

CHAPTER 571

COHABITATION ACT*

AN ACT to regulate cohabitations and to provide for other matters dealing with them or ancillary to them.

21st April, 2017[†]

ACT [XV of 2017](#). As Amended by Act [XIII of 2018](#).

ARRANGEMENT OF THE ACT

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Part I

Preliminary

1. The short title of this Act is the [Cohabitation Act](#). Short title.
2. (1) In this Act, unless the context otherwise requires: Interpretation.

"basic rights and duties" means those rights and duties listed under article 30;

"cohabitant" means a person who is continually and habitually living with another person in an ordinary, primary, common home, with whom he has an intimate relationship, and together consider themselves a couple, and is not already legally bound to another person:

Provided that for the purposes of *de facto* cohabitation, a person who, although being in a marriage or civil union is separated *de jure* shall also be considered as a cohabitant;

"Cohabitations Register" in relation to cohabitations that are registered in the island of Malta means that section within the Office of the Public Registrar in the same island of Malta responsible for affairs relating to cohabitations, and in relation to contracts of cohabitation done in the island of Gozo means that section within the Office of Public Registrar in the same island of Gozo entrusted to do that as previously stated;

*Repealed by Act XXVII of 2020.

[†]See Legal Notice 130 of 2017.

"Court" means the Civil Court (Family Section) or any other Court which from time to time shall be given the duty to take cognition of family matters;

"*de facto* cohabitation" means a cohabitation between two persons which cohabitation is not registered nor is it unilaterally declared under this Act and also includes persons who, although being in a marriage or civil union, are separated *de jure*;

Cap. 16. "dependent child" in relation to a cohabitant or a cohabiting couple, means any child of the cohabitants or any one of the cohabitants, or any child upon whom they are acting as *loco parentis* in accordance with the [Civil Code](#) and still have the right to receive maintenance from them in accordance to the same Code;

"Minister" means, unless otherwise indicated, the Minister responsible for justice;

Cap. 55. "notary" means a public official vested with all the powers conferred to him by the [Notarial Profession and the Notarial Archives Act](#);

"ordinary, primary, common home" means that home within which the cohabitants live together, belonging to either one of the cohabitants or to both of them in whichever portion, or possessed by title of lease or any other title, either together or by one of the cohabitants;

"registered" means enrolled in the Public Registry;

"registrar" means that public official identified by the Minister to fulfil the functions of the Registrar for Cohabitations for the Register of Cohabitations, and includes, for all purposes of this Act, any person authorised by the Registrar for this.

(2) All the provisions of this Act shall apply only for those cohabitations which are set up in accordance with the provisions of this Act and for no other form of cohabitation for which a declaration or contract has been registered and is not in accordance with the provisions of this Act.

Part II

De facto Cohabitation

De facto
cohabitation.

3. A *de facto* cohabitation does not give rise to mutual legal rights and obligations between cohabitants, and for all intents and purposes of the law, does not confer legal recognition to the relationship between the couple, except after two years and limited to the following:

- (a) a cohabitant shall be considered as a tenant for all intents and purposes of the law with regard to all rents of the ordinary, primary, common home that were legally constituted by any one of the cohabitants, irrespective of the date of constitution of the rent, and also with regard to any commercial rent under the [Civil](#)

[Code](#), until the said contract is terminated:

Provided that the owner of the ordinary, primary, common home retains the right to refuse to renew the aforementioned contract constituted by any one of the cohabitants once that contract expires unless, in the case of a contract that is automatically extended the owner has sent an official letter giving prior notice that the said contract is not going to be extended;

- (b) a cohabitant shall be considered as the closest person to the other cohabitant for all intents and purposes of the law;
- (c) a cohabitant shall have the right to take decisions relating to the medical care of the other cohabitant:

Provided that this sub-article shall not apply when any one of the cohabitants has declared, in writing, that such decisions should be taken by another person.

Part III

Cohabitation by means of a contract between the parties

4. Persons who have the intent of cohabitating and, or, persons who are already cohabiting may choose to regulate their cohabitation by entering into a contract in conformity with the provisions of this Act, which contract shall be registered by the notary as provided hereunder in this Act.

Cohabitation by means of a contract between the parties.

5. (1) A contract of cohabitation concluded between:

Nullity of contract of cohabitation.

- (a) persons, one of whom is under the age of assuming contractual obligations, unless that person is so authorised at law;
- (b) ascendants and descendants in the direct line;
- (c) siblings, from the same parents, or from one and the same single parent;
- (d) persons being related by affinity in the direct line;
- (e) the person adopting and the adoptee;
- (f) persons, one of whom is unable to give his consent for the contract due to interdiction, incapacitation or the lack of the use of reason;
- (g) persons who are married or are in a civil union relationship, either between themselves or with third parties;
- (h) persons who are in a contract of cohabitation with third parties according to the provisions of this Act;
- (i) persons who are in a cohabitation with third parties, one of whom has declared the relationship as such by a unilateral declaration in accordance with this Act;
- (j) cohabitants whose intimate relationship between themselves or with third parties is regulated by a foreign law that provides for rights and obligations between themselves, irrespective of its title as long as

such relationship is regulated in a way that has or may have legal effects in Malta,

shall be null and void.

