

# Family Law in Luxembourg: Overview

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A Q&A guide to family law in Luxembourg.

The Q&A gives a high-level overview of key issues including jurisdiction and conflict of law; pre- and post-nuptial agreements and matrimonial property regimes; divorce, nullity, and judicial separation; children; surrogacy and adoption; cohabitation; family dispute resolution; civil partnership/same-sex marriage; and controversial areas and reform.

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## Jurisdiction and Conflict of Law

### Regulatory Framework

1. What are the primary sources of law in relation to marriage, marital breakdown and the welfare of children and give a brief overview of which courts will have jurisdiction to hear the dispute?

### Sources of Law

As a civil law country, statute is the primary source of law. Luxembourgish judges are not bound by any kind of precedent, but previous decisions can serve as a guideline. The main sources for legislation are the Civil Code (based on the French Civil Code) and the New Civil Procedure Code (NCPC). These are supplemented by international sources that include Hague conventions and EU regulations.

### Court System

Family law was completely reformed by the Law of 27 June 2018, which creates a specific family court with family affairs judges. It largely simplifies family law, with the sole exception of juvenile cases, where the youth protection judge has exclusive authority. The youth protection judge, rather than a fully-fledged tribunal, is a specialist section of the ordinary civil courts, which operates partly according to its own rules, in derogation from ordinary civil regulations, as stated in the Law of 10 August 1992 on Child Protection.

Family affairs judges have exclusive jurisdiction in matters relating to marriage, matrimonial regimes, divorce, alimony, child custody, parental authority, legal administration of minors' property and domestic violence (Article 1007-1, NCPC).

## Jurisdiction

2. What are the main requirements for local courts to have jurisdiction in relation to divorce, property and children proceedings?

## Divorce

International competence is regulated through Regulation (EC) 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II Regulation).

Within Luxembourg, the court within the district in which the spouses have their common domicile or, failing that, in which the defendant or, in case of divorce by mutual consent, one of the spouses has her/his domicile, has legal jurisdiction (verified on the day when the lawsuit is filed (Article 1007-12, NCPC).

## Same-Sex Spouses and Civil Partners

With the law of 4 July 2014 and its subsequent modification of the Civil Code, Luxembourg adopted a gender-neutral approach, by replacing "wife and husband" with "spouses" and all legal provisions relating to marriage and divorce apply regardless of gender.

The Law of 9 July 2004 regarding legal effects of certain partnerships provides the legal framework for civil partnerships. Its application is subject to residence on Luxembourgish territory.

## Property

As an accessory to divorce, the judge with jurisdiction to pronounce on the divorce can also order liquidation of the matrimonial regime and splitting of common assets and decide what happens to the matrimonial home.

## Children

The court within the district of the family domicile has jurisdiction (Article 1007-2, NCPC).

If the parents live separately, a distinction is made between whether parental authority is shared or exclusive:

- If parental authority over the child(ren) is shared, the habitual residence of the minor determines jurisdiction.
- If parental authority is exclusive, the residence of the parent with parental authority determines jurisdiction.

## Domicile, Nationality and Habitual Residence

3. How do the concepts of domicile, nationality and habitual residence apply in relation to divorce, financial arrangements, and children?

Luxembourg is a small country and nearly half of its population are foreign citizens, so nationality has secondary importance in family law when it comes to rules on the jurisdiction of Luxembourgish courts. As a consequence, jurisdiction is mainly based on the concept of domicile and habitual residence.

Domicile is defined by Article 102 of the Civil Code as the place of one person's principal establishment. While this concept is theoretical in nature, in practice, the domicile is equivalent to the municipality where one person is registered. It is only possible to register in one place, even for minors who live alternately with both parents.

## Conflict of Law

4. What procedure applies for a party applying to stay proceedings in favour of a foreign jurisdiction? What factors do local courts take into account when determining forum issues?

## Procedure

Luxembourg law permits applying to stay proceedings in favour of a foreign jurisdiction. The Brussels II Regulation provides the *lis pendens* rules. When a party applies to stay proceedings in favour of a foreign jurisdiction, the *prior tempore* rule applies. Luxembourg considers that the court first seized will have jurisdiction over the matter in dispute, or at least until the court

first seized has decided whether or not it is competent. If Luxembourg is second seized in the same cause of action, Luxembourg courts will stay the case until the first court seized has taken a decision.

