

## **NATIONAL REPORT: SWITZERLAND**

Prof. Ingeborg Schwenzer  
Tomie Keller

*February 2015*

### **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.**

In Switzerland two kinds of formal relationships between a couple are known: marriage and a registered partnership.

Marriage is only open to persons of a different sex. It is commonly defined as the mutual consent of a man and a woman of full age to form an exclusive, long-lasting and officially recognized and formalized partnership. Matrimonial law is governed by Art. 90 et seq. Swiss Civil Code<sup>1</sup> (first division of the Swiss family law).

In 2007 the Swiss law on Registered Partnership<sup>2</sup> entered into force. This kind of formal relationship is only open to same-sex couples. The statute on registered partnerships largely mirrors the matrimonial law. Substantive differences can be found as far as financial regulations during ongoing partnerships and upon their dissolution are concerned. Furthermore, same-sex couples are not allowed to adopt children<sup>3</sup> or to gain access to medically assisted procreation.

- 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 comprehensive regulation of informal relationships under Swiss law. Statutory rules on informal relationships have repeatedly been rejected by the Swiss legislature. Until the 1990s unmarried cohabitation was even a criminal offence in some Swiss cantons.

---

<sup>1</sup> Schweizerisches Zivilgesetzbuch, SR 210.

<sup>2</sup> Partnerschaftsgesetz, SR 211.231. For details see I. SCHWENZER and A. BOCK, 'New Statutory Rules on Registered Partnerships and Protection Against Domestic Violence', in: B. ATKIN, *The International Survey of Family Law*, Jordan Publishing, Bristol, 2008, at p. 445 et seq.

<sup>3</sup> At the time of writing, a draft allowing step-parent adoption in same-sex relationships is pending.

In a few more recent Swiss laws the term factual relationship (*faktische Lebensgemeinschaft*) is expressly mentioned.<sup>4</sup> They mostly concern procedural rights, such as grounds for recusal or the right to refuse cooperation or to testify.<sup>5</sup>

With regard to the Swiss adult protection law, a partner in an informal relationship may be entitled to represent his or her partner in relation to medical procedures. According to Art. 378 para. 1 No. 4 Swiss Civil Code, representation may be assigned to any person (and thus in particular including the partner in an informal relationship) who cohabits with the person lacking capacity of judgement and regularly and personally provides him or her with support. The partner in an informal relationship is, however, only entitled to represent the other partner if that partner has not assigned another person to represent him or her, if there is no deputy (*Beistand*) with a right to act as a representative or if there is no spouse/registered partner who cohabits with the person concerned or who regularly and personally provides him or her with support.<sup>6</sup> Moreover, if the partner in an informal relationship has been appointed as the deputy of his or her partner, the adult protection authority may wholly or partly absolve the him or her alike other family members from certain duties (Art. 420 Swiss Civil Code).

Outside Swiss family law, a specific legislative provision on informal relationships can be found with regard to occupational pensions. According to Art. 20a para. 1(a) of the Swiss Law on an occupational pension for old age, survivors and invalids,<sup>7</sup> a pension fund has the possibility to include the partner in an informal relationship as a beneficiary in its regulation. Thus, a partner in an informal relationship may have the right to survivors' benefits if the respective pension fund has opted for this possibility and, further, if at the time of the death of the partner the relationship (*Lebensgemeinschaft*) had lasted for more than five years without interruption.<sup>8</sup> Alternatively, any person (and therefore including the partner in an informal relationship) who has been supported to a considerable extent by the insured person or has to support common children may also be entitled to such benefits.<sup>9</sup> It is up to the pension fund to regulate whether or not a partner is entitled to such benefits in cases where the insured partner was still married or in a registered partnership with another person.<sup>10</sup>

---

<sup>4</sup> E.g. Art. 42<sup>quinquies</sup>(b) Disability Insurance Act, Invalidenversicherungsgesetz, SR 831.20; Art. 420 Swiss Civil Code (*faktische/r Lebenspartner/in*), see also the next footnote.

<sup>5</sup> E.g. Art. 47 para. 1(c) and Art. 165 para. 1(a) Swiss Civil Procedure Code, Schweizerische Zivilprozessordnung, SR 272; Art. 56(c) and Art. 168 para. 1(a) Swiss Criminal Procedure Code, Schweizerisches Strafprozessrecht, SR 312.0.

<sup>6</sup> Art. 378 para. 1 Swiss Civil Code (order of persons entitled to represent).

<sup>7</sup> Bundesgesetz über die berufliche Alters-, Hinterlassenen- und Invalidenvorsorge, SR 831.40. For details see L. GLANZMANN-TARNUTZER, 'Die Lebenspartnerrente gemäss Art. 20a Abs. 1 lit. a BVG', *Aktuelle Juristische Praxis*, 2014, at p. 1145 et seq.

<sup>8</sup> The pension fund may stipulate further requirements, see Swiss Federal Supreme Court, BGE 137 V 383 E.3.2 (substantive requirements); BGE 136 V 127 (formal requirements).

<sup>9</sup> Art. 20a para. 1 (a) Swiss Law on an occupational pension for old age, survivors and invalids.

<sup>10</sup> L. GLANZMANN-TARNUTZER, 'Die Lebenspartnerrente gemäss Art. 20a Abs. 1 lit. a BVG', *Aktuelle Juristische Praxis*, 2014, at p. 1145, 1154.

In cases of the death of the partner in an informal relationship, the surviving partner may be entitled to damages under tort law. According to Art. 45 para. 3 Swiss Code of Obligations,<sup>11</sup> compensation must be granted if a person is deprived of his or her means of support as a result of homicide (*Versorgerschaden*). It is not necessary that such support is statutorily granted. Rather, the Swiss Federal Supreme Court has held that the partner in an informal relationship is entitled to such damages if he or she has actually been supported by the deceased and would most probably also have been supported by him or her in the future.<sup>12</sup> Furthermore, the surviving partner may be entitled to an appropriate sum for pain and suffering (*Genugtuung*). Pursuant to Art. 47 Swiss Code of Obligations the court may grant the dependants of the deceased such (additional) compensation in cases of homicide. Recently, such compensation was granted to a partner in an informal relationship in a case where the deceased was still married and the surviving spouse was also entitled to an appropriate sum for pain and suffering.<sup>13</sup>

- 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.**

Couples in an informal relationship may enter into an agreement regulating their relationship, especially concerning questions of property. However, they rarely make use of this possibility. Furthermore, it is not clear to what extent such agreements are legally allowed.

Where a couple have not regulated their relationship, general legal rules may apply, such as the law of obligations (e.g. the law of simple partnership, tenancy law, employment law) or the law of property. With regard to matrimonial law, the Swiss Federal Supreme Court has refused to apply matrimonial property law directly or by analogy to informal relationships.<sup>14</sup>

Informal relationships were first given a certain degree of legal recognition with regard to the termination of spousal support. Already under the old Swiss divorce law (before the reform of the Swiss divorce law in 2000), the Swiss Federal Supreme Court held in 1978 that spousal support ceases to exist in cases where the entitled person is living with another person in a 'qualified informal relationship'.<sup>15</sup> Such a qualified informal relationship was regularly assumed by the courts if the relationship had lasted for more than five years,<sup>16</sup> irrespective of the actual capacity

---

<sup>11</sup> Schweizerisches Obligationenrecht, SR 220.

<sup>12</sup> Swiss Federal Supreme Court, BGE 114 II 144 E.2.

<sup>13</sup> Swiss Federal Supreme Court, BGE 138 III 157.

<sup>14</sup> Swiss Federal Supreme Court, BGE 108 II 204 E.3.

<sup>15</sup> Swiss Federal Supreme Court, BGE 104 II 154. For details see A. BÜCHLER and H. STEGMANN, 'Der Einfluss der nichtehelichen Lebensgemeinschaft auf den nahehelichen Unterhaltsanspruch', *Die Praxis des Familienrechts*, 2004, at p. 229 et seq.

<sup>16</sup> E.g. Swiss Federal Supreme Court, BGE 118 II 235; BGE 109 II 188.

of being supported by the new partner.<sup>17</sup> This legal practice was in principle confirmed under the reformed divorce law.<sup>18</sup> Nowadays, spousal support (during a marriage or after divorce) may be suspended, reduced, revoked or denied if the entitled person lives with another person in a qualified informal relationship.<sup>19</sup>

Also with regard to spousal support, an informal relationship may – under very restricted conditions – have a promotive influence on the assessment of spousal support after divorce. When determining whether and to what extent spousal support has to be ensured, the duration of the marriage is one of the factors which must be considered in particular (Art. 125 para. 2 No. 2 Swiss Civil Code). According to the Swiss Federal Supreme Court, a (long-lasting) informal relationship preceding a (short) marriage may have an influence on the assessment of spousal support if this relationship already had a lasting influence on the lives of the couple (*Lebensprägung*) which justifies its consideration.<sup>20</sup>

In 1982 the Swiss Federal Supreme Court held that in particular upon dissolution some legal protection for informal relationships has to be ensured.<sup>21</sup> Under certain circumstances, financial problems upon the dissolution of informal relationships have since then been addressed by the Swiss Federal Supreme Court by applying principles of the Swiss Code of Obligations relating to simple partnerships (Art. 530 et seq. Swiss Code of Obligations).<sup>22</sup> The simple partnership is a contractual relationship in which two or more persons agree to combine their efforts or resources in order to achieve a common goal. Thus, if unmarried partners have formed an economic unit with joint finances to which both have contributed either financially or through work and labour, compensation may be sought upon the dissolution of the informal relationship.<sup>23</sup> These cases extensively depend on the court's interpretation of the parties' intention to enter into a legally binding relationship and of the common partnership goal pursued by the partners. However, up to now, only financial contributions<sup>24</sup> or contributions in the form of work and labour in the joint or the other partner's business<sup>25</sup> have given rise to compensation. Taking care of the

---

<sup>17</sup> Swiss Federal Supreme Court, BGE 116 II 394 E.3.

