

Asset Planning without Borders

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Legal forms of cohabitation in Germany

- The marriage is the only formalized form of cohabitation actually available in Germany.
- Since September 2017 two persons can marry without having regard to their sex (heterosexual marriage and homosexual marriage)
- The registered live-partnership (eingetragene Lebenspartnerschaft) has been introduced in 2001 for homosexual couples with (nearly) the same effects as a marriage. It has been abolished in 2017 with introduction of the homosexual marriage.
- The *de facto*-cohabitation of two or more people of same or different sex has no legal effects in Germany in family law or inheritance law.

Registers in the field of matrimonial property law in Germany

- The conclusion of a matrimonial agreement (Ehevertrag) can be entered into the Germany matrimonial property register (Güterrechtsregister). The register is allocated at the local courts. The registration is not necessary for the legal effectivity of the matrimonial agreement. However, a third party dealing with one of the spouses may not assert any more that he did not know of the matrimonial agreement when the agreement has been registered (exclusion of bona fide).
- Also the fact that a foreign matrimonial law is applicable may be entered into the register with the same effects.

Law applicable to the property regime in Germany

- All marriages and partnerships concluded on or **after January 29, 2019** the law applicable to the matrimonial property regime will be subject to the European Regulations on the matrimonial property regime of marriages and registered partnerships.
- A marriage concluded **before January 29, 2019** is subject to
 - The law chosen by the spouses in form of a marriage agreement
 - otherwise by the common national law of the spouses at the time of the marriage
 - otherwise by the law of the place of habitual residence of both spouses at the time of the marriage
 - otherwise by the law of the most close relationship of both spouses at the time of the marriage (sect. 14, 15 Introductory Act to the German Civil Code)
- A registered partnership registered before January 29, 2019 is subject to the law of the place of registration

Does there exist a Convention on matrimonial property for Germany?

- International Convention with the Empire of **Persia** dating from February 17, 1929
 - Sect. 8 para 3: Persian law applies to the family relations between Persian nationals
 - Priority to the European matrimonial property Regulations
- Convention with **France** on the creation of an uniform contractual property regime of community of gains (Wahl-Zugewinnngemeinschaft).
 - Applies only in case German or French matrimonial law is applicable and the spouses agree on the uniform property regime by marriage agreement.
 - The Convention contains no choice of law provisions and therefore does not affect the application of the European Regulations.

THANK YOU VERY MUCH FOR YOUR KIND ATTENTION