## Factors

Luxembourg courts strictly apply the Brussels II Regulation and any court in Luxembourg will necessarily analyse its international competency even if there is no discussion between parties on it.

## Anti-Suit Injunctions

There is no anti-suit injunction in Luxembourg family law.

## Applicable Law

5. Are foreign nationals treated differently on divorce?

Regulation (EU) 1259/2010 implementing enhanced co-operation in the area of the law applicable to divorce and legal separation (Rome III Regulation) provides for universal application based on the habitual residence of the spouses. Under Article 254 of the Civil Code, the spouses can opt for the law of their common nationality.

## Service of Proceedings

6. What are the requirements for service of divorce, financial and children proceedings in your jurisdiction?

The following are relevant with regard to service of judicial and extrajudicial documents:

- HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention).
- Regulation (EC) 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (Service of Documents Regulation).

- Regulation (EC) 1348/2000 on the service in the member states of judicial and extra-judicial documents in civil and commercial matters (Service Regulation).

The NCPC provides the rules on service of judicial acts. Essentially, three different ways of serving documents are possible, depending on the matter:

- Through one of Luxembourg's 19 court bailiffs, who are judicial officers, governed by the law of 4 December 1990 (Article 155).
- By registered letter through a bailiff (Article 102).
- Through the clerk of the court using ordinary postal service.

In family law, only the first and the third procedures are used, with the most usual way being through the court's clerk.

## **Pre- and Post-nuptial Agreements and Matrimonial Property Regimes**

### **Validity of Pre- and Post-Nuptial Agreements**

7. To what extent are pre-nuptial and post-nuptial agreements binding?

A marital convention is a binding contract made by a notary, that only comes into effect on the day of the celebration of the marriage. Pre-/post-nuptial agreements are largely recognised in Luxembourg although there are no specific statutory provisions that govern such agreements.

8. Do matrimonial regimes exist in your jurisdiction and is there a default matrimonial property regime?

### **Default Regime**

If the spouses do not choose to opt for a specific regime, the statutory matrimonial property regime is the community of property regime, also referred to as "community of acquisitions" (Article 1400, Civil Code). This regime distinguishes between common property after the marriage and the separate property of each of the spouses before marriage.

Any property, movable or immovable, is deemed to be common property unless it is proved to be the separate property of one of the spouses in accordance with a provision of law (Article 1402).

The community consists of the products of the spouses' work, the fruits and income of their separate property due or received during the marriage, and the property acquired by each of them for valuable consideration during the marriage, as well as the debts contracted during the marriage.

The separate property of the spouses comprises everything they owned before the marriage, as well as the property acquired by succession or donation during the marriage and goods that are considered theirs under Article 1404, like diplomas, clothes and jewellery.

## **Procedure**

Matrimonial property regimes must be adopted by a notary's deed. The Civil Code provides the rules applying to these marital conventions and matrimonial regimes.

It is possible for spouses to choose one of the regimes provided in the Civil Code, which must be made in a notary's contract (Article 1393).

In the absence of special stipulations, the default regime will prevail.

## **Other Regimes**

The spouses can also adopt the regime of "universal community". Under this, no difference is made between separate and common property, and everything is considered to be common.

Alternatively, the spouses can opt for the separation of goods regime, under which all property is separated. If the spouses acquire something together, for example, the family home, the general rules of undivided property apply. However, the spouses must comply with the primary matrimonial regime of Article 212 of the Civil Code.

9. How are foreign separation of property agreements and pre-nuptial and post-nuptial agreements treated by the courts in your jurisdiction?

Foreign property agreements must comply with the requirements of Article 25 of the Matrimonial Property Regulation ((EU) 2016/1103). The matrimonial property agreement must be written, dated and signed by both spouses.

However, Luxembourg law lays down additional formal requirements that the agreements cannot be contrary to morality and public order.

## **Divorce, Nullity and Judicial Separation**

### **Recognition of Foreign Marriages/Divorces**

10. Are foreign marriages/divorces/civil partnerships recognised in your jurisdiction?

#### **Marriages**

Luxembourg is one of three Contracting Parties to the HCCH Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages (along with France and The Netherlands).