<sup>18</sup> Under the application of Art. 129 Swiss Civil Code. See Swiss Federal Court, BGer 5P.135/2005 (22.7.2005). Under the reformed divorce law the suspension of spousal support has in some cases already been granted after three years, see Swiss Federal Supreme Court, BGer 5C.296/2001 (12.3.2002); BGer 5A\_81/2008 (11.6.2008).

<sup>19</sup> For details see D. DIEZI, *Nachlebensgemeinschaftlicher Unterhalt*, Stämpfli, Bern, 2014, at p. 126 et seq.

<sup>20</sup> Swiss Federal Supreme Court, BGE 135 III 59 E.4.4. See also Swiss Federal Supreme Court, BGE 132 III 598 E.9.2 (less strict conditions).

<sup>21</sup> Swiss Federal Supreme Court, BGE 108 II 204 E.3.a).

<sup>22</sup> For details see M. COTTIER and C. CREVOSIER, 'Die nichteheliche Lebensgemeinschaft als einfache Gesellschaft', *Aktuelle Juristische Praxis*, 2012, at p. 33 et seq.

<sup>23</sup> Swiss Federal Supreme Court, BGE 108 II 204 E.4. a). The rules of simple partnership cannot automatically be applied to all financial questions relating to an informal relationship. Rather, the court has to decide individually regarding the relevant circumstances of every case, see also Swiss Federal Supreme Court, BGer 4A\_383/2007 (19.12.2007).

<sup>24</sup> E.g. Swiss Federal Supreme Court, BGer 4A\_383/2007 (19.12.2007).

<sup>25</sup> E.g. Swiss Federal Supreme Court, BGer 4C.195/2006 (12.10.2007); BGE 109 II 228.

household and caring for the children does not amount to a contribution as required in a simple partnership.<sup>26</sup>

Furthermore, informal relationships are given legal effect outside private law. There is a tendency to give legal effect to informal partnerships in connection with the exclusion or limitation of social benefits or social insurance benefits.<sup>27</sup> With regard to social benefits the Swiss Federal Supreme Court has considered both of the salaries of a cohabiting couple when determining social benefits,<sup>28</sup> even though there is no legal duty to support each other in an informal relationship. A similar decision was made regarding a social insurance case, where the calculation for the reduction for health insurance was based on the income of both partners in an informal relationship.<sup>29</sup>

In cases of debt enforcement (*Schuldbetreibung*) an informal relationship is similarly treated as a marriage when assessing the minimum living wage (*Existenzminimum*) of the debtor. The Swiss Federal Supreme Court generally assumes that not only the accommodation costs but also the basic living expenses (so-called *Grundbetrag*) will be shared equally amongst the partners. These (assumed) savings are reflected by the fact that the basic living expenses of a debtor in an informal relationship are reduced<sup>30</sup> from that of a single person to as much as a half of the basic living expenses of a married couple.<sup>31</sup> However, different from a married debtor, any financial support by the debtor to his or her informal partner will not be considered in the assessment of the minimum living wage. Such support will only be respected if there are common children (and thus, with regard to debt enforcement, families are treated in the same way irrespective of the parents' marital status).<sup>32</sup>

Finally, with regard to aliens law, an informal relationship of a certain duration may under certain circumstances lead to permission for residence.<sup>33</sup>

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

There is no statutory definition of informal relationships in Switzerland. Rather, it is up to the courts to define informal relationships according to the respective legal question. The Swiss Federal Supreme Court still (mostly) uses the outdated and stigmatising term *Konkubinat* for informal relationships.

---

<sup>26</sup> Compensation was denied in Swiss Federal Supreme Court, BGer 4A\_441/2007 (17.01.2008), where a woman in an informal relationship had taken care of the common child for 16 years.

<sup>27</sup> D. DIEZI, *Nachlebensgemeinschaftlicher Unterhalt*, Stämpfli, Bern, 2014, at p. 131 et seq.

<sup>28</sup> Swiss Federal Supreme Court, BGE 129 I 1; BGer 1P.184/2003 (19.8.2003).

<sup>29</sup> Swiss Federal Supreme Court, BGE 134 I 313.

<sup>30</sup> The guidelines for debt enforcement and insolvency propose a *Grundbetrag* for a single person of CHF 1200 and for a married couple of CHF 1700. In the case of an informal relationship, the amount for basic living expenses would be reduced from CHF 1200 to as much as CHF 850.- (= half of CHF 1700).

<sup>31</sup> Swiss Federal Supreme Court, BGE 130 III 765 E.2.4; BGE 132 III 483 E.4.2.

<sup>32</sup> Swiss Federal Supreme Court, BGE 106 III 11 E.3.

<sup>33</sup> Swiss Federal Supreme Court, BGer 2C\_702/2011 (23.2.2012); BGer 2C\_97/2010 (4.11.2010).

In 1992 the Swiss Federal Supreme Court developed a definition of informal relationships in family law with regard to the termination of spousal support (for the entitled person living in an informal relationship with another person). According to the Swiss Federal Supreme Court an informal relationship is a long-term, if not permanent, comprehensive and generally exclusive relationship between two persons of a different sex, which comprises an intellectual/emotional, a physical and a financial element and can also be described as a 'community of residence, table and bed'.<sup>34</sup> However, the Swiss Federal Supreme Court further held that not all of these three elements have the same importance. Rather, it is up to the judge to individually evaluate all (relevant) circumstances to determine the quality of an informal relationship.

This definition has, concerning certain parts thereof, been strongly criticized by legal doctrine.<sup>35</sup> First, it excludes same-sex relationships without any justified reason. Second, neither a sexual relationship nor the fact that a couple live together should be qualified as a mandatory requirement. Meanwhile, the Swiss Federal Supreme Court has held that the physical element ('community of bed') is not an indispensable element for an informal relationship.<sup>36</sup> All in all, the practical relevance of the definition is very limited.<sup>37</sup>

The definition has been adopted outside family law in cases regarding occupational pensions or with regard to the payment of an appropriate sum for pain and suffering in cases of homicide (Art. 47 Swiss Code of Obligations (*Genugtuung*)). However, in cases regarding occupational pensions, the Swiss Federal Supreme Court has held that also same-sex couples may qualify as an informal relationship and a residential community is not a mandatory element.<sup>38</sup>

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

### **a. When does the relevant relationship begin?**

Depending on the subject and the case, importance is given to different factors. Regularly, major importance is attributed to cohabitation in terms of a common household.<sup>39</sup>

With regard to questions such as the termination of spousal support, social benefits or permission for residence in connection with aliens law, the duration is of great importance when determining whether or not legal effect is to be given to an

---

<sup>34</sup> Swiss Federal Supreme Court, BGE 118 II 235 E.3.b).

<sup>35</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 59, 65 et seq. with further references.

<sup>36</sup> Swiss Federal Supreme Court, BGER 5C.135/2002 (2.7.2002) E.2.5.

<sup>37</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 66.

<sup>38</sup> Swiss Federal Supreme Court, BGE 134 V 369 E.6.3.2 and E.7.1.

<sup>39</sup> E.g. Art. 378 para. 1 No. 4 Swiss Civil Code.

informal relationship. The required duration may vary (mostly between two to five years) depending on the respective subject.<sup>40</sup>

However, with regard to damages where a surviving partner is deprived of his or her means of support as a result of homicide (Art. 45 para. 3 Swiss Code of Obligations (*Versorgerschaden*)), rather than the duration of the relationship, decisive is whether the deceased partner actually supported the surviving partner.<sup>41</sup> Similarly, representation in relation to medical procedures is only granted where the partner regularly and personally supports his or her partner.<sup>42</sup>

In cases where the legal rules for simple partnership (Art. 530 et seq. Swiss Code of Obligations) are applied to the financial consequences upon the dissolution of the informal relationship, the parties' intention to enter into a legally binding relationship, their contributions and the common partnership goal pursued by the partners are decisive.

**b. When does the relevant relationship end?**

The relationship ends if one of the partners dies or the couple separate. The dissolution of the relationship is possible at any time, by mutual consent or unilaterally.

In cases where the legal rules for simple partnership are applied, the dissolution of the relationship does not, however, have to necessarily coincide with the dissolution of the simple partnership.<sup>43</sup>

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

The Swiss Constitution<sup>44</sup> has not had a noteworthy influence on the legal position of informal relationships between couples. Nowadays, the informal relationship is protected by the Swiss Constitution.<sup>45</sup>

---

<sup>40</sup> After five years the Swiss Federal Supreme Court regularly assumes a qualified informal relationship which terminates spousal support, see e.g. BGE 109 II 188 E.2; BGE 118 II 235 E.3.a). Under the reformed divorce law the suspension of spousal support has in some cases already been granted after three years, see Swiss Federal Supreme Court, BGer 5C.296/2001 (12.3.2002); BGer 5A\_81/2008 (11.6.2008). With regard to social benefits already two years were sufficient to give legal effect to the informal relationship. However, with regard to permission for residence (aliens law) an informal relationship of three years' duration did not suffice, see BGer 2C\_97/2010 (4.11.2010).

