

International Table 2007

	Prenuptial Agreements	Capital
Australia	<p>Binding provided that certain provisions have been met.</p> <p>Can be set aside on various grounds.</p> <p>Mainly used in 2nd marriage and high asset cases.</p>	<p>Tendency for clean break provisions.</p> <p>Outcome discretionary and should be just and equitable.</p> <p>Court will take into account the parties' current assets, their contributions (both financial and non financial) to the marriage and their needs factors, such as age, length of marriage and earning capacity.</p>
Belgium	<p>Enforceable and commonly used. The most common is a separation of goods where each spouse retains everything in their own name, unless it is decided that they will jointly own an asset. If sole ownership cannot be proved, then the asset will be divided equally.</p> <p>Another method used, although less commonly, is the universal community regime whereby all assets are divided equally.</p> <p>It is possible to have a combination of the above, or a prenuptial agreement using the law of another jurisdiction.</p>	<p>If there is no prenuptial agreement, then the Community of property regime applies.</p> <p>There will be 50 / 50 division of the assets on divorce, and premarital and inherited assets are excluded.</p>
Cyprus	<p>Enforceable under contract, rather than family law</p>	<p>There is a rebuttable presumption that the spouse who is not the named owner of the capital acquired between date of marriage and separation owns 1/3 of it. This includes capital which was acquired before marriage, but with a view to the marriage taking place.</p> <p>Inheritance is excluded.</p>
France	<p>Provisions relating to the matrimonial regime of the parties are enforceable.</p> <p>Not in relation to capital and maintenance on divorce.</p>	<p>Community of property regime applies unless the parties have entered into a prenuptial agreement.</p> <p>50 / 50 division on divorce, if no prenuptial agreement states otherwise.</p> <p>Premarital assets and inheritance is excluded, except under the regime of complete community (which is very rare).</p>
Germany	<p>Generally enforceable, if made in notarised form.</p>	<p>Community of (property) acquisitions will be applied unless a notarised agreement has been entered into which states otherwise.</p> <p>The community of property regime excludes inheritance, premarital assets and certain gifts. Any increase in assets during the marriage is divided between the parties.</p>

<p>Italy</p>	<p>Prenuptial Agreements based on Italian law are not enforceable.</p> <p>However, Prenuptial Agreements entered into pursuant to foreign law which are valid under that law are enforceable in Italy.</p> <p>If Italian law is to apply to the division of assets, the prenuptial agreement would only be enforceable in Italy if 1) the Prenuptial Agreement is drafted pursuant to a law recognising its validity, and 2) one of the spouses is resident or a citizen of Italy at the time when the Prenuptial Agreement is drafted.</p>	<p>Community of property regime</p> <p>50:50 division upon divorce.</p> <p>Inherited/pre-marital assets are excluded.</p> <p>Divorce court cannot order lump sum/property transfer</p>
<p>Jersey</p>	<p>Courts will accept if no dispute, if dispute then Court will have regard to the precise terms of agreement, and circumstances at the time the agreement was completed. No definitive case.</p>	<p>Court follows England and Wales in performing the section 25 exercise, has regard to case law from England and Wales, but this is persuasive and not necessarily binding.</p> <p>No pension sharing/pension splitting provisions. Court has regard to notions of fairness, equality and proportionality.</p> <p>All assets considered, with allowances made depending on nature and extent of assets and their source, and needs of the parties; pre marital and inheritance may be excluded.</p>
<p>Latvia</p>	<p>Valid and enforceable, although may only deal with division of capital</p>	<p>Community of property regime.</p> <p>Pre-marital assets and inheritance are excluded.</p>
<p>Malta</p>	<p>Binding</p>	<p>Divorce is not legal in Malta. The options are annulment or judicial separation.</p> <p>Usually 50:50 division on separation which excludes pre-marital and inherited assets.</p>
<p>New Zealand</p>	<p>Prenuptial agreements which contract out of the statutory regime for division of property are common and enforceable, subject to compliance with the relevant law.</p>	<p>Equal division of property acquired during the marriage, premarital property and inheritance will generally be excluded. It is possible to award compensation for a party who is economically disadvantaged by, for example, giving up their career.</p> <p>The focus is on a clean break if possible.</p> <p>There is no distinction between married and unmarried couples in this regard.</p>

