures on such assets, the provisions on the division of joint property apply, and b) when it comes to expenditures incurred by one partner on assets used by both partners in their common household, but owned solely by the other partner, the provisions on unjust enrichment apply (see also the verdict of the Supreme Court of May 16, 2000: IV CKN 32/00).

**43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?**

If a dwelling is jointly owned by both partners, each of the owners (partners) may request a division of the joint property (Art. 210 et seq. Polish Civil Code). Each owner may request that the joint property be divided, except for when such a division would be contrary to the law, the socio-economic character of the assets or would cause substantial change to the assets or a substantial decrease in their value. An asset that cannot be divided may, taking into account the circumstances of the case, be granted to one of the owners with an obligation to compensate the others, or

it may be sold. In the latter case, the sale price is subsequently distributed between the former co-owners.

If a dwelling is owned solely by one partner, the other partner may only claim a reimbursement of expenditures incurred on this property (See Question 42). Hence, it may be assumed that the decisive factors are indeed the formal ownership of the property (and not the duration of the relationship), the needs of each partner, and the care of any children.

**44. How are the joint debts of the partners settled?**

The separation of the partners in an informal relationship does not influence the existence/extinction of any joint debts. With respect to joint debts see Questions 31 and 32.

**45. What date is decisive for the determination and the valuation of:**

- a. The assets?
- b. The debts?

As mentioned above, the law does not provide for specific rules on the ownership and division of assets acquired by partners during their relationship. See Question 41.

**46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?**

No such claims are provided for.

**E. Death**

**47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?**

No, the surviving partner does not inherit in case of intestate succession.

**48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?**

No, in the case of intestate succession, the law does not grant the surviving partner any rights or claims against the estate.

**49. Are there specific rules dealing with the home and/or household goods?**

- A house and an apartment (a property right); a proprietary right to a flat in a housing cooperative (a right in rem):

The home in which both partners lived, being the exclusive property of the deceased, forms part of the estate which is subject to succession (either intestate or testamentary) just like any other asset. However, a spouse and other close person of the deceased, who lived with the deceased until the day of his/her death, is/are allowed to use the home and household goods in the same manner as prior to his/her demise for a period of 3 months following the opening of the succession (Art. 923 § 1 of the Polish Civil Code). A 'close person' includes a surviving partner in the informal relationship. The surviving partner is granted this right regardless of whether he/she is actually designated as an heir.

If the partners have acquired real property (a house, an apartment, a proprietary right to a flat in a housing cooperative) as joint property, only a respective share in the ownership right (for example one half - if the shares were equal) forms part of the estate which is subject to succession.

With respect to intestate succession see Question 47 and for testamentary succession see Question 50.

- Non-proprietary right to a flat in a housing cooperative (a right in rem):

Only one person may be entitled to a non-proprietary right to a flat in a housing cooperative. This right may only be jointly held by spouses (not partners in an informal relationship). In the case of the death of a partner who was entitled to this right, it then extinguishes. However, a spouse, children and other close persons have a claim against the cooperative for he/she/them to become its member(s) and being granted his/her/their own non-proprietary right to a flat in a housing cooperative (Art. 15 Polish Law on housing cooperatives). A 'close person' includes a surviving partner in the informal relationship.

- Tenancy (contract):

If partners jointly rented their home, after the death of one partner (the tenant) the other partner will continue the tenancy (Art. 691 § 5 Polish Civil Code).

If one person was a party to a tenancy contract, after his/her death the tenancy may continue for the benefit of his/her spouse, children or other persons whom the tenant was obliged to maintain, as well as a person being in a de facto relationship with the tenant. Such a person is entitled to assume the tenancy relationship subject to the condition that he/she habitually lived in the home until the death of the tenant (Art. 691 § 1, 2 Polish Civil Code). In the resolution of November 28, 2012 (III CZP 65/12) the Supreme Court stated that 'a person being in a de facto relationship with the tenant' means a person with whom the tenant was in a relationship which was of a sentimental, physical and economic nature, including a same-sex partner.

- Household goods – owned solely by the deceased:

When it comes to household goods – Art. 939 § 1 Polish Civil Code states that a spouse who inherits in accordance with the rules of intestate succession together with other heirs, except for children of the deceased who lived with him/her before his/her death, may claim from the estate (apart from his/her share in the estate) any household goods which he/she used during the life of the deceased.

This provision mentions only a surviving spouse, a not a surviving partner. Hence it may not be applied to a surviving partner.

**50. Can a partner dispose of property by will in favour of the surviving partner:**

**a. In general?**

Yes, a surviving partner may be designated in a will as a testamentary heir.

**b. If the testator is married to or is the registered partner of another person?**

Yes, a surviving partner may be designated in a will as a testamentary heir, irrespective of the fact that the deceased was married. However, in such case the spouse of the deceased may be entitled to the reserved share (which is construed as a monetary claim against a testamentary heir).

**c. If the testator has children?**

Yes, a surviving partner may be designated in a will as a testamentary heir, irrespective of the fact that the deceased had children. However, in such case the children of the deceased may be entitled to the reserved share (which is construed as a monetary claim against a testamentary heir).

**51. Can partners make a joint will disposing of property in favour of the surviving partner:**

**a. In general?**

**b. If either testator is married to or is the registered partner of another person?**

**c. If either testator has children?**

No, joint wills are prohibited. In accordance with Art. 942 Polish Civil Code, a will may contain dispositions upon the death of one person only.