<sup>41</sup> The couple had only been cohabiting for 10 months, see Swiss Federal Supreme Court, BGE 114 II 144 E.2.

<sup>42</sup> Art. 378 para. 1 No. 4 Swiss Civil Code.

<sup>43</sup> Swiss Federal Supreme Court, BGer 4A\_320/2010 (17.8.2010). See Arts. 545 and 546 Swiss Code of Obligations for the grounds for the dissolution of a simple partnership.

<sup>44</sup> Bundesverfassung der Schweizerischen Eidgenossenschaft, SR 101.

<sup>45</sup> See R. AEBI-MÜLLER and C. WIDMER, 'Rechtsregeln für nichteheliches Zusammenleben in der Schweiz', in: I. KROPFENBERG, D. SCHWAB, D. HENRICH, P. GOTTWALD and A. SPICKHOFF, *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking, Bielefeld, 2009, at p. 65, 66.

**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?**

International instruments and European legislation have not had a noteworthy relevance for the Swiss jurisdiction with regard to the legal position of informal relationships between a couple.

**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.**

Only a few decades ago, unmarried cohabitation had been a criminal offence in many of the Swiss cantons.<sup>46</sup> Although not necessarily implemented or enforced, it was not until 1995 that the last prohibition on unmarried cohabitation was abolished in the Valais canton.

Statutory rules on informal relationships have repeatedly been rejected by the Swiss legislature.<sup>47</sup> During the reform of the marriage law in 1984,<sup>48</sup> the need for the regulation of informal relationships in family law had been realised and discussed. The Swiss legislature then decided to postpone this discussion until the subsequently planned reform of the divorce law. There were different reasons for this decision: an in-depth analysis and discussion were seen as necessary, some wanted to await further developments and input from legal practice with regard to informal relationships and for others this question was not at all urgent or necessary since the Swiss Federal Supreme Court was already addressing the most urgent financial problems upon dissolution (see Question 3).

During the reform of the divorce law in 1998,<sup>49</sup> the regulation of informal relationships in family law was, however, explicitly rejected. It was argued that couples in an informal relationship may contractually regulate their relationship. Apparently, the legal practice of the courts (applying the rules for a simple partnership) did not reveal any need for a comprehensive regulation of informal relationships. Furthermore, a regulation of informal relationships would only create a (unnecessary) 'marriage light'.<sup>50</sup>

---

<sup>46</sup> In the 1970s around half of the Swiss cantons had a so-called *Konkubinatsverbot*, see R. FRANK, 'Kantonalrechtliche Konkubinatsverbote', in: R. FRANK, A. GIRSBERGER, N. P. VOGT, H. U. WALDER-BOHNER and R. H. WEBER, *Die eheähnliche Gemeinschaft (Konkubinats) im schweizerischen Recht*, Schulthess Juristische Medien, Zurich, 1984, at p. 6-8.

<sup>47</sup> For further details and references, see D. DIEZI, *Nachlebensgemeinschaftlicher Unterhalt*, Stämpfli, Bern, 2014, at p. 157 et seq.

<sup>48</sup> In force since 1988.

<sup>49</sup> In force since 2000.

<sup>50</sup> See Divorce Reform Message, Botschaft Scheidungsrecht, Bundesblatt 1996 I, at p. 1, 16.



Hence, the question of how to legally deal with informal relationships is still left to the courts and legal practice. Nevertheless, the informal relationship has found its way into a few more recent laws concerning questions such as procedural rights<sup>51</sup> or rights in connection with the reformed law of adult protection.<sup>52</sup>

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

There are no recent proposals with regard to a comprehensive reform in the area of informal relationships. However, there are a few reforms which are relevant, on some points, for informal relationships.

Currently, there is a legislative motion pending which requests the Swiss Federal Council to modernize the Swiss law of succession.<sup>53</sup> Accordingly, intestate succession and the right to a reserved share (*Pflichtteilsrecht*) shall be more flexible and adapted to the demographic, social and family-related changes and in particular shall include partners in an informal relationship. The legislature has accepted this motion; however, it has further included the condition that with regard to the law of succession no equal treatment between couples in an informal relationship and married couples should be granted.<sup>54</sup>

Furthermore, a major revision of child support is pending. According to the draft, child support shall encompass the costs incurred by the person caring for the child for forgoing gainful employment.<sup>55</sup> This means that child support would replace the support obligation towards the former spouse who is caring for the child (a similar regulation for the unmarried mother does not exist in Swiss law). Accordingly, an unmarried mother might soon receive financial support, at least indirectly, via child support.

Moreover, a draft allowing for step-parent adoption in informal relationships (as well as in registered same-sex relationships) is pending.<sup>56</sup> Currently, only adoption by a single person is open to partners living in an informal relationship. According to the draft, joint adoption is still only provided for married couples.

---

<sup>51</sup> E.g. Art. 47 para. 1(c) and Art. 165 para. 1(a) Swiss Civil Procedure Code; Art. 56(c) and Art. 168 para. 1(a) Swiss Criminal Procedure Code.

<sup>52</sup> Art. 378 para. 1 and 420 Swiss Civil Code.

<sup>53</sup> Motion 10.3524 Gutzwiller 'Für ein zeitgemässes Erbrecht'.

<sup>54</sup> Amtliches Bulletin Nationalrat 2011, at p.111 ('keine erbrechtliche Gleichstellung der Konkubinatspaare mit den Ehepaaren').

<sup>55</sup> See Art. 276 para. 2 and Art. 285 para. 2 Draft Swiss Civil Code, available at: [www.bj.admin.ch/bj/de/home/gesellschaft/gesetzgebung/kindesunterhalt.html](http://www.bj.admin.ch/bj/de/home/gesellschaft/gesetzgebung/kindesunterhalt.html).

<sup>56</sup> See Art. 264c para. 1 Draft Swiss Civil Code, available at: [www.bj.admin.ch/bj/de/home/gesellschaft/gesetzgebung/adoptionsrecht.html](http://www.bj.admin.ch/bj/de/home/gesellschaft/gesetzgebung/adoptionsrecht.html).

Finally, the Swiss Federal Council has been requested to present a report on a modern and coherent civil and especially family law.<sup>57</sup> The referring expert opinions and discussions have – amongst other subjects – addressed the regulation of informal relationships.<sup>58</sup> The final report has just recently been published.<sup>59</sup> A comprehensive legal regulation of informal relationships has not been proposed. Rather, the Swiss Federal Council considers evaluating a regulation similar to the *pacte civil de solidarité* (PACS) as known in France or at least a regulation for informal relationships in cases of hardship.

## 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.**

### Marriages concluded per annum in Switzerland:

Year	Total <sup>60</sup>	Crude Marriage Rate <sup>61</sup>
2000	39,758	5.5
2001	39,244	5.4
2002	40,213	5.5
2003	40,056	5.5
2004	39,460	5.3
2005	40,139	5.4
2006	39,817	5.3
2007	40,330	5.3
2008	41,534	5.4
2009	41,918	5.4
2010	43,257	5.5
2011	42,083	5.3
2012	42,654	5.3
2013	39,794	4.9

<sup>57</sup> Postulat 12.3607 Fehr 'Zeitgemässes kohärentes Zivil- und insbesondere Familienrecht'.

<sup>58</sup> For the presentations and contributions to the discussions and expert opinion (I. SCHWENZER, 'Familienrecht und gesellschaftliche Veränderungen'), see *Die Praxis des Familienrechts*, 2014, at p. 779-1008.

<sup>59</sup> Bericht des Bundesrates zum Postulat Fehr (12.3607), 'Modernisierung des Familienrechts', available at: [www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2015/2015-03-250.html](http://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2015/2015-03-250.html).

<sup>60</sup> Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/05/01.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/05/01.html).

<sup>61</sup> The crude marriage rate is the total number of marriages registered during the year among the average permanent resident population. This indicator is expressed by the number of marriages per thousand inhabitants. Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/05/02.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/05/02.html).

**Average age at first marriage in Switzerland:<sup>62</sup>**

Year	Men	Women
2000	30.3	27.9
2001	30.4	28.0
2002	30.5	28.1
2003	30.6	28.4
2004	30.8	28.6
2005	31.0	28.7
2006	31.0	28.7
2007	31.2	28.9
2008	31.4	29.1
2009	31.5	29.2
2010	31.6	29.4
2011	31.8	29.5
2012	31.7	29.5
2013	31.8	29.6

**Concluded Registered Partnerships<sup>63</sup> per annum in Switzerland (the Swiss law on Registered Partnership entered into force in 2007):**

Year	Total	Male Couples	Female Couples
2007	2,004	1,431	573
2008	931	660	271
2009	872	588	284
2010	720	499	221
2011	672	426	246
2012	695	428	267
2013	693	463	230

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

There is no detailed information available with regard to this question.

There is, however, information available with regard to household forms in Switzerland.<sup>64</sup> According to those numbers, it can be said that the number of informal relationships has grown during the last few decades. Whereas in 1980 around 96% of all households consisting of couples (*Paarhaushalte*) were married couples, in 2011 this number was only around 84.2%. Thus, 15.2% of households made up of couples in 2011 were formed by informal relationships between persons

<sup>62</sup> Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/05/04.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/05/04.html).

<sup>63</sup> Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/07.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/07.html).