(2) For the purposes of sub-article (1), the relationship of an adopted person shall be considered to exist both in reference to that person's biological family as well as his adoptive family.

(3) The Court of Voluntary Jurisdiction under which one of the parties intending to enter into a contract of cohabitation falls may, if good cause is shown, refrain from applying the provisions of article 5(1)(d).

Formalities of a
contract of
cohabitation.

6. (1) The contract regulating the cohabitation between two parties shall be made by a public deed for which a certificate of cohabitation shall be issued as prescribed by the Schedule of this Act, after the registration of the contract.

(2) In order for a contract regulating cohabitation between two parties to have the legal effects contemplated by this Act, it shall be done as prescribed by the provisions of this Act and shall be deemed to be valid only if all the provisions of this Act are observed and, or fulfilled.

(3) The parties must declare before the notary that there is nothing precluding them from entering into a legally valid contract of cohabitation, taking into account that which is prescribed under article 5, and the notary is obliged to do the annotations of this declaration in the said contract.

(4) The declaration mentioned in the preceding sub-article shall make good in the instances where the notary does not have the means to verify that there is nothing precluding the parties from being cohabitants, taking into account that which is prescribed in article 5.

(5) The parties shall also declare before the notary if they had already entered into any other contract of cohabitation together in the past, which contract was rescinded in accordance with this Act.

(6) After verifying by the appropriate searches whether the parties had entered into a contractual cohabitation between themselves, which contract had been terminated in accordance with the provisions of this Act, the notary shall:

- (a) if there were no previous contracts, state this in the said contract; or
- (b) if there was a previous contract, forward a copy thereof, together with the draft of the new contract to the competent Court for the authorisation of the same, in accordance with article 16, and shall forward the new contract for publication and registration only after obtaining the said authorisation.

(7) For the purposes of this article, the notary shall ensure that the official Public Registry search be updated officially up to not more than twenty-one days prior to the date of publication of the contract of cohabitation, unless he chooses to update it through an online search, in which case he shall update the search up to not more than seven days prior to the date of publication of the said contract.

7. (1) The registration of a contract regulating cohabitation between two parties is essential for the validity of the said contract with regard to the rights and duties of third parties.

Registration of the contract of cohabitation.

(2) The registration of a contract governing cohabitation between two parties cannot operate to validate a contract of cohabitation which independently of that registration is null.

8. In the contract governing cohabitation, the parties, amongst other things, shall agree on and indicate the following:

Matters in the contract of cohabitation.

- (a) (i) the house that shall be deemed to be the ordinary, primary, common home of the cohabitants;
- (ii) the legal title of each cohabitant on the said home;
- (iii) the transfer of the rights *in rem* on the said house which shall take place between the cohabitants in the event of separation, if appropriate;
- (iv) the personal rights of each of the cohabitants, or whichever one of them, on the tenement, in the event of separation, if appropriate;
- (b) the division of assets and liabilities, both held in common or belonging to one or the other cohabitant when the cohabitants wish to make a transfer of assets or liabilities by one part to the other, in the event of separation;
- (c) maintenance, periodic or as a lump sum if one of the cohabitants is or becomes dependent on the other cohabitant, together with the term and the modality of payment, both for during the period of cohabitation and in the event of separation, provided that the cohabitants are free to indicate that such maintenance is not due under all circumstances or in certain circumstances;
- (d) (i) the annual percentage mark up on the said maintenance, when and if it is due, or an indication as to how the mark up should be done for the amount to remain relevant without the need to make periodic changes in the contract, provided that if no mention is made as to the method of increment, such increase shall be taken to be in line with the Cost of Living Index;
- (ii) where the mark-up is on a fixed periodic basis, this

shall begin to be measured from the first anniversary of the registration of the contract, regardless of whether or not it falls due during that period;

(iii) where it is indicated that the increase shall be proportional to the salary of the cohabitant from whom maintenance is due, there shall be a clear indication in the contract of the amount that the said cohabitant has in salary at the time of the contract. If there is no other indication, the salary in question shall be deemed to be the net revenue;

(e) the right of the children of one of the cohabitants to live in the house considered as the ordinary, primary, common home of the cohabitants, if appropriate and unless otherwise ordered by the competent Court in previous proceedings;

(f) where there are children, which cohabitant will have the care and custody of any dependent children in the event of separation, unless otherwise ordered by the competent Court in previous proceedings;

(g) (i) a minimum amount of maintenance which a cohabitant shall provide to the other cohabitant for dependent children, together with the modality of payment, unless otherwise ordered by the competent Court at the request of either party, after having taken into consideration all the circumstances of the parties under the [Civil Code](#):

Provided that there shall be a clear indication that this article shall enter into force without the need for any legal proceedings immediately when the cohabitants are separated or no longer cohabiting together, whichever occurs first, as appropriate;

(ii) the parties are not free to indicate that there shall be no maintenance owed to children, and any clause to this effect is considered null and void.

