

The translation of a legislative text from one language to another is a difficult task. This is even more so if the translator is not a professional of that task, but rather a law student having some – limited – knowledge of English legal terms. This translation can therefore be no more than a first, and doubtlessly very imperfect effort and I do look forward to correcting the errors in the text. A particular difficulty stems from the fact that many legal terms have their very own significance within a given legal system; their meaning must therefore remain unclear for anyone unfamiliar with that system. In order to facilitate comprehension, I have added some remarks in italics at various points. A second major inconvenience arises from the use of the word "Lebenspartner" and its derivatives in almost every sentence and indeed in the Act's very title. That word can only be rendered imperfectly in English. It means a partnership which includes sharing "Life" and which is concluded to last a whole lifetime (See Section 1 (1)). I have opted for the literal translation of "Life Partnership", which is neither elegant nor very precise. Perhaps it will be possible in the future to adopt a better term.

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Act on Life Partnerships

16/02/2001

Part 1

Conclusion of a Life Partnership

Section 1

Formalities and Conditions of Validity

(1) Two Persons of the same sex conclude a Life Partnership by making, while they are both present, reciprocal declarations that they want to lead a Partnership for Life (Life Partners). These declarations may not be given under any condition, whether as to time or otherwise. The declarations become valid if they are given at the competent office. It is a supplementary condition of validity for the conclusion of a Life Partnership that the Life Partners have given a declaration on their Property Régime (Section 6 (1)).

(2) A Life Partnership can not be validly concluded

1. with a Person who is juvenile or married or who already has a Life Partnership with another Person;
2. between Persons who are related in direct line;
3. between full or half siblings;
4. if the Life Partners at the moment of conclusion of their Life Partnership do not want to create the obligations under section 2.

The "competent office" mentioned in Subsection 1 is to be designated by the different States which compose the Federal Republic. At first, the Federal Legislator wanted to impose the Registrars Office (which is competent for marriage ceremonies), but such a regulation would have needed approval by the second chamber of Parliament, the Bundesrat. Given the lack of support for this Act in that Chamber, no uniform solution could be found and the matter was left to the discretion of the States. Not all States have legislated in time for the first Partnerships (01/08/2001); those which have, have adopted different solutions according to political preferences.

The notion of "juvenile" in Subsection 2 Nr. 1 refers to Section 2 of the Civil Code which defines as "adult" a Person over the age of 18.

Part 2

Legal Consequences of the Life Partnership

Section 2

Community of Life within the Partnership

The Life Partners owe each other support and care as well as a common design of Life. They are responsible for each other.

Section 3

Life Partnership Name

(1) The Life Partners can designate a common name (Life Partnership Name). The Life Partners can choose, by way of declaration, the Birthname of one of the Life Partners as their Life Partnership Name. This declaration should be made at the Conclusion of the Life Partnership. The declaration becomes valid if it is made at the competent office. The validity of a later declaration depends on it being publicly certified.

(2) A Life Partner, whose name does not become Life Partnership Name, can add, by way of declaration, to the Life Partnership Name his Birthname or the name which he is using at the time of the declaration either as a prefix or as an addition. This may not be done if the Life Partnership Name itself contains several names. If the name of one of the Life Partners contains several names, only one of these names may be added. The declaration becomes valid if it is made at the competent office. The declaration can be retracted; in this case, no new declaration according to Section 3 (2)(1) may be made. The retraction becomes valid if it is made at the competent office. The declaration and the retraction have to be publicly certified.

(3) A Life Partner retains his Life Partnership Name even after the Termination of the Life Partnership. He can, by way of declaration, take up again his Birthname or the name which he used until the designation of a Life Partnership Name, or he may add his Birthname to his Life Partnership Name, either as a prefix or as an addition. Section 3 (2) is to be applied accordingly.

(4) Birthname is the name which is registered in the Birth Certificate of one of the Life Partners at the time of the declarations mentioned in Sections 3 (1)-(3).

Section 4

Duty of care

In the accomplishment of the duties which arise from the Life Partnership, the Life Partners owe each other only such a degree of care which they habitually use in their own affairs.

