

# ASK GSC

STALA CHARALAMBOUS, IS A PARTNER AT GSC SOLICITORS WHO SPECIALISES IN FAMILY LAW. HERE, SHE ANSWERS SOME OF YOUR QUESTIONS...

**Q** *I have built a successful family business and my son will inherit a substantial amount. He plans to marry and live in London. Is there anything he can do before he marries to protect our business and his assets if the marriage turns sour?*

**A** It is hoped your son will have a long and happy marriage, however, it is advisable to put precautions in place should the relationship break down. Steps can be taken to safeguard your son's financial position and to give a peace of mind.

A couple can have an agreement setting out how the financial matters will be dealt with on divorce. Such an agreement entered into before a marriage takes place, is known as a Prenuptial Agreement, Prenup or Premarital Agreement.

#### **Content of a Prenup**

These agreements can include clauses that deal with which country's law will govern the agreement, inheritance, businesses, loans (including from family members), heirlooms, property and other assets, bank accounts and pets.

Having a Prenup will provide evidence of:

- How the parties would like to deal with their financial matters during the marriage and in the event of a separation, divorce or dissolution of a civil partnership;
- What was brought into the marriage and what property is to be considered as Non-Matrimonial Assets by the parties, including any existing businesses that should be 'ring fenced'



and not 'touched' by the other party in the event of a divorce;

- The information of any debts of each party and how these will be treated by the parties;

#### **Enforcement**

Prenups are not automatically enforced in England and Wales. Having one will

not prevent a spouse from applying to court for a financial remedy on divorce. However, since the case of *Radmacher v Granatino* [2010] UKSC 42 more weight is being given to Prenuptial Agreements by the Courts.

The Law Commission Report 2014 published on 26 February 2016,

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discussed what would be required for a Qualifying Nuptial Agreement.

The agreement should be:

- Contractually valid; In writing, freely entered into, without any pressure;
- Validly executed as a deed;
- Made and signed more than 28 days before the wedding ceremony;

Before signing the agreement, both parties should have had full material financial disclosure from each other and had sufficient time to consider and seek independent legal advice in respect of the contents of the agreement.

**International considerations**

A 'Mirror Agreement' may be required if the couple are either expecting to receive an inheritance from abroad or to live in another country. Lawyers in the relevant countries will liaise to ensure that agreements prepared reflect the couple's wishes and are recognised in the relevant country.

When considering the financial matters on divorce, a judge will take into account the welfare of the children, whether there is a prenup and factors within section 25 Matrimonial Causes Act 1973. These include:

- The parties resources (income and capital)
- The length of the marriage
- Ages of the parties
- Income earning capacity of the parties
- The financial needs of the parties
- The welfare and any illness/disabilities of the parties that could affect future earning capacity.

**Q** *My ex-wife in England is refusing to let me see my young child. How can I see him?*

**A** **We're sorry to hear about your situation. First send the Mother a written request to see your child. If she does not agree, attend Mediation with an independent Mediator to try and reach an agreement with the Mother. If that fails, an application can be made to court for an order to see the child under The Children Act 1979, Section 8.**

**Before making a decision, the judge's considerations will include: what is in the child's best interests; the wishes and feelings of the child depending on his/her age and level of understanding and a court welfare officer's report. It will also be important to show the quality of your relationship with the child.**

**Q** *We live in the UK. I want to visit my parents abroad with our son. My husband is refusing permission. There are no court orders. Can I go?*

**A** **No. Either the permission of the other parent with parental responsibility or the judge is required before you can remove the child from the country he lives in. If your son is taken away without permission, this will be abduction, which is a criminal offence.**

**A court application for a Specific Issue Order giving permission can be made under The Children Act 1979, Section 8. This also applies if a person wants to relocate with a child to another country or area.**



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