(h) article 30 shall apply automatically between the cohabitants if no reference is made to the provisions of basic rights and duties as listed in the same article in the event of separation between the parties.

9. (1) If a maintenance claim for dependent children is contested by one of the cohabitants in accordance with article 8(g), the competent Court shall not take the amount indicated by the cohabitants as maintenance in the contract governing the cohabitation between the parties as fixed, provided that this amount is intended to be a minimum amount and not necessarily an appropriate one.

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Maintenance
claims.

(2) The Court shall not fix maintenance in an amount that is less than the amount which the contracting parties indicated as the minimum amount that shall be granted as maintenance for dependent children:

Provided that where the Court finds that the cohabitant which is obliged to pay the said maintenance has lost his employment without fault, the Court may consider fixing maintenance in an amount which is lower than the amount indicated by the cohabitants as the minimum amount that shall be given as maintenance for any dependent children in the contract, as well as indicating that the full amount of maintenance shall be immediately due as soon as the cohabitant which is obliged to pay the said maintenance finds employment.

10. (1) The notary before whom the parties are to sign the contract of cohabitation is obliged to explain in detail to the parties the consequences of the said contract and the clauses selected by the parties to be bound thereby.

Declaration to be made by the parties.

(2) In the contract of cohabitation, the parties shall state that the notary has duly explained in detail the consequences of that contract and of the clauses selected by the parties to be bound thereby and they have understood their obligations and rights arising therefrom.

11. The cohabitants wishing to amend the contract of cohabitation registered according to this Act, may do so only:

Amendments to the contract of cohabitation.

- (a) by means of a deed of correction registered by a notary without the requirement of any authorisation of the competent Court, if such act is intended to update any information about property, including the address of the ordinary, primary, common home, or to add clauses relating to children born after the registration of the original act; or
- (b) in any other instance, by means of a deed of correction registered by a notary after the parties have jointly obtained the authorisation of the competent Court, which Court shall ensure that there is nothing in the amendments that runs contrary to the best interest of the dependent children or that puts one cohabitant in a vulnerable situation.

12. In every instance where the Court is requested to give its authorisation for a deed of correction it shall, if it feels that it is appropriate to ensure that this deed is not done with abuse of a cohabitant on the other, hear the parties *viva voce*.

Authorisation from the Court.

13. Where the cohabitants change the house considered to be the ordinary, primary, common home according to their contract of cohabitation without amending the said contract as prescribed in article 11(a), the provisions which they had stipulated in the contract of cohabitation with regard to the ordinary, primary, common home according to article 8(a) shall apply to the new ordinary, primary, common home in the same manner.

Ordinary, primary, common home.

Rights of
registered
cohabitants.

14. A cohabitant registered under this Act shall benefit from the rights listed in the subsequent article and from further rights referred to directly in the law as applicable to registered cohabitants under this Act.

Rights conferred to
the cohabitants.

15. The rights conferred to the cohabitant registered under this Act are the following, namely that the cohabitant:

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- (a) shall be considered as a tenant for all intents and purposes of the law with regard to any lease of the ordinary, primary, common home legally constituted by any one of the cohabitants, irrespective of the date of the constitution of the lease, as well as with regard to any commercial lease under the [Civil Code](#):

Provided that the owner of the ordinary, primary, common home retains the right to refuse to renew the aforementioned contract constituted by any one of the cohabitants once that contract expires unless, in the case of a contract that is automatically extended the owner has sent an official letter giving prior notice that the said contract is not going to be extended;

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- (b) shall be considered as a tenant in respect of farmers' rights and, or obligations and therefore as included in the definition of 'lessee' under article 2 of the [Agricultural Leases \(Reletting\) Act](#);

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- (c) shall be regarded as 'family member' for the enjoyment of all rights related to renewal of lease of land under the [Agricultural Leases \(Reletting\) Act](#);

- (d) shall be regarded as having the same rights granted to a person who is married or in a civil union in terms of rights related to labour and family, including various rights related to leave, as well as those rights found in primary and subsidiary laws as well as under codes and working practices, excluding however the right of leave to accompany one's spouse to courses sponsored by the government abroad;

- (e) shall be considered as the closest person to the cohabitant for all intents and purposes of the law;

- (f) shall have the right to take decisions relating to the medical care of the other cohabitant:

Provided that this sub-article shall not apply when any one of the cohabitants has declared, in writing, that such decisions should be taken by another person;

- (g) shall have, in the event that one of the cohabitants dies intestate during the cohabitation, and the survivor is entitled for maintenance in the course of separation as agreed in the contract of cohabitation, the right to receive the amount equivalent to eighty percent of five years' maintenance as stipulated in the contract of cohabitation in a lump sum as a legitimate portion, unless the contract of cohabitation does not expressly

provide that this clause shall not apply:

Provided that this amount shall not exceed one quarter of the value of the estate when there are descendants, or one third of the value of the estate when there are no children:

Provided further that any action under this article shall be brought forward by not later than twelve months from the opening of succession as registered according to this Act, and such action may only be brought by the surviving cohabitant;

- (h) without prejudice to the provisions of the [Civil Code](#), shall have, in the event of death of one of the cohabitants during the cohabitation, the right of habitation *vita durante* in the ordinary, primary, common home held jointly with the deceased:

Provided that this right of habitation shall cease if the survivor contracts a marriage, civil union or enters into cohabitation with another person.

