



FRENCH CIVIL PARTNERSHIP CONTRACT (PACS)

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Abstract

A civil partnership is a legally recognized relationship between two people of the same sex or the opposite sex that offers many of the same benefits as a conventional marriage. Before addressing the specificities of the French civil partnership contract, designated as a civil covenant of solidarity (*pacte civil de solidarité*), commonly known as PACS, it is necessary to define and explain the origin of this type of contract. The conclusion of a PACS, despite the fact that it is less formal than marriage, implies the respect of certain conditions of substance and form during its formation and its modification. Recently, PACS has undergone changes on this point, through a simplification of the rules of form with the establishment of its statement and registration by the registrar, removing

the court clerk's intervention. Once the PACS is concluded, with the main purpose of organizing the couple's common life, this contract produces personal, pecuniary and patrimonial effects between the partners. As the PACS is legally only a contract, it can be dissolved by the appearance of four events. When PACS is dissolved, consequences result for the situation of the partners because they must proceed to the liquidation of the property they own and also repay the debts incurred during the period of their living together. If the dissolution of PACS is caused by the death of one of the partners, then particular consequences will affect the situation of the surviving partner. In fact, couples who entered into a PACS are not considered heirs in the eyes of the law. However, there are alternatives preventing the application of this principle, but they must be realized during the lifetime of the partners.

Keywords: *civil partnership contract, registration before the registrar, solidarity of debts, “indivision” or separation as to property, no legal inheritance.*

Introduction

The French civil partnership, commonly known as PACS, is a contract between two adult persons of the same sex or of different sexes, whose main purpose is to organize their living together as a couple. PACS was originally created on November 15, 1999 by the Law n°99-944 relating to civil partnership. However, the current content and structure of PACS is not the one provided for in the 1999 law because this contract

underwent a major reform in 2006. We owe the current organization of PACS to the law relating to the reform of inheritances and gifts (*“libéralités”* in French).

Prior to 1999, couples could only choose between a situation of cohabitation or marriage. Nevertheless, at that time, marriage was only granted to couples of different genders. Therefore, same-sex couples lived only in cohabitation. Cohabitation is not an advantageous situation for couples because they are legally considered as two single people. In fact, cohabitants are not severally liable for the debts of living together and are not considered as legal heirs at the death of the other partner. In order to improve the situation of same-sex couples and to give them marital status, the lawmaker created the PACS which is a new intermediate contract between cohabitation and marriage. The desired objective in 1999 is absolutely no longer relevant because the Law n° **2013-404** dating from May 17, 2013 granted marriage to same-sex couples. Therefore, the question arises of whether to maintain the PACS if the purpose for which it was originally created no longer exists. The upholding of PACS by the French legislature despite the disappearance of its main objective is perfectly legal. Indeed, the European Court of Human Rights claimed in a decision rendered on January 20, 2009, that each State has the possibility of establishing other matrimonial statuses than marriage in order to organize the living together of a couple. In retaining PACS, a new goal was found by the practice. Indeed, the PACS endures and becomes commonplace not only for same-sex couples but for those of different genders. (Beigner and Binet, 2017: 233) Many heterosexual couples choose to enter into a PACS for different reasons.

In particular, couples can choose definitively to turn to a PACS to organize their living together because they are less committed than in a marriage. They can also decide, before definitively projecting themselves in the marriage, to enter into a PACS in order to try to organize living together. In case of failure, it will be easier for the couple to dissolve a PACS than a marriage.

Nowadays, Article 515-1 of the French Civil Code defines PACS by explaining that “*A civil covenant of solidarity is a contract entered into by two natural persons of age, of different sexes or of a same sex, to organize their common life.*” If the PACS has been maintained it is obviously due to its differences compared to marriage. The biggest difference between these two contracts is that a PACS is a contract that deals exclusively with the situation of the partners, ignoring family life and children. Unlike marriage, the members of the couple who entered into a PACS aren’t called spouses but civil partners. (Gay, 2018) Despite the many differences between marriage and PACS when the latter was created, both contracts have now an increasing number of similarities. These common points have allowed PACS to be nicknamed by some authors of doctrine, such as Simler and Hilt, as a “*quasi-marriage*”. (Simler and Hilt, 2006: 1495-1500).

