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NATIONAL REPORT: SWEDEN

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A. General

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

Swedish law recognises two types of formal relationships. The first and traditional one is marriage which, following law reform carried out in 2009, applies to spouses irrespective of their sex, i.e., irrespective of whether they are of the same sex or of opposite sexes. The legislation regarding marriage is found in the Swedish Marriage Code (in Swedish, *Äktenskapsbalk 1987:230*), which regulates, for example, marriage conclusion and divorce, and the rights and duties of the spouses during marriage and upon its termination by divorce.

The second formal relationship between couples, recognised by Swedish law, is the institution of registered partnership which was introduced into legislation in 1994 through the Registered Partnership Act (in Swedish, *Lag 1994:1117 om registrerat partnerskap*) and aimed solely at couples of the same sex. This enactment, which was formally abolished in 2009 as redundant following the introduction of a gender neutral marriage concept (see above), still continues to apply to same-sex couples who have registered their partnership according to this legislation without later converting it into a marriage. The essence of the Registered Partnership Act, with successive amendments until its abolition in 2009, was to place registered partners on the same legal footing as married couples. Since 1 May 2009, when the revised Marriage Code with the gender-neutral marriage concept entered into force, it is no longer possible to enter into a registered partnership in Sweden. A characteristic of Swedish law is that marriage and the existing registered partnerships concluded in Sweden have the same legal effects. The difference was access to the one or the other, depending on the sex of the individuals concerned. Once marriage became an available option for same-sex couples, there was no need for the Swedish model of registered partnership.

- 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?**

Since 1 January 1974, Swedish law has contained specific enactments focusing on

informal relationships between couples living habitually together and sharing a household. The current special body of regulation is found in the Swedish Cohabitation Act (in Swedish, *Sambolag* 2003:376) focusing on two people who habitually live together as a couple sharing a joint household (§ 1). Swedish law calls the parties to such a relationship ‘cohabitees’, or ‘cohabitants’, or ‘the cohabiting couple’ (in Swedish: *sambor, det sammanboende paret*); this terminology will also be largely used in the Swedish national report. Both opposite-sex and same-sex couples are covered by this legislation. It should be noted that the material scope of application of the Swedish Cohabitation Act is limited to the regulation of how the couple’s joint home and household goods, if they qualify as so-called cohabitation property (in Swedish: *samboegendom*), are to be distributed upon the termination of the relationship, in addition to protecting one cohabitee’s interests in this property against unilateral actions taken by the other cohabitee. The Act also includes a mandatory regulation on the so-called ‘take-over right’ of the couple’s joint dwelling upon termination of the relationship, regulates the partners’ freedom of contract regarding the ‘cohabitation property’ and includes procedural provisions.

If one (or both) of the parties to the informal relationship is in a legally existing formal relationship (marriage or registered partnership) with another person, the Swedish Cohabitation Act is explicitly, according to § 1 para. 3-4, not applicable. The *travaux préparatoires* to the enactment indicate furthermore that a person cannot be in an informal relationship, subject to this enactment, with more than one person at a time.¹ Even if there is some support in the legal literature for the position that people who, according to the Swedish Marriage Code, are forbidden to marry each other because of close kinship, are to be excluded from the scope of the Swedish Cohabitation Act,² there is no case law on this issue.

Interestingly enough, the Swedish Cohabitation Act can cover situations where one or two people under the age of majority (i.e., 18 years) live together in a joint household. This is made explicit through § 9, para. 2, authorising a cohabitee or a prospective cohabitee under the age of 18 to sign an agreement concerning (future) division of the ‘cohabitation property’. The *travaux préparatoires*, likewise, state that the Act covers relationships between persons of at least 15 years of age, if the other criteria for the Act’s application are met.³ An underage person must, nevertheless, have the consent of his or her custodial parents to live in and share a joint household with another person, since a child’s residence falls within the scope of parental responsibilities.⁴

Apart from the specific regulation in the Swedish Cohabitation Act, special provisions addressing couples living with each other in informal relationships can be found in other Swedish enactments. An example is the Swedish Social Insurance Code (in Swedish: *Socialförsäkringsbalk* 2010:110) as regards the right to a so-called

¹ Government Bill, Prop. 1986/87:1, p. 369.

² F. GRAUERS, *Ekonomisk familjerätt*, Thomson Förlag, Stockholm, 2008, at p. 231.

³ Bet. 2002/03:LU19 p. 11.

⁴ Swedish Children and Parents Code (in Swedish, *Föräldrabalken* 1949:381), Chapter 6, § 2 and 11.

adjustment pension (in Swedish: *omställningspension*) following the death of the other partner to the informal relationship. Under certain conditions (which require more than the fulfilment of the criteria set out in the Swedish Cohabitation Act, § 1), the surviving partner may qualify for this pension as if he or she had been married to the deceased, Chapter 80, § 4. Another example is to be found in the Swedish Code of Land Law (in Swedish: *Jordabalk 1970:994*) explicitly placing partners to an informal relationship on the same footing as spouses regarding the right to take over the lease of the joint dwelling, Chapter 12, § 33. Certain provisions in Swedish legislation, in particular within the area of social welfare, are drafted in a neutral manner covering 'households with children', without regard to other legal 'etiquette'.

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

General principles on the law of obligations and the law of property are applicable to a couple living together in an informal relationship. It follows that the two cohabitants can enter into legal transactions with each other or, for example, acquire property jointly and become co-owners, just like any other people.

In some cases, according to case law, cohabitantes as well as spouses may be deemed to have acquired joint ownership rights to property in circumstances where such an outcome does not self-evidently follow from a more strict application of general principles of the law of obligations or property law. The reason for this more flexible approach lies in the taking account of the realities of family life, whether in marriage or in unmarried cohabitation, calling for a less formal approach to issues of acquisition of title.⁵ When it comes to property acquired for joint use, case law provides that one presumption applies for primarily household goods acquired for joint use, and another for other types of property; both presumptions often result in co-ownership for cohabitants. An example of the first kind of situation is the Court of Appeal judgment RH 1986:25: the cohabiting man and woman were considered to be joint owners of the furniture bought by the man for their joint use. The Swedish Supreme Court decisions NJA 1980 p. 705, NJA 1981 p. 693, NJA 1982 p. 589 and NJA 2013 p. 242 illustrate the second type of presumption, which has resulted in joint ownership of assets such as real estate property, condominiums, holiday cottages, horses, boats, etc. The construction of joint ownership is often called 'caveat ownership' or 'concealed co-ownership'.⁶ It applies to couples in marriage or in an

⁵ See the preparatory works in NJA II 1921 p. 89 to the Swedish Marriage Code of 1921, the Swedish Supreme Court decision NJA 2002 p. 142 and M. BRATTSTRÖM, 'Egendomsförhållanden undet bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 71 et seq. (see Chapter 2.2, in the English version of the book, to be published by Intersentia in 2015).

⁶ See M. BRATTSTRÖM, 'The Protection of a Vulnerable Party when a Cohabitee Relationship Ends - An Evaluation of the Swedish Cohabitees Act', in B. VERSCHRAEGEN (ed.), *Family Finances*, Jan Sramet Verlag, Vienna, 2008, at p. 350. See also M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPEMBERG et al. (eds.),

informal cohabitation relationship, when certain criteria specified by case law are met (see below, under Questions 27-29). According to the Supreme Court in NJA 2008 p. 826, it is to be seen as a rule of presumption of joint ownership, belonging to the field of family law and aimed at providing financial protection to the partner who financially contributed to an acquisition made by the other partner, solely in the latter's name.

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

The most relevant statutory definition on informal relationships is found in the Swedish Cohabitation Act (2003:376) § 1 para. 2 defining the 'cohabitees' covered by the enactment as two people who live together as a couple on a habitual basis and who share a household. The neutral reference to 'two people' means that both opposite-sex and same-sex couples are covered. Paragraph 2 indicates that the given definition is not limited to the 2003 enactment, but includes other legislative provisions referring to cohabitees or persons living together under marriage-like circumstances. According to the provisions in para. 3-4 such relationships are only covered where neither of the parties is married or a registered partner.

Other legislation, such as the Swedish Social Insurance Code, refers to the definition above in the Swedish Cohabitation Act, but in addition to this sets out additional requirements for a cohabitee to qualify for the enactment's protection. To qualify for an adjustment pension from the deceased cohabitee, for example, the surviving cohabitee must have been previously married to the deceased, have or have had a child with the deceased or be pregnant with the deceased's child (Swedish Social Insurance Code, Chapter 80 § 4).

The requirement in the Cohabitation Act expecting the couple to live together on a habitual basis (in Swedish: *stadigvarande*) suggests that temporary relationships are not covered. No minimum period is given in the enactment itself, for the relationship to be counted as habitual, although six months has been given as a kind of 'benchmark' in the *travaux préparatoires* to the Act. Factors other than the duration of the cohabitation may also be of relevance, in the case of shorter relationships.⁷ In the Court of Appeal judgment RH 2005:34, the court accepted the relationship as being subject to the Swedish Cohabitation Act even though the actual cohabitation had only lasted two and a half months.⁸

The definition of cohabitants in the Swedish Cohabitation Act also includes that the couple needs to share the household. There is no absolute requirement that the two persons have to be registered as living at the same address, even if this is usually the case. In the Supreme Court judgment NJA 1994 s. 256, the Court regarded two people

Rechtsregeln für nichteheliches Zusammenleben, Gieseking Verlag, Vienna, 2009, pp. 207-226, at p. 222 et seq.

⁷ Government Bill, Prop. 1986/87:1, p. 253.

⁸ Court of Appeal judgment RH 2005:34.

not registered as living at the same address as cohabitantes, since they had shared the expenses of the household and had a joint dwelling where their common child had been cared for and had been raised by them both. Sharing a household requires cooperation between the partners in respect of costs and expenses of the household.

The criteria of having to live together as a couple means that the two people usually have a sexual intimacy with each other, even if it is not an absolute criterion. (No such requirement exists either in respect of formal relationships.) The aim of this criterion is to exclude people in other kinds of relationships from the scope of the Swedish Cohabitation Act, such as parents and grown-up children, siblings or friends living together.⁹ Regarding the distinction between relationships that should be subject to the Swedish Cohabitation Act and relationships that fall outside it, the intention of the people in the relationship and their behaviour are to be taken into account. If the people in question are spending holidays together, attend celebrations together and otherwise act as a couple officially, that might be relevant for the classification of their relationship according to the Swedish Cohabitation Act.¹⁰

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

a. When does the relevant relationship begin?

The Swedish Cohabitation Act (2003) does not explicitly establish the criteria for the 'beginning' of the relationship. However, the criterion 'living together on a permanent basis' (habitually) suggests that more temporary relationships are not covered. In the *travaux préparatoires* to the Act, to qualify for the 'habitually' test, usually at least a six-month long cohabitation is required. Even shorter periods may, nevertheless, qualify, depending on an overall assessment of the circumstances of the case.¹¹ In case law, for example in the Court of Appeal's judgment RH 2005:34, the relationship was considered to be covered by the 2003 enactment in spite of the fact that the couple had only lived together for two and a half months before they separated. When assessing whether the couple's living together could qualify as 'habitual', the court paid special regard to the fact that the couple had had a relationship with each other for a longer period before they moved in together and that they had made a joint will. It has been suggested in the legal literature that the 'subjective side' should be taken into account, that is, the parties' intentions towards their relationship.¹² This position finds support in case law, notably in the Court of Appeal's judgment RH 1993:91. In that case, a man and woman had been registered at two different addresses, in spite of having had a joint dwelling and household for a period of six years. The man had made a will in favour of the woman. In the court's

⁹ Government Bills, Prop. 1986/87:1 p. 252 and Prop. 2002/03:80 p. 26.

¹⁰ Göran Lind, *Sambolagen, en kommentar*, Nordstedts Juridik, Stockholm, 2013, at § 1.

¹¹ Government Bill, Prop. 1986/87:1 p. 253. See also M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking Verlag, Vienna, 2009, pp. 207-226, at p. 216-217 and G. LIND, 'Utvecklingen av samboförhållanden och samborätten i Norden', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 55 (see Chapter 1.4.2, in the English version of the book, to be published by Intersentia in 2015).

¹² G. LIND, *Sambolagen, en kommentar*, Nordstedts Juridik, Stockholm, 2013, at § 1.

opinion, it was evident that the couple had wished to be regarded as cohabitantes. In his Commentary to the Swedish Cohabitation Act, Professor Göran Lind is of the opinion that if the couple, when moving in together, intended from that day on to be regarded as a cohabiting couple, then the relationship is to be counted as such from the date of their moving in together. The situation is different, if they merely start living together to test whether the relationship works. As time goes by, the relationship may well come to qualify as a habitual relationship, the duration of which is then to be calculated from the day they moved in together.¹³

b. When does the relevant relationship end?

The Swedish Cohabitation Act, § 2 para. 1, regulates when an informal relationship ends, if it is covered by the Act. The relationship ends, firstly, if the cohabitantes or one of them marries. Secondly, it ends if the couple moves apart. This is often evident when the couple ceases to be registered as living in the same address.¹⁴ Thirdly, it ends if one of the cohabitantes dies. An additional provision, § 2 para. 2, gives a further ground to regard the relationship as terminated, namely when one of the cohabitantes applies to court for the appointment of a property distributor or for the right to be entitled to reside alone in the joint dwelling or to take it over. This ground finds an explanation in the fact that the Swedish Cohabitation Act focuses on the regulation of the cohabiting couple's joint dwelling and joint household goods. (Assets which qualify as belonging to these categories are, according to the main rule of the enactment, to be divided jointly by the parties after the termination of the relationship; they are called 'cohabitation property'.)

