

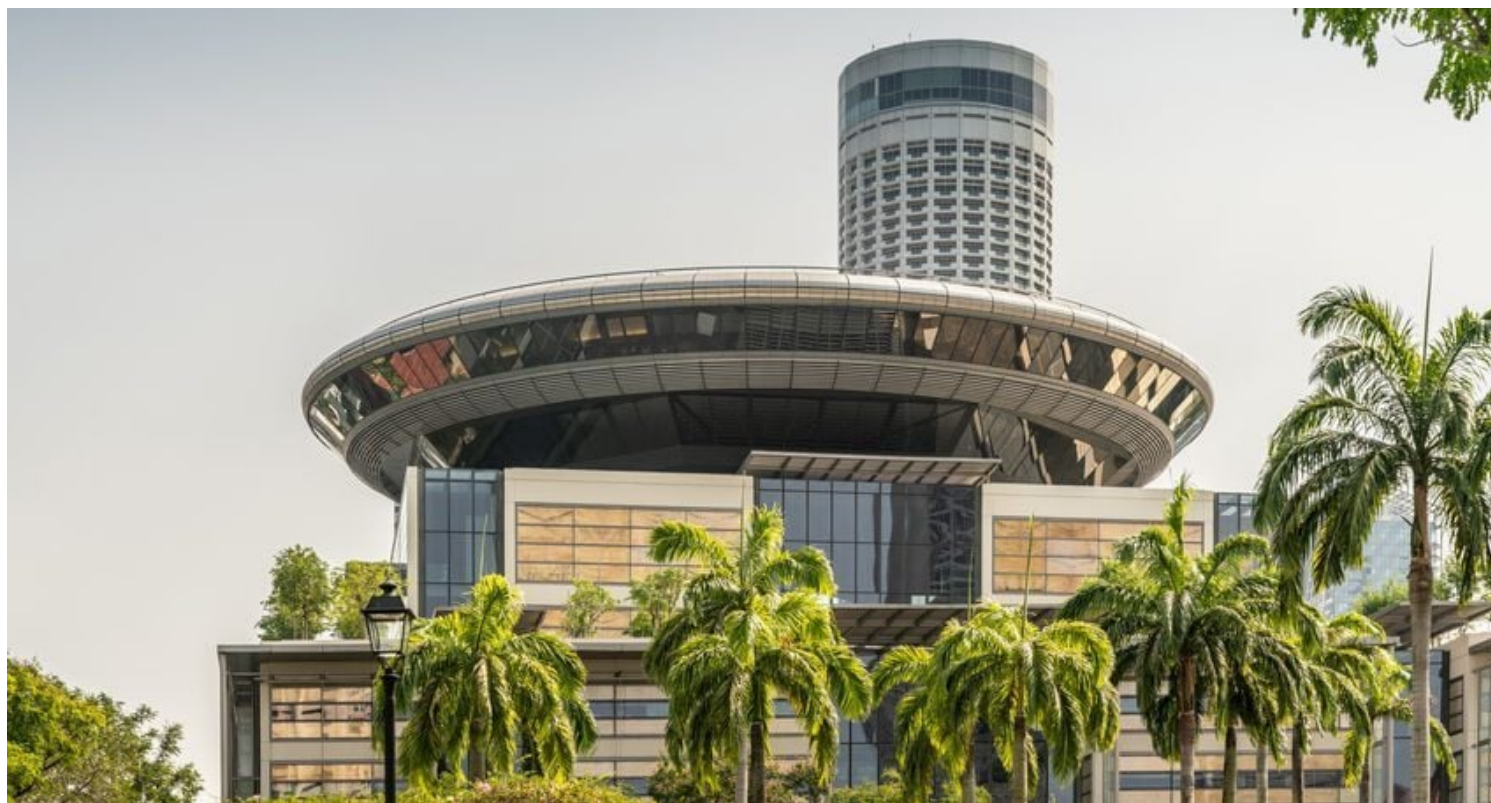
GETTING A PRENUPTIAL AGREEMENT IN SINGAPORE

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Category: [CNPupdates](#)

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Short summary:

“A prenuptial agreement (“**prenup**”) is an agreement that a couple enters into before getting married and which documents their respective positions in the event of a divorce. Although not always enforceable in Singapore, this commentary explores the practical advantages they can offer and clarifies frequently asked questions about getting one.”

