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Global Wealth and Marital Harmony: Navigating Prenuptial Agreements in Japan

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I. Introduction¹

The rise of international marriages in Japan has led to increasing awareness and interest in prenuptial agreements. According to the Ministry of Health, Labour, and Welfare (MHLW), international marriages accounted for approximately 3% to 5% of all marriages in Japan in recent years,² reflecting a growing trend of cross-border unions. Despite this trend, prenuptial agreements remain relatively uncommon in Japan. However, for high-net-worth individuals (HNWIs)—particularly those with global assets and complex financial portfolios—prenuptial agreements serve as an indispensable tool. They provide a structured approach to protecting personal wealth, safeguarding family interests, and clarifying financial arrangements between spouses. This document provides an overview of key considerations, challenges, and provisions for crafting effective prenuptial agreements under Japanese law, with a particular focus on international couples.

II. Characteristics of Prenuptial Agreements in Japan

A prenuptial agreement, often referred to as a “prenup,” is a legal contract entered into by two individuals prior to their marriage. This agreement outlines the rights, responsibilities, and expectations of each party concerning their assets, liabilities, and other financial matters

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² Statistics by MHLW, available at <https://www.mhlw.go.jp/toukei/saikin/hw/jinkou/suii09/marr2.html>

during the marriage, and in the event of separation or divorce.

While prenuptial agreements are common in many countries, their enforceability and treatment vary between jurisdictions.

In Japan, prenuptial agreements can be binding, but any such agreements must adhere to Japan's legal standards, including the principles of public order and morality (公序良俗).³ Japanese courts carefully scrutinize prenuptial agreements to ensure they are fair, equitable, and not overly advantageous to one party at the expense of the other. Consequently, crafting an enforceable prenuptial agreement in Japan often requires adapting international practices to fit the local legal framework.

Moreover, Japanese Civil Code requires that prenuptial agreements be executed prior to the registration of marriage.⁴ Therefore, international couples planning to enter into a prenuptial agreement should begin preparations at least two to three months before the intended marriage date. This timeline allows sufficient time for drafting, negotiations, and, if necessary, notarization of the agreement.

III. Common Provisions in a Japanese Prenuptial Agreement⁵

1. Classification of Property (Separate vs. Joint Property)

One of the most critical components of a prenuptial agreement in Japan is the clear distinction between separate and joint property.

- **Separate Property:** This typically includes assets owned by each party before the marriage, as well as assets acquired individually during the marriage through inheritance or gifts. In a prenuptial agreement, parties often explicitly define what constitutes separate property to avoid disputes during property division.
- **Joint Property:** This generally refers to assets acquired during the marriage through the combined efforts or income of both spouses. Without a prenuptial agreement, Japanese law generally presumes that marital property is subject to division upon divorce. A prenuptial agreement allows couples to customize this standard by specifying which assets will be treated as joint or separate property.

2. Spousal Support Arrangements

³ See, e.g., The Newly Annotated Civil Code (21): Relatives (1) – General Provisions, Formation, and Effects of Marriage, edited by Michio Aoyama et al., at p. 405.

⁴ Article 755 of the Civil Code.

⁵ For specific examples of contractual clauses, see, e.g., Q&A Guide to Utilizing Notarized Deeds, by Akira Oshima, at p. 227.

A prenuptial agreement can specify whether and to what extent spousal support will be provided during and after the marriage. Common provisions include:

- Agreed monthly or lump-sum payments in case of separation or divorce.
- Conditions under which spousal support may be modified (e.g., if one party breaches the agreement).

3. Handling Business Assets and Stocks

For entrepreneurs, investors, or those with substantial business holdings, the agreement can outline:

- How business assets and ownership stakes (e.g., shares in a family company) will be treated during the marriage and in the event of divorce.
- Restrictions on the transfer or division of shares to prevent dilution or unwanted involvement in the business.

4. Post-Separation Financial Support and Child Support

For couples with children or those planning to have children, provisions regarding post-separation financial support are often included:

- **Post-Separation Living Expenses:** Determining how one party may support the other after separation, especially if one spouse sacrifices career opportunities to care for children or manage the household.
- **Child Support:** Outlining the method of calculating and paying child support, including adjustments for education costs, healthcare, and other needs.