<sup>64</sup> Hence, these numbers do not include informal relationships which do not have a common household (living apart together).

of a different sex (with or without children) and 0.6% by same-sex couples (registered and informal relationships).<sup>65</sup>

**12. What percentage of the persons living in an informal relationship are:**

**a. Under 25 years of age?**

There is no information available with regard to this question.

**b. Between 26-40 years of age?**

There is no detailed information available with regard to this question.

From the population census of 2000 it can be said that most of the couples in an informal relationship without children are around 25-35 years of age. From 35 years onwards there is a sharp decline in informal relationships, which is (commonly) the time of a transfer to parentage.<sup>66</sup> Hence, it can be said that child-oriented marriage is (still) a very common phenomenon in Switzerland.

**c. Between 41-50 years of age?**

There is no information available with regard to this question.

**d. Between 51-65 years of age?**

There is no information available with regard to this question.

**e. Older?**

There is no information available with regard to this question.

**13. How many couples living in an informal relationship enter into a formal relationship with each other:**

**a. Where there is a common child?**

---

<sup>65</sup> Swiss Federal Statistical Office, 'Informationen aus der Demographie', *Newsletter No. 1 May 2014*, at p. 2 et seq.

<sup>66</sup> B. FUX, *Familiale Lebensformen im Wandel (Eidgenössische Volkszählung 2000)*, Bundesamt für Statistik, Neuchâtel, 2005, at p. 45.

**Couples in Switzerland with common children before their marriage:<sup>67</sup>**

<b>Year</b>	<b>Total</b>
2000	2,763
2001	2,745
2002	3,050
2003	3,149
2004	3,226
2005	3,526
2006	3,654
2007	3,885
2008	4,260
2009	4,581
2010	4,992
2011	5,127
2012	5,163
2013	4,864

There is no information available with regard to this question concerning registered partnerships.

**b. Where there is no common child?**

There is no detailed information available with regard to this question.

However, it can be said that child-oriented marriage is (still) a very common phenomenon in Switzerland. Hence, a child's birth enhances a formalisation of the relationship.<sup>68</sup>

**14. How many informal relationships are terminated:**

- a. Through separation of the partners?**
- b. Through the death of one of the partners?**

There is no information available with regard to this question.

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

There is no information available for informal relationships as well as for registered partners with regard to this question.

---

<sup>67</sup> Swiss Federal Statistical Office, table su-d-1.5.3.6 (Paare mit gemeinsamen Kindern vor der Heirat, 1980-2013).

<sup>68</sup> B. FUX, *Familiale Lebensformen im Wandel (Eidgenössische Volkszählung 2000)*, Bundesamt für Statistik, Neuchâtel, 2005, at p. 45.

The average duration of a marriage increased from 13.1 years in 2000 to 14.7 years in 2013.<sup>69</sup>

**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.**

**Percentage of children born out of wedlock in Switzerland:<sup>70</sup>**

<b>Year</b>	<b>Percentage</b>
2000	10.7%
2001	11.2%
2002	11.7%
2003	12.4%
2004	13.3%
2005	13.7%
2006	15.4%
2007	16.2%
2008	17.1%
2009	17.9%
2010	18.6%
2011	19.3%
2012	20.2%
2013	21.1%

There is no detailed information available with regard to the number of children born in an informal relationship. However, according to the Swiss Federal Statistical Office, the growing number of births out of wedlock generally indicates that these births are wanted births by unmarried women, mostly in an informal relationship.<sup>71</sup>

Furthermore, the statistics concerning household forms in Switzerland show that 3.7% of all households formed by couples were informal relationships with children (11.5% were informal relationships without children, 45% were married couples with children; 39.2% married couples without children and 0.6% were same-sex couples with or without children).<sup>72</sup>

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

<sup>69</sup> Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/06/04.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/06/04.html).

<sup>70</sup> Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/02/03.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/02/03.html).

<sup>71</sup> Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/02/03.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/06/blank/key/02/03.html).

<sup>72</sup> Swiss Federal Statistical Office, 'Informationen aus der Demographie', *Newsletter No. 1 May 2014*, at p. 2 et seq.

There is no information available with regard to the proportion of children living within an informal relationship who are not the couple's common children. There are, however, numbers available with regard to the household forms in Switzerland including the number of reconstituted families.<sup>73</sup>

**One-family households with children in Switzerland in 2012:<sup>74</sup>**

	<b>Number of households</b>	<b>Confidence interval <math>\pm</math> (in %)</b>
Total one-family households with child(ren)	1,163,167	0.5%
Unmarried couples with at least one child under 25 years, not reconstituted families (original families)	49,421	3.5%
Unmarried couples with at least one child under 25 years, reconstituted families	25,837	4.4%
Unmarried couples with youngest child aged 25 years or older	2,140	15.2%

**18. How many children are adopted within an informal relationship:**

**a. By one partner only?**

There is no information available with regard to the relationship status of a single adopter. Since 2000 only around 10-31 adoptions by a single person per year have been counted in Switzerland.<sup>75</sup>

**b. Jointly by the couple?**

In Switzerland, joint adoption by a couple is only possible for married couples (Art. 264a para. 1 Swiss Civil Code).

**c. Where one partner adopted the child of the other?**

Adoption of the partner's child is only allowed for married couples (Art. 264a para. 3 Swiss Civil Code). Currently, a draft Swiss Civil Code allowing for step-parent adoption in informal relationships is pending.

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

There is no information available with regard to this question.

**C. During the relationship**

<sup>73</sup> A reconstituted family is a family consisting of a couple and child(ren), of which at least one child is from a previous relationship.

<sup>74</sup> Shortened version of the table, see Swiss Federal Statistical Office, available at: [www.bfs.admin.ch/bfs/portal/en/index/themen/01/04/blank/key/01/06.html](http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/04/blank/key/01/06.html).

<sup>75</sup> Swiss Federal Statistical Office, table T 1.2.2.2.5.1 (Adoptionen).

**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?**

In Switzerland, partners in an informal relationship are under no duty to (financially) support each other.<sup>76</sup> Any support provided is to be qualified as a favour, a gift or as a fulfilment of moral obligations.<sup>77</sup>

Partners in an informal relationship may, however, contractually agree upon mutual financial support. Such an agreement can be concluded explicitly or impliedly and may be judicially enforced.<sup>78</sup>

If the partners have formed a simple partnership (Art. 530 et seq. Swiss Code of Obligations, see Question 3), they have to contribute (e.g. financially or through work and labour) to the partnership to achieve their common goal.<sup>79</sup> The simple partnership further entails a loyalty relationship between the partners, which obliges them to provide certain support and consideration.<sup>80</sup>

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

Generally, there is no duty to (financially) support each other in an informal relationship, except where this has been contractually agreed (see Question 20(a)).

The unmarried mother may only claim compensation against the father of the child for confinement costs, the costs of maintenance for at least four weeks prior to and at least eight weeks after the birth of the child and other expenses rendered necessary by the pregnancy or confinement, including the initial equipment for the child (Art. 295 para. 1 Swiss Civil Code).

Currently, a major revision of child support is pending. According to the draft, child support shall encompass the costs incurred by the person caring for the child for forgoing gainful employment. Accordingly, an unmarried mother may receive financial support, at least indirectly, via child support.

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

---

<sup>76</sup> B. PULVER, *Unverheiratete Paare*, Helbing Lichtenhahn Verlag, Basel, 2000, at p. 50.

<sup>77</sup> P. LIATOWITSCH and A. RUMO-JUNGO, 'Nichteheliche Lebensgemeinschaft: vermögens- und kindesrechtliche Belange', *Die Praxis des Familienrechts*, 2004, at p. 895,904; R. AEBI-MÜLLER and C. WIDMER, 'Rechtsregeln für nichteheliches Zusammenleben in der Schweiz', in: I. KROPFENBERG, D. SCHWAB, D. HENRICH, P. GOTTWALD and A. SPICKHOFF, *Rechtsregeln für nichteheliches Zusammenleben*, Giesecking, Bielefeld, 2009, at p. 65, 72.

<sup>78</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 59,75.

<sup>79</sup> R. AEBI-MÜLLER and C. WIDMER, 'Rechtsregeln für nichteheliches Zusammenleben in der Schweiz', in: I. KROPFENBERG, D. SCHWAB, D. HENRICH, P. GOTTWALD and A. SPICKHOFF, *Rechtsregeln für nichteheliches Zusammenleben*, Giesecking, Bielefeld, 2009, at p. 65, 72.

<sup>80</sup> R. D. DUSSY, *Ausgleichsansprüche für Vermögensinvestitionen nach Auflösung von Lebensbeziehungen*, Helbing Lichtenhahn Verlag, Basel, 1994, at p. 57.



Generally, there is no duty to (financially) support each other in an informal relationship, except where this has been contractually agreed (see Question 20(a)).

According to Art. 299 Swiss Civil Code, each spouse must give the other reasonable support in exercising parental responsibility over the latter's children and must represent the other spouse as the circumstances require. This provision may be applied by analogy to partners in an informal relationship.<sup>81</sup>

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

In Switzerland, partners in an informal relationship are under no 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?**

A partner in an informal relationship does not have a right to remain in the home against the will of the partner who is the sole owner or the sole tenant of the dwelling.