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- (i) shall have the right to be entitled to non-contributory social assistance when the cohabitant is a person who in the opinion of the director of social services is living with the head of the family as a spouse in marriage under article 30 of the [Social Security Act](#);

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- (j) shall have the right to have an invalidity pension paid to the cohabitant if the said cohabitant is maintaining the other cohabitant under article 26 of the [Social Security Act](#);

Cap. 318.
- (k) shall have the right to a widow's pension under articles 31 to 43 (both inclusive) of the [Social Security Act](#);

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- (l) shall have the right, upon the death of the other cohabitant, to apply for a retirement pension if he is a person who is or was entitled to be maintained by the deceased under article 46 of the [Social Security Act](#);

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- (m) shall have the right to payment of an age pension when both cohabitants qualify under article 66 of the [Social Security Act](#);

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- (n) shall have the right to receive social benefits as a foster carer in accordance with article 76A of the [Social Security Act](#);

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- (o) shall have the right to sickness assistance when the cohabitant is living with the head of the family during a period when such sickness assistance is being, or could be paid;
- (p) shall have the right to unemployment benefit and to special unemployment benefit if the cohabitant is maintaining the other cohabitant in accordance with article 30 of the [Social Security Act](#);

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- (q) shall have the right to maternity benefit and maternity leave benefit in accordance with articles 71 and 72 of the [Social Security Act](#);

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Cap. 318.	(r) shall have the right to the supplementary allowance under article 73 of the Social Security Act ;
	(s) shall have the right to children's allowance under articles 76, 80, 81 and 82 of the Social Security Act ;
Cap. 318.	(t) shall have the right to allowance in respect of children in care under articles 76A, 80, 81 and 82 of the Social Security Act ;
Cap. 318.	(u) shall have the right to an allowance for disabled children under articles 77, 80, 81 and 82 of the Social Security Act .
Termination of contract of cohabitation.	16. (1) A contract of cohabitation is terminated: (a) when one of the cohabitants dies; (b) when the cohabitants agree to terminate the said contract by means of a public deed registered by the notary; (c) when the cohabitants cease to cohabit together, one of the parties lodges an application declaring, under oath, the date from which the parties ceased to cohabit together, requesting that the Court declare the contract of cohabitation to be terminated, and requests the Court to order that the rights and obligations arising from the same contract of cohabitation enter into force. (2) The Court shall, in its decree, order the Registrar of the Courts to notify the Director of the Public Registry of the termination of the contract of cohabitation in order for such termination to be registered in the Public Registry within fifteen working days.
Termination of contract.	17. (1) Upon termination of the contract of cohabitation by the means referred to in article 16, the parties shall have the right to enforce all their rights and be bound by all the obligations contained in the contract of cohabitation. (2) Any respective rights and, or obligations in the contract of cohabitation which are triggered by the separation of the cohabitants or as soon as the parties are no longer cohabiting shall come into effect immediately upon such separation or end of cohabitation, and not only upon the termination of the contract of cohabitation in accordance with article 16: Provided that no action presented between persons who are, or were at any time cohabitants shall be considered null or vitiated due to illegal or unlawful considerations.
Action to be made within two years.	18. Every action made under articles 16 and 17 shall be made within the peremptory period of two years from when the parties terminate the contract of cohabitation or from when the parties are no longer cohabiting together, whichever occurs last, except for those actions relating to children, which actions are not limited by time.
Where the parties enter into a new contract together.	19. (1) If the cohabitants terminate the contract of cohabitation in accordance with article 16(b) while they are still cohabiting, and

subsequently they wish to enter into another contract of cohabitation together, this contract may not be published and registered without the authorisation of the competent Court, which Court shall ensure that nothing in this contract goes against the best interest of the dependent children, if appropriate, or places any one of the parties in a vulnerable situation when compared to the contract which has been terminated by the cohabitants.

(2) In every instance where the Court is requested to give its authorisation to the publication and registration of a contract of cohabitation in accordance with the preceding sub-article it shall, if it feels that it is appropriate to ensure that this contract is not being done with abuse of a party over the other party, hear the parties *viva voce*.

Part IV

Cohabitation by means of a unilateral declaration

20. A cohabitant who wishes to acquire the basic rights and duties listed in article 30 in relation to the cohabitant with whom he has been cohabiting for a period of at least two years, which cohabitant is refusing to enter into a contract governing the cohabitation between them under this Act, may do so by a unilateral declaration by judicial letter in accordance with this Act:

Unilateral
declaration.

