

Prenuptial Agreements in Vietnam – Why and How?

1. Why enter into a prenuptial agreement (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, child custody and child support in the event of divorce, can be clearly addressed prior to marriage. It is generally recommended to consider entering into a prenup prior to getting married in Vietnam, especially if there are significant assets on one side and little assets on the other side. However, a prenup in Vietnam is usually also a sensitive issue, especially for a prospective Vietnamese spouse: it is therefore important that the 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 prenups and last wills / testaments:

Many clients believe that a prenuptial agreement also addresses inheritance issues. This is not the case: prenups and last wills address different cases: while the prenup addresses the legal consequences in the event of a **divorce**, the last will addresses the legal consequences in the event of the **passing away** of one of the spouses (which must be strictly separated and distinguished). And while the prenup only affects the relationship between husband and wife, the last will has legal consequences for the entire family of the deceased (especially if he/she already has children from a previous marriage). In addition, a testament, 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 testament provides for disinheritance of the future wife (which is often recommendable). Therefore, it is always advisable to have prenup and testament independently notarized in two different documents and notary appointments.

3. Topics you can address in a prenup in Vietnam:

In legal practice, prenups can include most marriage-related family law agreements between spouses. Prenups may, specifically, address the following matters in the event of a divorce:

- Exclusion of division (equalization) of accrued gains during the time of the marriage: Without a prenup, Vietnamese law provides the equal (50%/50%) division (equalization) of financial gains throughout the marriage in the event of a divorce, the most important point in a prenup in Vietnam is the exclusion of sucu dividion/equalization of accrued gains.
- Who gets what if you separate or get a divorce in Vietnam: In return for the exclusion of the division/equalization of gains, the spouses usually agree on appropriate "severance pay" that often includes a minimum payment / cash settlement for the Vietnamese spouse, usually expressed in a monetary claim per year of marriage.
- Liability for debts of the other spouse.
- The creation of “common property” under Vietnamese law and agreements on specific purchases or projects, such as buying a joint property or starting a joint business.

- The distribution of household items and the use of the marital home in the event of divorce.
- Waiver of spousal maintenance in the event of separation or divorce.
- Child support and custody for joint children, the main residence of the children and 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. Topics you cannot address in a prenup in Vietnam:

- Complete exclusion of child support and visitation rights in the event that custody is with one parent only.
- Rules for personal matters, such as e.g. 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, care and education.

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

5. Form requirements:

A prenup in Vietnam must be notarized in the Vietnamese language. Since many notaries are not always familiar with the details of prenups, the notary should be carefully selected before notarizing the prenup.

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; 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 public.

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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