A similar rule is contained in Section 1359 for marriage. It concerns the degree of care owed in matters of tortuous liability.

Section 5

Obligation of Maintenance

The Life Partners are under a mutual obligation of maintenance. The Sections 1360a and 1360b of the Civil Code are to be applied accordingly.

The aforementioned sections of the Civil Code contain rules detailing the amount of maintenance due in marriage and the different ways in which maintenance may be paid.

Section 6

Declaration on the Property Régime

(1) The Life Partners have to make a declaration on their Property Régime before concluding a Life Partnership. They have to declare either that they have chosen a Régime of Aquests, or that they have concluded a Life Partnership Contract (Section 7).

(2) Within the Property Régime of Aquests, assets which belong to the Life Partners at the beginning of the Life Partnership or which are gained by them during the Life Partnership do not

become community property. Each of the Life Partners administers his own assets himself. At the Termination of this Property Régime, the balance of the surplus which the Life Partners have acquired within that Régime will be established. The Sections 1371 to 1390 of the Civil Code are to be applied accordingly.

(3) If the contract according to Section 6 (1)(2) or the Life Partnership Contract are invalid, a Régime of separate assets shall apply.

The regime of Aquests is the general marital property regime in German Family Law. The Sections 1371 to 1390 of the Civil Code define this regime. The general principle is that the gains made by both Partners during Marriage/Life Partnership should be equally distributed between the Spouses /the Life Partners. The distribution is, however, stalled until either the death of one of the two persons or divorce/termination. In the case of death, the surviving Person shall receive a quarter of the estate as realization of the Aquests regime; no further payment shall be made and it is immaterial whether there has been a gain at all. In the case of divorce/termination, the gains will be calculated and the surplus will be equally divided between the two persons.

Section 7

Life Partnership Contract

(1) The Life Partners may regulate their financial dealings by way of contract (Life Partnership Contract). This contract must be concluded in the presence of both Life Partners and has to be put in writing by a Notary. The Sections 1409 and 1411 of the Civil Code are to be applied accordingly.

(2) Section 7 (1)(2) shall not apply if the Life Partners have agreed in the form mentioned in Section 6 (1) to adopt the Régime of aquests before concluding the Life Partnership.

Sections 1409 and 1411 of the Civil Code are concerned with the formalities of a marital contract.

Section 8

Other financial Consequences

(1) It is presumed for the benefit of the creditors of one of the Life Partners that the movable objects which are in the possession of one or both of the Life Partners belong to the debtor. Furthermore, the Sections 1362 (1)(2) and 1362 (1)(3) as well as 1362 (2) of the Civil Code are to be applied accordingly.

(2) The Sections 1357 and 1365 to 1370 of the Civil Code are to be applied accordingly.

Section 1362 of the Civil Code is concerned with spelling out the scope of the presumption in favour of the creditors. Section 1357 legislates that a Spouse has power of attorney for her marital partner in affairs of everyday necessities. The Sections 1365 to 1370 are limitations of the power of a Spouse to dispose of the totality of his assets or (as the Courts have ruled) over a very large portion of his assets without the consent of his partner.

Section 9

Competences of the Life Partner in matters of Parental Responsibility

(1) If a parent who has sole parental responsibility leads a Life Partnership, the other Life Partner has, together with that Parent, the right of codecision in matters of the daily life of the child. Section 1629 (2)(1) of the Civil Code is to be applied accordingly.

(2) In the case of clear and present danger, the Life Partner is entitled to make all legal acts necessary for the wellbeing of the Child; the parent who has parental responsibility is to be informed immediately.

(3) The Family Court can limit or exclude the rights under Section 9 (1), if this is necessary for the wellbeing of the Child.

(4) There are no rights under Section 9 (1) if the Life Partners live separately for a not only transient time.

Section 1629 (2)(1) of the Civil Code contains a limitation for parental responsibility. For certain specified matters, parents need a court order.

