



Getting a Thai Prenup

Hello, and welcome to this brief report on getting a prenup in Thailand. My name is Phuangphet Hall and I am a Thai lawyer (B.A. Law LL.B) specializing in family law and the creation of Thai prenuptial agreements. I myself married a foreigner (Australian) in Thailand in 2004 and through this I believe I have a very sound and maturely based experience relating to Thai/foreigner marriage in Thailand and the many varied aspects involved. As a Thai lawyer, and as the author of this report, I am confident that the report addresses the primary issues related to Thai prenups, and as such, I hope you will find it worthwhile and beneficial toward enjoying a happy and long-lasting marriage in Thailand.



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interpretation of the contents of this report. The contents of this report are intended as being informational only and intended as a general guide from which the reader can make further inquiries as to any personal steps that the reader may wish to take. You should always seek the formal advice of a professional lawyer prior to taking any actions that could affect you financially and/or legally.

Introduction

This report has been created as a guide primarily for foreign prospective husbands intending to get married in Thailand under Thai law and jurisdiction. However, the basic elements and principles discussed also apply to Thai nationals who are embarking on a marriage and who wish to protect their financial position in the event of a divorce.

There is a lot of misconception and misunderstanding about Thai prenups which I hope will be dispensed with by the time you finish reading this report.

Traditional Barriers

For many Thai women, the subject of divorce and prenups is generally something that tends to get ignored or avoided when getting engaged. It would be fair to assume that this tendency toward avoidance isn't for any reasons of negative intention, but it has more to do with the exuberance of getting married and the extreme confidence that the marriage will last forever. Indeed, that is generally the intent of any honorable man or woman when getting married. Nobody really wants to think about the marriage failing before it even gets started.

Arranging a marriage always takes a lot of planning, - there are always so many things to attend to, from the wedding venue and guest lists, to the photographer, wedding attire, transport, and of course the honeymoon. There may even be plans for getting a new place to live as husband and wife. However, there isn't often any consideration or planning at all with regards to securing the financial future of the marriage and the husband and wife themselves. There are a couple of ways that this can be achieved; one is via the creation of a "will and testament" and/or "living will" and the other is via a prenuptial agreement. When an engaged couple add "*Create a prenup agreement*" to their list of marriage preparations, then they will have just given their marriage an added boost to support its long lasting success. It's really such a simple process compared with most other wedding preparations, and is really inexpensive to do, so you can factor it in without any major hassles at all.

When a couple enter into a marriage where the financial details have been clarified and settled beforehand to open and mutual agreement, the marriage can then proceed and develop on a foundation of strength and clear understanding as to the financial arrangements in the unforeseen event of divorce.

Why is Getting a Thai Prenup a Good Idea?

Protection of pre-existing assets: A prenuptial agreement is a very simple instrument which allows you to protect any pre-existing financial assets which you have acquired prior to getting married in the event that the marriage ends in divorce. Generally, this is mostly applicable for prospective husbands, but of course could also apply to prospective wives as there are many women with substantial assets that they have acquired prior to the marriage.

Financial protection for wives and children: A well structured prenuptial agreement also makes provisions for wives and any children of the marriage. This can provide peace of mind for the wife in knowing that she and her children would be taken care of in the event that the marriage ended prematurely by divorce. It is far better to discuss such things when you have balance and harmony in your relationship, than to start arguing about them later if the relationship starts to break down and communications and empathy become strained.

When a prospective wife is presented with the personal benefits to her of getting a prenup agreement created, then there is generally a new level of understanding and tone of co-operation exhibited which makes the process of acceptance and agreement a far more cordial and positive proposition.

If I already have a foreign prenup shouldn't that be sufficient?

If you've already created a prenup agreement in your own country, please bear in mind that such a document has no legal jurisdiction in Thailand. In some instances, it may not be relevant or of concern for you, but you do have the option of referencing it in your Thai prenup agreement so that your foreign property and asset provisions are made clearer. The main point here is that any prenup agreement you may have created in your own foreign country will not carry any legal authority in Thailand and thus you need to have a specific Thai prenup created which you would be able to rely upon for having full jurisdiction and authority in Thailand.

If you already have a prenuptial agreement registered in your home country then that will protect your assets in your own country, but it won't have any legal relevance in Thailand as only a Thai prenuptial agreement which is recognized under Thai law has relevance and local jurisdiction over your property and asset interests held in Thailand.

Without a local Thai jurisdiction prenuptial agreement you would be subject to vague interpretation and statutory common property principles when your Thai related financial matters are being settled pursuant to divorce. Therefore, you would be acting diligently by ensuring that you have a Thai prenuptial agreement prepared and ready for registration when you marry in Thailand.

