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Cross-Border Wealth and Marital Planning: FAQs on Prenups in Japan

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Introduction¹

Prenuptial agreements are a familiar tool in many countries for couples who wish to clarify financial arrangements before marriage. In Japan, however, they remain relatively uncommon and are sometimes misunderstood. For international couples, especially those with significant assets in multiple jurisdictions, questions often arise regarding how such agreements are treated under Japanese law.

This FAQ is designed to address the most common concerns raised by non-Japanese clients considering a prenup in Japan. It covers the legal validity of prenuptial agreements, their enforceability by Japanese courts, procedural requirements, and cultural perceptions.

1. Is a prenuptial agreement legally enforceable in Japan?

Yes. Under the Japanese Civil Code, spouses may agree before marriage on a special property regime that differs from the statutory community of property system. Such an agreement can determine in advance whether certain assets are to be treated as separate property or as marital property. If validly executed before the marriage is registered, the agreement will generally be respected between the spouses.

¹ This communication is provided as a service to our clients and friends and is for informational purposes only. It is not intended to create an attorney-client relationship or constitute an advertisement, a solicitation, or professional advice as to any particular situation.

2. Can Japanese courts override a prenup?

Japanese courts generally respect the intentions of the parties and interpret and enforce a prenuptial agreement according to its wording. That said, the court retain discretion to review the fairness of prenuptial agreements, especially at the time of divorce. Even if a contract has been properly executed, provisions that are manifestly one-sided (for example, a complete waiver of spousal support leaving one party in financial hardship) may be disregarded or adjusted by the court.

3. Do we need to notarize or register a prenup in Japan?

Under Japanese law, a prenuptial agreement must be executed prior to the marriage registration in order to be valid. However, there is no requirement for notarization or court registration for the agreement to be binding between the parties.

That said, if spouses wish the agreement to be effective against third parties (for example, creditors), it must be registered at the Legal Affairs Bureau (*Homukyoku*). In practice, most international couples preparing a prenup in Japan do not proceed with such registration, since their main concern is enforceability between themselves rather than vis-à-vis outsiders.

4. When should the prenup be signed in relation to marriage registration?

Under Japanese law, a prenuptial agreement must be executed before the marriage is registered in order to be valid.² If the agreement is signed after marriage registration, it will not be recognized as a binding marital property arrangement. For this reason, international couples are advised to begin preparing at least two to three months before the intended marriage date. This allows sufficient time for drafting, review, translation if necessary, and execution. Careful timing is critical because once the marriage is registered, the couple is generally bound by the statutory marital property system, and modifications are strictly limited.

5. Does the agreement have to be in Japanese, or can it be in English?

Japanese law does not require a prenuptial agreement to be in Japanese. An agreement written in English, or any other language, may be valid so long as the parties clearly understand its contents and it is executed in accordance with Japanese legal requirements. That said, in practice, it is advisable to prepare a Japanese translation (even as a reference

² See, Article 755 of the Civil Code. Under this article, a prenuptial agreement must be executed prior to the registration of marriage. However, this requirement has been criticized as lacking a sound rationale, and there are expectations that the provision may be amended in the future.

copy) if one spouse is Japanese. Courts place weight on whether both parties truly understood the agreement at the time of signing. Having a bilingual document also reduces the risk of future challenges based on alleged misunderstanding. Documentation showing that both spouses reviewed and consented to the terms is an important safeguard for enforceability.

6. Do both spouses need separate lawyers?

Unlike in some common law jurisdictions, Japanese law does not require each party to have independent legal counsel for a prenuptial agreement to be valid.

However, from an international perspective, independent legal advice is often recommended. In some jurisdictions, courts may give greater weight to a prenup if each spouse had separate counsel, as this reduces the risk of later claims of undue influence or lack of informed consent. Therefore, couples should carefully consider whether separate counsel would better protect the enforceability of their agreement in other jurisdictions where they may later seek recognition.

7. What kinds of assets can be excluded from marital property?

Under Japanese law, in principle, couples are free to agree in advance that certain assets will remain separate property and will not be subject to division upon divorce. Common categories include:

- Premarital assets: property owned before the marriage.
- Inheritance and gifts received by one spouse individually during the marriage.
- Specified financial accounts, real estate, or investments that the parties agree to treat as separate.

Without a prenup, Japanese courts generally presume that property acquired through the couple's joint efforts during marriage constitutes marital property and is subject to division. By contrast, a prenup allows couples to customize this regime by explicitly classifying assets as separate or joint, thereby reducing uncertainty in the event of divorce.

8. Can we include provisions about spousal support and child custody?

Spousal support:

Yes, a prenup may include provisions on whether and to what extent spousal support will be paid after separation or divorce. For example, the parties may agree on a lump sum, monthly payments, or waive support. However, if the agreed terms would leave one spouse in extreme financial hardship, a court may disregard or adjust them on the grounds of fairness.

and public policy.

Child custody:

This is more limited. Japanese law provides that custody is determined by the family court at the time of divorce, based on the best interests of the child. Accordingly, a prenup cannot bind the court's decision on custody. At most, couples may record a non-binding understanding (e.g., to discuss joint custody if legally permitted, or to cooperate on visitation), but such clauses are considered aspirational and do not carry legal force in Japan.

10. If we marry overseas, will a prenup still be valid in Japan?

Yes, in principle. If a couple marries overseas and later files a notification with the Japanese authorities, the marriage is recognized in Japan. A prenuptial agreement executed before the marriage can also be valid in Japan, provided that it complies with Japanese legal requirements—most importantly, that it was signed prior to marriage registration and does not violate Japanese public policy.³

However, Japanese courts will not automatically enforce a foreign-style prenup without scrutiny. For example, agreements prepared solely under U.S. or European templates may contain provisions (such as broad waivers of support) that a Japanese court could reject. To maximize enforceability, international couples should adapt their agreement to Japanese standards, even if their marriage is registered abroad.

11. How long does the process usually take?

The drafting and execution of a prenuptial agreement in Japan generally takes several weeks, provided that both parties promptly review drafts and give clear instructions. This timeframe includes:

1. Initial drafting based on the couple's intentions and asset structure.
2. Review and negotiation of specific provisions, such as the treatment of premarital assets, business interests, or spousal support.
3. Finalization and execution of the agreement before marriage registration.

However, in cases involving complex assets across multiple jurisdictions, or when translations and independent legal reviews are required, the process may extend to a couple of months or longer. To avoid last-minute issues, couples are strongly advised to begin preparations at least two to three months before the intended marriage date.

³ See, Article 755 of the Civil Code.

12. Is discussing a prenup considered culturally inappropriate in Japan?

While prenuptial agreements are common in many Western countries, they remain relatively uncommon in Japan. For some Japanese families, raising the subject may still be perceived as implying distrust or anticipating divorce. This cultural perception can make discussions emotionally sensitive.

That said, awareness is gradually changing, especially among international couples and high-net-worth individuals with global assets. Increasingly, a prenup is seen not as a sign of mistrust, but as a practical financial planning tool that helps avoid uncertainty and potential disputes in the future.

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