IV. Practical Challenges

1. Judicial Review

Even when a prenuptial agreement is validly executed under Japanese law, its enforceability is not absolute. During divorce proceedings, Japanese courts have the authority to review and potentially override certain provisions in the agreement, particularly if they are deemed unfair or contrary to public order and morality.⁶

For example:

- Clauses that significantly disadvantage one party (e.g., complete waiver of spousal support) might be invalidated.
- Provisions allowing one party to unilaterally initiate divorce or creating conditions that

⁶ See, e.g., The Latest Article-by-Article Commentary on the Civil Code: Relative, Taichi Kajimura, at pp. 113–114.

make divorce disproportionately easier for one side are also likely to be deemed invalid.

- If the court determines that the circumstances at the time of enforcement differ significantly from those when the agreement was executed, it may adjust the terms to reflect the current situation.

This judicial discretion underscores the importance of crafting agreements that are balanced, reasonable, and mindful of evolving circumstances. Clear documentation of the parties' understanding and agreement at the time of signing can help strengthen enforceability.⁷

2. Cultural Perceptions in Japan

In Japan, at present, prenuptial agreements remain relatively uncommon compared to countries such as the United States or European nations. Discussing a prenuptial agreement may sometimes be perceived as implying a lack of trust or an expectation of divorce, making such conversations emotionally challenging for couples in Japan.

V. Key Considerations for Non-Japanese HNWI

1. International Elements

Non-Japanese HNWI often have assets spanning multiple jurisdictions. To ensure that the prenuptial agreement is effective globally, careful attention must be paid to the following:

- **Recognition Across Jurisdictions:**

The agreement should ideally be designed to align with the laws of both Japan and the individual's home country (or any other jurisdiction where enforcement may be sought). This may involve adapting the agreement to meet differing requirements, such as notarization, financial disclosures, or fairness assessments. It is recommended to engage legal advisors from both Japan and the relevant foreign jurisdiction(s) to harmonize the terms of the agreement and ensure compliance with the laws of all involved countries.

- **Conflict of Laws:**

The governing law of the prenuptial agreement must be explicitly stated to prevent disputes about which country's laws apply. For example, a Japanese court may refuse to enforce a provision that violates Japanese public policy, even if the agreement is valid under another country's law.

⁷ If one spouse is Japanese and does not fully understand English, it is advisable to prepare a Japanese translation for reference and retain evidence that the spouse has read and understood it.

2. Complex Financial Structures

Non-Japanese HNWIs often possess diverse and intricate financial portfolios, including international real estate, foreign bank accounts, investments, and business holdings. Addressing these assets in a prenuptial agreement requires a tailored approach:

- **Classification of Assets:**

Clearly define which assets will remain separate property and which, if any, will become joint property during the marriage. This is particularly important for assets like offshore trusts or investment vehicles that may have legal or tax implications in multiple jurisdictions.

- **Future Modifications:**

Include provisions that allow for future review or adjustment of the agreement to account for changes in financial circumstances, legal environments, or tax laws across jurisdictions.⁸

VI. Conclusion

Prenuptial agreements are a viable and increasingly valuable tool for couples in Japan, particularly for those with substantial assets or complex financial arrangements. While Japanese law recognizes the validity of such agreements, ensuring their enforceability requires careful adherence to procedural requirements and a clear understanding of local legal principles.

For non-Japanese high-net-worth individuals, the complexities of cross-border assets, differing legal systems, and cultural considerations make professional guidance essential. By taking the time to establish a well-structured prenuptial agreement, couples can achieve several important objectives:

- **Protecting Long-Term Financial Interests:** Clearly delineating individual and shared assets ensures the preservation of wealth while minimizing financial disputes in the future.
- **Fostering Harmonious Family Relationships:** A thoughtfully crafted agreement can help avoid potential conflicts, not only between spouses but also among extended family members, particularly in cases involving inheritance or business succession.
- **Enhancing Marital Stability:** Open communication and mutual understanding

⁸ Article 758 of the Civil Code stipulates that a married couple's property arrangements cannot be altered after the registration of their marriage. Accordingly, any future adjustments must be made in a manner that does not conflict with this provision.

during the drafting process can strengthen trust.

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