Formation and modification of PACS

Before explaining in the following sections the consequences of a PACS, it seems obvious to explain the circumstances in which a PACS can be concluded. Despite the fact that the PACS is a less formal contract than a marriage, it still requires the respect of certain conditions by the couple.

The formation of a PACS requires both substantive and formal conditions (a). After being concluded, it is possible for the partners to modify the contract but in order to do that, some formalities must also be respected (b).

A) The conditions for the formation of PACS

1) Substantive conditions

For a PACS to be concluded, this one must fulfill substantive conditions. Some of these, which must be respected for the formation of a PACS, are identical to those required during a marriage (a). However, some substantive conditions are required only for the formation of a PACS (b).

a) Substantive conditions identical to those of a marriage

During the review of the PACS law, the Constitutional Council declared, in its decision rendered on November 9, 1999, that all the substantive conditions necessary for the validity of a contract under French law are applicable to PACS. (Constitutional Council, decision n ° 99-419, 1999) These conditions are laid down in Articles 1128 et seq of the French Civil Code and also apply during the conclusion of a marriage which, despite its affective connotation, remains a legal contract. Article 1128 states that *“The following are necessary for the validity of a contract: 1° the consent of the parties; 2° their capacity to contract; 3° content which is lawful and certain.”* These conditions are identical to any type of contract and not particular to the conclusion of the PACS, thus a thorough elaboration is not necessary.

The prohibition of marriage between members of the same family, also applies to PACS, as shown in Article 515-2 of the French Civil Code which states that “*On pain of nullity, there may not be a civil covenant of solidarity: 1 ° Between ascendant and descendant in direct line, between allied in direct line and between indirect descendant up to the third degree included; (...)*”. The article provides that if a PACS is concluded under these conditions, it will be deemed void. The Constitutional Council in its decision rendered on November 9, 1999 came to clarify that the sanction in the face of such a contract is absolute nullity. Nevertheless, there is a difference between marriage and PACS on this issue. For a marriage, an exemption is granted for the impediments to marriage between those allied in direct line. Indeed, Article 164 of the Civil Code states that following the death of the person who created the family link, marriage between the allied is possible. For example, the marriage between a daughter-in-law and her father-in-law is possible when the stepdaughter's husband, also the father-in-law's son, is dead. These exemptions are not applicable to PACS. It appears that the laws concerning prohibitions to unite members of the same family are stricter for PACS than for marriage. However, case law had to reflect the acceptance or not of a PACS between two men experiencing a feeling of filiation. (Court of Cassation, First Civil Division n°16-18685, 2017) In this case, the two men, who are not in a parent-subsidary relation (either biological or legal) wish to marry. The Riom Court of Appeal refuses to recognize the marriage on the grounds that the two men consider themselves psychologically as father and son, due to the large age gap between them of 44 years. The Court of Cassation rejects the arguments of the Court of Appeal and recognizes the PACS between the two men

on the grounds that no parentage exists between them and they shared a life together for 24 years.

Additionally, the French Civil Code prohibits polygamous marriages pursuant to Article 147 stating that “*No one may contract a second marriage before the dissolution of the first*”, and similarly PACS must also be monogamous. Therefore, it is impossible to conclude a PACS with a partner already engaged in a marriage or another PACS. However, partners can get married without having to dissolve their PACS beforehand, because PACS will end automatically from the moment of the marriage bond.

b) Substantive conditions only necessary for PACS

- **Specific substantive conditions for protected adults**

The adults placed under guardianship or curatorship can conclude a PACS, but they must respect some substantive conditions set out in the first paragraphs of Articles 461 and 462. Paragraph one of Article 461 regarding the curatorship states that “*The person under curatorship may not, without the help of the curator, sign the convention by which he/she concludes a civil covenant of solidarity. No help is required during the joint statement before the registrar or the notary (...)*”. Regarding that guardianship, paragraph 1 of Article 462 states that “*The conclusion of a civil partnership by a person in guardianship is subject to the permission of the judge or family council if he has been constituted, after hearing of the future partners and gather, if need be, the opinion of the parents and the entourage.*”

