



There's plenty for expat couples to consider when relocating, including long-term financial issues around the move. One of these is whether or not to get a "prenup" – particularly in cases where only one person will be working. Partner KAJAL ASWANI from disputes law firm Gall answers our readers' questions on the matter.



What are prenuptial agreements?

Commonly referred to as "prenups", these are private agreements entered into by parties before marriage to govern their future separation – particularly the distribution of assets, including gifts and inheritance acquired either before or after marriage and financial support for either party to the marriage in the event of a divorce. Generally, prenups don't cover issues relating to future care arrangements for children or their financial support.

Are prenups legally binding here?

There's no legislation governing prenups in Hong Kong. However, the courts can now give "full weight" to prenups when considering the financial claims on divorce, provided that the prenup was entered into by parties freely with full appreciation of its implications, and that the effect of the prenup is fair.

Is it something all couples should consider before marriage?

Prenups are relevant in circumstances where parties may marry later in life and have already accumulated assets without any contribution from the other party, and in cases of second marriages. They're also relevant where one party stands to receive gifts or an inheritance in future that they wish to protect from equal division in the event of divorce. In general, prenups can serve as a helpful way to manage expectations and to avoid unnecessary and costly disputes at the time of a marriage breakdown, when emotions are at their highest.

Is it a pessimistic step for a couple to consider a prenup?

If the topic is dealt with sensitively, it doesn't have to be seen as pessimistic. A prenup should be viewed as an insurance policy that may or may not be used. If used, it will reflect the couple's joint wishes on how their assets are to be dealt with, thereby giving them control over their own personal affairs instead of litigating through courts, which may unnecessarily escalate a stressful situation.

What happens in the event of a marriage breakdown – how is the prenup actioned?

The parties are obliged to bring the existence of the prenup to the court's attention in the event of divorce; in accordance with the terms of the prenup, the parties will invite the court to implement the agreement in full.

Anything else our readers should know about prenups?

If you're considering one, plan ahead and leave sufficient time to discuss and negotiate the terms with your future spouse and seek legal advice separately. Ideally the agreement should be signed well in advance of the wedding, and we strongly recommend that there is a gap of at least 28 days between signing the prenup and your wedding date to avoid any arguments of duress or undue influence.



3 STEPS FOR GETTING A PRENUP IN HONG KONG

- 1 Start by having a discussion on the assets to be ringfenced, and other areas you wish to cover in a prenup such as how income earned during the marriage should be treated.
- 2 Identify suitable lawyers who have expertise in this area and set up an initial consultation as soon as you've started your discussion.
- 3 Consider the draft prenup carefully and raise any questions or concerns you may have with your lawyer before signing the prenup.

3 REQUIREMENTS FOR A PRENUP TO BE LEGALLY ENFORCEABLE

- 1 Parties should feel they're on an equal footing and able to negotiate the terms without pressure when signing a prenup.
- 2 Parties should have a full understanding of the implications of signing a prenup.
- 3 The terms should be fair to hold the parties to the prenup at the time of divorce considering all the circumstances. Also, financial disclosure is clearly desirable, and we advise parties to produce it.

Find out more at gallhk.com or call 3405 7688.