

PRE-NUPTIAL AGREEMENT

Dated **this**

Is signed as a Deed by and between the Parties:

- XXX [name and address of first spouse]
- YYY [name and address of second spouse]

Whereas

1. XXX is and YYY is ... years of age.
2. XXX and YYY are expecting their first child in ... and are planning to marry in England in Presently they live together at
3. XXX and YYY love each other and are fully committed to their proposed marriage, which they hope and expect will last for as long as they both live.
4. Nevertheless, they recognise that it is possible that any marriage may break down. If that should happen to them, they are anxious to avoid any dispute about finances arising out of the breakdown. They regard the desirability of certainty in the event the marriage should break down as outweighing any apparent unfairness which might arise from giving effect to this Deed in the light of the circumstances as they might be at that time.
5. Accordingly they enter into this Deed of their own choice in order to regulate their financial affairs (so far as the law permits) in the event of a decree of divorce, nullity or judicial separation (each a „Divorce“).

And whereas

6. This Deed is made in contemplation of and is conditional upon the intended marriage of XXX and YYY in
7. XXX and YYY intend that this Deed shall, so far as possible, be legally binding upon **them**.
8. XXX and YYY have each received separate and independent legal advice from solicitor AAA and solicitor **BBB** respectively prior to the execution of this Deed.
9. XXX and YYY acknowledge and accept that this Deed is being entered into sufficiently in advance of their intended marriage for each of them to have had sufficient time for advice and reflection and that they have been in discussion regarding the terms of

Kommentiert [BS1]: Wird die Vereinbarung erst nach der Heirat geschlossen, heißt sie „Post-Nuptial Agreement“. Allerdings hat der „ärmere“ Ehepartner dann oft keine Motivation mehr, eine solche - für diesen nachteilige - Vereinbarung einzugehen..

Kommentiert [BS2]: Um später nicht angreifbar zu sein, sollten Pre-Nuptials mindestens einen Monat vor dem Hochzeitstermin unterschrieben sein, besser noch früher. Da die Erstellung eines Pre-Nuptial selbst bei optimaler Zuarbeit (Vermögensverzeichnis!) mindestens ein bis zwei Wochen dauert, sollten die Eheleute das Thema Ehevertrag in England frühzeitig angehen. Englische Familienrechtsanwälten raten dazu, den Prozess sechs Monate vor dem Hochzeitstermin zu starten.

Kommentiert [BS3]: Im Unterschied zu notariellen Eheverträgen in Deutschland sind englische Pre-Nuptials und Post-Nuptials für das Familiengericht später nicht bindend (siehe auch Ziffern 12 und 13). Das Gericht soll den Inhalt nicht ohne guten Grund ignorieren, es kann aber vom Inhalt des Pre-Nuptial abweichen oder das Pre-Nuptial auch vollständig für unwirksam erklären, insbesondere wenn die strengen Formvorschriften nicht eingehalten wurden oder wenn sich die Lebensumstände der Eheleute seit Abschluss erheblich verändert haben (Kinder, Krankheiten, Berufsunfähigkeit u.a.). Deshalb sollten Pre-Nuptials auch spätestens alle fünf Jahre überprüft und bei Bedarf angepasst werden. Pre-Nuptials sind mangels strenger Bindungswirkung also nach derzeitigem englischem Recht (Stand 2024) keine „echten Verträge“.

Kommentiert [BS4]: Jeder Partner muss sich von seinem eigenen Familienrechtsanwalt beraten lassen, sonst ist das Pre-Nuptial später angreifbar.

this Deed for sufficient time. They have each given full consideration to all the ramifications involved in signing this Deed.

10. XXX and YYY have each made the agreement contained in this Deed of their own free will, without undue influence or duress and without any promise or representation other than as set out in this Deed and on the basis of the terms set out in this Deed represent their entire agreement.

11. In so far as XXX and YYY have assets which are situated abroad, they intend that the terms of this Deed and not the local law shall be binding upon them as regards ownership.

12. XXX and YYY acknowledge and agree that each have been informed that under the Laws of the England and Wales it is not possible, as at the date of this Deed, to exclude the jurisdiction of the Court to make Orders pursuant to Matrimonial Causes Act 1973 but they hereby record that should their marriage come to an end for whatever reason and they fail to resolve their differences by amicable means in accordance with the provisions set out in this Deed, they will request the English Court to give full weight to the terms of this Deed and implement such terms while recognising that the Court may not be bound by them. If their marriage should be dissolved or annulled or a decree of separation pronounced by the Courts of a jurisdiction whose law gives full effect to Pre-Nuptial Agreements (including possibly at some future date England and Wales), they agree to invite the Court to take that course.