- **Specific conditions for international PACS**

The conclusion of a PACS on French territory does not require that the members of the couple have French nationality. However, future partners wishing to get married in France must have a common residence in France. If the couple resides abroad, it is possible for it to conclude a PACS only if at least one of the members of the couple has French nationality. The requirement of nationality is laid down in the last paragraph of Article 515-3 of the Civil Code which states that *“Abroad, the entry of a joint declaration of a covenant binding two partners of whom one at least is of French nationality, the formalities provided for in paragraphs 2 and 4 and those required in case of an amendment of the covenant shall be the responsibility of French diplomatic and consular agents. (...)”*. Regarding the applicable law to govern the international PACS, it is Article 515-7-1 which specifies that the applicable law is the one of the registration’s place of PACS. This article states that *“The conditions of formation and the effects of a registered partnership, as well as the factors and effects of its dissolution are subject to the substantive provisions of the authority’s State which registered it”*. Therefore as an example, a PACS registered in France will be subject to the French law concerning the rules of formation, its effects and its dissolution.

2) Formal requirements

All formalities concerning PACS are listed in Articles 515-3 and 515-3-1 of the Civil Code. These articles were introduced by the decree of December 23, 2006. However, their current wording is due to the modifying decree of May 6, 2017 implementing the law of November

18, 2016. Two major formal conditions emerge from these articles. The PACS must be written and registered.

a) Writing of the pact

The writing of a PACS agreement is mandatory under article 515-3 of the Civil Code. The form in which the agreement must be drafted is still free because the article specifies that the partners can draft the agreement themselves or leave the writing to a notary. Therefore, the partners are free to choose the form of PACS because the PACS agreement can be an authentic act or a private deed.

Once the writing of the agreement has been completed, the partners must do a joint statement of the agreement. Originally, the joint statement was registered only by the court's clerk. However, a first exception was made by the Law n° **2011-331** of 28 March 2011 on modernization of judicial or legal professions and certain regulated professions. This law authorized, for PACS agreements concluded before a notary, that the latter proceeds at the same time to the statement of the agreement. This provision was valid only for agreements entered into authentic form. A second evolution took place with the Law n° **2016-1547** of November 18, 2016 on modernization of justice in the 21st century, through which all the powers of the court's clerk was transferred to the registrar. Therefore, it is no longer necessary for future partners to travel to court. By conferring this power on the registrar, the legislator brings the PACS closer to marriage because they are both celebrated at the town hall. The law of November 18, 2016 falls within the current aim of the legislator, advocating a modernization of the justice of the 21st century. To achieve

this, the legislator is trying to unblock the courts by facilitating and accelerating their work.

In principle, in order to do the joint statement, the partners must appear personally before the registrar. But, exceptionally, paragraph 2 of Article 515-3 states that the registrar may move to the place of residence or domicile of one of the parties in case of serious impediments. This last notion remains vague because there is no list explaining what these serious impediments are. Thus, it is up to the judge to determine it according to the specific case, in order to know if the impediment must, or not, be considered serious. Concerning the partners concluding a PACS abroad, they must appear before the diplomatic and consular agents so that they carry out the formalities.

b) Registration of the pact

Unlike marriage, registration of PACS is much less formalistic. Before the entry into force of the law of November 18, 2016, the registration of the joint statement was done by the court administration service of the place of birth of each partner. However, the law of November 18, 2016 modified this procedure in order to relieve the clerks of some of their work and thus hope for a faster file processing by the court. Today, the procedure for registering PACS takes place either before the registrar or before a notary. They only check that the conditions necessary for the conclusion of a PACS are met. Once the check has been carried out, the notary or the registrar proceed to register the joint statement, as well as its publication, allowing it to be opposable to third parties. The last step is for them to transfer information about the couple's PACS to the

registrars of the birth places of each partner, so that they register it on the margin of the birth certificate.

Before the law of June 23, 2006, the PACS were mentioned in a special register, different from that of the birth certificate. This particularity was explained by the desire to preserve the anonymity of same-sex couples, because their PACS remained confidential and couldn't be known by others by simply reading the birth certificate. However, this need for confidentiality is no longer justified, due to the Law n° 2006-728 of June 23, 2006 on the reform of successions and gifts, which created Article 515-3-1 following the evolution of morals accepting same-sex couples. This Article indicates that now the PACS is directly mentioned in the margin of the birth certificate of each partner. For all those who concluded a PACS before the entry into force of this law, the opportunity was offered to request the application of this new Article to their situation despite a PACS concluded prior to 2006.