Provided that such unilateral declaration shall not terminate the rights which the cohabitants already enjoy as a result of their *de facto* cohabitation.

21. (1) For the unilateral declaration by means of the judicial letter mentioned in the previous article to create rights and obligations which are legally valid and enforceable under this Act, it must indicate, clearly and unequivocally, the following:

Formalities of a
unilateral
declaration.

- (a) the personal details of the cohabitants, including their identity card number;
- (b) the address where the cohabitants are residing together;
- (c) a declaration to the effect that there is nothing precluding the said cohabitants from entering into a legally valid contract of cohabitation taking into account that which is set forward in article 5;
- (d) the date from which the parties may have been referred to as cohabitants under this Act, and that from that date onwards none of the conditions set forward in article 5 were in place; and
- (e) a clear declaration, on pain of nullity, on the grounds upon which the judicial act is made.

(2) The content of the said judicial letter shall be confirmed on oath by the applicant before the Registrar of the Court or a legal procurator appointed as Commissioner for oaths under the [Commissioners for Oaths Ordinance](#), and shall be notified to the other party, provided that the provisions of sub-articles (3), (5) or (6) of article 187 of the [Code of Organization and Civil Procedure](#)

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may not be used to effect the service of the said judicial letter.

(3) The judicial letter must also contain, on pain of nullity, a formal notice to the respondent that if he does not reply within sixty days from when he is served with the said judicial letter by presenting a note in the acts of that judicial letter in accordance with the subsequent article, he shall automatically be bound to the basic rights and duties under this Act with the other party, and in absence of proof to the contrary, the judicial letter shall constitute the necessary proof that the cohabitation between the parties commenced on the date indicated by the applicant.

Rights of the
respondent.

22. By means of a note presented in the acts of the said judicial letter, the respondent may, within sixty days from the date of notification:

- (a) reject the claim on the ground that the parties are not truly cohabiting as required by this Act;
- (b) oppose the date from which such cohabitation should be presumed to be in conformity with this Act, in which case the basic rights and duties referred to in this Act shall be deemed to have come into effect from the date mentioned by the respondent, save for the right of the applicant to provide evidence by sworn application that the date was indeed the one referred to in the judicial letter:

Provided that where the cohabitation between the parties did not comply with article 21(1)(d) on the date referred to in the unilateral declaration, the date of commencement of cohabitation shall, for all purposes of the law, be considered to be the date from which the cohabitation could have been registered under the same article 21(1)(d), even where the respondent made no objection to that point during the stipulated time;

- (c) present a contract of cohabitation drawn up and registered under this Act, in which case the judicial letter will be considered null and void.

Judicial letter.

23. The judicial letter referred to in articles 20 and 21, as well as the respondent's note referred to in article 22 shall, on pain of nullity, be notified to the Registrar by the party which presented the judicial letter and, or the note, as appropriate.

Rights and duties
acquired.

24. (1) The rights and duties acquired under the provisions of article 20, provided that there was no opposition on the part of the respondent, shall be rescinded and declared null and without effect if a request by an application is lodged before the Civil Court (Family Section) or the Court of Magistrates (Gozo) (Family Section) (Superior Jurisdiction), as appropriate, by the respondent within twenty days from the first notification served unto him of any executive warrant, any other judicial act or any criminal case based on those rights and duties, and the Court is satisfied:

- (a) that the respondent did not have knowledge of the judicial letter because he was not duly notified; or
- (b) that the judicial letter did not contain the requirements

set out in article 21:

Provided that this application shall be appointed for hearing within two weeks.

(2) In the event of a criminal case based on the duties of a party arising from this Act with which the competent Court has yet to decide whether the same duties obtained under article 20 should be rescinded and declared null and void, the Court of Magistrates as a Court of Criminal Judicature shall defer the case for another date.

(3) Without prejudice to article 25, no objection, except that which is specifically prescribed in this article, shall prevent the issue or execution of any executive act or be regarded as a valid reason at law not to honour the duties of the respondent under this Act or reason for the establishment or deferral of criminal proceedings arising from a dereliction of duties pursuant to this Act.-Registration of the judicial letter.

25. (1) A judicial letter issued in accordance with the provisions of this Act may not be used to enforce the rights and duties referred to in the same act unless it has been registered in accordance with the provisions of this article, which should apply for the registration of those judicial letters as instruments which create rights and obligations that are legally valid and enforceable.

(2) The applicant for the registration of the judicial letter shall submit an authentic copy of the judicial letter to the Registrar, including proof of service and a copy of every reply received thereto, if any.

(3) Once the documents referred to in sub-article (2) are received, the Registrar shall examine the documents submitted, check whether the respondent has lodged a note in accordance with article 22 within the established time limit and if he is satisfied that the conditions for the registration of the judicial letter as conferring rights and duties which are legally valid and enforceable subsist, he shall proceed to register the documents presented in the Register of Cohabitation.

