

# International Prenuptial Agreements Part V:

## Prenuptial Agreements in Thailand

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Thailand has strict laws that govern the enforcement of prenuptial agreements. Couples who plan on signing a prenuptial agreement in Thailand should be cautious. A foreign court may apply [Thailand law](#) to a prenuptial agreement made in Thailand. Many countries, including some jurisdictions of the United States and Asia, will apply the laws of the country in which the couple signed their prenuptial agreement. This can invalidate a couple's prenuptial agreement in the event that the couple did not comply with the appropriate country's laws. For many couples this comes as quite a shock. Therefore, couples who sign a prenuptial agreement in Thailand should consider complying with Thailand's procedural and substantive laws.

The situation is more complex for foreign couples who wish to enforce their agreement within Thailand. If a Thai court finds that a prenuptial agreement has a conflict of law, the court may end up applying another country's laws. Due to the complexity of prenuptial agreements in Thailand, couples should seek legal advice from [Thailand divorce lawyers](#) who have practical experience with both the Thailand's procedural and substantive laws as well as Thailand's conflict of law principles.

### Procedural Requirements

Thailand has specific procedural requirements that must be met to form a valid prenuptial agreement. Unlike countries such as the United States where the prenuptial agreement is treated as a private agreement, the Thai government is actually involved in prenuptial agreements. Thailand requires that couples register their prenuptial agreement with the government's Marriage Registrar prior to marriage. (Chapter IV, Section 1467). Thailand has an additional requirement that the prenuptial agreement be signed by both parties and two witnesses. (Chapter IV, 1466). If the couple fails to comply with either requirement, the agreement is void and is not enforceable in Thailand. Foreign courts which apply Thai law to the couple's prenuptial agreement will also find the prenuptial agreement is void and refuse to enforce it. Couples who wish to avoid this should consult with an attorney familiar with the Thailand's procedural requirements.

### Substantive Requirements

Thailand has substantive restrictions on what may be included within a couple's prenuptial agreement. According to Title III Section 1598 of the Thai Civil Code "the right to maintenance cannot be renounced, attached, or transferred and is not subject to execution." If a couple attempts to waive a spouse's right to maintenance, the provision or even the entire prenuptial agreement can be unenforceable. Furthermore, the Thai Civil Code has a general

requirement that a couple's prenuptial agreement cannot violate "public order or good morals" (see Chapter IV, Section 1465). If the court finds that a clause in the agreement is in violation, then the clause is void. Similarly, a couple is not allowed to contract in regards to the rights of third persons (See Chapter IV, Section 1468). If a clause in the agreement violates this rule, it is considered void.

### Conflict of Law

Thailand has its own conflict of law principles which govern prenuptial agreements. A conflict of law exists when there are two interested jurisdictions (usually different countries) that have conflicting laws for a given case. In 1938, Thailand passed the Act on Conflict of Law. The Act governs any conflict of law for a prenuptial agreement. According to Title V Section 25, the essential elements and effects of a prenuptial agreement are governed by the laws of the couple's common nationality. This section has important implications for a foreign couple's prenuptial agreement. A foreign couple who duly follows Thailand's procedural and substantive law may find themselves with an unenforceable agreement if they do not follow the applicable country's laws. In order to ensure that a foreign couple's prenuptial agreement will be valid in a Thai court, the couple should consider Thailand's conflict of law principles. Foreign couples who believe there is a possibility they may get divorced within Thailand should consult with legal counsel who is well-versed in Thailand's conflict of law principles.

### Conclusion

As seen above, the application of Thai law to a couple's prenuptial agreement can have drastic consequences to a couple's agreement. Couples that sign a prenuptial agreement within Thailand should take care to follow Thai law.

### **Related Documents:**

[International Prenuptial Agreements Part I](#)

[International Prenuptial Agreements: Part II](#)

[International Prenuptial Agreements: Part III](#)

[International Prenuptial Agreements: Part IV](#)

[International Prenuptial Agreements: Part VI](#)

[International Prenuptial Agreements: Part VII](#)

[International Prenuptial Agreements: Part VIII](#)

[The Divorce Code of Thailand](#)

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