B) Formalism for modifying a PACS

Paragraph 6 Article 515-3 of the Civil Code offers to partners the possibility to modify their PACS agreement. For this, they must obligatorily establish a new document which will be again subjected to a registration by the registrar or the notary who received the initial act. The amendment of the PACS agreement is not simple because the new agreement must be subjected to the same formalities, as if it were a first PACS agreement. This formalism is not binding for the partners but rather for the registrar or the notary who must proceed once again with the formalities. The advantage for the partners, unlike the first agreement, is to send the revised agreement by registered letter with

acknowledgement of receipt, without the obligation to appear personally before the registrar or notary.

The effects of pacs during the life together

When the PACS is validly formed, in order to organize the partners' life, this contract necessarily has effects on the lives of the new partners. In particular, there are three main effects: effects on the partners' personal situation (A), pecuniary effects (B) and effects on their patrimony (C).

A) Personal effects

Following the conclusion of a PACS, the partners are united by a legal relation, from which ensue reciprocal obligations. They have evolved through the years, but the reciprocal obligations currently existing come from the law of June 23, 2006, having modified that of November 15, 1999. To clarify the notion of reciprocal obligations, it can be understood as the effects created by the PACS on the personal situation of each partner. Since 2006, these reciprocal obligations are two and listed in paragraph 1 Article 515-4 of the Civil Code which states that “*Partners bound by a French civil partnership commit themselves to a life together (1), as well as (...) reciprocal assistance (2) (...)*”.

1) Obligation of a life together

Paragraph 1 of article 515-4 of the Civil Code requires the couple wishing to conclude a PACS to envisage sharing a life together. Otherwise, the couple cannot conclude a PACS. A problem appears in the expression “life together” because this notion is too vague. That is why the Constitutional Council tried to define it on November 9, 1999,

during the review of the law relating to the French civil partnership. It emerges from this constitutional decision that the notion of life together doesn't refer to mere cohabitation but to the compulsory establishment of a real life of a couple. In giving this definition of common life, the Constitutional Council seems to imply that the partners owe each other, as in marriage, an obligation of fidelity. To know if common life between partners of a PACS implies an obligation of fidelity, this question was left to the discretion of the judges. First, the case law retained the existence of a fidelity obligation by considering that the partners could not have sexual relations with other people than the one with whom they concluded the PACS. This jurisprudential position offered the possibility to terminate the PACS to the exclusive wrongs of the offending partner. (TGI Lille, ordonnance de référé, 2002) However, later case law revisits this jurisprudential position by refusing to recognize a duty of allegiance between the partners of a PACS, despite the maintenance of the requirement of sharing a common life. (CA Montpellier, 2011); (CA Rennes, 2015)

2) Assistance

A second reciprocal obligation falls on each partner under paragraph 1 of Article 515-4, which is the duty of mutual assistance. This obligation is identical to that provided for marriages in article 212 of the Civil Code which states that "*The spouses owe each other respect, fidelity, aid and assistance*". Before the entry into force of the law of June 23, 2006, the duty of assistance did not exist as such for PACS, but Article 515-4 used the term "*mutual aid*". The latter was considered imprecise and replaced by the word "*assistance*" in 2006.

B) Pecuniary effects

Beyond the personal effects produced by the PACS, it also has effects on the wealth of each partner. The conclusion of a PACS implies for the partners to provide each other with material assistance (1), as well as to be in solidarity with the debts concluded during and for the life together (2). The pecuniary effects of PACS are similar to those of marriage.