The principle is that marriages contracted in another state are automatically recognised when the marriage has been celebrated in accordance with the main formal conditions for being married in that state. With regard to the substantive conditions, it is necessary to comply with the laws that apply to their personal status. The main Luxembourgish conditions must also be respected (being a civil marriage). The spouses must be capable and consenting.

To publish a marriage in the civil register, both spouses must appear before the registrar of the municipality of their residence with a valid identification card or passport and an authenticated marriage certificate.

#### **Divorces/Annulment**

The HCCH Convention on the recognition of divorces and legal separations, concluded on 1 June 1970, was approved by the Law of 20 December 1990.

#### **Civil Partnerships**

Foreign civil partnerships are recognised if they fulfil the legal requirements of the given state.

#### **Divorce**

11. What are the grounds for divorce?

## Divorce

A marriage is dissolved either through the death of one of the spouses, or through a *res judicata* (matter already judged) judgment pronouncing a divorce (Article 227, Civil Code).

There are no specific "grounds" for divorce but there are two different procedures that can be used (see also [Question 12](#)):

- Divorce by mutual consent (Articles 230 and 231, Civil Code), under which the spouses file the divorce claim together. They agree on the principle and the consequences of divorce. Their agreement is written and homologated by a judge.
- Divorce for irreparable marital breakdown (Articles 232 to 237, Civil Code) can be requested by one of the spouses, without giving any more specific reason, or, if there is agreement on the principle of divorce, but not on its consequences, by both jointly.

The assistance of a lawyer (or a notary in a divorce by mutual consent) is mandatory.

The same rules apply to same-sex marriages.

## Nullity

Marriage with an under-age spouse is deemed to be null, except where there is a special authorisation granted by a family affairs judge (Article 144, Civil Code).

A marriage can be nullified if both spouses did not consent freely to it, or if one spouse was coerced, or where there is bigamy (Article 146, Civil Code).

## Judicial Separation

Judicial separation is covered by Articles 306 and following of the Civil Code and Articles 1007-1039 of the NCPC.

The causes and the procedure for judicial separation are the same as for divorce by irreparable breakdown of conjugal relations.

In a judicial separation, the spouses are not divorced, but the regime of separation of goods automatically applies. A reconciliation remains possible.

12. What is the procedure and timeline for divorce?

## Divorce



There are two different procedures for divorce:

- **Divorce by mutual consent.** The spouses file a simplified writ, called a petition, with an agreement on the terms of the divorce and its consequences. It is mandatory to be assisted either by a lawyer or a notary (Articles 1007-1013, NCPC). Within 15 days of the filing, the spouses are summoned to appear in court. The judge hears the spouses in person and they can be assisted by their lawyers. The divorce judgment homologates the agreement signed by the parties and forms part of the judgment.
- **Divorce for irreparable marital breakdown.** Articles 1007-24 and following of the NCPC provide for the rules applicable to divorce for irreparable marital breakdown. It can be requested by one spouse only, or by the two of them jointly, if there is an agreement on the principle of the divorce, but not on its consequences. The divorce claim is filed by a lawyer through a petition and within 15 days of the filing, the spouses are called to appear in court to a hearing set within one month. The spouses must appear in person and must be assisted by two different lawyers.

The defendant spouse can ask for a period of reflection, which can be granted twice for a maximum of three months for each period. However, if the spouses agree on the divorce, the judge will pronounce the divorce immediately.

## Nullity

Nullity falls within the exclusive competency of the family affairs judges under Article 1007-1 of the NCPC. The claim is filed through the simplified writ called a petition. The assistance of a lawyer is not mandatory. Within 15 days of the filing, the court clerk will summon the spouses to a hearing which is held within one month of the summons.

## Judicial Separation

The procedure for judicial separation is the same as for divorce for irreparable marital breakdown (see above, [Divorce](#)).

## Religious Marriage and Divorce

13. Are customary and religious marriages and divorces recognised in your jurisdiction?

Religious and customary marriages and divorces are not recognised in the Luxembourgish jurisdiction without a civil component, regardless of where the marriage has taken place.