13. In the event that the law of England and Wales is changed so as to recognise the enforceability of Pre-Nuptial Agreements as qualifying actual agreements or otherwise, the parties hereby agree that this agreement should be subject to any such change in the law and agree promptly to take any and all steps as may be necessary to render this agreement enforceable under any such change in the law, but in the event of any omission to do so, this agreement will not be rendered invalid.

14. XXX and YYY acknowledge and accept that the terms of this Deed have been entered into by them in the hope and anticipation of having a child and potentially further children. They acknowledge and agree that (i) they will review the terms herein upon the fifth and tenth anniversary of the signing of this Deed. They further agree and acknowledge that in the event they do not, they nevertheless intend that this agreement shall remain binding upon them, in particular the part of this agreement which relates to their Separate Property, including their agreement as to the Family Estate; and (ii) the terms of this Deed shall no longer be binding upon them following the fifteenth anniversary of the signing of this Deed save for he declared and agreed intention of XXX and YYY to, if at all possible, preserve the land and property in the Family Estate for future generations as set out in paragraphs 19 and 20 below and this shall be the guiding principle of any settlement or order they seek and obtain whether by agreement, court order or otherwise in the event of a Divorce.

Kommentiert [BS5]: Internationale Paare / Familien mit Vermögen in verschiedenen Ländern sollten sich hierzu intensiv Gedanken machen und über die Optionen beraten lassen. Insbesondere ist zu prüfen, ob ein englisches Pre-Nup in diesen anderen Ländern wirksam ist oder ob man besser separate „Marriage Agreements“ nach den Regeln des jeweiligen Landes erstellt, was dann aber wiederum komplizierte Anwendungsabgrenzungen nötig macht. Das englische Pre-Nuptial muss aber jedenfalls das gesamte Weltvermögen beider Partner offenlegen (full financial disclosure).

Kommentiert [BS6]: Da englische Gerichte den Inhalt von Pre-Nuptials oft nicht anwenden, wenn sich seit Unterzeichnung die Lebensumstände massiv verändert haben, besteht die Kunst der Anwälte darin, künftige Entwicklungen möglichst vorwegzunehmen und für bestimmte Fallkonstellationen bereits im Voraus zu regeln, worauf die Parteien sich für diese Fallkonstellation geeinigt haben. Dies ist naturgemäß schwierig, auch weil die Partner die Auswirkungen bestimmter Umstände vorab nicht richtig einschätzen oder beurteilen können. Konkret anstehende Lebensveränderungen wie Kinder oder auch die Gründung eines Unternehmens kann und sollte man aber bereits aufnehmen und regeln, schon um dem Gericht später belegen zu können, dass die Partner diese Aspekte bereits bedacht hatten.

15. XXX and YYY are agreed that neither will cause or permit, publication in any media of the terms and effect of this agreement, nor any financial details and documents disclosed in relation to this Deed.

Kommentiert [BS7]: Eine solche Klausel ist natürlich vor allem für Prominente oder bekannte Unternehmensinhaber relevant.

16. XXX and YYY agree that in the event that there is a dispute as to the meaning of the terms of this Deed, they will attempt to resolve their disagreement in mediation in the first instance.

NOW THIS DEED WITNESSES

XXX and YYY Assets

17. XXX and YYY have fully and frankly disclosed to each other their means.

Kommentiert [BS8]: Ein Pre-Nuptial ist nur wirksam, wenn beide Partner ihre Vermögens- und Einkommensverhältnisse vollständig und detailliert offen gelegt haben. Das können und wollen viele meiner deutschen Mandanten (oder deren Eltern, die einen Familienbetrieb aufgebaut haben) nicht wahr haben. Diese Offenlegungspflicht geht vielen Deutschen gegen ihre „DNA“. Es führt aber kein Weg an diesem Vermögensverzeichnis vorbei. Es genügt etwa auch nicht eine Klausel wie „XXX hat Gesamtvermögen in Höhe von fünf Millionen Euro.“ Stattdessen müssen die einzelnen Konten, Depots, Immobilien usw. detailliert aufgelistet werden. Andernfalls ist im Ernstfall das Pre-Nuptial nichts wert.