Prenups: What are they?

A prenuptial agreement (“**prenup**”) is an agreement that a couple enters into before getting married and which documents their respective positions in the event of a divorce.

Typically, a prenup will cover the following matter(s):

1. the division of matrimonial assets;
2. maintenance of the wife and/or children; and/or
3. custody of the children

In certain cases, a prenup may also set out specific terms governing the marriage or the parties’ rights and

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obligations during the marriage (such as their respective financial responsibilities).

However, such terms only serve to extend the coverage of a prenup and should not be regarded as a defining characteristic.

The enforceability of prenups in Singapore

In Singapore, prenups are not enforceable in and of themselves.

This is because marriages in Singapore are governed by a combination of written laws and the principles established in court decisions (“**Singapore’s Matrimonial Laws**”).

The benefits of making a prenup

Although a prenup is not enforceable by itself, it can be useful in certain circumstances because:

1. a prenup may be helpful in guiding court proceedings;
2. a prenup can help steer parties to a swift resolution of divorce proceedings;
3. a prenup may be a good reference point for negotiations; and
4. a prenup can be a form of inheritance protection.

Helpful in guiding court proceedings

When assessing the weight to be given to a prenup, the court will typically consider whether:

1. each party received independent legal advice before entering into the agreement; and
2. one party has misled the other, such as by misrepresenting the nature and/or value of their assets.

If the court is satisfied that the prenup is fair to both parties after considering the circumstances in which the agreement was made, it will give effect to the terms of the prenup through its judgment.

If a court is not minded to give effect to the entire prenup, it can still be advantageous to have a prenup for strategic reasons. This is because the party seeking to avoid the terms of the prenup may have to justify why he/she is seeking to change what was previously agreed between parties in the prenup.

Swift resolution of divorce proceedings

As mentioned previously, a prenup can provide good guidance to the court with respect to the intention of parties and this can help expedite the divorce process and, in particular, the ancillary issue relating to the division of matrimonial assets. This can help the parties save effort, time and legal costs.

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A good reference point for negotiations

A prenup allows parties to consider and refresh their understanding of their original position that was discussed and agreed upon before the marriage turned sour.

As such, prenups can be a good reference point during negotiations and will likely be the start point for discussions. This is particularly helpful as parties tend to be distracted or ruled by their emotions when the marriage breaks down.

Inheritance protection

Assets (other than the matrimonial home) that are inherited will generally be excluded from the pool of matrimonial assets. In general, the law recognises that the other party to the marriage has no claim to assets that are inherited.

Having said that, Singapore's Matrimonial Laws may allow the other party to:

1. claim a share of the inherited asset if the other party has substantially improved it; or
2. retain the inherited asset as his/her own property if you are found to have gifted it to him/her.

Having a prenup which shows a common understanding that the inherited assets belong to you can help safeguard what is rightfully yours.

Parties should clearly set out their intentions concerning inherited assets in the prenup, particularly if there is an expectation/ anticipation that one party is likely to receive certain inherited assets.

Discussing prenups

Prenups can be a sensitive topic and may be perceived by some to be a sign of distrust.

However, a prenup should not be viewed any differently from an insurance policy – both documents are not strictly necessary and they both deal with issues that are not particularly pleasant to think about but they can help to minimise risk, reduce doubt and offer peace of mind.

The truth is that every marriage can potentially end in a divorce.

By inviting a couple to have a candid and mature discussion about this possibility (regardless of how unlikely), a prenup allows them to have a better appreciation of each other's expectations about the marriage and how they would like to manage their relationship

Ideally, both parties should seek advice from their own lawyers so that both parties are clear about the legal implications of the prenup. As previously mentioned, the court will generally be more inclined to consider giving effect to a prenup when both parties have received independent legal advice.

Just remember that a prenup may not be a guarantee that the court will settle a divorce based on what has

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been agreed between the parties but it does go some way in protecting the respective interests of both parties in the relationship.

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