The above-mentioned grounds all reflect objective criteria. In the case of fulfilment of any of these criteria, the cohabitation relationship should usually be viewed as having come to an end. However, in a case where the cohabitantes for some reason have moved apart without intending to end their relationship, they may still qualify to be covered by the Act and be regarded as cohabitantes. This might be the case if, for example, one of the cohabitantes falls ill and needs to be hospitalised, or if one of them needs to spend time in another city because of work or education. The first example finds support in case law. In the Supreme Court judgment NJA 1994 p. 61, it was necessary for the man to move out of the couple's joint dwelling and spend his time in different health facilities, due to an accident which had disabled him. In the Court's opinion, the couple's motives for no longer living together had to be taken into account. An illness which requires one of the partners to move out of the joint dwelling should not result in the end of the cohabitation relationship against the intentions of the partners.

The cohabiting couple might also move apart temporarily, in a form of 'trial separation', without aiming to finally end their relationship. In those situations, their intentions concerning the separation and the circumstances are of relevance, and

¹³ G. LIND, *Sambolagen, en kommentar*, Nordstedts Juridik, Stockholm, 2013, at § 1.

¹⁴ Statens Offentliga Utredningar, SOU 1999:104 p. 339.

assessments may differ from case to case.¹⁵ Another tricky situation is when the cohabiting couple wishes to end their relationship but have not yet moved apart, for example, because new accommodation has not yet been found for the cohabitee who is to move out of the joint dwelling. In the legal literature it has been suggested that, in a case like this, the cohabitation relationship should not to be considered to have ended until one of the objective criteria in the Swedish Cohabitation Act § 2 (above) has been fulfilled.¹⁶ There is, however, no case law on the issue.

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 position of the Swedish Constitution remains neutral in respect of whether the relationship of a couple is formal or informal. This position has facilitated Sweden's 'stance or ideology of neutrality', meaning that legislation should not contain provisions which create difficulties for persons who choose to found a family and have children without marrying.

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?

The European Convention on Human Rights (ECHR) enjoys in Sweden the status of higher ranking legislation, equal to that of the Swedish Constitution. The case law of the European Court of Human Rights (ECtHR) is taken into account in particular in the drafting of new legislation but also in case law. Considering that Sweden in comparison with other European countries is in the forefront as regards legal recognition of informal couples, irrespective of the couple's sexual orientation (on condition that they habitually cohabit with each other), the influence of the ECtHR's case law has remained limited. Yet, the ECtHR's case law has the potential of improving in particular unmarried fathers' parental responsibilities. Fathers to children born in informal relationships lack, namely, *ex lege* parental rights under Swedish law. The impact of other European legislation has been limited, due to the higher level of protection generally provided by Swedish law.

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.

A 'stance of neutrality' (above Question 6) was adopted towards the end of the 1960s, in a government mandate to a legislative committee appointed to consider necessary changes in Swedish family law, in particular within the field of marriage law. The committee's mandate was extended in 1969 to cover unmarried cohabitation, as a

¹⁵ G. LIND, *Sambolagen, en kommentar*, Nordstedts Juridik, Stockholm, 2013, at § 2.

¹⁶ G. LIND, *Sambolagen, en kommentar*, Nordstedts Juridik, Stockholm, 2013, at § 2.

response to the ever increasing number of couples in Sweden living together (and even having children together) without marrying.¹⁷

The Swedish legislature's first enactment, specially designed for couples who lived together outside marriage, was the Act of Unmarried Cohabitants' Joint Dwelling (in Swedish, *Lagen 1973:651 om ogifta sambors gemensamma bostad*). The aim of this legislation was modest in the sense that it was limited to regulating which of the cohabitants, upon termination of the relationship, had the right to take over the occupation of the joint dwelling, but only in cases where the joint dwelling was a leased property or owned by the cohabitants or one of them on a tenant-basis (such as a condominium or a housing association apartment, but not real estate). The decision had to be made on the basis of the (former) cohabitants' needs of the dwelling, whereby the children's residence was a factor of utmost relevance. The 1973 Act (which entered into force on 1 January 1974) was intended as a provisional solution, to be soon replaced by more comprehensive legislation, but applied until 1 January 1988 when new legislation finally entered into force.

At that date, together with the new Swedish Marriage Code, a new enactment entitled Act on Cohabitants' Joint Home (in Swedish, *Lagen 1987:232 om sambors gemensamma hem*) became applicable. As with the previous legislation of 1973, this Act only applied to situations where an unmarried man and an unmarried woman lived together under marriage-like circumstances. This legislation was far more radical than its predecessor. In essence, it provided for the right for both cohabitants to share the net value of the joint dwelling and joint household goods upon termination of the relationship, on condition that this was property acquired for the couple's joint use (i.e., 'cohabitation property'), and unless otherwise agreed between them. The enactment also provided for the right to take over the occupation of such property upon the termination of the relationship and, during the relationship, protected each of the cohabitants against unilateral actions concerning this property by the other cohabitant. The clear influence of the provisions of the Swedish Marriage Code regarding matrimonial property relations is visible. As in the case of marriage, entering into unmarried cohabitation did not as such affect ownership rights to any property.¹⁸ Cohabitants received instead a right to an equal division of the net value of property acquired for the purpose of being used as their joint dwelling or the net value of household goods. The difference from marital property rights is that only these two categories of property were of relevance for the property division, whereas in a marriage all the spouses' property will be included, unless otherwise agreed by

¹⁷ See M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Giesecking Verlag, Vienna, 2009, pp. 207-226, at p. 209 et seq.; G. LIND, 'Utvecklingen av samboförhållanden och samborätten i Norden', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 23 et seq. (see Chapter 1.3, in the English version of the book, to be published by Intersentia in 2015); C. SÖRGJERD, *Reconstructing Marriage - The Legal Status of Relationships in a Changing Society*, Intersentia, Cambridge, 2012, at p. 135 et seq.

¹⁸ M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Giesecking Verlag, Vienna, 2009, pp. 207-226, at p. 215 et seq.

them (or stipulated by a third party). Through another piece of legislation, namely Act on Homosexual Cohabitees (in Swedish: *Lagen 1987:813 om homosexuella sambor*), the 1987 Act on Cohabitees' Joint Home was extended to cover same-sex cohabitees as well.

The currently applicable provisions are found in the Cohabitation Act of 2003 (in Swedish: *Sambolag 2003:376*). The bulk of the provisions of the 1987 Act on Cohabitees' Joint Home were transferred unchanged into the 2003 enactment in addition to certain important clarifications, largely in response to problems experienced in practice. The 2003 enactment covers both same-sex and opposite-sex couples, on the same conditions.

During the drafting procedure, much consideration was given to the issue whether the concept of cohabitation property, i.e., the property to be included in the property division, should be extended to cover motor vehicles, such as cars, acquired for the couple's joint use. This would have meant, as suggested by the law commission in charge of the proposals, that the parties to the relationship, upon its termination, would have had the right to equal division of the net value consisting not only of the joint dwelling and household goods acquired for their joint use, but also of motor vehicles. The proposal also included the right for the cohabitee in greater need of the vehicle to take it over, as is the case with the couple's joint dwelling and household goods. The proposal aimed to achieve a greater economic security for people living together in an informal relationship. The proposal was, however, turned down by the government which was not convinced that this was an optimal way of achieving increased protection, for example, because it could result in one of the cohabitees having to include cars owned by him or her in the property division while a car owned by the other cohabitee might not be included.¹⁹ This discussion demonstrates two important characteristics of Swedish law, namely, that motor vehicles, such as cars, are not included within the scope of household goods and that, in respect of informal cohabitation, only property acquired for the couple's joint use can be included in a property division whereas, e.g., previously acquired property of the same kind is not covered. For example, if one of the partners moves to a dwelling owned by the other partner where the couple stills lives until they separate 10 years later, this dwelling will not qualify as 'cohabitation property' to be included in the property division, because it had not been acquired for the couple's joint use. If, on the other hand, this dwelling had been sold during the couple's relationship and the money received had been used by the owner to buy a new dwelling for the couple, that new dwelling would be included because it was acquired for the couple's joint use. The results can in fact be quite arbitrary.²⁰

¹⁹ Government Bill, Prop. 2002/03:80, p. 25 and p. 31 et seq.

²⁰ For concrete examples on how the Swedish Cohabitation Act works in practice, see M. BRATTSTRÖM, 'The Protection of a Vulnerable Party when a Cohabitee Relationship Ends - An Evaluation of the Swedish Cohabitees Act', in B. VERSCHRAEGEN (ed.), *Family Finances*, Jan Sramet Verlag, Vienna, 2008, at p. 345-354 and M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking Verlag, Vienna, 2009, pp. 207-226, at p. 218-221.

The government was also concerned about the general lack of knowledge regarding what rules apply to unmarried couples in the couple's mutual relationship, and that the couples concerned should not be confronted with the application of rules they had not counted upon.

In other areas of law, most importantly as regards parental rights, the legislative trend since the 1970s has been to place couples cohabiting informally with each other on an equal footing with married couples.²¹ The child's birth status does not affect parental responsibilities. Certain differences of treatment exist, however, in some respects, such as the unmarried father's need to acknowledge his paternity whereas the married father is covered by the *pater est* rule. Cohabiting couples qualify for assisted fertilisation treatments under the general health care system of Sweden on the same conditions as couples in a formalised relationship. In a lesbian relationship, the birth-mother's same-sex partner (irrespective of the existence of marriage, registered partnership or cohabitation) always has to acknowledge her parentage in relation to the child, born through assisted fertilisation treatment to the couple. Under Swedish law only married couples and couples in a registered partnership may jointly adopt a child (Swedish Children and Parents Code, Chapter 4, § 4). Furthermore, if the parents are not in a formalised relationship with each other at the time of the child's birth (or later), parental rights belong to the birthmother alone (Swedish Children and Parents Code, Chapter 6 § 3). Shared parental rights require in that case a parental agreement or a court decree (Swedish Children and Parents Code, Chapter 6 § 4).

When it comes to means-tested social welfare benefits, for instance living support and housing allowance, the income and means of both cohabiters are taken into account when deciding whether they can qualify for a benefit and to what extent.²² The reason is that couples living in informal cohabitation could otherwise profit financially at the expense of society by choosing not to marry.

The survey above shows that the Swedish legislature's concern since the late 1960s has focused on couples living habitually together in an informal relationship. No attention has been given to any other kinds of informal relationships between couples. It has been under consideration, but in the end dismissed as not necessary, to draft legislation regarding the joint household of other people (than couples), such as the joint household of siblings or the joint household between a parent and a grown-up child.²³

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar

²¹ See further, M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking Verlag, Vienna, 2009, pp. 207-226, at p. 210 et seq. and A. SINGER, 'Samboendets föräldrarättsliga relevans', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 225 et seq. (see Chapter 5, in the English version of the book, to be published by Intersentia in 2015).

²² Government Bill, Prop. 1978/79:12, pp. 87 et seq. and Socialstyrelsen, *Ekonomiskt bistånd. Handbok för socialtjänsten*, 2013, at p. 98 et seq.

²³ See Statens Offentliga Utredningar, SOU 1999:104, pp. 271-280.

bodies) for reform in this area?

Even if the Swedish government, in connection with the 2003 law reform, was sympathetic towards future law reforms to strengthen the mutual rights and duties of unmarried cohabiting couples, no such proposals have in fact been presented by law commissions or the government to Parliament. Currently (2015), a law commission is considering how to amend the legislation so as to provide increased prospects for treating involuntary childlessness.²⁴ No differences are to be made on the basis of whether the relevant parties wishing to have a child are in a formalised or an informal relationship of cohabitation. In 2009, a law commission proposed extending the right to joint adoption of children to cohabiting couples.²⁵ This proposal is currently under consideration by the government and may result in a Bill to Parliament in 2015 or 2016.

In the legal literature, on the contrary, there is active debate on how to improve the mutual legal rights of people living together as a couple in an informal relationship. Nordic legal scholars have, furthermore, carried out joint research on how best to harmonise the Nordic laws (Denmark, Finland, Iceland, Norway and Sweden) on informal cohabitation. The proposals have been published in the book *Nordisk samboerrett*,²⁶ the English translation of which – ‘Nordic law on informal cohabitation’ – is expected to be published in 2015.

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.

By the end of 2012, the population of Sweden consisted of 9,555,893 inhabitants. The civil status of the population was as follows. Approximately one third were married (3,233,934); one half were registered as single (4,943,573) even if many of these people were living in an unmarried cohabitation relationship;²⁷ one tenth were divorced (916,856) and one twentieth (451,530) were widowed.²⁸ Marriage is the most common civil status for men between the ages of 39 to 91 and for women between the ages of 34 to 78. Younger persons are often unmarried. Among the oldest groups in the population, being widowed is the most common civil status, especially for women

²⁴ Utredningen om utökade möjligheter till behandling av ofrivillig barnlöshet, Dir. 2013:70 (Committee on increased prospects for treatment of involuntary childlessness).

²⁵ Statens Offentliga Utredningar, SOU 2009:61.

²⁶ J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014.

²⁷ Statistics Sweden, ‘Nästan halva befolkningen lever i parrelation’, available at: www.scb.se/sv_/Hitta-statistik/Artiklar/Nastan-halva-befolkningen-lever-i-parrelation/.