## Finances/Division of Assets

14. What powers do the courts have to allocate financial resources and property on the breakdown of marriage?

The judge has no power to allocate any specific financial resources or property to one of the spouses. In a divorce by mutual consent, the judge cannot amend the agreement signed by the spouses. If the judge considers the agreement reached does not respect both spouses' interests, they can only refuse the divorce and ask the spouses to amend the agreement.

15. What factors are relevant to the exercise of the court's powers?

Not applicable.

16. What is the court's current position on the division of assets?

The judge must split the assets as governed by the matrimonial regime of the spouses, either chosen by the spouses or by default. If the spouses have opted for a separation of goods, the judge verifies that the condition of the mandatory primary matrimonial regime are respected as set out.

If the spouses have one or more children under the age of 12 years, the judge can allow one of the spouses to reside in the marital home serving as the habitual residence of the children for a maximum of two years, or until the youngest child has turned 12 after the pronouncement of the divorce. This is only possible if the house belongs to one or both spouses, and it must be in the best interests of the children. The judge must determine a monthly compensation allowance to be paid to the other spouse.

## Finances/Spousal Maintenance (Alimony)

17. How does ongoing spousal maintenance operate following marital breakdown? Is maintenance awarded for a fixed term or on an open-ended basis? Is there a set formula or do judges have discretion over quantum and term?

## **Spousal Maintenance**

After marital breakdown, the judge can impose an obligation for maintenance on either spouse. Maintenance is determined according to the needs of the spouse to whom it is paid and within the limits of the contributory capacity of the other spouse.

If the spouses agree, the court can decide that the alimony will be paid in a lump sum. The amount of the capital must be equal to the amount of the monthly alimony.

## **Basis for Award**

The maintenance obligation cannot exceed the duration of the marriage, although exceptions can be made due to age or illness.

## **Fixed Formula or Court Discretion**

There is no set formula. The judge has discretionary power over quantum and term regarding spousal maintenance.

18. Is it common for maintenance to be awarded on marital breakdown?

Luxembourg considers that each spouse should support themselves after the divorce, and maintenance after marital breakdown is only granted in cases where the requesting spouse cannot work either because of age or illness or other specific circumstances.

19. What is the court's current position on maintenance on marital breakdown?

Maintenance has only alimentary purposes and is never compensatory. The judge will consider the:

- Duration of the marriage.
- Ages and states of health of the spouses.
- Professional qualifications and occupations.
- Estimated or foreseeable assets of the spouses, both in capital and income, after the liquidation of the matrimonial regime.

## Finances/Child Support

20. What financial claims are available to parents on behalf of children within or outside of the marriage?

## Married Couple

Both parents must contribute to the upbringing of their children (Article 213, Civil Code). The marriage contract can provide for the amount of this contribution. If nothing has been determined, each spouse must participate according to their individual financial ability either in cash or in kind.

If this does not happen, it is possible to get authorisation from a family affairs judge to enforce the obligation for maintenance, mainly by accessing wages (attachment of earnings) (Article 1011, NCCP).

The judge defines the conditions and the exact amount of this access.

## Divorced Couple

In a divorce by mutual consent, the spouses' agreement regulates every aspect of their divorce, including the financial contribution to child maintenance. However, the judge can control the amount fixed by the spouses with regard to the best interests of the child (Article 1007-16, NCPC). If this is deemed inappropriate, the judge can order the parties to change the agreement.

In a divorce for irreparable marital breakdown, the judge decides the individual financial contribution to child maintenance. This is calculated in accordance with the child's needs and the parents' financial income and resources.

## Unmarried Couples

Every parent, whether they have parental authority or not, must contribute financially to child maintenance (Article 372-2, Civil Code). It is calculated in the same way as if the parents had been married.

If the child is of legal maturity, the contribution can be paid directly to the adult child (Article 376-2, Civil Code).

Children born into any other form of legally recognised relationship are treated as children of unmarried couples.

## **Transfer Of Property**

Both parents are responsible for handling their children's finances, as a parental obligation (Article 382, Civil Code). The parent with which the child lives most of the time is entitled to act on the child's behalf to obtain maintenance.

If one of the parents has exclusive parental authority, a family affairs judge controls any financial transactions in relation to the child.

