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# Property consequences of registered partnerships

 Luxembourg

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(in civil and commercial matters)

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

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

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

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

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

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

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

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

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

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

The partners may decide not to conclude any property regime agreement whatsoever. In this case, the legal regime will apply to their partnership. Alternatively, they may conclude an agreement in which they specify the property consequences of their partnership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Luxembourg law does not recognise the annulment of registered partnerships.

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

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

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

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

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

For all other matters, ordinary law applies.

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

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

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

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

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

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

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

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

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

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

In any event, any *inter vivos* instruments (*actes entre vifs*), whether free of charge or for payment, transferring rights in rem in immovable property (*droits réels immobiliers*) other than preferential rights (*privilèges*) or

mortgages (*hypothèques*), will be transcribed at the office of the mortgage registry (*Bureau de la Conservation des Hypothèques*) of the jurisdiction in which the property is located.

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

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