²⁸ Statistics Sweden, ‘Statistisk årsbok 2014: Befolkning’, available at: www.scb.se/Statistik/_Publikationer/OV0904_2014A01_BR_06_A01BR1401.pdf, at p. 96-97. The figures for married people includes those who have registered partnerships.

whose average life expectancy exceeds that of men. In 2012, the average age of marrying was 39.1 years for men and 36.1 years for women. That can be compared with the year 1991, when the male and female average ages for marriage were 33.5 years and 30.5 years, respectively.²⁹

The number of concluded marriages in Sweden, from 2000 to 2013, is stated in the table below.³⁰

Year	Marriages
2000	39,895
2001	35,778
2002	38,012
2003	39,041
2004	43,088
2005	44,381
2006	45,551
2007	47,898
2008	50,332
2009	48,033
2010	50,730
2011	47,564
2012	50,616
2013	45,703

Between 1 January 1995 and 30 April 2009 same-sex couples could enter into a registered partnership in Sweden, which was regulated by rules essentially corresponding to those applicable to marriages and spouses. The Registered Partnership Act was abolished as of 1 May 2009, when it became possible for same-sex couples to marry or to have their registered partnership converted into a marriage through a simple administrative act. By the end of 2013 there were 4,883 women and 3,962 men in Sweden who lived in a same-sex marriage or in a registered partnership.³¹ The number of registered partnerships concluded in Sweden is stated in the table below.³²

²⁹ Statistics Sweden, 'Statistisk årsbok 2014: Befolkning', available at: www.scb.se/Statistik/_Publikationer/OV0904_2014A01_BR_06_A01BR1401.pdf, at p. 77.

³⁰ Statistics Sweden, 'Befolkningsutveckling', available at: www.scb.se/sv_/Hitta-statistik/Statistik-efter-amne/Befolkning/Befolkningens-sammansattning/Befolkningsstatistik/25788/25795/Helarsstatistik---Riket/26046/.

³¹ Statistics Sweden, 'Giftermål mer populärt än partnerskap', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/Giftermal-mer-populart-an-partnerskap/.

³² Statistics Sweden, 'Partnerskapsförändringar efter region, civilstånd och kön', available at: www.statistikdatabasen.scb.se/pxweb/sv/ssd/START_BE_BE0101_BE0101O/PartnerskapAndring/table/tableViewLayout1/?rxid=fbda2c7f-db3b-419c-8962-9298c4ff0eaf.

Year	Registered Partnerships
1995	665
1996	319
1997	262
1998	250
1999	287
2000	357
2001	381
2002	422
2003	497
2004	567
2005	593
2006	660
2007	650
2008	814
2009	148

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

To live in an informal relationship, such as cohabitation covered by the Swedish Cohabitation Act of 2003, is not a civil status. Consequently, information in the population records (civil register) only mentions if a person is married, divorced, widow/widower or single. Official Swedish statistics indicate, however, that approximately one third of all couples living together in Sweden 2013 were in an informal relationship, as cohabitants (1,390,464).³³

In this connection, one should also mention a survey carried out by Dr. Kajsa Walleng for her PhD thesis in law (defended in May 2015) about cohabitation relationships in Sweden. The survey includes data collected through a questionnaire from a number of people between the ages of 20 to 70 who were registered as single in the population records. This survey indicates that 40% of all couples living together in Sweden are in an informal relationship, as cohabitantes.³⁴

In Sweden, the development of modern cohabitation outside marriage dates back to the 1960s, when the marriage rates fell sharply, while at the same time the number of informal relationships and the number of children born outside marriage rose dramatically. The proportion of couples living together outside marriage was estimated in 1969 to be 6-7%, in 1985 to be 20% and in the early 2000s to be slightly

³³ Statistics Sweden, 'Nästan halva befolkningen lever i parrelation', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/Nastan-halva-befolkningen-lever-i-parrelation/. Since 2012, register-based census household statistics have been available in Sweden. This means that statistics based on census data can show both family relationships and the sharing of accommodation. According to the model used, a couple was classified as cohabitantes if the people were registered in the same dwelling, were at least 18 years of age, of different sexes, not closely related to each other and the age difference between the persons did not exceed 15 years.

³⁴ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 81 and p. 88-91.

more than one third of all couples living together.³⁵

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

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

There are no official statistics on details such as these. It is, however, estimated that on average a woman is just under 25 years of age and a man just under 27 years of age when the informal cohabitation relationship starts. These figures can be compared with the average age of marriage, which for a woman is 36 years and for a man 39 years.³⁶

In the survey included in Kajsa Walleng's above-mentioned study (Question 11), the people who answered the questionnaire and regarded themselves to be in an informal cohabitation relationship were divided into groups as follows.³⁷

Age	
20-29 years	28%
30-39 years	27%
40-49 years	22%
50-59 years	13%
60-70 years	10%

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

- a. Where there is a common child?

There are no specific official statistics on this. However, a demographic report (by the Swedish state's agency for statistical information, published in 2012) about family structures and separations among first-time parents with children born in 2000 includes some figures of interest. Approximately one third of the couples were already married when the first child was born and approximately an additional third of the couples married before the end of 2010.³⁸ In the legal literature, a survey by Professor Margareta Brattström indicated that 74% of the married couples surveyed (who later on had divorced) had been in an informal relationship of cohabitation

³⁵ Government Bill, Prop. 2002/03:80 p. 24; A. AGELL and M. BRATTSTRÖM, *Äktenskap Samboende Partnerskap*, Iustus Förlag, Uppsala, 2011, at p. 18.

³⁶ Statistics Sweden, 'Statistisk årsbok 2014: Befolkning', available at: www.scb.se/Statistik/_Publikationer/OV0904_2014A01_BR_06_A01BR1401.pdf, at p. 77.

³⁷ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 83.

³⁸ Statistics Sweden, 'Sambo, barn, gift, isär? Demografiska rapporter 2012:1', available at: www.scb.se/statistik/_publikationer/BE0701_2012A01_BR_BE51BR1201.pdf, at p. 9 and 82.

with each other, on average for more than four years, before they married.³⁹

b. Where there is no common child?

Again, there are no specific official statistics on this question. Brattström's above-mentioned survey gave as a result that 74% of the interviewed persons had been in a cohabitation relationship with each other before marriage, see above under a.⁴⁰ According to the same survey, when a divorced person enters into a new relationship this is more commonly of an informal than formal nature.⁴¹

14. How many informal relationships are terminated:

a. Through separation of the partners?

There are no official statistics on how many informal relationships are terminated by the couple separating. According to a Government Bill from the early 2000s, it had been twice as common for children with merely cohabiting parents to experience their parents' separation than children whose parents were married.⁴² Later data indicates, however, that both unmarried cohabitation and marital relationships tend to be more stable, in terms of duration, in the 2000s than in the 1990s.⁴³

b. Through the death of one of the partners?

There are no official statistics about how many informal relationships are terminated through the death of one of the cohabiters. As mentioned before, unmarried cohabitation does not qualify as a civil status so as to be specially mentioned in the population records, and it is therefore not possible to use any general statistics to answer the question. However, Dr. Oscar Erixson analysed in his PhD thesis (defended in national economics in 2013) the information in a Swedish administrative dataset containing estate inventories of almost 70,000 people in Sweden who had died between the years 2002-2004. His conclusion was that about 3% of the deceased had been in an informal relationship of cohabitation at the time of death.⁴⁴ The figure seems reasonable; the average life expectancy is approximately 80 years in Sweden.⁴⁵ Cohabitation outside marriage is not very common at that age.⁴⁶

³⁹ M. BRATTSTRÖM, 'Bodelning mellan makar - verklighetens betydelse för framtidens regelutformning', *Tidskrift för Familierett, Arverett og Barnevernsrettslige spørsmål* (FAB), 2011, at p. 71.

⁴⁰ M. BRATTSTRÖM, 'Bodelning mellan makar - verklighetens betydelse för framtidens regelutformning', *Tidskrift för Familierett, Arverett og Barnevernsrettslige spørsmål* (FAB), 2011, at p. 71.

⁴¹ M. BRATTSTRÖM, 'Bodelning mellan makar - verklighetens betydelse för framtidens regelutformning', *Tidskrift för Familierett, Arverett og Barnevernsrettslige spørsmål* (FAB), 2011, at p. 76.

⁴² Government Bill, Prop. 2002/03:80, p. 24.

⁴³ Statistics Sweden, 'Kärnfamiljen vinner mark', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/Karntfamiljen-vinner-mark/.

⁴⁴ O. ERIXSON, *Economic Decisions and Social Norms in Life and Death Situations* [diss. Uppsala University], 2013, at p. 59 and 64.

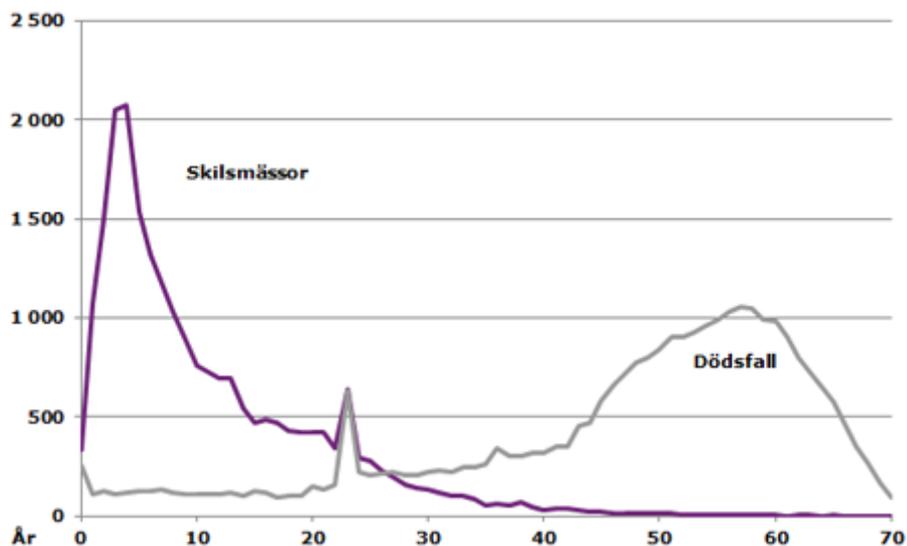
⁴⁵ Statistics Sweden, 'Medellivslängden ökar stadigt', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/Medellivslangden-okar-stadigt/.

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 are no official statistics about the average duration of informal relationships of cohabitation. Certain available figures indicate, however, that it is more likely that cohabiting couples separate than married couples.⁴⁷

According to Kajsa Walleng's above-mentioned (Question 11) survey on cohabitation relationships in Sweden, 51% of these relationships had lasted less than 7 years. On the other hand, 13% of the cohabiting relationships had lasted more than 20 years.⁴⁸

The average duration of a marriage in Sweden is 24 years.⁴⁹ The chart below shows the number of dissolved marriages in Sweden in 2013 and their duration in years, both for cases of divorce (in Swedish: *skilsmässor*) and for cases where the marriage was terminated through the death of a spouse (in Swedish: *dödsfall*).⁵⁰ The marriages which ended in a divorce in 2013 had lasted on average 11 years, while those terminated through the death of a spouse had lasted 47 years on average. The majority of all marriages in Sweden are lifelong.



⁴⁶ G. LIND, 'Utvecklingen av samboförhållanden och samborätten i Norden', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 19 (see Chapter 1.2.4, in the English version of the book, to be published by Intersentia in 2015).

⁴⁷ Statistics Sweden, 'Sambo, barn, gift, isär? Demografiska rapporter 2012:1', available at: www.scb.se/statistik/_publikationer/BE0701_2012A01_BR_BE51BR1201.pdf, at p. 24.

⁴⁸ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 84.

⁴⁹ Statistics Sweden, 'Nästan 54 000 äktenskap tog slut 2013', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/Nastan-54-000-aktenskap-tog-slut-2013/.

⁵⁰ The chart is Statistics Sweden, 'Nästan 54 000 äktenskap tog slut 2013', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/Nastan-54-000-aktenskap-tog-slut-2013/. Unfortunately, it has not been possible to change from a chart to a table.

There are no official statistics about the duration of partnerships registered in Sweden. In 2013, 130 registered partnerships were dissolved through a court decree ('partnership divorce') and 19 registered partnerships ended through the death of one of the partners.⁵¹ The same figures for 2008, i.e., the last full year when it was possible to register a partnership in Sweden, were 181 partnership divorces and 21 partnerships which ended through the death of a registered partner. Swedish law does not require a partnership divorce for the couple to marry each other.⁵²

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.

The latest available official statistics about the percentage of children born outside a formal relationship are from 2009. In that year 55% of all children were born outside a formal relationship, but as many as 46% had a birthmother who at the time of the child's birth cohabited with the father of the child.⁵³ As indicated above in Question 14a, it is not unusual in Sweden that cohabitants with a common child later marry each other. Of all children living together with both their parents in Sweden in 2011, 70% of the parents were married and 30% were cohabiting.⁵⁴

In Kajsa Walleng's survey (above Question 11), 81% of the cohabiting couples were living together with joint children. Among them, 74% had only joint children and 7% had both joint children and children who were not the couple's joint children.⁵⁵

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

There are no updated official statistics in Sweden about the proportion of children living within a relationship of informal cohabitation who are not the couple's common children. Of all children who lived with two adults in 2011, approximately 10% did not live in their original nuclear families but in blended families, with a step-father or a step-mother, with or without half-siblings or step-siblings.⁵⁶ It can be assumed that informal cohabitation is more common than marriage among blended families. The given figure coincides with the results of Kajsa Walleng's survey (Question 11). Among those who answered the questionnaire in 2010 and counted

⁵¹ Statistics Sweden, 'Partnerskapsförändringar efter region, civilstånd och kön', available at: www.statistikdatabasen.scb.se/pxweb/sv/ssd/START_BE_BE0101_BE0101O/PartnerskapAndring/table/tableViewLayout1/?rxid=fbda2c7f-db3b-419c-8962-9298c4ff0eaf.