21. On what basis is child maintenance calculated?

Parents must contribute to child maintenance in proportion to their respective personal resources and the needs of the child (Article 372-2, Civil Code).

In practice, an accurate account of the incomes and expenses of each party will be made, taking into consideration:

- Incomes (including salary, rents).
- Expenses (loans, rent, assurances).
- Expenses relating to the child (for example, extracurricular activities, dental costs, glasses, sports, cultural events and holidays).

The typical expenses of daily life, such as electricity, internet and telephone are not taken into account.

In a divorce by mutual consent, the parents determine the exact amount of their financial contribution under the control of a family affairs judge.

In all other cases, the judge will calculate the exact amount of the contribution.

22. What is the duration of a child maintenance order (up to the age of 18 years or otherwise)?

Parents must pay child maintenance as long as the child cannot support themselves.

The obligation does not automatically stop when the child reaches the age of legal maturity (Article 372-2, Civil Code).

23. Can a child (whether of legal maturity or otherwise) make a claim directly against their parents?

The parents represent their children in court, except when the law permits the minor to act alone (for example, Article 1007-50 of the NCPC allows the minor to ask for a change with regard to parental authority or custody).

Therefore, a minor cannot make a financial claim directly against their parents. However, where there is a conflict of interest between the best interests of the child and the interests of the parents, the judge can appoint an "ad hoc administrator" who will act as a trustee and will represent the minor in Court (Article 388-2, Civil Code).

Once a child reaches majority, they can file a claim in their personal name against their parents, as the child then has the full capacity and control of their civil rights.

An adult child (the age of legal maturity being 18 years) who is still dependent can file a claim against one or both parents.

## **Enforcement of Financial Orders**

24. What are the main methods of enforcement to ensure compliance with financial orders following divorce/dissolution in your jurisdiction?

A garnishing order is the main method of enforcement to ensure compliance with financial orders following divorce/dissolution, which is possible in domestic and foreign decisions.

25. What is the legal position on the reciprocal enforcement of financial orders?

Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations (Maintenance Regulation) will apply to all EU financial orders relating to maintenance obligations. There are three ways in which orders can be enforced:

- Where the financial order was made in an EU member state applying the HCCH Protocol on the Law Applicable to Maintenance Obligations 2007 (Hague Protocol 2007), the order is enforceable in the EU state where it was made, and it will be enforceable in Luxembourg without an exequatur (that is, a judgment on enforcement) or a declaration of enforceability.
- Where the financial order was made in an EU member state not applying the Hague Protocol 2007 (such as the UK and Denmark), no special procedure will be needed to recognise the order in Luxembourg, but its enforcement will be subject to a declaration of enforceability.
- Where the financial order was made by a non-EU court, an exequatur will be required unless the non-EU country has signed up to an international treaty (for example, the Hague Maintenance Convention).

## Financial Relief after Foreign Divorce Proceedings

26. What powers are available to the court to make orders following a foreign divorce? If such a power exists, what is the legal basis for making such an application?

If there are any new elements justifying a new decision, the judge has discretionary powers to amend the foreign decision as well as the domestic order.

## Children

### Custody/Parental Responsibility

27. What is the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage? Do local courts in your jurisdiction recognise parenthood that has been established in another jurisdiction for the purposes of custody/parental responsibility, maintenance and so on?

## General Position for Custody/Parental Responsibility

**Custody.** After the breakdown of their relationship, an unmarried couple can decide by mutual consent how they intend to settle custody. If an agreement is not possible, the judge will decide the custody arrangements (Article 1007-1, NCPC).

For a married couple seeking a divorce by mutual consent, the settlement must set out the terms of custody. The judge controls whether the provisions of the custody settlement are in the best interests of the child. If not, the judge will order the parties to change that part of the agreement (Article 1007-16, NCPC).

Where a couple undergoes divorce for irreparable marital breakdown, the judge will set the custody terms (Article 237, Civil Code). If the judge needs more information about the family's situation to be able to take a decision on custody matters, they can order a social investigation or welfare report (*enquête sociale*) on the capacity and environment of both parents (Article 1007-51, NCPC).

**Parental responsibility.** Joint parental authority is exercised by all parents, whether unmarried, married, separated or divorced. Custody is limited until the age of majority.

