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5 Things to Know about Pre-Nuptial Agreements

Discussing finances can be a sensitive matter for many couples but making sure parties are 'on the same page' before marriage is crucial.

Here are 5 important things to know about pre-nuptial agreements before deciding whether they are right for you and your partner:

1. Pre-nups can help take the pressure off a relationship

A pre-nuptial agreement, in short a 'pre-nup', is an agreement entered into by couples before their marriage to set out their financial arrangements in the unfortunate event that the marriage ends. It is a topic which some couples avoid discussing, but if discussed with caution and care, can strengthen their relationship, help manage their expectations, and offer financial security to both parties.

2. Pre-nups can help avoid acrimonious and costly divorce proceedings

A pre-nup sets out clearly how the following are going to be treated in the event the marriage ends:

- You and your partner's respective assets/liabilities and income acquired before and during the marriage;
- You and your partner's joint assets/liabilities and income acquired during the marriage;
- The gifts, inheritance and trust interests to be received by you and your partner before or during the marriage.

A pre-nup can also set out the financial provisions for the financially weaker party.

3. Pre-nups are not binding on the Courts in Hong Kong but may be given full weight

At present, pre-nups are not binding on the Courts in Hong Kong. The terms of a pre-nup cannot oust the jurisdiction of the Courts in Hong Kong as the Courts are bound by legislation governing the making of financial

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orders in matrimonial proceedings.

Having said that, following significant developments in this area of law in the UK and in Hong Kong over the past 10 years, pre-nups are now given the fullest effect by the UK and Hong Kong Courts as may be permitted by law, provided that:

- The parties entered into the pre-nup of their own free will, without undue influence or pressure. This is addressed by there being a period of reflection between signing a pre-nup and the marriage. At least 28 days is recommended.
- The parties had a full appreciation of the implications of the pre-nup. In other words, they should be in possession of all the information material to their decision to sign the agreement before signing it, so that they can fully understand the implications of the agreement. This is addressed by both parties receiving independent legal advice before signing a pre-nup and by providing their respective financial disclosure.
- It must be fair in the circumstances prevailing to hold the parties to the pre-nup. If the effect of the nuptial agreement would be to leave one party in a predicament of need, while the other party is comfortably provided for, this is likely to be unfair.

At the time of divorce, the Courts will consider whether it is fair to hold the parties to the pre-nup considering the prevailing circumstances.

4. **Child custody and child support are typically not included in a pre-nup**

You and your partner may express your agreement on the care arrangements for children in a pre-nup. However, it is not fair for a pre-nup to prejudice the reasonable requirements of any children of the family, such as their needs and expenses. It would be premature to agree on the amount of child support before the marriage.

5. **Approach the topic of a pre-nup openly and as early as possible**

Some people are concerned that a pre-nup may “kill the romance” before a marriage. Indeed, topics around finances and disclosure of assets can be sensitive. However, the reality is that entering into a marriage is more than just romance; it requires openness and honesty. Healthy communication is key to a happy married life. Therefore, having a discussion about pre-nups with your partner as openly and early as possible may help strengthen your relationship and avoid potential arguments, unrealistic expectations or misunderstandings in the future.

Contact



Chantelle Woo

Associate

+852 3405 7600

chantellewoo@gallhk.com