



## Why More People are Considering a ‘Prenup’ as a Wise Investment

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Between a global pandemic and ongoing economic upsets, most business owners and investors have been busy safeguarding and future-proofing their assets and investments.

Yet, despite the endless hours of strategy, planning and financials, few have adequately invested the time to ensure that in the event of a divorce, that their accumulated assets and wealth will be protected for the future.

Of course, nobody ‘ties the knot’ with anything other than expectations of a rosy future, but time and experience has shown that most would have benefited from planning ahead for this difficult reality. In the same way that the legal profession is heavily involved in ensuring that corporate rights of ownership will be lawfully respected, your personal assets and what you plan to do with them should also be respected, which is why a solid, prenuptial agreement – a ‘prenup’ can be a wise investment early on.

For many, it’s a natural part of wealth protection and succession planning. Crucially, it can assist in ensuring business continuity and reassurance, particularly where shareholdings are involved.

In the last 20 to 30 years there has been a sea change in the approach of the UK courts to the use of prenuptial agreements to determine dissolution of assets on separation. Traditionally, these were seen as for the rich and famous. However, in recent years, the UK courts have begun to recognise their merit in resolving disputes.

Following the outcome of a significant Supreme Court Case in 2020 (*Radmacher v Granatino*), it’s now established that UK courts will uphold a prenup entered into by both parties, as long as it is formulated in the correct and proper manner, and that the court will decide what is unfair.

The Supreme Court set out a checklist in this case which assists the courts in evidencing “fairness” to held ensure it is upheld. For example, the agreement

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must not attempt to limit children's rights to financial provision, each party must disclose their financial positions before signing and have independent legal advice. There should be no evidence of duress or undue influence and the terms are not deemed to be substantively unfair.

Though the latter is more difficult to define, a solid, well-advised and measured prenup will always be more difficult to set aside and there are many areas to be considered, for example, the length of marriage and the assets involved, arrangements for children now and in the future, the type of assets involved and plans for the future.

So, whether you are tying the knot, or have tied it already, marriage, romance and being pragmatic can all be aligned as part of a pre- or post-nuptial agreement to protect all parties, your family and business – leaving you free to focus on living your best life with less to worry about.

#### Guidance:

If you require further information about anything covered in this briefing, please contact **Rachael McKee** or your usual contact at the firm on **+44 (0)28 9099 8207**. This publication is not designed to provide legal or other advice and does not deal with every important topic or cover every aspect of the topics with which it deals. Publication date: February 2023.



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