The court rarely gives exclusive parental authority to one of the parents and will only do so under the condition that it is in the best interests of the child (Article 376-1, Civil Code).

Emancipation is possible for a child from the age of 16 years in special circumstances (for example, where the minor is pregnant and wants to get married) (Article 482, Civil Code).

Parental authority can be also given to a third party (Article 379, Civil Code).

Parents can, by mutual consent, decide to let their child be looked after by a third party (Article 380, Civil Code). In this case however, parental authority will still be exercised by the parents. The person entrusted with the child can take every decision regarding everyday life, notably concerning the child's supervision and education.

Where no parent can exercise parental authority, the "guardianship" procedure allocates parental authority to a third party.

## Parenthood Established in Another Jurisdiction



Parenthood established in another jurisdiction is generally recognised without any further formal recognition necessary, except for that of children born in another jurisdiction through surrogacy to parents habitually resident in Luxembourg (see [Question 31](#)). No legislation exists in Luxembourg regarding surrogacy, and jurisprudence is not clear on how to treat these children.

28. What is the legal position in relation to access/contact/visitation following the breakdown of a relationship or marriage?

Currently, a shared/alternate residence order (*résidence alternée*) can be made in favour of both parents when the circumstances permit it. However, this does not necessarily mean that the child will spend exactly the same amount of time with each parent.

All decisions on access/contact/visitation/residence must be made in consideration of the best interests of the child. The judge will take into account:

- The parents' habits before the divorce/separation.
- The child's age and their opinion.
- The parents' respective parental capacities.
- All other important circumstances.

## International Abduction

29. What is the legal position on international abduction?

Luxembourg is party to the HCCH Convention on the Civil Aspects of International Child Abduction of 1980 and also applies the Brussels II Regulation.

The General State Prosecutor is the central authority on international child abduction.

Child abduction is also a criminal offence in Luxembourgish law.

## Leave to Remove/Applications to Take a Child Out of the Jurisdiction

30. What is the legal position on leave to remove/applications to take a child out of the jurisdiction? Under what circumstances can a parent apply to remove their child from the jurisdiction against the wishes of the other parent?

Both parents jointly have parental authority and no parent has the right to relocate the child to another state without permission from the other parent.

If the parents cannot reach an agreement on the relocation of their child, a family affairs judge has exclusive jurisdiction to authorise the change of residence (Article 1007-1 – 3°, NCPC).

When parental authority is exclusively allocated to one of the parents, this parent must inform the other of their intention to remove the child, as this is considered an important decision. The other parent then has the option to oppose the decision in court.

To authorise relocation of a child, the same criteria as for residency will be taken into account (see [Question 28](#)). In addition, each parent will be legally entitled to maintain or build a personal relationship with their child, even while they are abroad (Article 376, Civil Code).

## Surrogacy and Adoption

### Surrogacy Agreements

31. What is the legal position on surrogacy agreements in your jurisdiction? Is surrogacy available to individuals and cohabiting couples (both heterosexual and same-sex)?

Surrogacy is not regulated at all in Luxembourg. According to Luxembourg doctrine, a surrogacy agreement can be interpreted as being against public order law in accordance with Article 16 of the Law of 15 November 1982 on substances of the human body, which forbids selling human substances.

However, there is no regulation that expressly forbids surrogacy.

Different court cases have dealt with surrogacy, but there is not yet significant jurisprudence on the topic. The courts of first instance appear to be more open to recognising surrogacy than the Court of Appeal.

The general consensus seems to be that a surrogacy arranged through a court order abroad will be legalised in Luxembourg through the exequatur procedure.

Draft Law 6568A was created on 28 July 2017 to reform this area and the project aims to add a new Article 313-3 to the Civil Code, which will give a parent the right to recognise a parental project based on a surrogacy agreement by the civil registry officer. This relates only to foreign surrogacies by parents who want to have their children recognised in Luxembourg and obtain Luxembourgish nationality for them.

This draft law also aims to make an addition to Article 12 of the law of 1 August 2007 concerning human cells, which will expressly prohibit proceeding with surrogacy in Luxembourg.

It seems that children born to foreign parents that do not habitually reside in Luxembourg are legally recognised in Luxembourg.