1) Material aid

Paragraph 1 of Article 515-4 of the Civil Code requires partners to provide each other material aid. In principle, the material aid must be provided by each of the partners and it is evaluated according to the pecuniary capacities of each. However, this principle is not a public order because the legislator specifies in this paragraph that partners may provide for another way of allocating material aid within their PACS agreement. Material aid provided for PACS tends to be closer to other pecuniary obligations for marriage. In particular, the spouses have an obligation of contribution to household expenses to which is added a duty of support. Material aid is different from the contribution to household expenses according to the procedure. In fact, in the event of a dispute concerning material aid, no procedure exists to resolve it. It is through the provisions of the PACS agreement that judges will base their decision. Concerning the scope of material aid, it is up to case law to define it. This question not being clearly solved, judges will have to ask themselves whether the material aid must meet only the vital needs, in which case the aid is comparable to the duty of support, or if it covers the expenses of daily life according to the living's standard of the couple,

and in this case the material aid will be close to the contribution to household expenses. (Courbe, 2017: 145-147)

2) Joint liability for debts

As in marriage, PACS partners are jointly and severally liable for certain debts. Regarding the joint liability for debts between the partners, paragraph 2 of Article 515-4 of the Civil Code states that *“Partners shall be jointly and severally liable with regard to third parties for debts incurred by one of them for the needs of everyday life and for expenses relating to the common lodging.”* As for the spouses linked by the marriage, they are not responsible for the same debts as those contracted by the partners. Paragraphs 1 and 2 of Article 220 state that *“Each spouse has the power to enter into contracts for the sole purpose of maintaining the household or child education: any debt thus incurred by one of obliges the other jointly and severally. (a1) Severally liability does not take place, however, for manifestly excessive expenses, regarding to the lifestyle of the household, the usefulness or uselessness of the operation, the good or bad faith of a contracting third party. (a2)”*. The joint liability of the debts between the partners is greater than the one between the spouses. Indeed, the partners are severally liable with all the debts contracted for the needs of everyday life, while the spouses are only severally liable with the debts contracted for specific needs such as child education. Consequently, some debts contracted by a partner may be considered severally according to the lifestyle of the couple, even if they would not have been between spouses because these debts do not fall into the categories mentioned in Article 220. However, this joint liability for debts contracted between partners is close to that of the spouses.

There are two situations in which neither the partners, nor the spouses, are held liable for certain debts incurred by their partners. These situations are provided in Article 220. Joint obligations do not arise: 1) *as regards expenditures that are manifestly excessive with reference to the way of living of the household, to the usefulness or uselessness of the transaction, to the good or bad faith of the contracting third party;* 2) *where they were not concluded with the consent of the two spouses, as regards installment purchases or loans unless those relate to reasonable sums needed for the wants of everyday life.*

C) Property effects

1) The legal regime of “separation as to property”

Before the entry into force of the 2006 law, no legal regime governed by default the property of PACS couples. Therefore, when there was no “*indivision* agreement” between the partners, the law provided dispersed rules to govern these situations. *En indivision* is the most common method of joint ownership, according to French legislation, and refers to the undivided property, purchased by two or more persons, with each one holding a stake in the property in whatever terms that may be decided between them. In English law it is equivalent to «a tenancy in common». In general, the law considered that furniture acquired after the conclusion of the PACS, as well as other furniture acquired before, was subject to “tenancy in common”. These rules implied complex management because most partners’ property belonged equally to both members of the couple. It was difficult, especially when PACS was dissolved, to reach an agreement on the division of property.

To simplify this asset management, the law of June 23, 2006 created a legal patrimonial regime only for PACS. This regime, implicitly found in Article 515-5, is the “separation as to property”. This regime allows partners to personally own the properties they owned before the PACS conclusion. Thus, during the dissolution of PACS, each partner takes back the properties for which he has always remained the sole owner. However, if the partners disagree on the ownership of a property, it is up to the one who claims to be the exclusive owner to provide proof of ownership of the property. Failing to do this, the property is considered to be indivisible. The submission to the regime of “separation as to property” does not prevent the partners who acquired properties to submit them to “*indivision*”. In this case, ownership of these properties cannot be contested. They will not be able to try to recover the ownership of the property on grounds of an unequal contribution to this property by having contributed more in its management and improvement than the other partner, because the “*indivision*” was decided during the property’s purchase. All these rules, relating to the regime of “separation as to property”, apply only if the partners have not provided other provisions in an agreement managing their property.