Rather, the entitled partner may evict the other partner at any time, having regard to the period of notice possibly given.<sup>82</sup> The relationship may be qualified as sub-letting (Art. 262 Swiss Code of Obligations), with the usual three-month period of notice (Art. 266c Swiss Code of Obligations). An extension of the sub-lease may be possible under certain circumstances (Art. 272 Swiss Code of Obligations). The relationship may further be qualified as a simple partnership (Art. 530 et seq. Swiss Code of Obligations), with the usual six-month period of notice (Art. 546 para. 1 Swiss Code of Obligations). Finally, it may be qualified as a loan for use, which is free of charge (Art. 305 et seq. Swiss Code of Obligations). However, in the case of a loan for use, dismissal without notice is possible (Art. 310 Swiss Code of Obligations), unless otherwise agreed.

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

Civil law remedies in cases of domestic violence were enacted in Switzerland in 2007.<sup>83</sup> They are found in the chapter on the protection of personality rights. This ensures that these provisions apply irrespective of the legal status of the persons

---

<sup>81</sup> I. SCHWENZER and M. COTTIER, in: H. HONSELL, N. P. VOGT and T. GEISER, *Basler Kommentar Zivilgesetzbuch I (Art. 1-456 ZGB)*, Helbing Lichtenhahn Verlag, Basel, 2014, at Art. 299 N 1.

<sup>82</sup> For details see H. HAUSHEER, T. GEISER and R. AEBI-MÜLLER, *Das Familienrecht des Schweizerischen Zivilgesetzbuches*, Stämpfli, Bern, 2014, at N 03.31 et seq.

<sup>83</sup> For details see I. SCHWENZER and A. BOCK, 'New Statutory Rules on Registered Partnerships and Protection Against Domestic Violence', in: B. ATKIN, *The International Survey of Family Law*, Jordan Publishing, Bristol, 2008, at p. 445 et seq.

involved, and even encompass stalking by persons who are wholly unrelated to the victim.

In cases of violence, threats or harassment, the court may order the offender to leave the common home for a certain period of time if the victim and the offender share the same residence (Art. 28b para. 2 Swiss Civil Code). This eviction may be ordered irrespective of the offender's legal rights to the dwelling.<sup>84</sup> The period may be extended once only.

Furthermore, and where justified by the circumstances, the court may – with the landlord's consent – transfer the rights and obligations under the tenancy agreement to the victim alone (Art. 28b para. 3 No. 2 Swiss Civil Code).

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

There are no specific rules on a partner's rights to occupy the home in cases where the partner owning or renting the home is absent.

In cases of an absence for a long duration by one of the partners (hospitalization or imprisonment), the partner may remain in the common home as long as the absent partner consents to this and in cases of a lease as long as the renting partner is not violating the lease contract.

Where the person (temporarily) lacks the capacity of judgement or is absent (e.g. unknown whereabouts) a deputy may be appointed by the adult protection authority (Art. 390 para. 1 Swiss Civil Code),<sup>85</sup> unless the informal partner has been appointed as the competent representative (in a respective directive). The deputy has to deal with further proceedings within his or her scope of competence. The consent of the adult protection authority is required before the deputy may carry out a liquidation of the household and/or terminate the lease on a dwelling where the client lives (Art. 416 para. 1 No. 1 Swiss Civil Code).

**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?**

There are no specific rules on transactions concerning the home of the partners in an informal relationship where the home is jointly owned by the partners.

In Switzerland, there are two kinds of collective ownership: co-ownership (*Miteigentum*) and joint ownership (*Gesamteigentum*). Depending on the type of ownership of the home, different rules regarding transactions apply.

---

<sup>84</sup> H. HAUSHEER, T. GEISER and R. AEBI-MÜLLER, *Das Familienrecht des Schweizerischen Zivilgesetzbuches*, Stämpfli, Bern, 2014, at N 03.34.

<sup>85</sup> For details see H. HENKEL, in: H. HONSELL, N.P. VOGT and T. GEISER, *Basler Kommentar Zivilgesetzbuch I (Art. 1-456 ZGB)*, Helbing Lichtenhahn Verlag, Basel, 2014, at Art. 390 N 8 et seq., 16 et seq.

A co-ownership exists where several persons own a share in an object which is physically undivided (Art. 646 para. 1 Swiss Civil Code). Each co-owner has the rights and obligations of ownership in respect of his or her share in the object (Art. 646 para. 3 Swiss Civil Code). Hence, unless otherwise agreed, each partner in an informal relationship may freely dispose of his or her share,<sup>86</sup> may encumber it with a mortgage or rent it to a third party, as long as it is compatible with the rights of the other co-owners (Art. 648 para. 1 Swiss Civil Code). The disposition or encumbrance of the (entire) object and the modification of its designated purpose require the consent of all co-owners, unless unanimously agreed otherwise (Art. 648 para. 2 Swiss Civil Code).

If several persons bound together in a community by a legal provision or contract own an object by virtue of that community, they are joint owners and the rights of each joint owner attach to the whole object (Art. 652 Swiss Civil Code). Such a community might, for example, be created if the persons build a community of heirs (Art. 602 para. 2 Swiss Civil Code) or in case of informal relationships if the partners form a simple partnership (Art. 544 para. 1 Swiss Code of Obligations).<sup>87</sup> Unless otherwise provided, the unanimous decision of all the joint owners is required in order to exercise ownership rights and in particular to dispose of the object in any way (Art. 653 para. 2 Swiss Civil Code). Further, the right to divide the object or make dispositions relating to a portion thereof is excluded for the duration of the community (Art. 653 para. 3 Swiss Civil Code).

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

There are no specific rules on transactions concerning the home of partners in an informal relationship where the home is owned by only one of the partners. Unless otherwise agreed, the partner owning the home is free to dispose, mortgage or sublet the home as he or she wishes.

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

There are no specific rules on transactions concerning the home of partners in an informal relationship where the home is rented by both partners.

If both partners are tenants, they are jointly liable for the rent. With regard to the termination of a lease, they jointly have to terminate the lease contract and likewise the landlord has to give notice of termination to both partners.

---

<sup>86</sup> However, co-owners do have the right of pre-emption against any person acquiring a share who is not a co-owner, Art. 682 para. 1 Swiss Civil Code.

<sup>87</sup> Joint ownership of property requires the recording of the legal relationship (e.g. simple partnership) in the land register (*Grundbuch*), Art. 51 para. 1(c) and para. 3 provisions on the land register, Grundbuchverordnung, SR 211.432.1.

The legal situation between the partners if they separate and one of them wants to leave the rented home is unclear. Without the landlord's consent, the parties cannot assign the lease contract to one partner only.<sup>88</sup> Furthermore, the law does not provide efficient proceedings with the possibility of assigning the lease to one partner in the case of a dispute.<sup>89</sup>

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

There are no specific rules on transactions concerning the home of partners in an informal relationship where the home is rented by only one of the partners. Unless otherwise agreed, the partner renting the home may terminate or sublet the home as he or she wishes.

Where a termination of the lease would cause hardship for the tenant or his or her family that cannot be justified by the interests of the landlord, the tenant may request an extension of the lease (Art. 272 para. 1 Swiss Code of Obligations). In 1979 the Swiss Federal Supreme Court decided that a partner in an informal relationship does not belong to the family in this regard.<sup>90</sup> However, this case law can now be considered to be outdated and no longer applicable.<sup>91</sup>

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

In Switzerland, the general provisions on agency in the Swiss Code of Obligations apply to informal relationships (Art. 32 et seq. and in the case of a simple partnership Art. 543 para. 2 Swiss Code of Obligations). A distinction can be made between an agency with or without authorization. The latter may be authorized subsequently (Art. 38 para. 1 Swiss Code of Obligations) or may be covered by the agency without authority (*Geschäftsführung ohne Auftrag*, Art. 419 et seq. Swiss Code of Obligations). In case of authorization, the extent of the agency depends on the extent of the authorization provided by the represented partner (Art. 33 para. 2 Swiss Code of Obligations).

A partner in an informal relationship may further be entitled to represent his or her partner in relation to medical procedures (Art. 378 para. 1 No. 4 Swiss Civil Code: representation may be assigned to any person who cohabits with the person lacking the capacity of judgement and regularly and personally provides him or her with

---

<sup>88</sup> M. MONTINI and M. MONTINI, 'Protection du logement de famille: l'état civil doit-il (encore) jouer un rôle', in: O. GUILLOD and C. MÜLLER, *Pour un droit équitable, engagé et chaleureux*, Helbing Lichtenhahn Verlag, Basel, 2011, at p. 363, 394.

<sup>89</sup> H. HAUSHEER, T. GEISER and R. AEBI-MÜLLER, *Das Familienrecht des Schweizerischen Zivilgesetzbuches*, Stämpfli, Bern, 2014, at N 03.30.

<sup>90</sup> See Swiss Federal Supreme Court, BGE 105 II 197 E.3.c) referring to the former Art. 331 Swiss Code of Obligations, which corresponds to the currently applicable Art. 272 Swiss Code of Obligations.

<sup>91</sup> M. MONTINI and M. MONTINI, 'Protection du logement de famille: l'état civil doit-il (encore) jouer un rôle', in: O. GUILLOD and C. MÜLLER, *Pour un droit équitable, engagé et chaleureux*, Helbing Lichtenhahn Verlag, Basel, 2011, at p. 363, 388; B. PULVER, *Unverheiratete Paare*, Helbing Lichtenhahn Verlag, Basel, 2000, at p. 59.

support). However, the partner in an informal relationship – unlike the spouse or registered partner – is not statutorily entitled to represent the partner who is no longer capable of sound judgement (Art. 374 Swiss Civil Code). Partners in an informal relationship may certainly appoint each other as deputies in the respective directives.