## Adoption

32. What is the legal position in relation to adoption? Is adoption available to individuals and cohabiting couples (both heterosexual and same-sex)?

With the Law of 4 July 2014 and the reform of Article 143 of the Civil Code, adoption is equally available to same-sex couples and heterosexual couples.

The adoption procedure is provided in Articles 344 and following of the Civil Code:

- Articles 343 onward provide the rules that apply to simple adoption proceedings. The adopted child will not completely lose ties with its biological family.
- Articles 367 onward provide the rules that apply to the procedure on plenary adoption. In this case, the adopted child will lose all ties with their biological family.

Article 349 allows adoption only for married couples (and not to couples who are merely cohabiting). It is possible to adopt as a single parent.

Adoption is available for individuals who are least 25 years old, with an age difference of at least 15 years between the adopted child and the adopting parent, except where the adoption happens inside a marriage, where the age difference required is only ten years.

## Cohabitation

33. What legislation (if any) governs division of property and financial claims for unmarried couples on the breakdown of the relationship?

There is no law regulating the division of property and financial claims for unmarried couples on the breakdown of their relationship.

Since 6 August 2004, unmarried couples have been able to enter into a civil partnership. On termination of the partnership, the obligation to contribute to common charges will stop. However, Article 12 provides the possibility for one ex-partner to seek a continuation of financial help from the other partner after the breakdown. This help is calculated according to the needs of the requesting partner and in proportion with the income of the other party.

This financial help will be limited in time. The duration cannot exceed the duration of a civil partnership and it can only be granted in exceptional cases. It is rarely requested.

## Family Dispute Resolution

### Mediation, Collaborative Law and Arbitration

34. What non-court-based processes exist to resolve disputes? Is alternative dispute resolution mandatory? What is the current status of agreements reached through mediation, collaborative law and arbitration?

Any judge can order a mediation information session, either on demand or at their discretion (Article 1251-12, NCPC), but alternative dispute resolution is not mandatory.

Collaborative law does not exist in Luxembourg.

An arbitral judgment is only binding on the parties that choose this procedure, it cannot be binding on a third party (Article 1243, NCPC).

35. What is the statutory basis (if any), for mediation, collaborative law and arbitration?

Mediation in connection with a judicial process is set out in Articles 1251-1 to 1251-24 of the NCPC.

The arbitration process is set out in Article 1224 to Article 1251 of the NCPC.

The system of collaborative law does not exist in Luxembourg.

## **Civil Partnership/Same-Sex Marriage**

36. What is the status of civil partnership/same-sex marriage? What legislation governs civil partnership/same-sex marriage?

Same-sex marriage is regulated by Article 143 of the Civil Code and has the same status as marriage of two people of different sexes.

Civil partnerships are regulated by the Law of 6 August 2004 and the status is the same for same-sex and different-sex couples.

## **Media Access and Transparency**

37. What is the position regarding media access to and press reporting of family law cases?

Family cases are heard in the council chamber, which means that only the parties are present (Article 1007-6(1), NCPC). However, Article 1007-9 (4) of the NCPC requires the judgments from family affairs judges to be made in open court. In practice, this never happens. The same

article allows the judge to decide independently, or when asked by the parties, to hear the family case in public and in this situation, members of the press can have access.

## Succession Rights on Divorce/Dissolution

38. How does divorce impact succession and estate planning in your jurisdiction?

If the divorce between two spouses is final, they are considered strangers to each other and a succession claim can no longer be made. The divorce does not affect an existing will in favour of the spouse, and the will would need to be amended to exclude the divorced spouse.

## Controversial Areas and Reform

39. What areas of the law (if any) are currently undergoing major change? Which areas of law are considered to be particularly controversial?

Divorce law was fundamentally revised in 2018, and the family affairs judge position was created.

Since 2017, a draft law has been discussed to reform paternity/maternity determination procedures, and providing for legislation on surrogacy and gamete donation, but there has been no public discussion on these subjects.

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**Non-professional qualifications.** Conseillère d'Etat

**Professional associations/memberships.** IAFL.

**Publications.** *Droit De La Famille - Recueil De Textes, Legitech 2019.*

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**END OF  
DOCUMENT**