**52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:**

**a. In general?**

**b. If either partner is married to or is the registered partner of another person?**

**c. If either partner has children?**

No, the only disposition upon death is a will (Art. 941 Polish Civil Code). On the possibility of designating a surviving partner as a testamentary heir see Question 50.

**53. Is the surviving partner entitled to a reserved share<sup>3</sup> or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?**

No, the surviving partner is not entitled to the reserved share.

**54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?**

No data are available.

**55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?**

No data are available.

**56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?**

No data are available.

## **F. Agreements**

**57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?**

General rules on contractual obligations provided for in the Polish Civil Code apply.

**58. Are partners in an informal relationship permitted to agree on the following issues:**

**a. The division of tasks as between the partners?**

Yes.

**b. The contributions to the costs and expenses of the household?**

Yes.

**c. Their property relationship?**

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<sup>3</sup> See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

Yes.

**d. Maintenance?**

Yes.

**e. The duration of the agreement?**

Yes.

**59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?**

Yes.

**60. Are the agreements binding:**

**a. Between the partners?**

Yes.

**b. In relation to third parties?**

Yes, in particular as far as property is concerned.

**61. If agreements are not binding, what effect, if any, do they have?**

Agreements are binding.

**62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?**

No specific legislative provisions regulate informal relationships.

**63. When can the agreement be made (before, during, or after the relationship)?**

The agreement can be made before, during, or after the relationship comes to an end.

**64. What formal requirements, if any, govern the validity of agreements:**

**a. As between the partners?**

**b. In relation to a third party?**

As agreements concluded between partners are not regulated in a particular manner, common principles of the civil law apply. For example, a donation agreement concerning a real estate, for its validity – both as between the partners and in relation to a third party – requires the form of a notarial deed.

**65. Is independent legal advice required?**

No. However, lawyers do offer such assistance.

**66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?**

There are no statistics available for this question.

**67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?**

There are no statistics available for this question.

**G. Disputes**

**68. Which authority is competent to decide disputes between partners in an informal relationship?**

The ordinary courts are competent to decide on disputes between the partners in an informal relationship.

**69. Is that the same authority as for spousal disputes?**

Yes, the ordinary courts also decide on spousal disputes.

**70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?**

When hearing the dispute between the partners at the request of one of them, a court seized may scrutinise such an agreement. This scrutiny may be carried out in light of the circumstances indicated in Question 71.

**71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?**

A court seized may override or modify the agreement in accordance with general provisions concerning legal acts. In accordance with Art. 58 § 1 Polish Civil Code, a legal act which is contrary to statutory law or is intended to evade the law is null and void, unless the appropriate provision provides for a different consequence, in particular that an appropriate provision of the statutory law replaces the nullified provisions of the legal act. Also a legal act contrary to the 'principles of community life' is null and void. If only a part of the legal act is nullified, the other part of the legal act will remain valid, unless the circumstances of the case indicate that without the provisions affected by the nullity the legal act would not have been entered into. This is an *ex lege* nullity. A court verdict stating that the legal act is null and void is

only of a declaratory nature. It is possible for a party (a partner) to claim defects in consent (being in a state precluding a conscious decision made with one's free will, fraud, mistake), which are regulated in Art. 82-88 Polish Civil Code.

When it comes to third persons, in accordance with Art. 59 Polish Civil Code, in the case of the conclusion of a contract, the performance of which makes the satisfaction of a claim by a third party totally or partially impossible, this party may request the court to declare that the contract is unopposable towards that third party, if the parties to the contract (i.e. the partners) knew about the claim or if the contract is gratuitous.

If, as a result of a legal act performed to the detriment of creditors, a third party obtains a financial benefit, each of the creditors may request the court to declare the legal act unopposable towards that creditor, if the parties to the legal act had knowledge of the creditors' detriment and the third party knew about this or should have known if he/she had acted diligently (Art. 527 et seq. Polish Civil Code).

If due to an extraordinary change of circumstances, which would mean that performance would result in excessive difficulties or would expose one of the parties to a gross loss, which the parties (partners) could not foresee while concluding the contract, a court may, after taking into account the parties' interests and the principles of community life, change the manner of performance, the value of the performance or even rescind the contract. While rescinding the contract the court may, if necessary, decide on mutual settlements between the parties (Art. 3571 Polish Civil Code).

**72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?**

Parties may agree that an arbitration court will decide on their disputes concerning proprietary rights and non-proprietary rights, with the exception of maintenance claims (Art. 1157 Polish Code of Civil Procedure). It should be underlined, however, that certain controversies which arise between the partners, including the parentage of a child, civil status and parental authority, are not left entirely to the partners' party autonomy.<sup>4</sup>

**73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?**

The existence of an arbitration clause does not preclude the possibility of seising an ordinary court (competent authority). However, if a case that is covered by the

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<sup>4</sup> K. WEITZ, in: T. ERECINSKI, J. CISZEWSKI and K. WEITZ (eds.), *Kodeks postępowania cywilnego. Komentarz. Część czwarta. Przepisy z zakresu międzynarodowego postępowania cywilnego. Część piąta. Sąd polubowny (arbitrażowy)*, LexisNexis, Warsaw, 2009, at p. 604.

arbitration clause is brought before an ordinary court, the court will refuse to hear it if the other party claims the existence of the arbitration agreement before engaging in the dispute as to the merits of the case (Art. 1165 § 1 Polish Code of Civil Procedure).

An arbitral award or a settlement reached in the arbitral court has legal authority which is equal to an ordinary court's verdict or a settlement reached in this court after its recognition or stating its enforceability (Art. 1212 § 1 Polish Code of Civil Procedure).

**74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?**

Detailed data are not available.