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

With regard to ownership in informal relationships the general rules on the law of property apply (Art. 641 et seq. Swiss Civil Code). Being in an informal relationship generally does not change the ownership of assets. Hence, ownership belongs to the person who has brought in, acquired or received the respective asset. However, if a simple partnership between the partners in an informal relationship exists and the asset is brought in (*quoad dominium*),<sup>92</sup> joint ownership is established.<sup>93</sup> The ownership remains with the sole owner of a simple partnership in case the asset is brought in only for use (*quoad usum*).

If the partners in an informal relationship jointly acquire assets they become co-owners (*Miteigentümer*) of those assets (Art. 646 et seq. Swiss Civil Code), unless otherwise agreed. Only if the partners are bound together in a community by a legal provision or contract do they become joint owners (*Gesamteigentümer*) (Art. 652 et seq. Swiss Civil Code), unless otherwise agreed. Such a community is in place if a simple partnership between the partners exists (either entirely or only with regard to the respective assets).<sup>94</sup>

**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 rules governing acquisitions and/or transactions in respect of household goods with regard to informal relationships.

**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?**

There are no circumstances under which partners in an informal relationship can be regarded as joint owners if the title belongs to one partner only.

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

---

<sup>92</sup> For property (*Grundeigentum*) the formal requirements for the transfer of ownership have to be followed, see Art. 657 para. 1 Swiss Civil Code.

<sup>93</sup> For details see M. COTTIER and C. CREVOSIER, 'Die nichteheliche Lebensgemeinschaft als einfache Gesellschaft', *Aktuelle Juristische Praxis*, 2012, at p. 33, 39 et seq.

<sup>94</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 59, 74.

If the ownership of an asset is unclear – because neither of the partners in the informal relationship can prove sole ownership (e.g. by an inventory or other documents) or joint ownership because of a simple partnership – the possessor of a chattel is presumed to be its owner (Art. 930 Swiss Civil Code). If the chattel is jointly possessed, co-ownership (in equal parts) is presumed.<sup>95</sup>

With regard to (immovable) property the record in the land register (*Grundbuch*) is decisive.

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

The same rules apply as for the partners in an informal relationship (see Question 29).

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

Partners in an informal relationship become jointly liable for debts either by contract or by law. There are numerous cases where the law provides for joint and several liability (irrespective of an informal relationship), such as in certain cases of tort law (e.g. Art. 50 and 51 Swiss Civil Code).

According to Art. 143 Swiss Code of Obligations, debtors become jointly and severally liable for a debt (*Solidarschuld*) by (explicitly or impliedly)<sup>96</sup> stating that each of them wishes to be individually liable for the performance of the entire obligation. This might be the case where both partners in an informal relationship jointly rent an apartment together.

Joint liability may also exist where the partners in an informal relationship form a simple partnership. According to Art. 544 para. 3 Swiss Code of Obligations, subject to a contrary agreement, partners in a simple partnership are jointly and severally liable for obligations towards third parties contracted jointly or through representatives.

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

In the case of joint and several liability (*solidarische Haftung*), the creditor can fully or partially recover debts from any of the debtors (Art. 144 para. 1 Swiss Code of

---

<sup>95</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 59, 74.

<sup>96</sup> For details see I. SCHWENZER, *Schweizerisches Obligationenrecht Allgemeiner Teil*, Stämpfli, Bern, 2012, N 88.15.

Obligations). The same applies for joint and several liability concerning a simple partnership.<sup>97</sup>

**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.**

There are no specific rules governing the administration of assets jointly owned by the partners in an informal relationship. Hence, the rules of property law apply.

Under co-ownership (see Question 24(a)), ordinary measures of administration and use must be distinguished from other measures. Ordinary measures of administration may be effected by each co-owner alone (Art. 647a Swiss Civil Code), whereas all other measures (e.g. measures that require construction work) require the consent of all or the majority of the co-owners (Art. 647b-647e Swiss Civil Code). The costs of administrative measures are borne by the co-owners in the proportion of their property shares, unless otherwise agreed (Art. 649 Swiss Civil Code). The co-owners may agree on rules of use and administration that deviate from the statutory provisions (Art. 647 para. 1 Swiss Civil Code). In any case, each co-owner may request that measures that are necessary for the preservation of the value and the usability of the asset are carried out, and, if necessary, to have these ordered by the court (Art. 647 para. 2 No. 1 Swiss Civil Code). Further, if an asset is threatened by imminent or growing harm, each co-owner may take the necessary preventive measures at the expense of all of the co-owners (Art. 647 para. 2 No. 2 Swiss Civil Code).

Administration in the case of joint ownership (see Question 24(a)) is governed by the rules of the underlying community (Art. 653 para. 1 Swiss Civil Code). For partners in an informal relationship this will often be a simple partnership (Art. 530 et seq. Swiss Code of Obligations). If there are no other provisions in this respect, an unanimous decision by all of the joint owners is required (Art. 653 Swiss 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?**

In Switzerland, the law does not grant maintenance after separation to a former partner in an informal relationship, irrespective of any relationship-related detriments.<sup>98</sup>

---

<sup>97</sup> For details see C. M. PESTALOZZI and P. HETTICH, in: H. HONSELL, N. P. VOGT and R. WATTER, *Basler Kommentar Obligationenrecht II (Art. 530-1186 ZGB)*, Helbing Lichtenhahn Verlag, Bern, 2008, at Art. 544 N 14 et seq.

<sup>98</sup> R. AEBI-MÜLLER and C. WIDMER, 'Rechtsregeln für nichteheliches Zusammenleben in der Schweiz', in: I. KROPFENBERG, D. SCHWAB, D. HENRICH, P. GOTTWALD and A. SPICKHOFF, *Rechtsregeln für nichteheliches Zusammenleben*, Giesecking, Bielefeld, 2009, at p. 65, 92 et seq.

- 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)?**

See the answer to Question 34, question is not relevant.

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

See the answer to Question 34, question is not relevant.

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

See the answer to Question 34, question is not relevant.

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

See the answer to Question 34, question is not relevant.

- 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?**

See the answer to Question 34, question is not relevant.

- 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?**

See the answer to Question 34, question is not relevant.

- 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?**

There are no specific rules for determining the ownership of the partners' assets when these partners in an informal relationship separate. Rather, the general rules on



the law of property will apply (Art. 641 et seq. Swiss Civil Code). See Question 26 and 29.

**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?**

There are no specific rules which subject all or certain property to the property division when the partners in an informal relationship separate.

If the parties have neither explicitly nor impliedly concluded an agreement with regard to their property, each partner in an informal relationship takes his or her belongings (according to the law of property). Generally, any contributions made (financially or by means of labour) are to be qualified as a favour, a gift or as the fulfilment of moral obligations and will not be compensated.

However, the partners in an informal relationship may have formed a simple partnership (encompassing either the whole or only parts<sup>99</sup> of the informal relationship).<sup>100</sup> The simple partnership is a contractual relationship in which two or more persons agree to combine their efforts or resources in order to achieve a common goal (Art. 530 para. 1 Swiss Code of Obligations, see also Question 3).<sup>101</sup> Thus, a simple partnership exists where the partners in an informal relationship have formed an economic unit with joint finances to which both have contributed either financially or through work and labour. Upon the liquidation of the simple partnership (Art. 548-550 Swiss Code of Obligations), the surplus which remains after the satisfaction of partnership debts, the reimbursement of any expenses incurred and advances made by each partner and the return of the value of contributions<sup>102</sup> is divided as profit among the partners (Art. 549 para. 1 Swiss Code of Obligations). Unless otherwise agreed, each partner has an equal share in the profits regardless of the nature and amount of his or her contribution (Art. 533 para. 1 Swiss Code of Obligations). Any shortfall is borne equally by the partners as a loss (Art. 549 para. 2 Swiss Code of Obligations). However, these cases largely depend on the court's interpretation of the parties' intention to enter into a legally binding relationship and of the common partnership goal pursued by the partners. Thus, legal uncertainties concerning these claims remain in legal practice.

---

<sup>99</sup> E.g. a joint bank account for household finances.

<sup>100</sup> The rules of simple partnership cannot automatically be applied to all financial questions relating to an informal relationship. Rather, the court has to decide individually regarding the relevant circumstances of every case, Swiss Federal Supreme Court, BGE 108 II 204 E.4. a); BGer 4A\_383/2007 (19.12.2007).

<sup>101</sup> For details see M. COTTIER and C. CREVOSIER, 'Die nichteheliche Lebensgemeinschaft als einfache Gesellschaft', *Aktuelle Juristische Praxis*, 2012, at p. 33 et seq.

<sup>102</sup> However, contributions (*Einlagen*) which were made for the joint consumption of the informal relationship may not have to be reimbursed, see Swiss Federal Supreme Court, BGE 108 II 204 E.6.a) and D. STAEHELIN, in: H. HONSELL, N. P. VOGT and R. WATTER, *Basler Kommentar Obligationenrecht II (Art. 530-1186 ZGB)*, Helbing Lichtenhahn Verlag, Bern, 2008, at Art. 548/549 N 8. With regard to ownership see Question 26.

**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)?**

In Switzerland, the partners in an informal relationship do not have preferential rights regarding their home and/or the household goods.

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

Generally, the termination of an informal relationship does not affect the joint debts of the partners.

Joint debts assumed by a simple partnership formed by the partners have to be settled upon the liquidation of the simple partnership (Art. 549 para. 1 Swiss Code of Obligations). Each partner has the right to demand a settlement of any debts before the distribution of the possibly remaining surplus of the simple partnership amongst the partners.<sup>103</sup>

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

**a. The assets?**

Generally (if the partners have not concluded an agreement), the determination and valuation of assets upon separation is not relevant.