26. A judicial letter issued in accordance with the articles of this Act may not be used to enforce the rights and duties referred to in this Act once a contract governing the cohabitation of the said parties according to this Act is registered.

Judicial letter.

27. A unilateral declaration of cohabitation has legal effects only with regard to the parties.

Legal effects of a unilateral declaration.

28. A unilateral declaration of cohabitation under this Act can only be registered until five years from the entry into force of this Act.

Termination of period of registered unilateral declarations.

29. Without prejudice to the preceding article, the rights and duties of cohabitants in a cohabitation regulated by a unilateral declaration in accordance with the provisions of this Act, as well as the same cohabitation, remain valid and enforceable.

Rights and duties of cohabitants to apply.

Part V

Basic Rights and Duties

Basic rights and duties.

30. (1) The basic rights and duties referred to in this Act are as follows:

- (a) the right to certain movables found in the ordinary, primary, common home of the parties under article 31;
- (b) the right to financial aid under article 32;
- (c) the right of the cohabitant to continue to reside in the ordinary, primary, common home for a reasonable period of time after the separation under article 33;
- (d) the duty to pay for utilities under article 34;
- (e) the right of the surviving cohabitant to reside in the ordinary, primary, common residence of the parties under article 35.

(2) The rights and duties listed in the preceding sub-article shall apply automatically in the case of cohabitation by means of a contract between the parties, as well as in the case of cohabitation by means of a unilateral declaration.

Right to certain movables.

31. There shall be a *iuris tantum* presumption that cohabitants are entitled to an equal portion of the movables found in the ordinary, primary, common home which were acquired during the period of cohabitation established under the registered contract of cohabitation or under the proviso of article 21(b), as appropriate, unless those movables were not given to either one of the cohabitants by a donation, personal gift or were devolved upon them by succession from third parties:

Provided that in this article, ‘movables’ shall include the ornamental and decorative movables kept at the ordinary, primary, common home of the cohabitants or such house which was considered the ordinary, primary, common home of the cohabitants for some time, and shall exclude moneys, securities, vehicles and domestic animals.

Right to financial aid.

32. (1) Where the cohabitants have a dependent child or children who are young or disabled, both during the period of cohabitation and in the event of separation, the party who is taking care of the upbringing of the said child or children and because of their age or disability, is financially dependent on the other party, shall have the right to ask for financial assistance from the other party to make good for the economic disadvantage.

(2) The financial aid referred to in this article may be periodic or lump sum and the Court, before reaching its decision, shall consider, among others, the following circumstances:

- (a) the financial circumstances, requirements and obligations of each cohabitant at the date of the request;
- (b) the rights and benefits that the cohabitant is legally bound with to a person with whom he had previously

contracted marriage or civil union in a previous period, so however that the rights of that person shall remain unaffected;

- (c) the rights and benefits of each dependent child or of any child from a previous relationship of each cohabitant so however that the rights of the said children shall remain unaffected;
- (d) every contribution made by any one of the cohabitants to look after the ordinary, primary, common home and, or the said children;
- (e) the effect on the earning capacity of each cohabitant as a consequence of the responsibilities that they have or had during the period within which the parties have lived as a cohabiting couple, and the degree to which the capacity of future earnings of the parties was reduced because the cohabitant has relinquished or lost the opportunity of gainful activity in order to take care of the ordinary, primary, common home and, or the children;
- (f) any physical or mental incapacity of the cohabitants; and
- (g) the conduct of each cohabitant if the conduct is such that in the opinion of the Court, it would be unfair if it is not taken into account.

(3) Before reaching its decision, the Court may order to give notice to any other person or persons whom it specifies and may hear the person or persons on such terms and in relation to those matters which it deems appropriate in the interests of justice.

(4) The said financial aid in this article cannot be requested for a period preceding the time when the request is being made.

(5) Without prejudice to the preceding sub-articles, if a cohabitant who has no dependent young or disabled children, both during the period of cohabitation as well in the case of separation, and is financially dependent on the other party and his financial dependency is a result of the relationship or the end of such relationship with the other cohabitant, that party has the right to request financial aid from the other party.

(6) Before determining whether to grant or reject the request mentioned in the previous sub-article, the Court shall consider:

- (a) the circumstances referred to in article 32(2);
- (b) the duration of the relationship between the parties;
- (c) the basis on which the parties have entered that relationship;
- (d) the degree of commitment of the parties to each other;
- (e) the age of the parties; and
- (f) the capacity of the requesting party to find gainful

employment.

(7) The Court may, if it feels it should grant the request, do so for a limited period of time or decide to grant such request until the existence of particular circumstance or circumstances subsist.

(8) The Court shall not grant the demand if it believes that the granting of financial aid to one of the parties would constitute an injustice to the other party.

(9) If the Court, upon a request made by one of the cohabitants, having regard to any change in the circumstances of the case and to any new evidence, including some variation by another order of the Court made in favour of any person with whom the cohabitant was married or in a civil union with, or evidence that the party receiving the financial aid has adequate income may, if it considers it appropriate, by order vary any other order made under this article.