⁵² Registered partners are permitted to marry - or to convert their registered partnership into a marriage through a simple administrative act - now that the Swedish Act on Registered Partnerships no longer (since 1 May 2009) applies.

⁵³ Statistics Sweden, *Tabeller över Sveriges befolkning 2009* s. 213.

⁵⁴ Statistics Sweden, '50 000 barn är med om en separation varje år', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/50-000-barn-ar-med-om-en-separation-varje-ar/.

⁵⁵ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 85.

⁵⁶ Statistics Sweden, '50 000 barn är med om en separation varje år', available at: www.scb.se/sv_/Hitta-statistik/Artiklar/50-000-barn-ar-med-om-en-separation-varje-ar/.

themselves as cohabitantes, 18% said that they were living with children who were not the couple's common children.⁵⁷

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

a. By one partner only?

There are no statistics about this in Sweden. Since single people may adopt under Swedish law and people living in an informal cohabitation relationship are regarded as single people in Swedish population records in respect of civil status, such adoptions could at least theoretically take place. Considering, however, that the prospects for adopting a child are much greater when the prospective adoptive parent lives in a formalised relationship and adopts jointly with his or her spouse or registered partner, the number of adoptions by a sole person in an unmarried cohabitation can be expected to be low. Couples wishing to adopt a child usually formalise their relationship, since this is the only way to be able to adopt jointly under Swedish law (Swedish Children and Parents Code, in Swedish: *Föräldrabalken 1949:381*), Chapter 4, § 4.

b. Jointly by the couple?

Under current Swedish law, only couples who have formalised their relationship may jointly adopt a child (see above under a). Hence, there are no statistics on this.

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

Under the current Swedish law, only persons living in a formalised relationship, i.e., in a marriage or registered partnership, may adopt the other partner's child Swedish Children and Parents Code, Chapter 4, § 1. Therefore, there are no statistics about this.

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

There are no official statistics in Sweden about how many cohabitantes in an informal relationship had previously been in a formal or an informal relationship. In Kajsa Walleng's survey concerning the year 2010, 22% of the people regarding themselves as living in an unmarried cohabitation reported that they had been previously married and 35% reported that they had previously cohabited in an informal relationship.⁵⁸ See also the answer to Question 13.

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

⁵⁷ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 86.

⁵⁸ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 86.

a. Where there are no children in the household?

Under Swedish legislation, no obligation exists for the cohabiting couple to support each other or to contribute to the shared household. In reality cohabitees usually cooperate to meet at least the joint needs, in equal shares or in relation to each cohabitee's income. Often they have an implied agreement or common understanding on this. And interestingly enough, in the practice of social welfare authorities, the existence of unmarried cohabitation is taken into account when assessing a partner's or the couple's rights to various social welfare benefits, such as living support, funded by the public sector. This means that even if there is no legal duty of mutual support, in practice parties in a cohabiting relationship are expected to financially support each other.

b. Where there are common children in the household?

See above, under a, indicating a negative answer. However, parents have a legal duty to maintain their children, irrespective of their own civil status and whether they live together or apart (Swedish Children and Parents Code, Chapter 7, § 1). The existence of common children in an unmarried cohabitation is at the same time not completely without relevance for a mutual duty of maintenance. Exceptionally, a cohabiting person's duty to maintain his or her children living in another residence may be reduced having regard to his or her need to maintain a partner with whom he or she is habitually living in an informal relationship, Swedish Children and Parents Code, Chapter 7, § 3.

c. Where there are other children in the household?

No. See above, under a and b. On the other hand, a person who lives on a habitual basis with a child and the child's parent may have a duty of maintenance in respect of the child. For this to be the case, the step-parent must either be married to the parent or have a joint child with the parent.⁵⁹ A step-parent's duty of maintenance lasts only for the duration of the cohabitation with the child's parent and it is subsidiary to the duty of maintenance owed by the child's other (non-residential) parent. The justification for extending the maintenance obligation to include the other partner's child in a cohabitation relationship, provided that the cohabitants also had a child in common, was to safeguard for all the children in the family the right to enjoy the same standard of living.⁶⁰

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

No, there is no general duty to contribute to costs and expenses of the household when living together in an informal relationship. In practice, see under Question 20,

⁵⁹ Swedish Children and Parents Code (in Swedish *Föräldrabalken* 1949:381), Chapter 7, Section 5.

⁶⁰ A. SINGER, 'Samboendets föräldrarättsliga relevans', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 245 (see Chapter 3.5.5, in the English version of the book, to be published by Intersentia in 2015).

the cohabitees usually contribute to these costs, in equal shares or in relation to their ability to pay. As indicated in the previous answers (in particular to Question 8), the focus in Swedish legislation on unmarried cohabitation has been to protect the mutual rights in respect of a joint dwelling and household goods acquired for the couple's joint use.

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?

Yes, if the relationship is subject to the Swedish Cohabitation Act (2003), (see above, answers to Question 2, 4 and 8) this situation is specially regulated. According to § 28 of the Swedish Cohabitation Act, a cohabitee may apply to court to be granted the right to remain in the home until the property distribution is carried out, but only on condition that the home is to be included in the property division. This is the case, according to § 3, if the home was acquired for the couple's joint use as their joint home. It does not matter which of the cohabitants is the owner or tenant of the home, or in charge of payments. If the home was acquired to serve as a joint home for the cohabitants, it will be subject to the division of the property upon the termination of the relationship.

There is also a rule in the Cohabitation Act, § 22, which gives the cohabitant in greater need of the dwelling the right to take it over, even when the dwelling is owned by the other cohabitee and even if it is not subject to the division of the property: however, this only applies on the condition that such a taking over can be regarded as reasonable. The owner must, however, be compensated for the dwelling's value. Mostly, the cohabitant in greater need of the home is considered to be the one who will have the custody, or the actual care, of the children, though this is not an absolute requirement. This provision is only applicable to a home that is subject to a tenancy or is an apartment in a cooperatively owned building. If the dwelling qualifies as 'real estate property' under Swedish law, usually a house with a piece of land, it is excluded from the scope of § 22.

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

Yes, if the relationship is subject to the Swedish Cohabitation Act (see above, answers to Question 2 and 4), § 28, para. 2 which grants a cohabitee not only the right, by court order, to remain in the joint home (above Question 22), but also to apply the court to forbid the partners from visiting each other. The aim of this provision is to protect the integrity of the (former) cohabitees and to prevent domestic violence, but it applies only upon termination of the relationship and only until the property division. The court may also prohibit a partner from remaining in the couple's joint home, when the other partner's life, health or liberty is under threat, Swedish Act (1988:688) on Prohibition of Contact, § 1 a. Usually, this prohibition is limited to a period of two months, § 4.

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

No specific rules apply concerning this situation. If the partners' relationship is classified as a cohabitation relationship and, therefore, is subject to the Swedish Cohabitation Act (see above, under Question 2 and 4), a permanent or long absence of one of the partners might lead to the conclusion that the relationship has ended (see above, Question 5 b). In that case, the other partner has the opportunity to apply to the court for the right to remain in the home until the property distribution has been carried out (see above, Question 22).

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?

When two people own something jointly, general rules in the Swedish Co-ownership Act (in Swedish: *Lag 1904:48 s. 1 om samäganderätt*) are applicable. According to § 2 any disposal over a jointly owned asset requires the consent of all co-owners, unless it is not possible to acquire such consent due to illness or absence. If the partners qualify as cohabitees under the Swedish Cohabitation Act, special restrictions apply under its § 23, requiring the other partner's consent for dispositions such as any disposal, mortgage, lease and subletting of the joint dwelling acquired for the cohabitees' joint use, or for pawning it. A cohabitee is not permitted to divest, sublet, grant tenancies or pawn the joint home acquired for the couple's joint use and thus to be included in a property division. This also applies to any other joint dwelling to which the other cohabitee might be granted the right to take it over upon the ending of the relationship (under § 22). If a cohabitee refuses to consent, the court may upon application by the other cohabitee grant permission for the transaction, § 24.

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

If the home qualifies as 'cohabitation property', meaning that it has been acquired for the cohabitees' joint use, the above-mentioned restrictions in the Swedish Cohabitation Act, § 23 apply. This has to do with the fact that the formal ownership of the joint dwelling is irrelevant under this enactment; what counts is that the home has been acquired for the couple's joint use. The partner owning the home must respect these restrictions. If cohabitees live in property to which one of them holds the title or lease, they may have the property registered as their joint dwelling by notifying Lantmäteriet (The National Land Survey). Notification to this effect can be a guarantee that the cohabitee who owns the property does not sell or mortgage it without the consent of the other cohabitee.

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

The same restrictions under the Swedish Cohabitation Act, requiring the consent of the other cohabitee, also apply when the home is a rented property just as when it is owned, by one of the cohabitees or both of them. See above, answers to Question 24a and b.

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

See answers above, under a-c. It does not matter if the home is rented by one of the partners or by them both.

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

In Swedish law, general rules on agency are applicable in situations where one of the cohabiting partners acts as an agent for the other partner. There are, in other words, no specific rules concerning agency in any kinds of informal relationships.

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

Cohabitees can, just like anyone else, become co-owners by acquiring property together. This is the case when they buy something together, for example real estate, both receiving a title to it, or when they have received a common gift from a third party. If one of the cohabitees is the sole owner, they can become co-owners through transference of a share of the property to the other cohabitee, by sale or gift. Importantly, however, Swedish case law provides that having regard to the realities of family life, in particular the cohabitees' or spouses' contributions and intentions, it may in some cases be more reasonable to determine issues of ownership of property acquired for joint use, in a less formal manner than following the general principles of property law where emphasis is on the formal title.⁶¹ As a result, two rebuttable presumptions have been developed, the one concerning primarily household goods, and the other for other types of property, both presumptions often resulting in co-ownership for cohabitees (or spouses/registered partners). The latter presumption is commonly called 'joint caveat ownership' or 'hidden co-ownership', and can be of significant economic relevance.⁶² See further below, under Question 27 and Question 28.

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.

When it comes to acquisitions of movable assets, primarily in the form of household goods, cohabitees – as well as spouses and registered partners – are presumed to have acquired the property as co-owners, irrespective of the formal title to the

⁶¹ See the preparatory works in NJA II 1921 p. 89, the Swedish Supreme Court decision *NJA 2002 p. 142* and M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 71 et seq. (see chapter 2.2, in the English version of the book, to be published by Intersentia in 2015).

⁶² See M. BRATTSTRÖM, 'The Protection of a Vulnerable Party when a Cohabitee Relationship Ends – An Evaluation of the Swedish Cohabitees Act', in B. VERSCHRAEGEN (ed.), *Family Finances*, Jan Sramet Verlag, Vienna, 2008, at p. 350 and M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking Verlag, Vienna, 2009, pp. 207-226, at p. 222 et seq.

property. The presumption can be used for items that have been acquired for the use of both cohabitantes, on the condition that they both have contributed to the expenses of the joint household.⁶³ However, the presumption can be set aside if the holder of the title can show that the intention was not to acquire the property for the couple's joint use or that the cohabitee's (or spouse's) financial contribution for the acquisition was intended as a loan or a gift for the other cohabitee, to enable his or her acquisition of the property.⁶⁴

The definition or label of 'joint household goods' (in Swedish: *gemensamt bohag*) in the Swedish Cohabitation Act is independent of issues of ownership. Instead, the property must be intended for, and also used by, both cohabitantes in their joint home. The owner cohabitee may not, without the consent of the other cohabitee, dispose of these goods, for example, in the form of alienation or pledging them as security, § 23. If the other cohabitee refuses to consent, the court may, upon application by the owner, permit the disposition, § 24. In the case where such dispositions have taken place without the required consent or permission by court, court proceedings can be initiated in order to have the transaction declared void and title or use restored, § 25, para. 1. The proceedings must be commenced within three months from the time when the other cohabitee learnt about the transaction, § 25 para. 2.

The owner cohabitee's right to dispose of household goods can be subject to restrictions under the Swedish Cohabitation Act, § 23, on condition that the assets qualify to be covered in the property division following the termination of the relationship. The basic requirement in this respect is that they have been acquired for the cohabitantes' joint use (see § 3 and Question 24).⁶⁵ Joint household goods are defined in § 6 as furniture, domestic appliances and other corporeal chattels intended for the joint home. Goods which are exclusively used by one cohabitee are not included in the category of joint household goods. According to § 7, goods used mainly for recreational purposes do not qualify as joint household goods.

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

Swedish courts have in a number of cases accepted that a concealed ('hidden' or 'caveat') co-ownership can arise between cohabitantes (and spouses) when the requirements of general principles on the law of obligations or property are not fulfilled.⁶⁶ The Supreme Court decisions NJA 1980 p. 705, NJA 1981 p. 693, NJA 1982

⁶³ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 71 et seq. (see Chapter 2.2, in the English version of the book, to be published by Intersentia in 2015).

⁶⁴ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 75.

⁶⁵ This excludes previously (i.e. before the relationship) acquired household goods and assets received by a cohabitee from a third party, as a gift or bequest or by a will, on condition that the assets must be the recipient's separate property, to be kept outside a property division, see Swedish Cohabitation Act § 4.