A possible participation in the surplus of a simple partnership (see Question 42) is determined upon the liquidation of the simple partnership (Art. 549 Swiss Code of Obligations).

**b. The debts?**

Generally, the termination of an informal relationship does not affect the joint debts of the partners. Thus, the determination and valuation of debts upon separation is not relevant.

Joint debts assumed by a simple partnership formed by the partners have to be settled upon the liquidation of the simple partnership (Art. 549 para. 1 Swiss Code of Obligations).

**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?**

---

<sup>103</sup> D. STAEHELIN, in: H. HONSELL, N. P. VOGT and R. WATTER, *Basler Kommentar Obligationenrecht II* (Art. 530-1186 ZGB), Helbing Lichtenhahn Verlag, Bern, 2008, at Art. 548/549 N 6.

Generally, a partner in an informal relationship may not claim compensation on the basis of any contributions made or disadvantages suffered during the relationship.

A partner may be entitled to a salary if he or she has worked in the other partner's business. According to Art. 320 para. 1 Swiss Code of Obligations, an employment contract between the partners is concluded when one of them accepts the performance of work over a certain period in his or her service, which in the circumstances could only reasonably be expected in exchange for a salary.<sup>104</sup>

Where the partners in an informal relationship have formed a simple partnership (Art. 530 et seq. Swiss Code of Obligations), compensation may be sought upon the dissolution of the relationship (see Question 42).<sup>105</sup> However, these cases largely depend on the court's interpretation of the parties' intention to enter into a legally binding relationship and of the common partnership goal pursued by the partners. Up to now, only financial contributions<sup>106</sup> or contributions in the form of work and labour in the joint or the other partner's business<sup>107</sup> have given rise to compensation. Taking care of the household and caring for the children have not amounted to a contribution as required in a simple partnership.<sup>108</sup>

## **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?**

In Switzerland, a surviving partner in an informal relationship has no rights of inheritance in the 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?**

With regard to compensation, the surviving partner generally has the same claims against the estate as against the partner upon separation. Thus, for instance, claims against the estate based upon a simple partnership may be possible under certain circumstances (Art. 530 et seq. Swiss Code of Obligations, see Questions 3 and 42).<sup>109</sup> The death of a partner in an informal relationship will generally lead to the liquidation of the simple partnership (Art. 545 para. 1 No. 2 Swiss Code of

---

<sup>104</sup> See Swiss Federal Supreme Court, BGE 109 II 228; BGer 4C.89/1999, *Die Praxis des Familienrechts*, 2000, at p. 151 et seq.; BGE 79 II 168. See also BGE 87 II 164 (an interim change of legal practice).

<sup>105</sup> Swiss Federal Supreme Court, BGE 108 II 204 E.3.a).

<sup>106</sup> E.g. Swiss Federal Supreme Court, BGer 4A\_383/2007 (19.12.2007).

<sup>107</sup> E.g. Swiss Federal Supreme Court, BGer 4C.195/2006 (12.10.2007); BGE 109 II 228.

<sup>108</sup> Compensation was denied in Swiss Federal Supreme Court, BGer 4A\_441/2007 (17.01.2008), where a woman in an informal relationship had taken care of the common child for 16 years.

<sup>109</sup> M. COTTIER, 'Ein zeitgemässes Erbrecht für die Schweiz', *successio*, 2014, at p. 29, 31.

Obligations). There are, however, many uncertainties concerning these claims in legal practice.<sup>110</sup>

In cases of the homicide of a partner in an informal relationship, the surviving partner may be entitled to damages under tort law. According to Art. 45 para. 3 Swiss Code of Obligations, compensation must be granted if a person is deprived of his or her means of support as a result of homicide (*Versorgerschaden*). It is not necessary that such support is statutorily granted. Rather, the Swiss Federal Supreme Court has held that a partner in an informal relationship is entitled to such damages if he or she has actually been supported by the deceased and would most probably also have been supported by him or her in the future.<sup>111</sup>

Furthermore, the surviving partner may be entitled to an appropriate sum for pain and suffering (*Genugtuung*). Pursuant to Art. 47 Swiss Code of Obligations the court may grant the dependants of the deceased such (additional) compensation in cases of homicide.<sup>112</sup>

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

In Switzerland, other than is the case for married partners,<sup>113</sup> there are no specific rules which are applicable to the surviving partner in an informal relationship dealing with the home and/or household goods.

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

##### **a. In general?**

A partner in an informal relationship can dispose of property by will in favour of the surviving partner. In 1983 the Swiss Federal Supreme Court held that dispositions in favour of the surviving partner in an informal relationship are not immoral.<sup>114</sup>

The testator must have the capacity of judgement and be at least 18 years of age (Art. 467 Swiss Code of Obligations). The testator can in general make his or her will in holographic form (Art. 498 and 505 Swiss Civil Code). Furthermore, the testator must observe any possible reserved shares of the surviving heirs (Art. 470 para. 1 Swiss Civil Code). Heirs entitled to a reserved share are the descendants, the parents and the surviving spouse/registered partner of the deceased (Art. 471 Swiss Civil Code). The deceased may only freely and entirely dispose of his or her property in a last will when there are no heirs who are entitled to a reserved share (Art. 470 para. 2 Swiss Civil Code).

---

<sup>110</sup> M. COTTIER and C. CREVOSIER, 'Die nichteheliche Lebensgemeinschaft als einfache Gesellschaft', *Aktuelle Juristische Praxis*, 2012, at p. 33 et seq.

<sup>111</sup> Swiss Federal Supreme Court, BGE 114 II 144 E.2.

<sup>112</sup> Swiss Federal Supreme Court, BGE 138 III 157.

<sup>113</sup> E.g. Art. 219 or 612a Swiss Civil Code.

<sup>114</sup> Swiss Federal Supreme Court, BGE 109 II 17 E.1.b), the immorality of such a disposition is only implied where it appears to be an actual *pretrium stupri*.

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

A partner in an informal relationship can dispose of property by will in favour of the surviving partner if he or she is married to or is the registered partner of another person. However, the testator must observe the reserved share of his or her spouse or registered partner (Art. 470 para. 1 Swiss Civil Code).<sup>115</sup> The surviving spouse or registered partner is entitled to one half of his or her intestate succession (Art. 471 No. 3 Swiss Civil Code).

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

A partner in an informal relationship can dispose of property by will in favour of the surviving partner if he or she has children. However, the testator must observe the reserved shares of his or her children (Art. 470 para. 1 Swiss Civil Code). The descendants of the deceased are entitled to three-quarters of their intestate succession (Art. 471 No. 1 Swiss Civil Code).

**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?**

A joint will is unknown in the Swiss law of succession. Legal doctrine and case law deny the validity of joint last wills.<sup>116</sup>

**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?**

Partners in an informal relationship can make other dispositions of property upon death in favour of the surviving partner.

They can conclude contracts of succession (Art. 494 et seq. Swiss Civil Code). The contract of succession can be concluded between two or more testators. Notably, the testator may conclude an inheritance renunciation contract with an heir with or without valuable consideration (Art. 495 para. 1 Swiss Civil Code). Hence, heirs entitled to a reserved share may contractually waive their inheritance rights (either partly or entirely). According to Art. 512 para. 1 Swiss Civil Code, a contract of succession must, however, meet the same formal requirements as a will executed as a public deed (Art. 499 et seq. Swiss Civil Code) in order to be valid. Additionally, the contracting parties must simultaneously declare their intentions to the public official

---

<sup>115</sup> Additionally, before unwinding the inheritance any matrimonial property claims have to be considered.

<sup>116</sup> For details and further references see A. BÜCHLER and S. DICKENMANN, 'Das gemeinschaftliche Testament – Ein Rechtsvergleich Schweiz-Deutschland', *successio*, 2008, at p. 74 et seq.

and sign the deed before him or her and two witnesses (Art. 512 para. 2 Swiss Civil Code).

Gifts upon death to a partner in an informal relationship are also possible. According to Art. 245 para. 2 Swiss Code of Obligations, a gift whose occurrence is made contingent upon the donor's death is subject to the provisions governing testamentary dispositions (Art. 481 et seq. Swiss Civil Code). Thus, the formal requirements of the testamentary contract (Art. 512 Swiss Civil Code) generally have to be observed.<sup>117</sup> Furthermore, the reserved shares of surviving heirs have to be respected; if not, claims of abatement (*Herabsetzungsklagen*) will otherwise be possible (Art. 522 et seq. Swiss Civil Code).

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

Partners in an informal relationship can make other dispositions of property upon death in favour of the surviving partner if either partner is married to or is the registered partner of another person. However, the testator must observe the reserved share of his or her spouse or registered partner (Art. 471 No. 3 Swiss Civil Code), unless an inheritance renunciation contract has been concluded (see Question 52(a)).

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

Partners in an informal relationship can make other dispositions of property upon death in favour of the surviving partner if either partner has children. However, the testator must observe the reserved shares of his or her children (Art. 471 No. 1 Swiss Civil Code), unless an inheritance renunciation contract has been concluded (see Question 52(a)). However, according to Art. 468 para. 1 Swiss Civil Code, any person concluding a testamentary contract has to be capable of judgement and must have reached the age of 18.

**53. Is the surviving partner entitled to a reserved share<sup>118</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?**

In Switzerland, the surviving partner is not entitled to a reserved share or to any other rights or claims against the estate in the case of a disposition of property upon death in favour of another person.