Section 10 Succession Rights

(1) The surviving Life Partner of a Deceased is legal heir to a quarter of the estate next to relatives of the first order and to half of the estates next to relatives of the second order and next to grandparents. In excess of this, he inherits as an "advance" the household assets which belong to the household of the Life Partners and the presents which were exchanged at the conclusion of the Life Partnership. If the Life Partner is legal heir next to relatives of the first order, he shall inherit this "advance" only if he needs them for a proper household. The rules on special bequests shall be applicable.

(2) If no relatives of the first or second order and no grandparents survive, the Life Partner shall inherit the whole estate.

(3) The succession rights of the Life Partner are excluded, if at the time of the death of the person who leaves the inheritance

1. the grounds for Termination of the Life Partnership according to Section 15 (2)(1) or (2) were fulfilled and the Deceased had applied for or consented to Termination;
2. the Deceased had made an application according to Section 15 (2)(3) and that application was materially well founded;

In these cases Section 16 shall be applied accordingly.

(4) Life Partners may establish a common testament. The Sections 2266 to 2273 of the Civil Code are to be applied accordingly.

(5) Section 2077 (1) and (3) of the Civil Code shall be applied accordingly to any testamentary disposition of a Life Partner.

(6) If the deceased has excluded a surviving Life Partner from the inheritance by way of testamentary disposition, that Life Partner may demand half of the value of the legal inheritance from the heirs as statutory portion. The provisions of the Civil Code on statutory portions are to be applied accordingly; a Life Partner is to be held to be a marital partner in these provisions.

(7) The provisions of the Civil Code on the renunciation of the inheritance are to be applied accordingly.

Relatives "of the first order" are the children of the deceased (Section 1924 of the Civil Code); relatives "of the second order" are the parents of the deceased and their children (=the siblings or half-siblings of the deceased).

A "common testament" (Subsection 4, referring to Sections 2266 to 2273 of the Civil Code) differs from normal testaments in terms of special formalities as well as special effects. It was until this Act limited to marital couples.

Section 2077 means that a testamentary disposition to the benefit of a Spouse shall be deemed to be retracted if a divorce had been granted or if one the spouses had applied for a divorce, and the application was materially well founded.

Section 11 Other Consequences of the Life Partnership

(1) A Life Partner shall be deemed to be member of the family of his partner, as long as no other statutory disposition is made.

(2) The relatives of one of the Life Partners are deemed to be related by Partnership with the other Life Partner. The line and degree of relationship shall be determined according to the line and

degree of the mediating relationship. This relationship shall continue even after the Life Partnership which founded it has been terminated.

Part 3

Separation of the Life Partners

Section 12

Maintenance at Separation

(1) If the Life Partners are living separately, a Life Partner may demand of the other such maintenance which is proper according to the way of life, and the financial and professional situation during the Life Partnership. If one of the Life Partners does not work, he may be asked to earn his living by paid work; this is not so if this cannot be expected of him with regard to his personal situation (which includes the length of the Life Partnership) and to the financial situation of the Life Partners.

(2) The demand of maintenance is to be refused, lowered or restricted in time insofar as it would be inequitable towards the debtor of that obligation. The Sections 1361 (4) and 1610a of the Civil Code are to be applied accordingly.

The Sections concern details of the calculation of maintenance and its payment.

Section 13

Division of Household Assets

(1) If the Life Partners are living separately, each of them can demand of the other that those household assets which belong to him be given back. However, he must leave them with the other Life Partner if that Partner needs these assets in order to run a separate household and if this is equitable with regards to the circumstances.

(2) Household assets which belong to both Life Partners are to be distributed equitably. The Court can order an adequate compensation for the use of such assets.

(3) Property of such assets remains unchanged, unless the Life Partners deem otherwise.

Section 14

Designation of Homes at Separation

(1) If the Life Partners are living separately, or if one of them wants to live separately, one of the Life Partners may demand that the other give him the common home, or part of it, for sole use, if such a decision is necessary in order to avoid a special hardship. Special consideration shall be given to the fact that one of the Life Partners owns (either alone or together with a third party) the property (Eigentum), the Erbbaurecht or the right to use immovable property (Nießbrauch); this shall also be the case for a Wohnungseigentum, the Dauerwohnrecht and the dingliche Wohnrecht.