(10) The rights arising from this article are terminated, without the need to request such termination, as soon as the party receiving the financial aid contracts a marriage or civil union, as well as if such party is cohabiting, even if only in *de facto* form, with another person.

Right of habitation
after separation.

33. (1) In case of separation between the cohabitants, each cohabitant has the right to continue to reside in the ordinary, primary, common home for a period which the Court considers reasonable under the circumstances:

Provided that in the case where the cohabitants live in the said ordinary, primary, common home by means of a legally constituted lease, such right shall apply only until the owner does not extend a contract that is automatically extended, and the owner has sent an official letter to the cohabitants giving prior notice that the said contract is not going to be extended.

(2) The period referred to in the previous sub-article shall be interpreted limitedly to allow the cohabitant who does not enjoy real rights on the said ordinary, primary, common home to find suitable alternative accommodation.

Duty to pay
utilities.

34. In case of separation between the cohabitants, when there is no decree of a competent Court or written agreement between the cohabitants stating otherwise, there should be a rebuttable presumption that cohabitants have the duty to pay for all utilities related to the ordinary, primary, common home in which they reside in equal shares among themselves for the period they resided in it, irrespective of whether the accounts of the utilities are addressed to one cohabitant only.

Right of habitation
after death.

35. (1) In the case of death of one of the cohabitants, the survivor shall be entitled to the right of habitation over the ordinary, primary, common home of the cohabitants for a period of years equivalent to the number of years that they had been cohabiting:

Provided that this number of years cannot exceed fifteen years.

(2) The survivor is entitled to the said right *vita durante* or until he enters into another contract of cohabitation, marriage or civil union.

36. During a unilaterally declared cohabitation, the cohabitant, or at the end of such cohabitation, a person who was cohabiting with another person and has the basic rights and duties emanating from this Act, may obtain the said rights and enforce the said duties upon request by means of an application in the Civil Court (Family Section) or the Court of Magistrates (Gozo) (Family Section) (Superior Jurisdiction).

Actions for basic rights and duties.

37. Every action made under article 36 shall be made within two years from when the parties are no longer cohabiting together:

When the parties are no longer cohabiting together.

Provided that no action can be taken under this Act from the date of registration of a marriage or civil union between the parties, without prejudice to any outstanding action they had commenced before that date.

Part VI

General provisions

38. When two cohabitants contract a marriage or civil union between them:

General provisions.

- (a) the contract of cohabitation, concluded and registered; or
- (b) the provisions of the law in the context of a unilateral declaration of cohabitation;

shall immediately be null and void with regard to the parties, who, from the date when the marriage or civil union is contracted, shall have no right of action on the basis of their cohabitation against each other.

39. None of the provisions of this Act shall prejudice the rights of third parties in relation to any cohabitant.

Rights of third parties.

40. (1) Where a request is made for action under this Act to the competent Civil Court by one or the other cohabitants, or by both of the cohabitants who have agreed to end their cohabitation, save the action contemplated in article 17, before granting authorisation to the cohabitant or cohabitants to proceed with the cause, the Court shall summon the parties to appear before a mediator, either appointed by the Court itself or with the consent of both parties, so that where they have not already agreed on the terms of separation, such mediator helps the parties reach a contract of separation from the cohabitation on an agreed basis:

Mediation.
Amended by:
[XIII 2018](#).36.

Provided that where the Court is presented with evidence of domestic violence between the cohabitants, the Court shall not summon the parties to appear before a mediator:

Provided also that where, during the mediation, the mediator becomes aware of any incident of domestic violence, he shall immediately cease the mediation and inform the Court on the matter.

(2) This agreement shall include the following terms, as applicable and if appropriate:

- (a) the care and custody of the children;
- (b) the access of the two parties to the children;
- (c) the maintenance of the cohabitants, or of one of them, and of each child;
- (d) the ordinary, primary, common home where the parties have resided as cohabitants;
- (e) other rights emanating from this Act but which the parties wish to come to an independent agreement on.

(3) In all procedures of separation in the case of cohabitation before the competent Civil Court made upon request of one of the cohabitants or both, having agreed that their cohabitation shall be terminated, even where the cohabitants are separated by contract or by a judgement given by the competent Court, the Court may, when it deems it necessary on its own initiative, or at the request of the mediator or one of the cohabitants:

- (a) appoint a children's advocate to represent the interests of the minor children of the parties, or of any of them; and
- (b) hear the minor children of the parties, or any of them, where it considers it to be in their best interest to do so:

Provided that in all procedures of separation from cohabitation before the competent Civil Court as referred to in this article, the Court may order the parties to submit information about the payment of children's maintenance.

Cap. 16.

(4) For every action requested under this Act, save for the action contemplated in article 17, articles 37 and 39 of the [Civil Code](#) shall *mutatis mutandis* apply.

Power to make regulations.

41. The Minister may make regulations to establish the procedure relating to mediation between the parties as provided for in this subtitle.