Portugal	<p>Prenuptials are enforceable.</p> <p>There are some limitations on content, including in relation to maintenance.</p> <p>The parties can chose the legal regime governing their marriage</p>	<p>Community of acquired property regime if there is no premarital agreement to the contrary.</p> <p>50:50 division of assets upon divorce although premarital and inherited assets are excluded.</p> <p>If one of the spouses is over 60 years old, then a separation of property regime will be used to avoid an equal division on divorce.</p>
Scotland	<p>Enforceable, although they can be altered by the court if the terms were not fair and reasonable at the time the agreement was entered into.</p>	<p>No community of property.</p> <p>The matrimonial property (which is property existing on the earlier of the date the parties separate or the date proceedings are issued) is divided equally, unless there are special circumstances where this will not be appropriate.</p> <p>Inheritance and gifts are excluded, as are premarital assets, except the family home.</p> <p>Capital may also be awarded based on the parties' present resources where there has been economic advantage or disadvantage due to the marriage, or to share the burden of the children – see also under spousal maintenance.</p> <p>A spouse cannot ask for financial orders to be made once the couple are divorced, except in <i>very</i> restricted circumstances.</p>
Slovakia	<p>Prenuptial agreements are null & void</p>	<p>Community of property regime</p> <p>Pre-marital assets and inheritance are excluded.</p>
Spain	<p>Valid and enforceable where they are not seriously detrimental to one of the parties or any children.</p>	<p>Community of property regime</p> <p>Different regimes apply in Catalonia/Balearics/ Navarre/ Aragon/Basque Country</p> <p>Matrimonial home will usually be allocated to parent with care of minor children</p> <p>Pre-marital assets and inheritance are excluded</p>
Switzerland	<p>Enforceable if they relate to an elected property regime.</p> <p>Limited enforceability if they relate to a future divorce and exclude child maintenance or pension sharing.</p>	<p>50:50 division on divorce of all community property which excludes premarital assets and inheritance.</p>
Turkey	<p>Binding provided that it is issued before a notary public and the regime application for asset protection is chosen clearly in the agreement.</p>	<p>In the case no agreement is executed by and between the parties, the properties obtained during marriage are divided equally.</p> <p>Pre-marital assets and inheritance are excluded.</p>

California	<p>Enforceable in the family court provided that certain formalities have been complied with, and that the agreement was signed freely and with disclosure of all assets and debts.</p> <p>Child support cannot be contracted, but there is the possibility of the waiver of spousal maintenance subject to review upon divorce.</p>	<p>All property acquired during marriage (community property) except through gift or inheritance is divided equally on divorce. The gift or inheritance goes to the person receiving it without offset.</p>
New York	<p>Enforceable, providing certain conditions are met.</p>	<p>The court will firstly identify the parties' property, which will then be classified as separate or marital. Separate property includes inheritance, pre marital assets, and legal compensation payments.</p> <p>The property will then be valued and an equitable distribution made of the marital property. The parties will keep their own separate property.</p>
South Africa	<p>An antenuptial contract which effectively separates their estates for the forthcoming marriage is enforceable.</p>	<p>Where the parties do not have an antenuptial contract, they are married in the community of property regime, that is, one joint estate.</p> <p>Where the parties do have an antenuptial contract, and were married before November 1984 the court has a discretion to order redistribution of the assets. If they were married after this date however, and have not expressly excluded the accrual system, they will be subject to it. This means that the parties will share equally in the growth of their respective estates during the marriage.</p> <p>If this system is excluded, the court has no discretion to interfere in the distribution of assets.</p>