(2) If one of the Life Partners has to give the other sole use of the common home or of part of it, he may demand adequate compensation for use, if this is equitable.

The notions referred to in Subsection 1 designate different ways of holding immovable property under German Law. As the legal situation is very different from English Law in this respect, any

translation would be hazardous. It is important to note, however, that all these notions refer not to a purely contractual obligation to rent, but to different ways of holding property.

Part 4 Termination of the Life Partnership

Section 15 Termination

(1) On application of one or both of the Life Partners, the Life Partnership will be dissolved by way of a Court Order.

(2) The Court shall terminate the Life Partnership if

1. both Life Partners have declared that they do not want to continue with the Life Partnership and that twelve months have elapsed since that declaration;
2. one of the Life Partners has declared that he does not want to continue the Life Partnership and 36 months have elapsed since that declaration was served on the other Life Partner;
3. the continuation of the Life Partnership would be an unreasonable hardship for the applicant for reasons which stem from the person of his Life Partner.

(3) The Life Partners can retract their declaration according to Section 15 (2)(1) or (2), as long as the Life Partnership has not been terminated. If in the case of Section 15 (2)(1) one of the Life Partners retracts his declaration, the Court will terminate the Life Partnership if 36 months have elapsed since the joint declaration was made.

(4) The Declarations according to Section 15 (2) Nr. 1 and 2 or Section 15 (3) have to be made personally and have to be publicly certified. They may not be given under any condition, wether as to time or otherwise.

Section 16 Maintenance after Termination

(1) If one of the Life Partners can not maintain himself after the Termination of the Life Partnership, he can demand that the other Life Partner grant him the amount of maintenance which, with regards to the standard of life during the Life Partnership, appears proper and insofar and as long as, due to illness or his age a salaried work cannot be expected of him.

(2) The obligation expires if the Claimant enters into Marriage or into a new Life Partnership. The Section 1578 Subsections 1 (1)(2, first half-sentence) (4), Subsections 2 and 3, Sections 1578a to 1581 and 1583 to 1586 and 1586b of the Civil Code are to be applied accordingly.

(3) In the determination of the amount of maintenance due, a former Life Partner takes precedence before a new Life Partner and other relatives (in the sense of Section 1609 (2) of the Civil Code) in the case of Section 1581 of the Civil Code; all other persons who have a statutory claim to maintenance take precedence over the former Life Partner.

Section 17 Decisions by the Family Courts

If upon the Termination of the Life Partnership the Life Partners cannot agree on who should live in the common home in the future, or who should get the equipment/furniture of that home and other household assets, the Family Court shall, on application, determine the legal situation according to

equity. The Court shall have regard to all relevant circumstances. As regards the home and the household assets, the ruling of the Court shall have the effect of organizing the legal situation. *The last sentence refers to the power of the Court not only to determine the property situation but also to change it by conveying property from one of the Partners to the other.*

Section 18

Decision on the common Home

(1) With regards to the common home, the Court may order that

1. a tenancy agreement which has been entered into by both Life Partners shall be continued by one of them alone;
2. one of the Life Partners enters into a tenancy agreement which had been entered only by the other Life Partner.

(2) If the common home is property or co-property of one of the Life Partners, the Court may order that a tenancy agreement be founded as to that home, if the loss of that home would be an inequitable hardship.

(3) Sections 3 to 7 of the Marital Home and the Household Assets Order and Section 60 of the *Wohnungseigentum* Act are to be applied accordingly.

Section 19

Decisions on Household Assets

Sections 8 to 10 of the Marital Home and Household Assets Order shall be applied accordingly.

Movable Property which is in the sole Property of one of the Life Partners or in the Co-Property of one of the Life Partners and a third party shall be ordered to be transferred to the other Life Partner by the Court only if that other person depends on its continued use and the transfer is not unreasonable for the other person.

The Marital Home and Household Assets Order is applicable in Marriage Disputes and gives Courts a wide discretion in regulating these disputes.