2) Diversion of the legal regime: the “*indivision* agreement”

There is no obligation for a couple to submit their property to the regime of “separation as to property”. The partners can conclude an “*indivision* agreement” in which they put all their properties acquired after the conclusion of the PACS. This agreement can be drafted as soon as a PACS is concluded or in an amending agreement drafted during PACS, producing effects for properties later acquired. Nevertheless, not all

properties can be submitted to “*indivision*”. Article 515-5-2 lists these properties which should remain the exclusive property of only one of the partners. Thus, *the following property shall remain separate property:*

- 1) *cash received by each partner from whatever source, subsequent to registration of the agreement and not used to obtain title to an asset;*
- 2) *created assets and accessories;*
- 3) *personal effects;*
- 4) *assets or proportion of assets with respect to the last apartment ‘acquired from a prior partner, to the extent that the rights were established pursuant to duly registered prior agreement as amended;*
- 5) *assets or an interest in assets purchased with cash derived from an inter vivos donation or through an estate.*

The dissolution of pacs

The dissolution of a PACS is much simpler than the dissolution of marriage, as there are only four situations, each of which has a specific procedure, to dissolve it (A). As soon as the PACS is dissolved, there are effects on the situation of each partner. Some effects of the dissolution of PACS are provided for by law but this can be circumvented by the partners by drafting agreements or wills which have a superior legal force to the law. Other effects not provided for by law are governed solely by the agreements or the legal regime adopted by the partners (B).

A) The four cases of dissolution of PACS and the respective procedures

Article 515-7 of the Civil Code only provides for four situations in which the dissolution of PACS is possible. The article states that “*The civil covenant of solidarity is dissolved by the death of one of the partners or*

by the marriage of the partners or one of them. (...) The French civil partnership also dissolves by joint statement of the partners or unilateral decision of one of them. (...)”.

First, the dissolution of a PACS can be achieved through a joint statement drafted by partners wishing to separate by mutual agreement. After having written together their joint statement, the partners must hand it over to the registrar or the notary who registered the PACS. Once registration is done, the PACS immediately ends for the partners. Nevertheless, the dissolution of PACS will create effects towards third parties only when disclosure formalities are fully done.

The dissolution of a PACS can also follow a unilateral rupture. The latter means that only one of the partners wishes to break the PACS. When doing so, the partner wishing to break it is not obliged to justify his choice. Nevertheless, he has the obligation to warn the other partner of his will to break PACS. As soon as the other partner has been informed, the registrar or the notary who registered PACS proceeds to register the unilateral rupture. This procedure, by which each partner can put an end to a PACS overnight, may put civil partners in an insecure position. As a matter of fact, the derelict partner can claim compensation for the damage suffered when the dissolution of the PACS by the other partner is sudden. Nevertheless, the unilateral rupture is not in itself a fault. This implies that the derelict partner cannot obtain compensation solely due to the dissolution of the PACS by the other partner. To show that he has suffered harm and thus obtain damages, the derelict partner must show that the break-up of the PACS took place brutally or suddenly. If the judges recognize the existence of a wrongful termination, they will

award damages to the derelict partner, while maintaining the dissolution of PACS.

Regarding the dissolution of PACS following the marriage of one of the partners with a third party, the partner marrying is not obliged to alert his former partner. Indeed, the latter will be aware of the marriage by the fact of the dissolution of the PACS, which is automatic. («*Dissolution du PACS : Procédures et conséquences*», 2018)

The PACS dissolution procedure is the same when the PACS terminates following the death of one of the partners or the marriage of the partners or of one of them. In all these situations, the registrar, in charge of noting the death or marriage on the margin of the birth certificate, must alert the registrar of the PACS registration place. The latter must then register the dissolution of the PACS and notify the partner(s). These formalities must be carried out but they have no influence on the actual day of dissolution because this one is effective on the day of the marriage or the death.

B) The effects of dissolution

Regardless of the situation at the origin of the dissolution of a PACS, the partners must always, following the dissolution, proceed to the liquidation of their properties and the payment of their debts. A particularity is added in the field of succession, when the death of one of the partners leads to the dissolution of the PACS. The succession's rules for civil partners totally differ from that of the spouses.