Common Property Provisions under Civil Law

Thai marriages come under the jurisdiction of Thai Civil Law which by default considers all property and wealth created after the commencement of marriage, as “common property” (Sin Somros) which is jointly owned on a 50/50 basis by the both the husband and the wife.

In circumstances where there was no prenuptial agreement existing between a husband and wife getting a divorce, the Thai Civil Court would have to make a decision as to what constituted common property of the marriage and what did not. For instance, if a husband had a pre-existing business which was predominantly based on his own exclusive talent and ability, then without a prenup it could be argued that the wife was entitled to 50% of his business in the event of a divorce, but by having a prenup in place which specifically addressed this factor, then the financial settlement would be in accordance with the prenup agreement and not subject to argument or court arbitration.

Generally speaking, any financial assets created by the husband and/or the wife during the marriage, fall into the 50/50 “common property” category. Whilst this could be a positive factor in many circumstances, it pays to clarify specific ownership of assets via a prenup agreement to prevent all property being considered as “common property” when in fact that may not be the case.

Being able to define “common property” from protected personal property can not only save a lot of hassle and argument, but also can expedite the process of financial settlement in the event of a divorce. This might not seem like a big deal at the outset, but being able to settle a divorce and sort out the financial affairs quickly can save a lot of time and stress at a time when emotions and normal functionality are under a lot of pressure.

Registration of your Thai Prenup

The word “prenuptial” basically means “before marriage”, and so therefore, a prenuptial agreement has dubious legal authority if it is created and registered after the marriage. In fact, in Thailand, a prenuptial agreement needs to be registered on the same day as the registration of the marriage in order for it to be legally valid. Moreover, the registration of the prenup agreement needs to be registered at the same local amphur office simultaneous to the registration of the marriage. This is not a difficult or daunting process however. It’s simply a case of the married couple taking their prepared and completed prenup agreement into the amphur office where they are registering their marriage. The prenup agreement document is submitted with all the other documents such as ID card, Passport, Home record card and any other relevant documents. These are all processed and registered by the officer as being relevant to the registration of the marriage. The fact that the prenup agreement is

recorded as having been registered as part of the marriage registration process is very relevant and one of the major components giving the prenup its legal validity.

A prenuptial agreement is meant to be impartial, fair, balanced, and agreed upon by genuine consent between the parties. That means that the agreement document needs to be created and signed before the marriage is registered. Both parties signing the agreement (and in most cases particularly the prospective wife) need to apply their signatures pursuant to a clear understanding and genuine consent to all of the provisions made within the agreement. In this case it is recommended that the signatories acknowledge (and in most case particularly the prospective wife) that they have had the opportunity and benefit of independent consideration of the contents and implications of the agreement which they are signing without any undue influence or duress. This of course cannot generally be achieved when a prenup agreement document has been presented without adequate time and opportunity for it to be properly considered.

Registration of the prenup needs to be done simultaneously to the legal registration of the marriage at the local amphur (district) office. Simply speaking, the prepared document can be signed by the parties and witnessed by the amphur official registering the marriage.

Thai Language must be clear and legally valid: As you can appreciate, any documentation pertinent to a Thai marriage needs to be clearly written in Thai as the non-English speaking Thai marriage partner could not be expected to sign and agree to a document that wasn't written in their own native Thai language. Of course, the document also needs to have each section translated into English so that the English speaking partner can clearly see and approve of the provisions made.

Whilst the legally operative language used is Thai, when the document is prepared by a suitably capable Thai lawyer also competent in English translation skills, then the English translation is a direct interpretation of the Thai language and can be relied upon as being an accurate and honest representation adequate for the English speaking partner to understand and agree to.

Making changes to your Thai Prenup

As you may be able to appreciate, changes or amendments to a prenup cannot be made once the document has been completed and registered. Therefore, in the extreme case where circumstances might call for further consideration, then a separate “nuptial” agreement (or “post (after) marriage”) agreement would need to be created. However, it should be noted that such a document would not be able to contradict or conflict with the original prenup agreement otherwise the terms and provisions of the original prenup agreement would override and prevail as being the legally valid agreement between the parties.

As indicated, it would be extremely rare for a “nuptial” (post-marriage) agreement to be necessary or appropriate to be created after an original “prenuptial” agreement has been made. In fact, it might even be a complete waste of time and effort, and one which would definitely require independent legal advice.

Ownership of Thai real estate in relation to Thai prenups

Thai law does not allow for foreign ownership of land. Whilst there are many mechanisms available to allow foreigners to invest in and hold Thai property, there is a strict exclusion of foreign ownership in land even between married couples on a shared basis.

Foreign prospective husbands to Thai wives should bear in mind that any funds they provide to the wife for the purpose of purchasing land (with or without constructions), become part of the common property of the marriage and as such the wife becomes an instant 50% equity owner (as well as being 100% title owner) in any land that might have been totally financed by the husband.

