

International Prenuptial Agreements Part VII:

Prenuptial Agreements in Japan - the Devil's in the Details

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The legal systems of many nations have laws that regulate the formation and enforcement of international prenuptial agreements. Japan is no exception. However, Japan's laws on the subject are particularly detailed and organized. This distinguishes Japan from many other countries, such as the United States (See Part II of this series), where the laws on international prenuptial agreements remain generalized and relatively underdeveloped. It should be mentioned however, that Japan's legal system relies primarily on legislation rather than case decisions rather than case decisions found in the U.S.A. and other common law jurisdictions. Couples who plan on signing an agreement in another country but think they may get divorced in Japan should seek legal counsel who is familiar with the complexity of Japan's laws and the legal systems of both countries. If a couple decides to sign an agreement in Thailand and get divorced in Japan, for example, they should consult qualified prenuptial and [Thailand divorce lawyers](#).

Conflict of Law

Japan has extremely detailed laws that govern the conflict of law issues of international prenuptial agreements (See Part I and II for discussion of Conflict of Law). A conflict of law exists where there are two or more countries that may have an interest in the case or jurisdiction to decide a case and they have conflicting laws to apply to the case. International prenuptial agreements are often plagued by conflict of law issues. Typically there are at least two interested countries: the country in which the couple signed the agreement and the country who is reviewing the agreement. Since the laws governing prenuptial agreements often reflect the countries' unique family law concerns, the laws among countries differ significantly. Japan's Private International Law: Act on General Rules of Application of Laws (referred to hereafter as "the Act") controls the international conflict of law issues within Japanese courts. The Act has two sections addressing international prenuptial agreements directly. According to Article 25 of the Act, the court must apply the laws of the couple's shared nationality. If the couple does not have the same nationality, the court will apply the law of the country where the couple has its shared residence. Lastly, if there is no shared residence, then the court will apply the laws of the country which is most closely connected to the couple. To ensure that the agreement follows the laws of the applicable country, couples should consult with an attorney whom is experienced in Japan's conflict of law principles.

Choice of Law

Japan also has detailed laws that control the choice of law provisions in international prenuptial agreements. A choice of law clause is a provision that designates which country's law the contracting parties want applied to their agreement. Couples often include choice of

law clauses in their prenuptial agreements. Japan has strict laws on the substance of couple's choice of law clause. According to Article 26 of the Act, a couple's choice of law must be only one of three countries. If the couple chooses a different law than one of these three, the court will refuse to apply the couple's choice of law clause. Couples who wish to include a choice of law clause should consult with legal counsel that has expertise in choice of law issues and the intricacies of Japan's law.

The topic of international prenuptial agreements is riddled with potentially fatal legal land mines. If couples do not follow the right country's laws, their prenuptial agreement may be found invalid and unenforceable by courts around the world. Couples who want to get married and sign a prenuptial agreement abroad should hire attorneys who are competent in both conflict of law and choice of law issues. This is especially true for couples who believe there is a chance they might get divorced in Japan. It is imperative for these couples that they seek legal counsel with experience in both Japan's and the foreign legal system's international prenuptial agreement laws.

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