According to Art. 606 Swiss Civil Code, heirs who were members of the household of and were maintained by the deceased at the time of his or her death may demand

---

<sup>117</sup> For details see N. P. VOGT, in: H. HONSELL, N. P. VOGT and T. GEISER, *Basler Kommentar Zivilgesetzbuch I (Art. 1-456 ZGB)*, Helbing Lichtenhahn Verlag, Basel, 2014, at Art. 245 N 7 et seq.

<sup>118</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.

that they be maintained for a further month at the estate's expense. Thus, if the partner in an informal relationship is a named heir (Art. 438 Swiss Civil Code) and cohabited with and was maintained by the deceased, he or she is entitled to be maintained for a further month.

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

There is no information available with regard to this question.

**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?**

There is no detailed information available with regard to this question. It can be said that generally the number of people making a will in Switzerland is rather low. The numbers estimated are around a third and up to 50%-60% in urban areas or with regard to larger inheritance sums.<sup>119</sup>

**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?**

There is no information available with regard to this question.

## **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?**

There are no specific rules concerning agreements between partners in an informal relationship.

Hence, the general rules with regard to contracts will apply, such as the legal rules on the abuse of a right (Art. 2 para. 2 Swiss Civil Code), the legal rules on nullity (Art. 20 Swiss Code of Obligations) or especially the legal rules on the protection of legal personality against excessive restrictions (Art. 27 Swiss Civil Code).<sup>120</sup> Furthermore, no particular form has to be observed, unless a particular form is required by law (Art. 11 Swiss Code of Obligations).

Generally, the partners in an informal relationship have a large degree of freedom with regard to such agreements. However, some questions with regard to the extent of such agreements have not yet been clarified and decided, such as questions regarding the duration of support obligations or a global reference to marriage law

---

<sup>119</sup> For further references see R. FANKHAUSER, *Die Ehekrise als Grenze des Ehegattenerbrechts*, Stämpfli, Bern, 2011, at p. 67 et seq.

<sup>120</sup> P. LIATOWITSCH and A. RUMO-JUNGO, 'Nichteheliche Lebensgemeinschaft: vermögens- und kindesrechtliche Belange', *Die Praxis des Familienrechts*, 2004, at p. 895, 903.

or to a marital property regime.<sup>121</sup> Furthermore, partners in an informal relationship may be limited with regard to questions concerning third parties or the state (e.g. parties cannot assign a lease contract to one partner without the consent of the landlord).

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

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

Generally, partners in an informal relationship are permitted to agree upon the division of tasks as between themselves, but this is not enforceable.

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

Generally, partners in an informal relationship are permitted to agree upon the contributions to the costs and expenses of the household.

**c. Their property relationship?**

Generally, partners in an informal relationship are permitted to agree on their property relationship. It is however unclear whether a global reference to a marital property regime (e.g. participation in acquisitions) is possible.<sup>122</sup>

**d. Maintenance?**

Generally, partners in an informal relationship are permitted to agree upon maintenance. However, questions with regard to the extent or the duration of maintenance are unclear (e.g. whether and to what extent support obligations are limited in their duration pursuant to Art. 27 Swiss Civil Code).<sup>123</sup>

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

Generally, partners in an informal relationship are permitted to agree upon the duration of the agreement. However, they have to observe the protection of legal

---

<sup>121</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 59, 68 et seq.; H. HAUSHEER, T. GEISER and R. AEBI-MÜLLER, *Das Familienrecht des Schweizerischen Zivilgesetzbuches*, Stämpfli, Bern, 2014, at N 03.13.

<sup>122</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 59, 68 et seq.; H. HAUSHEER, T. GEISER and R. AEBI-MÜLLER, *Das Familienrecht des Schweizerischen Zivilgesetzbuches*, Stämpfli, Bern, 2014, at N 03.13.

<sup>123</sup> According to H. HAUSHEER, T. GEISER and R. AEBI-MÜLLER, *Das Familienrecht des Schweizerischen Zivilgesetzbuches*, Stämpfli, Bern, 2014, at N 03.15, support obligations may only be permitted in a limited way. See also R. AEBI-MÜLLER and C. WIDMER, 'Rechtsregeln für nichteheliches Zusammenleben in der Schweiz', in: I. KROPFENBERG, D. SCHWAB, D. HENRICH, P. GOTTWALD and A. SPICKHOFF, *Rechtsregeln für nichteheliches Zusammenleben*, Giesecking, Bielefeld, 2009, at p. 65, 93.



personality against excessive restrictions (Art. 27 Swiss Civil Code, see also Question 58(d)).

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

Generally, the parties can agree on the legal consequences of their separation within the legal boundaries of the general rules with regard to contracts (see Question 57). They may, however, be limited with regard to questions concerning third parties or the state (e.g. parties cannot assign a lease contract to one partner without the consent of the landlord).

**60. Are the agreements binding:**

**a. Between the partners?**

Generally and within the legal boundaries of the general rules with regard to contracts (see Question 57), the agreements are binding between the partners.

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

The parties are limited in their agreements where the consent of third parties is required (e.g. parties cannot assign a lease contract to one partner without the consent of the landlord).<sup>124</sup> Furthermore, many questions regulated by the state do not fall within the ambit of contractual agreements (e.g. question relating to aliens law or (inheritance) tax law).

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

There are no specific legal rules or case law with regard to this question.

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

Not relevant.

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

Generally, an agreement between partners in an informal relationship can be made before, during or after the relationship.

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

**a. As between the partners?**

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

---

<sup>124</sup> A. BÜCHLER, 'Vermögensrechtliche Probleme in der nichtehelichen Lebensgemeinschaft', in: A. RUMO-JUNGO and P. PICHONNAZ, *Familienvermögensrecht*, Stämpfli, Bern, 2003, at p. 59, 72.

Generally, no particular form has to be observed, unless a particular form is required by law (Art. 11 Swiss Code of Obligations). In order to be binding, a contract transferring real estate must be executed as a public deed (Art. 657 para. 1 Swiss Civil Code).

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

Independent legal advice is not required.

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

There is no detailed information available with regard to this question. However, it can be said that explicit agreements made between partners in an informal relationship are an exception,<sup>125</sup> although they are highly recommended in the literature (also accessible for laymen). Rather, implied agreements exist, which are indeed difficult to prove.

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

There is no information available with regard to this question.

**G. Disputes**

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

In Switzerland, the organisation of the courts and the conciliation authorities (*Schlichtungsbehörden*) falls within the competence of the cantons (Art. 3 Swiss Civil Procedure Code). Generally, cantonal law governs the material and functional jurisdiction of the courts (Art. 4 Swiss Civil Procedure Code).<sup>126</sup> Thus, the cantons may provide for special courts for a particular jurisdiction (e.g. labour courts).

For disputes between partners in an informal relationship the respective civil court of first instance provided by the canton is competent to hear the case. Generally, litigation is preceded by an attempt at conciliation before a conciliation authority (Art. 197 and 198 (exceptions) Swiss Civil Procedure Code).

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

---

<sup>125</sup> See H. HAUSHEER, T. GEISER and R. AEBI-MÜLLER, *Das Familienrecht des Schweizerischen Zivilgesetzbuches*, Stämpfli, Bern, 2014, at N 03.09.

<sup>126</sup> The terminology may also differ, e.g. the names of the courts of first instance (*Zivilgericht*, *Bezirksgericht*, ...).

In Switzerland, in general, no family courts exist.<sup>127</sup> Thus, the same court is competent for spousal disputes. However, an attempt at conciliation before a conciliation authority is not required for divorce proceedings as well as proceedings with regard to the protection of the marital union and dissolution of a registered partnership (Art. 198(c), Art. 198(a) in connection with Art. 271 and 198(c) Swiss Civil Procedure Code). For all these proceedings specific procedural rules exist (Art. 271 et seq. Swiss Civil Procedure Code).<sup>128</sup>

**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?**

The courts cannot scrutinise an agreement made by the partners in an informal relationship.

According to the general principles of contract law, the courts may set aside an agreement for reasons such as immorality or unlawfulness (Art. 20 Swiss Code of Obligations) or a mistake (Art. 23 et seq. Swiss Code of Obligations).

**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)?**

The competent authority cannot override or modify the agreement, except for the same reasons as any other contract.

**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?**

There are no specific alternative dispute-solving mechanisms offered or required with regard to disputes arising out of informal relationships.

Generally, parties to a dispute may choose mediation instead of conciliation or during court proceedings (Art. 213 and 214 Swiss Civil Procedure Code). Furthermore, with regard to financial questions, arbitration might be a possibility.

**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?**

With regard to an agreement on mediation, there are no procedural effects. The parties may, however, jointly request mediation instead of conciliation or during

---

<sup>127</sup> Family courts exist in the canton of Aargau, but they are not competent to hear disputes arising from informal relationships.

<sup>128</sup> For details see I. SCHWENZER and T. KELLER, 'New Swiss Code of Civil Procedure: Special Proceedings in Matrimonial and Family Law Matters', in: B. ATKIN, *The International Survey of Family Law*, Jordan Publishing, Bristol, 2012, at p. 377 et seq.

court proceedings when the dispute has arisen (Art. 213 and 214 Swiss Civil Procedure Code).

With regard to a valid arbitration agreement, the arbitral tribunal has jurisdiction concerning the subject matter and any court seized in breach of the arbitration agreement has to dismiss the claim.

**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?**

There is no information available with regard to this question.