To be clear, the foreign husband becomes a 50% equity owner in the land which means that any proceeds from any sale of the land (“property”) must be shared on a 50/50 basis between the husband and the wife. Whereas in some cases, the wife might be able to either sell the property or raise finance against it, the husband always retains 50% equitable interest which can be claimed via a civil court petition as well as being noted on the Channot title to the land.

Therefore, any prenup agreement which attempts to note more than 50% share of property equity, or that makes any claim to land “ownership” by a foreigner would be invalid as that would be an unlawful term of contract being inserted into the agreement.

Children of the marriage and Thai prenups

In ordinary circumstances, there are usually no children in existence at the time of the marriage. However, in circumstances where one or more of the marriage partners has children from a previous marriage for which they have custody, then upon marriage those children by default form part of the new family of the marriage. This can create some special circumstances which need to be taken into consideration and accordingly might require independent legal advice.

Assuming that the married couple have no children between them at the time of the marriage, then it might be appropriate to make allowances for the arrival of children into the family where this could be reasonably considered as being a possibility. In such cases it should be noted that any new arrivals of children between the married couple become the “property” of the marriage, and accordingly it would be very prudent to include provisions for them in the prenup agreement. This isn't to suggest

that you would be able to nominate which marriage partner gets custody of the children, but more so to suggest that adequate financial provisions can be made for them in the event that the marriage ends in divorce.

As you can appreciate, each case would be different according to circumstances but some reference to a percentage bias in favor of the custodial parent might be appropriate, or where custody was shared, then some reference to adequate monthly allowance and education provisions might be made. By making provision for children of the marriage, the wife (being the usual primary care giver and custodian after divorce) can rest assured that adequate provisions have been made for her children. This is one definite advantage of having a prenup from the perspective of the prospective wife whereas the common perspective tends to be that prospective wives often see the proposition of prenups as a negative suggestion.

Divorce – The much undiscussed “D” word!

Getting married is usually a very joyous and happy occasion. Spirits are high and love is in the air so to speak. This tends to relegate any thought or discussion on the topic of divorce as having negative connotations and in some cases might even be considered as being superstitious and therefore a topic not discussed or given any consideration to.

In a marriage that lasts forever and never ends in divorce, then a prenup agreement is totally redundant. This can often be the rationale behind not making adequate provisions via a prenup agreement because the prospective husband as wife are so totally in love and committed to each other that to even for a moment to consider the prospect of a divorce seems totally ludicrous and simply an unwelcome negative concept that should be immediately dispensed with.

The fact remains however, that divorce is a fact of life and one that has affected many couples who never for a moment considered that their marriage could ever possibly be rocked by adversity.

It shouldn't be automatically assumed that just because a prenup has been created, that either party intends or thinks that the marriage will not last. On the contrary, a prenup agreement should be seen as a necessary preparatory step to getting married, and one that will hopefully never need to be called upon at any time in the future.

Proposing a marriage can often create its own set of problems. Generally a lot of thought and preparation will go into the process. By comparison, the proposing of a prenup agreement doesn't need to be anywhere nearly as difficult or delicate. When a prospective wife knows that you are serious enough to make preparations to secure the financial stability of the marriage (including provisions that she would directly

benefit from), then the whole process of discussion around getting a prenup becomes a lot simpler. I would suggest that sharing this PDF report with your prospective wife could be a great way of introducing the concept and benefits of having a Thai prenup agreement created. As mentioned earlier, a marriage in which solid financial provisions have been made is a marriage that is built on a solid foundation and as such is one which is more likely to prevail over time. The argument for having a prenup is overwhelmingly stronger than simply getting married without having made any financial provisions in the unforeseen event that the marriage is affected by divorce.

What to do next - Getting your own Thai prenup agreement

After reading this report I would hope that you would be in a much better position to more clearly understand the various aspects of getting a Thai prenuptial agreement created.

However, you might still have some specific questions remaining which you'd like to get answered. In that regard I'd like to invite you to ask any questions you might have, and also to have a confidential free chat about getting your own Thai prenup. In that regard I can offer you a free phone consultation (via Thai mobile network) or via a Skype call. These calls generally go for 10 to 15 minutes and are in strict confidence with no charge applying. I am a Thai lawyer fluent in English and Thai which means you can have a meaningful conversation yourself, and/or include your Thai wife who I'd be happy to speak to either during our call or via a separate conversation.

If you refer back to our website at <https://diamondrussell.com/thai-prenups-online/> you'll see the relevant buttons for "Getting Started" and for "Getting a Callback" which allows us to make a call back to any Thai mobile number within a couple of hours.

I thank you for taking the time to download and read this PDF report which I hope you have found useful.

I would welcome the honor and privilege of being of service to you in due course and wish you every success in your marriage.

Yours Sincerely,

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