Applicability.
S.L. 12.20.

42. In the absence of specific regulations the [Civil Court \(Family Section\), the First Hall of the Civil Court and the Court of Magistrates \(Gozo\) \(Family Section\) \(Superior Jurisdiction\) Regulations](#) shall, *mutatis mutandis*, apply to any action brought under this Act with the exclusion of the action contemplated in article 17.

Recognition of foreign contracts of cohabitation.

43. (1) When the cohabitants have contracted and registered their cohabitation outside of Malta, or when their cohabitation is already governed by foreign legislation and both of them wish for their cohabitation to have the same legal effects as cohabitations registered in Malta, they shall enter into a contract of cohabitation

by means of a public deed for which a certificate of cohabitation as prescribed in the Schedule of this Act shall be issued.

(2) In this case, in order for the rights and duties arising from this Act to apply to the parties with regard to their cohabitation, which has been registered under this Act, they shall:

- (a) provide to the notary drawing up the contract documents showing that the cohabitation of the parties is indeed recognised in the said foreign jurisdiction which governed their cohabitation, which documents the notary shall annex to the contract;
- (b) lay down the date on which the said cohabitation was recognised in the foreign country in question;
- (c) lay down the rights and duties which the cohabitants shall be bound by in an unequivocal manner in the contract, provided that these shall at least match the minimum requirements under article 8;
- (d) make a declaration in the same public deed stating that they wish to have the rights and duties emanating from their cohabitation, if and when claimed before the Maltese Courts, regulated under this Act and not be subject to any other foreign law.

(3) In this case, the date upon which the cohabitation should be considered to have been constituted between the parties in this case shall be deemed to be, for all intents and purposes of this Act, the date stated in the contract of cohabitation of the parties in accordance with sub-article (2)(b), and not the date on which the cohabitation has been registered under this Act.

(4) All articles, with the exception of those relating to the constitution of registered cohabitation referred to in this Act with regard to registered cohabitation between two cohabitants shall apply *mutatis mutandis* for recognition of cohabitation according to this article.

44. When cohabitants are entitled to maintenance under a contract of cohabitation or under this Act and, or, ordered by a competent Court, they shall immediately notify the department of social services:

Duty of cohabitants regarding maintenance.

Provided that if the cohabitants fail to do so, all benefits given and which were not due shall be refunded to the department:

Provided further that if it is proven that a cohabitant knowingly failed to observe the provisions of this article, he shall upon conviction be liable to the punishment envisaged for fraud in social benefits.

45. Wherever in the Laws of Malta it is considered that there is or may be a conflict of interest due to affinity between two persons, in any circumstance, this shall be construed as applying also to registered, unilaterally declared or *de facto* cohabitants.

Conflict of interest.

Unjustified
enrichment.
Cap. 16.

46. (1) Articles 1028A and 1028B of the [Civil Code](#) shall apply where a cohabitant feels that by means of the relationship of cohabitation, the other cohabitant has unjustly enriched himself, to the damage of the former cohabitant.

(2) The action for the payment of damages caused in this manner are barred by the lapse of two years from when the effect of the unjustified enrichment ceases.

Power to make regulations.

47. The Minister may make regulations to implement and give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may prescribe anything which shall be done or may be prescribed and provide for any consequential thing, incidental to or connected to the provisions of this Act.

SCHEDULE
(Article 6)

REGISTRU PUBBLIKU PUBLIC REGISTRY

Jena, taun taht inform, niCertifikat i din ta' taun taht kija vera kopja ta' Certifikat ta' koabitazzjoni imregimentat f-URRUGU tar-Registru Pubbliku tar-Bast Valletta, Malta.
I the undersigned, do hereby certify that the following is a true copy of a Certificate of Cohabitation registered in the Public Registry Office of Valletta, Malta.

ĊERTIFIKAT TA' KOABITAZZJONI — CERTIFICATE OF COHABITATION		DATA TA' L-ATT: DATE OF THE ACT:
KOABITANT [1] / COHABITANT [1]	TAFSIRES DWAR IL-KOABITANTI - PARTICULARS OF THE COHABITANTS	KOABITANT [2] / COHABITANT [2]
	Isem u Kognom Name and Surname Dress u Post ta' Tawidil Dwelling or Identification Address Data u Post ta' Tawidil Identification Document Dress tal-bieb tal-Koabitazzjoni Start Date of Cohabitation Post u Abitazzjoni Place of Residence Isem u Kognom il-Garant, u l-oqra applikabbli Kunjom Garant/Guarantor Name and Surname of Parties, and where applicable Member Surname of Member's	
		Data tad-Ditt ta' J-NIL Date of receipt of Act. Nomm waħda l-oqra tar-Registru Nin Progressive Number of Registration Firma tar-Registatur tar-Koabitazzjoni Signature of Cohabitation Registrar Data tad-Direttur jew l-oqra uffiċjal iher in Representanza l-High/Legatus Signature of Director or other official to act in his/her stead.