

## **PRE-NUPTIAL AGREEMENTS IN THE PHILIPPINES**

Atty. Maria Clara B. Tankeh-Asuncion, Esq.

### **I. Legal Background**

Under Philippine law, marriage is an inviolable social institution whose nature, consequences and incidents are governed by law in the Family Code of the Philippines, otherwise known as Executive Order No. 209. This took effect on 3 August 1988 and repealed the pertinent provisions of the Civil Code on Marriage (Republic Act 386) which became effective on 30 August 1950.

As a rule, marriage is governed by rules established by law and cannot be made inoperative by stipulation of the parties. Divorce itself is not recognized in the Philippines (although Nullity proceedings are common) but there are provisions for the division of matrimonial property. The parties may enter into a pre-nuptial agreement to fix their property relations during the marriage within the limits provided by the Family Code (Article 1, Family Code). Pre-nuptial agreements are otherwise known as “marriage settlements” under the Family Code. They are also known as “ante-nuptial contracts”.

When the parties, as future spouses, enter into a pre-nuptial agreement, it is the binding law between them and the Family Code is supplementary. In the absence of a pre-nuptial agreement, it is only then that the provisions of the law and local custom apply. In short, the pre-nuptial agreement takes precedence in the determination of the property relations between the husband and the wife. Therefore, the regime of absolute community of property provided by law in the Family Code is subsidiary to the will of the future spouses as embodied in their pre-nuptial agreement.

A pre-nuptial agreement is conditional upon the marriage of the parties and becomes effective from the moment of celebration of the marriage. Therefore, it is an accessory to the marriage and governed by the same principle of invariability once entered into by the parties. In the Philippines, it is still uncommon amongst the general population to enter into a pre-nuptial agreement prior to marriage and it is more usual to be governed by the regime of absolute community of property as provided by law.

Pre-nuptial agreements are generally entered into where there is a significant age disparity between the parties, where there is a wide difference between the wealth or indebtedness between the parties, and where one party has been married before and there is a desire to protect the children of the former marriage.

Like any ordinary contract, the pre-nuptial agreement must be entered into voluntarily between the future spouses. It becomes binding between the husband and wife and cannot be changed while the marriage is existing unless there is an application to the Court to set aside the agreement on grounds similar to that of a petition for separation of property such as in case of abandonment of the spouse without just cause or failure to comply with his or her obligations to the family. The contract can be set aside on the grounds of lack of consent,

fraud, coercion, mistake, undue influence or bad faith. Thus, the law provides the grounds for a judicial separation of property. A pre-nuptial agreement may only be altered after the dissolution of marriage provided it will not prejudice creditors of either spouse whose share would be reduced as a consequence of the change of property regime.

## **II. Formalities**

In order to be valid between the parties, a pre-nuptial agreement should be in writing, but in order to be effective against third persons, it must be in a public instrument, that is, notarized, by a duly appointed notary public, and recorded in the Registry of Property for the Protection of Creditors and in the local civil registry. Any modification to the pre-nuptial agreement must follow the same formality and since it is an accessory to the marriage, it must be executed before the celebration of marriage.

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To avoid any type of fraud, mistake, coercion, undue influence, misrepresentation or concealment of assets which can be a ground to nullify the pre-nuptial agreement, a full disclosure statement of all assets and monies is advisable.

## **III. Contents of the Agreement**

In a pre-nuptial agreement, all assets and properties along with the value of each asset should be included. It may also include a provision that deals with the apportionment of wages, commissions, inherited property, life insurance benefits, pension plans, medical or health insurance benefits, educational plans, administration of property, and payment of taxes. Likewise, it is desirable to include a mediation or arbitration clause to provide alternative ways of resolving disputes without going to court. Further, in the event of litigation, a provision on venue in case an annulment action is commenced should be included.

## **IV. Void Agreements**

If one stipulation in the pre-nuptial agreement is void, it does not nullify the entire agreement which may contain several stipulations. As a general rule, the future spouses are free to stipulate anything subject to the limitations of freedom to contract, i.e., the stipulations of contracts should not be contrary to "law, morals, good customs, public order or public policy." In general stipulations in a pre-nuptial agreement which would be void include, those contrary to the nature and purpose of marriage, to the liberty and rights of individuals, or in general, to morals and good customs; those which violate legal provisions of a prohibitory or mandatory character, those which are derogatory to the authority of the spouses in the family, or in general and those contrary to the public order or public policy. In the case of a void pre-nuptial agreement, the law provides that the parties be governed by the regime of absolute community of property.

## **VI. Who can contract?**

A minor, under 21 years of age but at least 18 years of age, who may contract marriage may also execute a pre-nuptial agreement provided the persons authorized to give parental consent to the marriage are made a party to the agreement by giving their authority. In the event of a party being disabled, there are provisions which allow for the appointment of a guardian to protect a party's interests.

## **VII. Governing Law**

Where the spouses are both Filipino citizens or when only one is a Filipino citizen and the other is a foreigner, their property relations shall be governed, firstly, by their pre-nuptial agreement where they may stipulate what laws shall govern their property relations. If there is no such stipulation, the laws of the Philippines shall apply regardless of where they live and where the marriage is celebrated. The laws of the Philippines, however, will not apply with respect to property located outside the Philippines, whether the pre-nuptial agreement is entered into in the Philippines or in the country where the property is located. Article 16 of the Civil Code provides: "Real property as well as personal property is subject to the law of the country where it is situated." In short, the location of the property determines the jurisdiction to be applied as to the extrinsic and intrinsic validity of the contract.

## **Conclusion**

The law on pre-nuptial agreements in the Philippines places a premium on the liberty of the future spouses' ability to agree on their property relations within the limits allowed by law. The philosophy would seem to be that, since marriage is a special contract of permanent union, it is the parties who are in the best position to agree on how to make their union last. Prenuptial agreements are seen, contrary to the UK and many other jurisdictions, as a means to keep the parties together, not a convenient mechanism for division of property once the parties are apart.