

TOP TIPS FOR PRE-NUPS

The idea of a prenuptial agreement may seem unromantic, but the purpose is for both parties to feel safe in the knowledge that their assets are somewhat protected if the worst case scenario happens. Be realistic, open and honest. An awkward conversation now may save months of acrimony in a possible future divorce.

- *Write the agreement well ahead of the actual marriage* and at least 28 days beforehand, to get comfortable with the terms and to avoid any pressure in signing the agreement. It also avoids the appearance of coercion if it is considered well in advance.
- *You MUST instruct separate lawyers.* Prenuptial agreements in this country are not automatically legally binding upon divorce, at best they are persuasive. The court is unlikely to adhere to an agreement absolutely if it has been drafted merely by the two spouses. Legal advice may come at a price, but it could save you significant divorce costs in future. And separate legal representation protects the interests of both future spouses.
- *The foundations of any pre-nup are independent legal advice and exchanging full and frank financial disclosure* of your respective financial circumstances.
- *The prenuptial agreement needs to be completed in writing* as the court will not recognise just a verbal agreement.
- *Exchange full financial disclosure* with your future spouse irrespective of whether they are included in the pre-nup. Be transparent. Insert provisions that outline the process for any liabilities incurred by the other party before marriage. If full disclosure is not exchanged the agreement is likely to be considered void. Think about matters such as pay rises, bonuses, inheritance and joint purchases and discuss how these will be distributed in the event of divorce, if at all.
- *Consider if you or your future spouse holds assets in more than one country.* If so, you will need to take advice in that jurisdiction and you may need a mirror prenuptial agreement to deal with those assets.
- *Agree on provisions in the case of separation or divorce.* For example, if one of you gives up work to bring up the children, how would/should he/she be provided for financially? For how long would such a provision last? It may be an unromantic conversation but it would give you and your future spouse security and reassurance in the long term.
- *Think about and agree each spouse's contribution,* and how this should or should not be recognised.
- *Take children into account.* Decide on how matters such as education will be paid for and by whom in the event of separation or divorce. Bear in mind though that finances and children are treated very differently and child arrangements agreed in a pre-nup will solely be one factor to consider in the context of what is in a child's best interests.

- *Remember that the court will only uphold any provisions as long as it is deemed fair, meets your respective needs and is in the best interests of the parties and in particular any children involved. Be aware that this can be transient and change as your circumstances change.*
- *Sign the agreement in the presence of a witness. Both parties should sign at the same time and in front of the same witness.*