⁶⁶ This case law includes spouses. The principle of concealed co-ownership is, however, of relevance in particular for cohabitantes since their relationship is not covered by family law rules to the same

p. 589 and NJA 2013 p. 242 constitute important examples of this.⁶⁷ Although in these cases the property in question had been acquired only in the name of one cohabiting partner, the court concluded that at the time of acquisition the partners must have intended that the property would be co-owned by them. Such common intention has been considered to exist when it is shown that the property was, actually, acquired for the joint use of the cohabitantes and that the other cohabitee (the 'hidden' co-owner) had made some financial contribution for the acquisition with the aim of becoming a joint owner. The Swedish Supreme Court has, in NJA 2002 p. 142, developed the justification behind this case law by stating that 'the construction of co-ownership gives financial protection to the cohabitee who was not the formal purchaser. With regard to the special community that arises in a cohabitation relationship, often with joint possession, and where non-formalised and implicit agreements are common, a natural point of departure is to presume that property which is purchased for the couple's joint use, formally by one spouse or cohabitee but with financial contribution from the other, is to be co-owned'. The 'hidden-co-owner's contribution must, however, have been made at the time the property was acquired, in order to result in co-ownership. It is not possible for a cohabitee to achieve co-ownership (through the principle of the concealed right of co-ownership) by making successive payments in arrears – for example by paying in the form of instalments when the other cohabitee has already been the owner of the property for some time.

In most cases, the principle of concealed co-ownership has been applied to real estate property (i.e., in this case, land property with a house) used as the cohabitantes' joint dwelling. Case law confirms, however, that it can also arise in relation to real property used only for recreational purposes, to apartments in cooperatively owned buildings (in Swedish: *bostadsrätt*) used as the couple's joint dwelling, and to movable property such as boats, horses, etc. Of relevance in this respect are the Swedish Supreme Court decisions NJA 1992 p. 163, NJA 2002 p. 3, NJA 2008 p. 826 and NJA 2008 p. 1053.

If the formal owner is able to show that the intention was that only one of the cohabitantes would own the property, or that the financial contribution by the other was a loan or a gift, the presumption of co-ownership can be set aside; see the Swedish Supreme Court decisions NJA 2004 p. 397 and NJA 2008 p. 1053 and the

extent as for spouses. See M. BRATTSTRÖM, 'The Protection of a Vulnerable Party when a Cohabitee Relationship Ends – An Evaluation of the Swedish Cohabitees Act', in B. VERSCHRAEGEN (ed.), *Family Finances*, Jan Sramet Verlag, Vienna, 2008, at p. 350 and M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPEMBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking Verlag, Vienna, 2009, pp. 207-226, at p. 222 et seq.

⁶⁷ See also A. AGELL, *Äganderätten till fastighet för makar och samboende*, Norstedt, Stockholm, 1985, at p. 19 and M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 78 et seq. (see Chapter 2.2.3, in the English version of the book, to be published by Intersentia in 2015).

Court of Appeal decision RH 1991:23.⁶⁸

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

If both partners are not title holders – or if the criteria for the assumption of joint ownership in other cases (Question 27-28) are not fulfilled – general principles of the law of property apply. Where something is purchased or otherwise acquired, it usually means that the person who was a party to the contract or other transaction becomes the owner. Whose money is used to pay for the property, or who incurred the debt to acquire it, is of relevance for deciding on issues of ownership. Public registers such as land registers on real property or motor vehicle registers usually provide a good indication as to who the owner is.

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

The general principles of the law of property and the constructions of joint ownership, in respect of household goods and other movable property, are also applicable in relation to third parties. As regards real estate property, in relation to third parties only the person given as the title holder in the real property register qualifies as the owner of that property.⁶⁹

Swedish law contains special rules concerning how ownership is presumed in relation to a cohabiting partner's creditors. In order to protect the creditors' recovery of debts made by a partner to an informal cohabitation, it is presumed that chattels found in the cohabiting couple's joint possession belong to the cohabitee who is subject to the distraint (in Swedish: *utmätning*). The property can be protected from distraint if it is made probable that it is owned jointly by the cohabitees or if it is evident that the property belongs to the other cohabitee or a third person, Swedish Enforcement Code (in Swedish: *Utsökningsbalken*, 1981:744) Chapter 4, § 19. Receipts can serve as proof, as well as documentation of money transactions from a joint account or both partners' accounts to pay for the property. For example, in the Supreme Court case NJA 1984 p. 375, a boat in the debtor's possession had been distrained. It was later shown that the boat in fact belonged to the debtor's wife, who had paid for the boat and also had the purchase contract for the boat. The same assessment would also apply to a cohabiting couple in a similar situation. Regard must also be had to other rules. A gift between the cohabitees can, for example, not become effective in relation to the donor's creditors if the the object has not come into the recipient's possession, the donor being excluded from any further disposal of the

⁶⁸ M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 75 and p. 82 (see Chapter 2.2.2 and 2.2.3 in the English version of the book, to be published by Intersentia in 2015).

⁶⁹ See the Swedish Supreme Court decisions NJA 1984 p. 772 and NJA 1985 p. 97. See also M. BRATTSTRÖM, 'Dold samäganderätt – en sammanfattning av rättsläget', *Juridisk Tidskrift (JT)*, 2011–2012, pp. 322–324.

property.⁷⁰ (See also below, Question 60.)

According to the Swedish Enforcement Code, Chapter 4, § 24, real property can be distrained if it is clear that it belongs to the debtor. It follows that the debtor cohabitee must have the title deed to the property and be registered as the owner in the real property register. A registration as the owner can be rebutted, for example by presenting a formally correct deed of transfer showing that someone else owns the property. As stated above under Question 26 and 28, real estate can be subject to a concealed co-ownership between spouses or cohabitees, at least when it comes to the law of obligations. The Supreme Court decision NJA 1984 s. 772 lays down that a concealed co-ownership of real estate does not give the concealed co-owner protection against the official owner's creditors; the interests of the creditors are to be given priority over the entire value of the property.

If the conditions for the above-mentioned hidden right of co-ownership are fulfilled, the 'open' owner's creditors can benefit from the adopted position.⁷¹ Bearing in mind that a concealed co-owner to property has a legally valid claim to be recognised as a formal co-owner, that person's creditors can thus exercise distraint rights on the property, according to the rules on distraint in the Enforcement Code, Chapter 4, § 23.⁷² The creditor must in that case be able to show that the conditions for concealed co-ownership exist. Where there are competing claims between the open owner's creditors and the concealed owner's creditors, the former's claims usually have priority over the entire value of the property. The date of the request for payment is, in addition, of relevance.

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

Partners to an informal cohabitation are under Swedish law considered as two separate individuals as regards liability for debts. Joint responsibility for debts arises in the partners' mutual relationship when both cohabitees have jointly become indebted, in accordance with the general principles of the law of obligations, for example because they have purchased property jointly. A creditor may, however, only demand payment from the partner who entered into the transaction.

32. On which assets can creditors recover joint debts?

The creditors may recover joint debts on any assets belonging to either one of the indebted cohabitees - as long as the cohabitees are jointly and severally liable.

33. Are there specific rules governing the administration of assets jointly owned

⁷⁰ G. MILLQVIST, *Sakrättens grunder*, Norstedts Juridik, Stockholm, 2011, at p. 84 et seq.

⁷¹ Swedish Supreme Court decision NJA 1984 p. 772.

⁷² Swedish Supreme Court decision NJA 1985 p. 615; Court of Appeal decision RH 2000:93. See also M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 75 and p. 116 (see Chapter 2.5.1 in the English version of the book, to be published by Intersentia in 2015).

by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

The Swedish Cohabitation Act focuses on the partners' right to the property which is to be included in the property division following the termination of the relationship, i.e., so-called cohabitation property. The administration of this property is subject to certain restrictions, in order to safeguard the interests of both partners, § 3 and 23. For this to be achieved, the other partner's consent is required for transactions of the kind mentioned under Question 24. The protected property can be jointly owned, or owned solely by one of the partners, or be a rented dwelling. The fact that it has been acquired for the partners' joint use is decisive.

When property is jointly owned – irrespective of any kind of family relationship between the owners – the Swedish Co-ownership Act (in Swedish: *lagen 1904:48 s. 1 om samäganderätt*) is applicable. Co-ownership of household goods, vehicles, real property or any other joint dwelling, stocks and shares, as well as property co-owned through the hidden or concealed right of co-ownership, all fall under the scope of this enactment.⁷³ The co-owners are expected to administer the co-owned assets jointly, Swedish Co-ownership Act, § 2. Where agreement is necessary, but the co-owners are unable to agree, the court may, upon application by one of the co-owners, appoint an administrator to take care of the assets, § 4. The court can also decide that the property in its entirety is to be sold at public auction, § 6.

With respect to the disposal of co-owned property in its entirety, for example through transfer, mortgage, pawn or grant of enjoyment, all the co-owners are expected to have given their consent to the disposition, Swedish Co-ownership Act, § 2. In contrast to the rules that apply to disposal in its entirety of the jointly owned property, each co-owner has the right to freely dispose of his or her individual share in the property. For example, a co-owner may sell or give away his or her share in the property without the other co-owners' consent.⁷⁴

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?

There is no such right under Swedish law.

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**

⁷³ The Swedish Supreme Court has in its judgments *NJA 1980 p. 705* and *NJA 2008 p. 1053* applied the Co-ownership Act even when the co-ownership was concealed.

⁷⁴ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 90 (see Chapter 2.3.1 in the English version of the book, to be published by Intersentia in 2015).

- children)?
- c. **The standard of living during the relationship?**
- d. **Other factors/circumstances (such as giving up his/her career)?**

Having regard to the fact that former partners to an informal relationship have no duty to support each other, these questions lack relevance from the point of view of Swedish law.

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

See above, answers to Question 34-35, rendering this question irrelevant from the point of view of Swedish law.

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

Not relevant in Sweden.

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

Not relevant in Sweden.

- 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?**

Since former partners to an informal relationship have no legal duty to support each other, later events of this kind are 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?**

Not relevant in Sweden.

- 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?**

Under Swedish law, ownership issues are decided in accordance with the general principles of the law of property, in addition to the special, but rebuttable

presumptions of 'hidden' or 'caveat joint ownership', applicable to spouses (registered partners) and cohabitantes in an informal relationship. These rules and the relevant case law have been described in detail above, in particular under Questions 27-30.

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?

This is, indeed, the focus of the protection provided by the Swedish Cohabitation Act of 2003 (see Question 2, 4 and 8 above). Upon the termination of the relationship, the so-called 'cohabitation property' of the couple (in Swedish: *samboegendom*) is subject to property division, entitling both (former) partners to an equal share of this property's net value. Cohabitation property consists of the joint home of the couple and their household goods, in both cases, however, only if the property was acquired for the couple's joint use, Cohabitation Act § 3. 'Cohabitation property' does not include property given to a partner by a third party who, in the form of a will or bequest, had stipulated that the property was to be the recipient's separate property, 4 §.⁷⁵ Unless otherwise agreed by the cohabitantes (§ 9), the 'cohabitation property' will be subject to property division between the cohabitantes when the relationship ends, if property division is requested by one or both cohabitantes, § 8, within one year from the termination of the relationship.

The first step in the division of the 'cohabitation property' is to calculate the cohabitantes' shares, § 12. The calculation is done by deciding the value of each cohabitant's assets belonging to this category of property, after which a deduction will be made to cover that cohabitee's debts. As a rule, only debts that are in some way related to the 'cohabitation property' are to be deducted from the value of the cohabitee's assets belonging to the category of 'cohabitation property', § 13 para. 2. However, in the case where the cohabitee lacks other assets which can cover his or her other debts, then these debts will also be deducted from the debtor's 'cohabitation property'. After deduction of the debts, both cohabitantes' shares in the 'cohabitation property' are amalgamated and then divided equally, § 13-14.

After the calculation of the shares of each cohabitant, the net value of the 'cohabitation property' is to be distributed, as a rule equally between the former cohabitantes. One way to do this is for the cohabitee with more cohabitation property to simply hand over a part of this property to the other cohabitant so that shares become equal. The cohabitee may, however, choose to pay a corresponding sum of money to the other cohabitee, § 17.

If the result of the division requiring one of the cohabitantes to transfer property or a

⁷⁵ A similar provision applies in respect of partners in a formal relationship (marriage or registered partnership), Swedish Marriage Code (in Swedish: *Äktenskapsbalken* 1987:230), Chapter 7 § 2 para. 1.

corresponding value of money to the other cohabitee would be unreasonable, exceptions to the rule of equal sharing may be made (in the form of an adjustment of the property division), for example, if the relationship ends after a short time, § 15. This provision states that if it would be unreasonable for a cohabitee to hand over property to the other partner for both to receive equal shares in the net value of the 'cohabitation property', having regard to the length of the relationship as well as the cohabitees' economic circumstances and overall circumstances, the division can be adjusted. The result is that the equal division will be avoided. No property needs to be handed over, or in any case less than 50 % of the net value of the 'cohabitation property'. This provision might become applicable, for example, when only one of the cohabitees owns property qualifying as 'cohabitation property' whereas the other cohabitee has considerable property not qualifying to be included in the property division. In formalised relationships, Swedish Marriage Code Chapter 12 § 1 provides for a similar adjustment of division of marital property.

The division of property is primarily a private transaction, to be performed by the cohabitants on their own without the involvement of any competent authorities. A document concerning the division of the property is to be drawn up and signed by both (former) partners, Swedish Cohabitation Act, § 20 with further references to the Swedish Marriage Code, Chapter 9, § 5. If the partners cannot agree on the division – or cannot perform it on their own – a property division executor can be appointed by the court upon the application of the partners or one of them.

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)?

