



WHAT IF?

WITH TODAY'S GLOBAL DIVORCE RATE APPROACHING 50%, A PRENUPTIAL MAY BE AN UNCOMFORTABLE BUT PRUDENT DECISION TAKEN BY SME BUSINESS OWNERS WHO MAY WISH TO PRESERVE WHAT THEY HAVE WORKED HARD TO BUILD, SAYS INDEPENDENT FINANCIAL ADVISOR GREG POGONOWSKI.



A prenup normally details how financial matters must be dealt with in the event of divorce. In other words, how assets will be divided, how debts will be handled, and whether each party has any financial responsibility and so on.

In the UAE, some wealthy

couples also go down this route to try to protect their wealth or businesses. But no matter the income and asset size, anyone can enter into a prenup. Of course, the longer the marriage remains intact, the greater the future assets are likely to become. Prenups can be useful for couples of any financial

means because they are an important part of the wider need for thoughtful planning when couples decide to marry.

When people who live in different jurisdictions, or who contemplate doing so, are planning to marry – they should seriously consider entering into a prenup and consult with their financial advisor, so this article is for information purposes only. It must be checked by legal counsel in your local jurisdiction before being acted upon.

With divorce now more common, couples need to consider this unromantic option before taking the plunge. In the UAE, the divorce rate among Emiratis alone is over one in four, according to figures released by the Dubai courts. It must be said, however, that the courts in the UAE give little weight to a prenup, and have viewed the enforcement of prenups as appearing to be against public policy, Shari'ah law aside.

With this said, the traditional view is shifting and the courts appear to be now saying that

a prenup can be a material consideration when considering what adjustments to make to a divorcing couple's financial circumstances on divorce.

Marriage itself is already a financial commitment, whereby a couple agrees who pays the mortgage, debts and bills, and how they should go about savings and investments. It stands to reason, therefore, that couples entering into a marriage, regardless of religion or country of origin, should have a full understanding of each other's expectations of the financial aspects of the marriage and what happens if the relationship ends. Asking serious questions about how you see finances in the marriage partnership may save you pain and money later - and might even save your marriage.

Prenups are a relatively new legal way of setting out what the financial arrangements will be if a married couple decides to divorce. At present, they are more usually used by American and European couples, and are not so common among Asian and Arab couples.

Although they are not enshrined in law in most countries, they are useful because they guide lawyers and judges in the event of a marriage break up. As in much of the world, these agreements are a declaration of intentions in the event of divorce, but are not binding on the courts and cannot create a breach of local law in any way.

If you are rich and want to protect your assets, a prenup in itself is insufficient. Wealthy clients should restructure their assets for 100% protection, by placing as much of their wealth as possible into a trust or foundation, before marriage. As to when the subject should be raised, no financial advisor can recommend a perfect time, although the earlier into the relationship this is done, the better.

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Greg Pogonowski, Independent

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A prenup can act as a safeguard for both spouses. It aims to protect

expensive and acrimonious divorce should occur, by defining the rights and responsibilities of the parties in advance.

For your prenup to have a chance of being binding there are certain key elements you should include in your prenuptial agreement, so here are my top ten tips:

1. List all assets, liabilities, income, and expectations of gifts and inheritances. A full disclosure is a critical element of a prenuptial agreement to ensure that it has a chance of being referred to during proceedings.
2. Describe how premarital debts will be paid. This will help to identify which debts will be satisfied by marital resources or premarital resources, and is often overlooked.
3. Resolve what happens to your premarital property in reference to changes in value including appreciation, gains, income, rentals, dividends and the proceeds of such property in the event of divorce.
4. The marital residence is often an issue that can become contested in the event of divorce. Decide which spouse will own the marital residence and secondary homes in the event of divorce, and how any proceeds from those homes and real estate assets be divided in the event of a divorce.

5. Clarify what will happen to each type of property, whether jointly or individually owned, such as real estate, art work, collectibles and jewellery.

6. Alimony, maintenance, or spousal support, is another particularly contentious issue. Prenuptial agreements allow parties to allow for a waiver or property settlements instead of support, although it should be noted that many jurisdictions are reluctant to limit recovery in this regard and, as a result, it is very important to understand local laws.

7. Decide what will happen in the event of a divorce with regard to medical, disability, life insurance, and long term care insurance.

8. There is a full and fair disclosure of the earnings and property of each party, and the parties have had an opportunity to consult with legal counsel of their own choice.

9. As a general rule, the agreement must also be in writing; executed in the presence of two witnesses independent from each other and all parties.

10. The prenup should be acknowledged by the parties before a person authorised to administer an oath (notarised).

It is only in cases where full disclosure is not given, or the agreement becomes substantively unfair at the time of the divorce that courts strike down the validity of such agreements. A prenup may be deemed substantively unfair if the circumstances on which the agreement was based have changed so drastically that enforcement would not have met with the reasonable expectations of the parties at inception. ■

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