First, once a PACS is dissolved, the partners must share their properties. There is no law governing the division of property upon dissolution of a PACS. Therefore, each sharing will be amicable and different depending

on the situation of the partners. If the partners have put their properties under the legal patrimonial regime applicable to PACS, then their property is submitted to the regime of “separation as to property”. This regime means that properties acquired by one of the partners before and during the life together remain the exclusive ownership of the partner who purchased the property. Therefore, during the dissolution of the PACS, each partner gets back his personal properties. However, there is one exception when one of the partners improved the personal property of the other by giving him money. In this situation, the creditor partner may request the reimbursement of these sums. If the partners did not wish to submit their property to the legal regime, then they could create their own agreement by submitting their property to the “*indivision*”. Therefore, the property belongs to both partners equally. The division of property into “*indivision*” is not always easy because not all properties can be divided into two parts. That is why in practice, one of the partners retains the property in its entirety and in return pays a sum of money to the other partner, which is called “*soulte*”. If neither of the partners wants to keep a property, then they can sell it and divide equally the money received from that sale.

If the spouses have incurred debts or receivables during their life together, it is at the time of the dissolution of the PACS that the refund or the claim for payment of receivables must be carried out. The partners must reimburse the debts contracted jointly towards third parties during their joint life. They must also reimburse each other for the existing debts between them. For example, if the partners foresaw a joint contribution to household expenses when PACS was concluded, but one of them

failed to do so, the defaulting partner must reimburse the other during the dissolution. If there is disagreement about the repayment of the debts, the partners have the possibility to seize the judge for family affairs which will rule on the division of the properties.

Besides, when the dissolution of a PACS is caused by the death of one of the partners, the rules of succession applicable to PACS couples differ from those applicable to married couples. Indeed, the major difference between a surviving spouse and a surviving partner is in the scope of succession. Unlike a surviving spouse, the surviving civil partner is not a legal heir of the deceased partner. This implies that the law does not provide for the surviving partner a part of the inheritance of his deceased partner. (*«PACS: pas de testament = pas d'héritage»*, 2016) Despite the fact that the law does not provide for an inheritance for the surviving partner, it does not prevent partners to draft, during their lifetime, agreement provisions which will apply instead of the law and will allow the surviving partner to inherit.

There are two possibilities for civil partners to inherit each other's properties when one of them dies. (Arnau, 2015) The first is to put their properties, not under the legal regime of the “separation as to property”, but in “*indivision*”. The advantage for the partners to put their properties in “*indivision*” appears when one of the partners dies the surviving partner recovers the other half of the patrimony and thus becomes the only owner of the property. However, the surviving partner cannot inherit all the properties of the deceased despite the “*indivision*” because the law prohibits the submitting of certain properties under “*indivision*”, as aforementioned. (*«PACS et succession»*, 2018) This is the case, for

example, for properties acquired before the conclusion of PACS which could not be divided. The second possibility for a partner to inherit the deceased partner's properties is the writing by the latter of a will. Again, the surviving partner cannot always inherit the entire estate of the deceased partner. In fact, if there are rightful heirs within the estate, part of the estate called “*la réserve*” can only be given to these heirs. For example, the children or the surviving spouse are considered as rightful heirs. If this is the case, and if the deceased has written a will in his favor, the surviving partner may still inherit from another part of the estate which is called “the available share”. This notion is defined as “*the share of an estate which can be transferred on to persons other than the rightful heirs.*” (“Quotité disponible – définition”, 2012) In view of these two possibilities for the surviving partner to inherit, it appears that an estate is possible between partners but it must be explicitly foreseen before the death of one of them.

Conclusions

PACS stands for “pacte civil de solidarité », and is a legal union between two persons of either sex. Originally PACS was introduced in France in 1999 as a way for same-sex couples to have the same rights as married couples, but its popularity has increased year after year among straight couples also. Nowadays, 95% of couples getting PACS are of different sexes. The main effects of the PACS are the obligation of the partners to live together and the duty to provide material support and mutual assistance. Solidarity between partners does not apply to debts that are clearly excessive. In terms of property, separation of property becomes

the rule and undivided shares, the exception. Civil partners do not have the exact same rights as married couple. Unlike spouses, civil partners are not considered legal heirs of their deceased partners. Nevertheless, the law does not prevent the partners from drafting agreement provisions, during their lifetime that will allow the surviving partner to inherit. Despite the fact that PACS is apparently more advantageous than marriage, due to its ease of conclusion and dissolution and also because it involves couples less than a marriage, it remains disadvantageous concerning estate. Before concluding one of these contracts, the couple must be aware of these major differences, which will enable them to choose the most appropriate contract for their situation.

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