Upon termination of the relationship the partner in greater need of the dwelling or the household goods (on condition that this property is included in the 'cohabitation property') has a right to take over the dwelling or goods, a so-called 'take-over right'; the other partner must, however, be compensated to a corresponding extent (usually in the form of money), Swedish Cohabitation Act, § 16 and 17. Usually the partner who is to have actual custody of the couple's joint children (the residential parent) is considered to be the one in greater need of the joint dwelling. Other things that may be taken into account are the cohabitees' health, age and their prospects of getting hold of a new home if forced to move out.⁷⁶

Exceptionally, a cohabitee's take-over right may concern a joint dwelling which does not belong to the category of 'cohabitation property', § 22 (for example because it was already owned or rented by the other cohabitee before the relationship.) In this case, however, the take-over right usually requires that the cohabitees have common children. In other cases, it is only due to exceptional reasons that a partner may be granted the right to take over such a dwelling. An example might be that the cohabitee wishing to remain in the couple's home has children of his or her own

⁷⁶ G. LIND, *Sambolagen, en kommentar*, Norstedts Juridik, Stockholm, 2013, at § 22.

(who are not common children with the other cohabitee) and that the dwelling has been their home during a long period of time.⁷⁷ This extended take-over right only applies to tenancy rights and to an apartment, belonging to the other cohabitee, in a cooperatively owned building, and does not cover real estate property (i.e., in this case land property with a house).

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

The Swedish Cohabitation Act of 2003 does not regulate the settlement of the partners' joint debts in general. Instead it regulates the settlement of debts which are related to the property qualifying as 'cohabitation property' upon the termination of the relationship, § 13. According to § 13, debts that are in some way connected to 'cohabitation property' are to be deducted from the value of this property, before its division between the (former) cohabitees. According to the main rule, the net value of this property is to be divided equally between the partners upon the termination of the relationship (Question 42).

Other joint debts that the cohabitants might have (see answer to Question 31) are settled according to general principles of the law of obligations and property. After separation, for practical reasons, the partner who will keep the asset connected to the debt usually also takes over the debt. But if no special arrangements are made, the partners will continue to be jointly liable even after separation.

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

a. The assets?

Within a year from the ending of the relationship, each of the former cohabitees can request a division of the 'cohabitation property', i.e., the joint dwelling and household goods which were acquired for the couple's joint use during their cohabitation, Swedish Cohabitation Act, § 8. This provision also stipulates that the date for the determination of the assets to be shared is when the cohabitation ends. As to the various ways in which an informal relationship covered by the Swedish Cohabitation Act can be terminated, see answer to Question 5b. The requirement that a property division must be requested within one year from the ending of the relationship, and in the case of death of one of the cohabitees at the latest when the estate inventory (in Swedish: *boutredning*) of the deceased cohabitee takes place, is aimed at creating clarity within a reasonable time as to whether a property division will be requested or not.

The Swedish Cohabitation Act does not contain any specific rules on the decisive date for the valuation of assets. Certain principles have, however, been developed through legal practice and case law. Supreme Court judgment NJA 1997 p. 674 is an important decision in this regard. In this case the cohabitees' home (an apartment in a cooperatively owned building) was assessed at the value on the day of the property division. The prevailing view today is that the decisive date for the valuation of the

⁷⁷ Government Bill, Prop. 1973:32 p. 169.

assets is the date when the inventory of the former partners' assets and debts is finalised and the property is divided.

b. The debts?

The date of the ending of the relationship determines what debts are taken into account. Considering that debts can both decrease and increase after this critical date, it seems fair to evaluate them to their value as at that date.

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?

Claims on concealed co-ownership to property, formally under the title of one of the partners only, are often raised upon separation. If the claim is successful, being recognised as a 'hidden' joint owner to the property can provide important compensation for this partner's contributions during the relationship, see above Question 28.

In principle, upon separation a partner can claim compensation from the other partner with reference to the general principle of compensation for unjustified enrichment.⁷⁸ In case law, this principle appears not to be invoked. One reason for this could be the Supreme Court judgment NJA 1975 p. 298, dealing with claims for remuneration for work within the joint household of the cohabitantes and for the caring for the other during illness. The Court rejected the claims with reference to the couple's personal relationship and the fact that the work was carried out as part of their cohabitation. The couple had lived together for 10 years.

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?

The Swedish model, adopted in the Cohabitation Act of 2003, is to protect the partners through a right to share in certain property acquired for the couple's joint use, the 'cohabitation property'; this model also applies when the relationship is ended by the death of a partner. Probably due to this emphasis, the surviving partner does not enjoy any rights of inheritance in the case of intestate succession. The lack of a right to intestate succession is the most noteworthy difference between informal and formal relationships (marriage and registered partnership) besides the more limited scope of 'cohabitation property' compared to 'marital property'.

⁷⁸ I. LUND-ANDERSEN, 'Det økonomiske opgør ved samlivets ophør', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 142 (see Chapter 3.3.8 in the English version of the book, to be published by Intersentia in 2015).

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?

Claims that can be raised between the cohabitantes when their relationship ends can also be raised by the surviving partner on the estate of the deceased, for example, the right to be recognised as a 'hidden' co-owner to property to which the deceased partner alone held title (see above Question 3 and 28). In the case of death, the surviving cohabitee may (exclusively) request a division of the 'cohabitation property' and/or the take-over right of the joint dwelling and household goods, Swedish Cohabitation Act, § 18 para. 1. The heirs, etc., enjoy no corresponding right.

Within the framework of the division of 'cohabitation property' the Swedish Cohabitation Act provides a right for the surviving partner to receive a fixed amount from this divisible property once debts have been deducted, § 18 para. 2. In 2015 this fixed amount, consisting of two so-called price amounts which are annually adjusted to the general living expenses in Sweden, was 89,000 Swedish crowns (approximately €9,600). This sum is exactly half of that granted to a surviving partner in a formalised relationship (marriage, registered partnership).⁷⁹ It is, however, not a rule or expression of minimum inheritance but forms a part of the rules regarding division of the 'cohabitation property', i.e., the joint dwelling and household goods acquired for the partners' joint use. Its purpose is to ensure that the surviving cohabitee is left with a minimum value of property but only with regard to 'cohabitation property'. The right is irrelevant and does not come into play if the surviving partner's share in the divisible property exceeds the value of this fixed amount. On the other hand, the surviving partner is entitled to this amount even if he or she has assets which are not included in the property division and which greatly exceed the value of this fixed amount. This right is also to be seen against the background that the surviving cohabitee has no right to compensation from any other assets of the deceased cohabitee. That this is a rule linked to the existence of 'cohabitation property' between the partners is reflected in the fact that it cannot be set aside by the deceased partner's will.

In the case of intestate succession when the deceased partner has no heirs, i.e., persons with a right to inherit from him or her according to the Swedish Inheritance Code (in Swedish, *Ärodbalk 1958:637*),⁸⁰ the property goes to the Swedish state. The competent state authority (*Kammarkollegiet*) can grant a surviving partner the right to succeed to the deceased person's estate – or part of it – if it can be clearly proved that this corresponded with the wish of the deceased person, for example, in the form of

⁷⁹ See M. BRATTSTRÖM, 'The Protection of a Vulnerable Party when a Cohabitee Relationship Ends – An Evaluation of the Swedish Cohabitees Act', in B. VERSCHRAEGEN (ed.), *Family Finances*, Jan Sramet Verlag, Vienna, 2008, at p. 350–351 and M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking Verlag, Vienna, 2009, pp. 207–226, at p. 223 et seq.

⁸⁰ In cross-border cases, of course, another state's law can be applicable. As of 17 August 2015 the EU's Inheritance Regulation will be applied in Sweden to deaths that occur from this date on.

written documentation or making this wish known to witnesses. These kinds of situations remain exceptional.

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

The rules applicable to the home and the household goods upon the death of one of the cohabittees are in general the same as the rules applicable upon separation between the cohabittees (see above Question 42, 43 and 48). It is, however, only the surviving cohabitee – and not the heirs of the deceased partner – who has the right to request the division of the ‘cohabitation property’ and the right to take over the dwelling and household goods, Swedish Cohabitation Act, § 18 para. 1.

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

a. In general?

Yes. A person in an informal relationship has the same right as anyone else to dispose of his or her property by will, subject to certain formal requirements, to the advantage of whoever he or she wishes to favour. The rules in the Swedish Code of Inheritance (in Swedish, *Ärvdabalk 1958:637*) are applicable.

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

Under the Swedish Code of Inheritance the surviving partner to a formalised relationship (marriage or registered partnership) has the right to intestate succession after the deceased partner, Chapter 3 § 1. A spouse’s or a registered partner’s right to intestate succession may, however, be set aside by a will made by the deceased, for example in favour of an informal partner. The surviving spouse or registered partner always has, however, according to the Swedish Code of Inheritance, Chapter 3 § 2 para. 2, the right to obtain the value of four basic price amounts, but with regard to the outcome of the property division between the spouses or registered partners and his or her own separate property. In addition, the deceased partner’s children always have the right to receive their forced share (in Swedish: *laglott*), which is half of the value of their legal inheritance share. Due regard to these persons’ rights may make it necessary to set the will aside in full or in part.

c. If the testator has children?

Children or other direct heirs (grandchildren, great-grandchildren, replacing their parent) are always entitled to receive without delay their forced share from the estate, unless the will is made in favour of their other parent who at the time of the death was in a legally existing formalised relationship (marriage or registered partnership) with the deceased. The forced share is half of the share the person would have inherited if there had been no will, Swedish Code of Inheritance, Chapter 7 § 1. After the will has been served on the person with a right to a forced share, he or she must bring a legal action against it within six months, Swedish Code of Inheritance, Chapter 7, § 3 para. 3. If the will is made in favour of a surviving spouse or a registered partner who is also the child’s own parent, the child has the

right to receive its share (the forced share or full share) only until the death of the surviving parent, Chapter 7, § 3 para. 2. This position stands in marked contrast to what applies if the child's parents were only in an informal relationship with each other at the time of the death. In that case, the child has the right to demand the forced share from the estate, in spite of the will in favour of the surviving partner/parent. If the child is under age, a personal representative needs to be appointed for the child to take care of the child's interests in the estate, inter alia, to request the payment of the forced share from the deceased parent's estate.

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

a. In general?

Yes, partners can make joint wills in favour of the surviving partner. A joint will is, essentially, two separate wills, written in the same document for practical reasons, even if the testators' stipulations can be interrelated. The Swedish Code of Inheritance contains a special provision regarding joint wills, Chapter 10 § 7. If a testator to a joint will has unilaterally annulled it or changed its stipulations and, by doing so, has essentially spoiled the terms of the joint stipulations, he or she has thereby lost the rights granted by the joint will.

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

The fact that either one of the partners is in a formalised relationship with another person does not affect this right as such, see above under a. The freedom of testation is, on the other hand, subject to the restrictions mentioned above under Question 50b-c, aimed at securing for the deceased person's children their forced share from the estate, as well as securing for the legal spouse or registered partner a minimum amount of the estate.

c. If either testator has children?

Yes, see answer to Question 51b above and the answer to Question 50c.

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?

Under Swedish law, agreements as to succession upon death and promises of gifts upon death which cannot be enforced during the donor's lifetime, are generally regarded as null and void and are therefore not binding, Swedish Code of Inheritance, Chapter 17 §§ 1 and 3. The only way to validly dispose of assets upon death is by making a will, in addition to the taking out of a life insurance policy and appointing a certain person, such as the informal partner, as the beneficiary.

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

No, see answer to a.

c. If either partner has children?

No, see answer to a.

53. Is the surviving partner entitled to a reserved share⁸¹ 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?

Within the framework of the division of 'cohabitation property', i.e., the joint dwelling and household goods acquired for the cohabiting couple's joint use, the Swedish Cohabitation Act gives the surviving cohabitee the right to receive a fixed amount from this divisible property once debts have been deducted, § 18 para. 2. In 2015 this fixed amount, consisting of two so-called price amounts which are annually adjusted to the general living expenses in Sweden, was 89,000 Swedish crowns (approximately €9,600). This amount is exactly half of that granted to a surviving partner in a formalised relationship (marriage, registered partnership).⁸² The purpose of this rule is to ensure that the surviving cohabitee is left with a minimum value of property but only with regard to 'cohabitation property'. The right is irrelevant and does not come into play if the surviving partner's share in the divisible property (i.e. the 'cohabitation property') exceeds the value of the fixed amount; it is the only available 'compensation'. On the other hand, the surviving partner is entitled to this amount even if he or she has assets of much higher value but which fall outside the scope of the 'cohabitation property'. This right cannot be set aside by the deceased partner's will.

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

There are no official Swedish statistics on this. As has been pointed out earlier, informal cohabitation is not regarded as a civil status and so receives no special mention in the population records. One available study (see above under Question 14) indicated that 3% of the deceased had been in an informal relationship of cohabitation at the time of the death.⁸³

⁸¹ 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.

⁸² See M. BRATTSTRÖM, 'The Protection of a Vulnerable Party when a Cohabitee Relationship Ends - An Evaluation of the Swedish Cohabitees Act', in B. VERSCHRAEGEN (ed.), *Family Finances*, Jan Sramet Verlag, Vienna, 2008, at p. 350-351 and M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPEMBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Giesecking Verlag, Vienna, 2009, pp. 207-226, at p. 223-224.

⁸³ O. ERIXSON, *Economic Decisions and Social Norms in Life and Death Situations* [diss. Uppsala University], 2013, at p. 59 and 64.

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 are no official statistics on how common it is that partners to an informal relationship make a will in favour of the other partner. Generally speaking it is assumed that the making of a will is an exception and not the rule in Sweden. In the data analysed by Oscar Erixson (Question 14) 17% of the deceased had left a will, resulting in a 5% frequency of unequal division between family lines.⁸⁴ Kajsa Walleng's survey (Question 11) stated that 18% of the respondents who regarded themselves to be in an informal relationship of cohabitation had made a will in favour of the other cohabitee.⁸⁵

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 are no official statistics on how common it is that a partner in a cohabitation relationship is the beneficiary of the other partner's life insurance. However, the most common form of savings for Swedish households is life insurance; in total, life insurance amounted to almost 42% of all household savings in 2013.⁸⁶ Furthermore, most employees have group life insurance. The starting point is that the insured party (or the employee) may freely dispose of the insurance by making bequests, without any restrictions (such as the right to forced share), Swedish Insurance Contracts Act (in Swedish: *Försäkringsavtalslagen* 2005:104) Chapter 1 § 5 and Chapter 14, § 1-3 and 7. The standard terms and conditions of a life insurance policy often indicate who the beneficiary is. It has become common that cohabitees, besides spouses and children, are given as the beneficiaries in these standard terms. An insured person may always explicitly appoint his or her cohabitee as the sole beneficiary.

