

Prenuptial Agreement Vietnam (Prenup) - Overview

1. Why enter into a prenup in Vietnam?

Prenuptial agreements (prenups) are expressly recognized under Art. 47 of the Vietnamese Marriage and Family Law. In particular, a prenuptial agreement is an important tool to clarify the separation of assets during and the division of assets in the event of a divorce. Other important areas, such as spousal support, childcare and child support in the event of divorce, can be clearly addressed prior to the marriage. It is therefore usually advisable to first think about a prenup before getting married in Vietnam, especially if there are significant assets on one side. However, a prenup in Vietnam is usually also a sensitive issue, especially for a prospective Vietnamese spouse: it is therefore important that a prenup is “fair” in the sense that you let your prospective spouse know that he/she will not be left completely penniless in the event of a divorce (which could theoretically be agreed upon).

2. Distinction between prenup and last will (testament) in Vietnam:

Many clients believe that a prenuptial agreement also addresses inheritance issues. This is not the case: prenup and last will address different matters: the prenup addresses the legal consequences in the event of a divorce, while the last will addresses the legal consequences in the event of the death of one of the spouses (which must be strictly distinguished from marriage or divorce). While the prenup only affects the relationship between husband and wife, the last will has legal consequences for the entire family of the deceased / the heir (especially if he already has children from a previous marriage). In addition, the last will, unlike the prenup, is a purely unilateral declaration by the testator, which the future wife does not necessarily have to know about, especially if the last will provides for disinheritance of the future wife. Therefore, it is always advisable to have prenup and last will independently notarized in two different documents and notary appointments.

3. Matters you can address in a prenuptial agreement in Vietnam:

In legal practice, the term "prenuptial agreement" includes all marriage-related family law agreements between spouses. Prenups may, amongst others, include the following regulations:

- Exclusion of the division of accrued financial gains during the time of the marriage (in case of divorce): Since the basic principle of compensation in Vietnamese marriage law is the equal division of any financial / monetary gain during the time of the marriage, one of the most important provisions in a prenup in Vietnam is the exclusion of such division of accrued gains.
- Liability for debts of the other spouse.
- The creation of “common assets” and/or agreements on specific purchases or projects, such as e.g., purchasing a property in Vietnam or starting a business in Vietnam.
- Who gets what if you divorce in Vietnam: In return for the exclusion of the division of accrued gains, the spouses usually agree on appropriate "severance pay" regulations that include a minimum payment / cash settlement for one of the Vietnamese spouses, usually expressed in a monetary claim per year of marriage.
- The distribution of the household effects, the use of the marital home in the event of divorce.

- Waiver of spousal support in the event of separation or divorce.
- Financial support obligations for joint children, custody for joint children and contact / visitation rights of the other parent.
- The distribution of pension entitlements acquired during the marriage.
- The procedure for filing (joint) tax returns in case of divorce in Vietnam.

4. Matters you cannot address in a prenuptial agreement in Vietnam:

- Exclusion of child support and contact/visitation rights;
- Rules for personal questions or frivolous matters, such as how many nights a week someone can go out without their spouse or where the couple should spend their vacations;
- Use of surnames after marriage;
- Agreements about children such as: birth control, children's names, child care and education.

Such non-monetary agreements are not permitted in Vietnam and could even lead a divorce judge to declare the entire prenuptial agreement void.

5. Form requirements:

A prenuptial agreement in Vietnam must be notarized in Vietnamese language. Since many notary publics are not always familiar with the details of prenups, the notary should be carefully selected prior to notarizing the marriage contract.

6. Our services:

We will advise you in determining whether a prenup is necessary or desirable in your specific circumstances and if so, the scope of the prenup. This includes: review of your assets and, if necessary, your current retirement plans, insurances etc.; initial advice on cross-border issues such as choice of law and Prenup recognition outside Vietnam; draft of a prenup tailored to your specific situation both in English and Vietnamese (note it must be in Vietnamese as it needs to be officially notarized with a Vietnamese notary); in case your spouse uses a lawyer too: Consult with your spouse's lawyer on any issues of contention and advise you accordingly so that you both may make informed choices; execute the final prenup in Vietnamese language by notarization with the Vietnamese Notary Office.

About the Author:

Dr. Matthias Dühn, LL.M. (Georgetown) was admitted as a lawyer to the German Bar Association in 2001 and has been registered as a "Foreign Registered Lawyer" in Vietnam since 2007. He has been focusing his law firm Viet Diligence Legal law firm, founded in 2014, on market entry of foreign investors and entrepreneurs in Vietnam, and is therefore familiar with all legal questions relating to Vietnamese investment-, corporate-, commercial- and tax laws. He also advises on all matters questions relating to international contract drafting and complex contract negotiations, particularly in the area of commercial contracts, mergers and acquisitions (M&A) and joint ventures. Dr. Dühn is also experienced in all Vietnamese labor law issues, such as drafting employment contracts, termination of employees and complex settlement negotiations.

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