In Kajsa Walleng's survey (Question 11), 39% of the cohabitees reported that they had appointed their partner as the beneficiary of their life insurance. 17% answered that they did not know whether the partner was the beneficiary or not.⁸⁷

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 is a general freedom for cohabitees, just as for anyone else, to enter into

⁸⁴ O. ERIXSON, *Economic Decisions and Social Norms in Life and Death Situations* [diss. Uppsala University], 2013, at p. 59 and 63-64.

⁸⁵ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 111.

⁸⁶ Svensk Försäkring, 'Insurance in Sweden, Statistics 2013', available at: www.svenskforsakring.se/PageFiles/6717/SF_Statistikbroschyr_2013_eng.pdf?epslanguage=sv, at p. 9.

⁸⁷ K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 114.

agreements with each other. The agreements are covered by the general rules on the law of obligations.

Swedish law contains a special regulation in the Swedish Cohabitation Act on what is commonly referred to as a 'cohabitation agreement'. Even if this term appears to be of a more general scope, it is limited to an agreement between the cohabiting couple whereby they exclude or limit the scope of application of the rules on the division of 'cohabitation property', § 9 para. 1. By concluding a new agreement of this kind the cohabitees may alter their previous agreement, for example, by setting it aside. It follows that the provisions of the Swedish Cohabitation Act on the division of 'cohabitation property', i.e., the joint dwelling and household goods acquired for the couple's joint use, are default rules, applicable only when not otherwise agreed by the partners.

The above-mentioned cohabitation agreement can be further defined. According to § 9 para. 1, a cohabiting couple or a couple who plan to begin a cohabitation relationship may agree that there is to be no division of property or that some specific property, which otherwise would qualify as 'cohabitation property', is not to be included in a property division. A 'cohabitation agreement' is equivalent to a marital property agreement (in Swedish: *äktenskapsförord*), which under the Swedish Marriage Code can likewise be used to achieve a total or partial exclusion of the spouses' legal rights to each other's so-called marital property (in Swedish: *giftorättsgods*) which is, according to the main rule, to be included in the property division. Whereas a marital property agreement must be registered in order to receive legal effect, the Swedish Cohabitation Act does not provide for the registration of a cohabitation agreement; this also precludes the possibility of registering it in the same way as marital property agreements in Sweden.

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

Interestingly enough, the *travaux préparatoires* to the Swedish Cohabitation Act mention that, by concluding agreements with each other, the cohabitees will often be able to create solutions suitable for their relationship.⁸⁸ How these agreements may be drafted in order to be legally valid is, however, not specified in the statement. An agreement of a nature other than the specifically defined 'cohabitation agreement' under the Act will be judged according to general principles of the law of obligations.

a. The division of tasks as between the partners?

Cohabitees can agree about division of tasks. Such an agreement does not, however, have any legal effects and it cannot be enforced against the will of one of the partners.

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

⁸⁸ Government Bills, Prop. 1986/87:1, p. 99 and Prop. 2002/03:80 p. 32.

Again, it is possible for cohabitees to enter into agreements about contributions to costs and expenses of the household. During the relationship it is usual that both cohabitees contribute financially to the various costs and expenses of their joint household; usually there is an implied agreement between the cohabitees on this. Certain outlays paid solely by one cohabitee may give rise to a debt relationship.⁸⁹ But an outlay can also be a matter of a reasonable contribution to the couple's household costs, which in that case cannot be recovered. Some outlays may give grounds for a claim for joint ownership, when the other partner is formally the holder of the title. Other outlays may be classified as a gift from one partner to the other. Qualifying the legal character of an outlay typically becomes relevant when disputes arise between cohabitants after their relationship has come to an end.⁹⁰

c. Their property relationship?

As has been repeatedly mentioned, the focus of the Swedish Cohabitation Act is on the regulation of so-called 'cohabitation property'. The cohabitees enjoy, nevertheless, the right to exclude a future property division of this property, in whole or in part, in the form of a 'cohabitation agreement'. This resembles what spouses are able to agree in the form of a marital property agreement (see above Question 57).

Apart from agreements relating to the 'cohabitation property', limited in essence to whether, upon the termination of the relationship, certain property acquired for the couple's joint use will be included in a division of property or not, it follows from the general freedom of contract that the cohabitees may also conclude other agreements with each other, inter alia, to control property issues between them. As has been mentioned above (Question 26-28), cohabitees can be considered to be co-owners to property, under presumptions of 'hidden' or 'caveat co-ownership', applicable to couples in formal or informal relationships of cohabitation. This construction reflects a presumption that the cohabitees have agreed on joint ownership in the light of the circumstances of the acquisition.

d. Maintenance?

Cohabitees have no legal duty to maintain each another under Swedish law. An agreement to the effect that a partner is to pay maintenance to the other, during the relationship or after separation, could be equated to an undertaking to make a gift. The main rule in Swedish law is that an undertaking to make a gift is not binding on the parties. Exceptionally, however, the promise can be binding if it is made either in a written document or if the promise of the gift is made verbally with the intention of making the donor's will public.⁹¹ Cohabitants can make use of the existing

⁸⁹ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 106 (see Chapter 2.4.5 in the English version of the book, to be published by Intersentia in 2015).

⁹⁰ Cf. Ö. TELEMAN, 'Försträckning eller gåva', *Advokaten*, 2014, at p. 40 et seq.

⁹¹ See S. 1 of the Swedish Gift Act (in Swedish *Lag 1936:83 angående vissa utfästelser om gåva*).

possibilities to give gifts to each other. It is, however, uncertain what if anything can be achieved through an agreement on future maintenance.⁹² A similar lack of clarity exists as to whether spouses are able, during the course of the marriage, to agree upon post-divorce maintenance should the marriage be dissolved.⁹³ Considering a general unwillingness in Swedish law to accept legal consequences for unmarried cohabitation that would exceed those of marriage (or are intended to be the same),⁹⁴ much speaks against the validity and enforceability of agreements on future maintenance.⁹⁵

e. The duration of the agreement?

The partners are free to enter into an agreement about the duration of the agreements concluded between them, if the agreement as such is valid and enforceable, according to general principles of contract law and the law of obligations. The wording of the Swedish Cohabitation Act § 9, regarding a 'cohabitation agreement' between the partners appears, however, to be limited to a stipulation on exclusion or to the scope of the division of 'cohabitation property'. The parties may, on the other hand, enter into a new agreement about the division of this property. A new agreement can thus be used to reach the same goal as if it were possible to agree upon the duration of such an agreement.

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

The most important agreement which is also specially regulated by the Swedish Cohabitation Act relates to the division of the 'cohabitation property' upon termination of the relationship. Through this agreement, somewhat misleadingly called a 'cohabitation agreement', the parties can exclude or reduce the scope of the future property division or, in the form of a new agreement, re-introduce the property into the division. The provisions in § 16 and 22 of the Act concerning the right to take over and occupy the joint dwelling of the couple are, on the other hand, mandatory by nature, meaning that they cannot be set aside in the form of an agreement, due to the societal considerations at stake.

⁹² See e.g. Government Bill, Prop. 2002/03:80p. 32, where the Swedish government states that an investigation should be initiated about possibilities for cohabitantes to enter into agreements.

⁹³ L. TOTTIE and Ö. TELEMAN, *Äktenskapsbalken, En kommentar*, Norstedts Juridik, Stockholm, 2010, at p. 106-107; A. A. AGELL and M. BRATTSTRÖM, *Äktenskap Samboende Partnerskap*, Iustus Förlag, Uppsala, 2011, at p. 55-56.

⁹⁴ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 70 and p. 110-111 (see chapter 2.1 and 2.4.6 in the English version of the book, to be published by Intersentia in 2015). See also the Swedish Supreme Court judgment *NJA 1985 p. 172* in which the Court refused to recognise the parties' agreement according to which their relationship was subject to the legal effects of marriage.

⁹⁵ See M. JÄNTERÄ-JAREBORG, 'Rechtsregeln für nichteheliches Zusammenleben in Schweden' (in English), in: I. KROPPENBERG et al. (eds.), *Rechtsregeln für nichteheliches Zusammenleben*, Gieseking Verlag, Vienna, 2009, pp. 207-226, at p. 222. Cf. M. BRATTSTRÖM and M. SAYED, 'Behandlingen av mahr i samband med bodelning enligt svensk rätt', *Juridisk Publikation*, 2013, at p. 221 et seq.

It follows from the fundamental freedom of contract that applies in general in the parties' mutual relationship that cohabitants can, to a large extent, agree on the legal consequences of their separation, subject to the enforceability of the agreement (above Question 58). Enforceability requires that the agreement satisfies minimum requirements as to clarity, specificity and foreseeability.⁹⁶ It must be possible to comprehend the substance of the agreement and its consequences, prior to signature. There are examples in Swedish case law where agreements between cohabitants stipulating that the rules of marriage are to be applied between them have been considered too general in nature and have therefore not been considered legally valid by the court, see in particular the Supreme Court judgment NJA 1985 p. 172. In the legal literature there is support for the opinion that cohabitants should have the right to enter into agreements which, on specific aspects, result in the same legal consequences as in a formalised relationship.⁹⁷ One example of this could be an agreement that the value of certain property (not included in the cohabitation property according to the law) should be divided equally once debts assignable to the property had been paid. If the agreement were to result in a beneficial transfer of value from one cohabitant to the other it could, however, from the point of view of property law, be considered to be an undertaking to make a gift,⁹⁸ and therefore need to meet the special requirements for validity (Question 58d).

60. Are the agreements binding:

a. Between the partners?

A so-called cohabitation agreement (see above Question 57) must according to the Swedish Cohabitation Act, § 9 be concluded in writing and signed by both cohabitants or, if concluded before the relationship, the prospective cohabitants. If the agreement, or a new agreement replacing the previous one, fulfils these requirements, it will be binding between the partners.

Other agreements between the partners need to meet the ordinary requirements, according to the law of obligations. These requirements differ between various kinds of agreements. An important exception from the general rules may apply when property has been purchased during the relationship for the couple's joint use, but with only one of the partners receiving the formal title to it. Under certain conditions, as developed by case law, this property can be regarded as jointly owned by the partners.

b. In relation to third parties?

A cohabitation agreement, regulated by the Swedish Cohabitation Act, § 9, is binding

⁹⁶ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 96 (see Chapter 2.4.1 in the English version of the book, to be published by Intersentia in 2015).

⁹⁷ Cf. F. GRAUERS, *Ekonomisk familjerätt*, Thomson Förlag, Stockholm, 2008, at p. 267 et seq.

⁹⁸ Cf. M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 102 et seq. (see Chapter 2.4.4 in the English version of the book, to be published by Intersentia in 2015).

on third parties but does not, as such, have any legal effect in relation to third parties. This has to do with the fact that the agreement is limited to the exclusion of the division of 'cohabitation property', as defined by the Act, or to a reduction of the scope of the property division, or to bringing previously excluded 'cohabitation property' back within the scope of the division, through a new agreement. The agreement has no impact on the ownership of the property to be included or excluded.

Upon the property division, each cohabitee has the duty to take account of the interests of his or her creditors and may not, to the creditors' detriment, forgo property that is to be included in his or her share, the Swedish Cohabitation Act, § 21 with further reference to the Swedish Marriage Code, Chapter 13 § 1-2. If, as a result of such a forbidden action, the cohabitee is unable to pay a previous debt incurred before the property division took place, or if for any other reason the cohabitee can be assumed to be insolvent, the other cohabitee is liable for the deficit up to the value of the forgone property.⁹⁹

Other agreements between the partners need to meet the ordinary requirements, according to the relevant law of obligations or property law. These requirements differ between various kinds of agreements.¹⁰⁰

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

If an agreement is not binding, its effect – if any – is limited to a moral commitment. No legal measures or sanctions are available to enforce it, in the event of breach of the agreement.¹⁰¹

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

The Swedish regulation on 'cohabitation property' is, basically, a default regime which can be set aside by the partners' agreement. This means that the partners can 'opt out' of this regulation but also 'opt into it', if they wish to set the previous 'opt out' agreement aside.

According to the Swedish Cohabitation Act, § 9, cohabitees or prospective cohabitees may conclude an agreement called a 'cohabitation agreement', on the scope of the division of their 'cohabitation property', which is always limited to the couple's joint dwelling and joint household goods acquired for their joint use. This greatly resembles what spouses are able to agree in the form of a marital property agreement.¹⁰² A 'cohabitation agreement' under the Swedish Cohabitation Act

⁹⁹ See further Swedish Cohabitation Act § 20, with further references to the Swedish Marriage Code (in Swedish: *Äktenskapsbalken* 1987:230) Chapter 13, § 1 para. 3.

¹⁰⁰ We have interpreted Question 60 as a continuation of Question 59, meaning that its scope is restricted to agreements on the legal consequences of separation.

¹⁰¹ Cf. Swedish Supreme Court decisions *NJA* 1929 p. 225, *NJA* 1932 p. 290 and *NJA* 1940 p. 112.

¹⁰² Cf. G. LIND, *Sambolagen, en kommentar*, Norstedts Juridik, Stockholm, 2013, at § 9 and § 10.

implies that the cohabitees or prospective cohabitees have come to an agreement that there will be no division of the 'cohabitation property', or that certain assets otherwise included in this category of property are excluded from the division, when the relationship ends. 'Cohabitation property', previously excluded by an agreement from the property division, can be reintroduced into the division by concluding a new 'cohabitation agreement' to this effect. From § 9 it follows that the enactment's property regime (limited to so-called 'cohabitation property') is a default regime which applies only or to the extent that the parties have not opted out of it. There is a need to emphasise that all other property which either partner may own alone or jointly with the other cohabitee does not constitute 'cohabitation property' and therefore, *ex lege*, is not included in the property division. On the other hand, the provisions of the Swedish Cohabitation Act, § 16 and 22 on a partner's take-over right of the joint dwelling, following a need-based assessment, cannot be set aside by the partners' agreement.

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

The 'cohabitation agreement', limited to the scope of the division of 'cohabitation property', may according to the Swedish Cohabitation Act § 9 be concluded during the cohabitation relationship or before the cohabitation relationship starts.

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

a. As between the partners?

The 'cohabitation agreement', regulated by the Swedish Cohabitation Act § 9, must be concluded in writing and signed by both parties. (In a case where they or one of them is underage, in addition the holder of parental responsibilities must consent to the agreement, § 9 para. 2.)

When it comes to agreements other than those subject to the Swedish Cohabitation Act there are no special rules, meaning that the general principles of the laws of obligations and property are applicable. As between the parties, an agreement as such is normally sufficient, both written and oral agreements usually qualifying. Important exceptions apply, however, in relation to gifts and real property. The validity of a gift between the parties and in relation to a third party requires that the object has come into the intended recipient's possession and that the donor is excluded from further disposal of the property.¹⁰³ According to Swedish case law, shared possession between the donor and the recipient of the gift is not sufficient to satisfy the requirement of the transfer of possession.¹⁰⁴

A particular variant of transfer of property between a cohabiting couple is when a 'concealed right of co-ownership' is transformed into an 'open co-ownership'. The

¹⁰³ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 102-103 (see Chapter 2.4.4 in the English version of the book, to be published by Intersentia in 2015).

¹⁰⁴ See Swedish Supreme Court decision *NJA 1962 p. 669*.

'concealed owner' has, thereby, a legally protected claim to an 'open ownership'. In the case of real property, a specially regulated conveyance agreement must then be drawn up after which the 'concealed' owner can be documented as a co-owner at the land registry.¹⁰⁵

Generally speaking, having regard to the risk of future disputes, written agreements are to be recommended, not least for reasons of clarity and proof.¹⁰⁶

b. In relation to a third party?

The cohabitation agreement in its special meaning under Swedish law (above under a), lacks validity in relation to third parties.

A sales contract concerning movable assets, on the other hand, requires that the condition of transfer of possession is fulfilled. Bearing in mind that, in a cohabitation relationship, the seller of the property is not self-evidently excluded from further use of the property, the seller's creditors may be able to make claims on the property, in a case where the seller partner becomes insolvent.¹⁰⁷ A joint ownership to real estate property requires as a rule, in order to become binding on third parties, that the previously concealed joint owner is registered as a co-owner in the real estate registry.¹⁰⁸ Regarding gifts, the same rules and principles apply when it comes to validity between the parties. An undertaking to make a gift is, furthermore, not binding on third parties.¹⁰⁹

65. Is independent legal advice required?

The Cohabitation Act sets out no requirements on independent legal advice, prior to the conclusion of the 'cohabitation agreement' regulated by the Act, or at any other stage, for example, in the property division. This position follows that of the Swedish Marriage Code which, equally, does not require independent legal advice to precede the conclusion of a matrimonial property agreement, or at other events.

66. Are there any statistics or estimations on the frequency of agreements made

¹⁰⁵ See M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 101 (see Chapter 2.4.3 in the English version of the book, to be published by Intersentia in 2015).

¹⁰⁶ Cf. M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 96 et seq. (See Chapter 2.4.1 in the English version of the book, to be published by Intersentia in 2015).

¹⁰⁷ The Swedish Enforcement Code (in Swedish: *Utsökningsbalken* 1981:774) Chapter 4, § 19. Cf. M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 99–100 (see Chapter 2.4.3 in the English version of the book, to be published by Intersentia in 2015).

¹⁰⁸ See Swedish Supreme Court decisions *NJA* 1984 p 772 and *NJA* 1985 p. 615.

¹⁰⁹ See Swedish Gift Act (in Swedish: *Lag 1936:83 ang. vissa utfästelser av gåvor*) and M. BRATTSTRÖM, 'Egendomsförhållanden under bestående samboende', in: J. ASLAND et al., *Nordisk samboerrett*, Gyldendal, Oslo, 2014, at p. 104–105 (see Chapter 2.4.4 in the English version of the book, to be published by Intersentia in 2015).

between partners in an informal relationship?

Several surveys have been conducted in order to establish to what extent cohabitantes enter into agreements with each other.¹¹⁰ The data remains, not surprisingly, uncertain as persons living together in an informal relationship are, statistically speaking, a difficult group to survey. The surveys indicate however very clearly that far from all cohabitantes – maybe only 15-20% – have concluded agreements connected with their relationship.¹¹¹

According to Kajsa Walleng's survey (see above Question 11), the figure is slightly lower. Only 14% of the persons interviewed who regarded themselves to be cohabitantes in an informal relationship, reported having concluded some kind of an agreement with the other cohabitee.¹¹²

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

No, there are no statistics regarding the content of agreements between cohabitants. The permitted content of a 'cohabitation agreement' is, however, clearly defined by the Swedish Cohabitation Act, § 9. As regards other agreements, these can be expected to be of a diverse nature. Many of them can be expected to strengthen the mutual rights and duties of the partners, in different respects. But there can equally be agreements which go in the opposite direction, for example, if the partners agree that their mutual relationship is not to result in any mutual rights or duties. Nevertheless, partners covered by the Swedish Cohabitation Act cannot exclude the application of the take-over right of the joint dwelling in the case of the termination of the relationship.

G. Disputes

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

If the dispute concerns the division of the couple's 'cohabitation property', special rules apply according to the Swedish Cohabitation Act, § 26. This provision provides each of the partners with the right to turn to the court, for the court to appoint a person to carry out the division of the property in the capacity of a 'property division executor' (in Swedish: *bodelningsförrättare*). The court-appointed property division executor has a mandate to decide on all the disputed matters if the partners are not able to come to an agreement. If one of the former cohabitantes is dissatisfied with the executor's decision, the decision may be appealed against, by bringing legal

¹¹⁰ I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomiforbundets Forlag, Copenhagen, 2011, at p. 528; Norges Offentlige utredninger, NOU 1999:25 p. 71: Statens Offentliga Utredningar, SOU 1999:104 p. 152.

¹¹¹ T. SVERDRUP, 'Samboere uten lovvern', *Tidskrift för Familierett, Arverett og Barnevernsrettslige spørsmål* (FAB), 2011, at p. 256.

¹¹² K. WALLENG, *Att leva som sambo*, Iustus Förlag, Uppsala, 2015, at p. 109.

proceedings against the other former cohabitee. The executor's fee is, as a general rule, paid in equal shares by both parties. The rules are modelled on those applicable to disputes between spouses regarding the division of their marital property, and § 26 refers explicitly to the corresponding rules in the Swedish Marriage Code (its Chapter 17). The former cohabitees also have the right to have legal representatives of their own to assist them in their contacts with the property division executor.

Special provisions in the Swedish Cohabitation Act are, furthermore, of relevance in disputes concerning the take-over right of the joint dwelling upon termination of the relationship. If the partners cannot agree, the court may decide which of them has the greater need of the dwelling, § 22 and 30. The court may also decide, upon application by one of the partners, which of them has the right to remain in the joint dwelling until the division of the property has been carried out, § 28, or the court may forbid the partners to visit each other.

Apart from the provisions of the Swedish Cohabitation Act, regard needs to be given to the Swedish Act on Co-ownership if the partners are joint owners to property (for example because they have purchased property together). The Swedish Cohabitation Act is restricted to so-called 'cohabitation property' and all other property falls outside its scope, for example a summer cottage owned jointly by the partners or a jointly owned car. If the co-owners have a dispute about the administration of the co-owned asset, for example their summer cottage, either one of them may apply to the court for it to designate a property administrator, to administrate the asset or, as a last resort, to sell it through a public auction, § 3 and 6.

If, on the other hand, the dispute is about the couple's joint children (parental responsibilities) the social services, more precisely the local social welfare board (in Swedish: *socialnämnden*), in the different municipalities of Sweden have a duty to assist the parties, in the form of arranging so-called cooperation discussions, mediation, counselling and generally with the purpose of getting the parties to agree (Swedish Children and Parents Code, Chapter 6, § 17 a). A written agreement on parental responsibilities in relation to a child is often negotiated under the supervision of the local social welfare board and must be approved by it. If an agreement cannot be reached (or approved of), the dispute needs to be taken to an ordinary court of law by initiating legal proceedings.¹¹³

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

The competent authority is the same for disputes between couples in an informal relationship and couples in a formalised relationship.

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?

¹¹³ See Swedish Children and Parents Code (in Swedish: *Föräldrabalken 1949:381*), Chapter 6, §§ 5, 10, 14, 14a and 15a.

In court proceedings initiated by the partners or one of them the court has the power to scrutinise all kinds of agreements between the partners regarding their mutual rights and duties. If the Swedish Cohabitation Act is applicable (see answers to Question 2 and 4) and the cohabitantes have concluded a 'cohabitation agreement', an explicit provision in § 9 para. 3 concerns the court's powers to scrutinise this agreement. Scrutinizing of the other agreements is made possible through the general rules and principles of the laws of obligations and property.

An agreement between the partners regarding parental responsibilities in relation to their joint children (custody, contact and the children's residence) must be approved by the local social welfare board in order to be valid (Swedish Children and Parents Code, Chapter 6 § 17 a). This requires scrutiny by the board. Only an agreement that can be regarded to be in the best interests of the child should be approved. The child should be heard, subject to certain restrictions.

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)?

Indeed, in respect of an agreement on division of 'cohabitation property', Swedish Cohabitation Act, § 9 para. 3 explicitly states that if a term in the agreement is unreasonable having regard to the agreement's content, the circumstances when the agreement was concluded or which have subsequently arisen, as well as the overall circumstances, the agreement may be adjusted or set aside in the property division. This rule is modelled on a general rule of contract law, found in Chapter 3, § 36 of the Swedish Act on Contracts (in Swedish: *Avtalslagen*); a similar provision is found in the Swedish Marriage Code, Chapter 12 § 3, concerning adjustment of marital property agreements in connection with the property division.

When it comes to agreements not subject to the Swedish Cohabitation Act, as stated above, general rules and principles of the law of obligations and property law are applicable and the agreement can be scrutinised in accordance with those principles and rules. These rules are found in the Swedish Act on Contracts, for example the above-mentioned provision in Chapter 3 § 36.

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?

When it comes to disputes about division of 'cohabitation property', the partners can apply to the court for the appointment of a property division executor, Swedish Cohabitation Act, § 26. The mandate of the appointed property division executor includes decision-making in all issues relating to the 'cohabitation property' on which the parties are not able to reach an agreement. Usually the appointed executor makes every effort to get the parties to agree on the relevant issues. The relevant provision in § 26 refers directly to the corresponding provisions of the Swedish Marriage Code (see in particular its Chapter 17 § 6).

Disputes about parental responsibilities (custody and contact and child's residence) can be taken to court, but should in the first place be resolved with the assistance of the local social welfare board (see answer to Question 68). The social welfare board has the duty to assist the parties, in the form of arranging so-called cooperation discussions, mediation, counselling and generally makes efforts to get the parties to agree on the issues (Swedish Children and Parents Code, Chapter 6, § 17 a). A written agreement on parental responsibilities is often negotiated under the supervision of the local social welfare board and it must always be approved by the board as to substance. An agreement approved by the social welfare board has the same effect as a court judgment and is enforceable, and can be enforced if necessary, Swedish Children and Parents Code, Chapter 6 § 6 and Chapter 21 § 1. If the dispute is taken to court, the court may refer the parties to mediation in an attempt to have the dispute solved outside court, Swedish Children and Parents Code, Chapter 6 § 18a.

Disputes about maintenance for children can be solved in three different ways. First, the parents agree on the amount of maintenance to be paid by the parent who does not live with the child. Second, they can go to court for the court to settle the issue. Third, however, the residential parent can turn to the social insurance agency (in Swedish: *Försäkringskassan*) which will step in and pay a certain fixed amount of money each month for the child's maintenance, Swedish Social Services Act (in Swedish: *socialtjänstlagen*), Chapter 17. The agency has a right of recovery against the maintenance debtor. This alternative enables the parents to avoid a dispute about child maintenance and can, therefore, be looked on as a kind of alternative dispute solving mechanism, even if the purpose is ultimately only to safeguard each child's right to a very basic level of support, irrespective of the parents' ability or lack of ability to pay maintenance.

Generally speaking, it is the duty of a court to strive to reach an agreement between the parties to the dispute, Swedish Code of Procedure (in Swedish: *Rättegångsbalken 1942:740*). Where possible, mediation should be used to achieve this aim, and the court may appoint a mediator.

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?

If ADR is understood in a broad sense, i.e., also to cover parental agreements on parental responsibilities approved by the social welfare board and final decisions by a court appointed property division executor, then the procedural effect is the same as that of a final court decision.

An agreement on ADR as such is not binding on the partners and it cannot be enforced.

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?

No such statistics exist.