17.1. XXX's present assets are summarised in Appendix A hereto. YYY is satisfied that XXX's financial position has been adequately set out in Appendix A for the purpose of receiving advice on this Deed. Appendix A.1. defines those assets that currently form part of XXX's interest in the XXX-Family Estate and which form XXX's Separate Property as defined below. Appendix A.2. defines XXX's other assets ("XXX Personal Assets") which for the purpose of this Deed do not fall within the definition of XXX Separate Property.

17.2. [entsprechendes Wording zu 17.1 in umgekehrter Richtung]

Kommentiert [BS9]: Diese Klausel ist das Kernstück eines englischen Pre-Nuptial Agreement. Mit diesem sog. „ringfencing“ will der reichere der beiden Partner bestimmte Vermögensbestandteile für den Fall einer späteren Scheidung aus dem hälftigen Vermögensausgleich (equal split) herausnehmen, also vor der Aufteilung verschonen. Ob und in welchem Umfang das möglich ist und vom Scheidungsgericht später akzeptiert wird, füllt viele Bände englischer Fachliteratur und ist Gegenstand tausender Scheidungsurteile zu Pre-Nuptials.

18. XXX and YYY have each acquired their present assets independently of and without contribution from the other. They each acknowledge that they have no claims over the other's present assets. In so far as either XXX or YYY have made gifts to each other they each acknowledge that they have no claim over the gifts they have made.

19. XXX understands that the great majority of XXX's assets derive from inheritance, in particular his legal interest in the land and property he owns in respect of the Family Estate.

Kommentiert [BS10]: Hiermit wird bekräftigt, dass und warum das „ringfencing of family property“ angemessen ist und vom Gericht als wirksam anerkannt werden soll.

20. XXX and YYY acknowledge and agree that the main purpose in entering this Deed is to preserve together and intact XXX's current and future interest in property, in particular the Family Estate, that has already or will be gifted or inherited by him from family members, chiefly his deceased grandparents and his parents, for future generations of the XXX family. XXX and YYY acknowledge and agree that, for the purposes of this Deed, the "Family Estate" consists of not only its present and future real and tangible property (including future land purchases), but also the present and future liquid assets, including cash and investments, supporting the continued ownership of the Family Estate or arising from rental and sales, including sales of development land, of portions of the estate, save for those assets set out in Appendix A.2. and designated "XXX Personal Assets", notwithstanding their origin.

21. XXX and YYY acknowledge and agree that they will leave each other substantial provision, as far as they are able to, in their wills as long as their marriage is subsisting at the time of their deaths and to their joint issue. In particular, XXX and YYY intend that XXX's assets, in particular regarding the Family Estate, will be preserved together and intact, as far as is possible, for inheritance by their joint issue, in particular their child anticipated in In the event of Divorce, XXX and YYY wish that any court order does not prejudice the carrying out of this intention.

Consideration

22. The consideration for this Deed is the mutual promises and agreements herein contained and the contemplated marriage of XXX and YYY.

Coming into Force

23. This deed shall come into force on XXX and YYY celebrating a valid ceremony of marriage within 12 months of this Deed providing always that should the marriage not be celebrated within 12 months of the execution of this Deed, this Deed shall not be deemed to be effective unless revived by a Supplemental Deed executed by XXX and YYY.

24. XXX's Separate Property

24.1. Appendix A.1, together with XXX's future interests in the Family Estate, as defined at paragraph 20 above, together with any future assets purchased with or exchanged for the net sale proceeds thereof and any income derived therefrom howsoever the assets are owned whether outright in his sole name or jointly with another or more persons or under the terms of a trust shall constitute XXX's Separate Property.

24.2. XXX shall hold and freely dispose of XXX's Separate Property wherever it may be situated and wherever it is, free from all rights of YYY therein under the laws of any jurisdiction save in so far as it is expressly referred to in this Deed.

24.3. Subject to the provisions of this Deed, YYY hereby renounces and releases all the capital, income, pension and property adjustment claims she may have under the laws of any jurisdiction to XXX's Separate Property which as defined above shall include any future assets purchased with or exchanged for the net sale proceeds thereof and any income derived therefrom howsoever the assets are owned whether outright in his sole name or jointly with another or more persons or under the terms of a trust.

Kommentiert [BS11]: Bei Vermögen in verschiedenen Ländern ist zu prüfen, ob eine solche Klausel dort hält bzw. durchsetzbar wäre.

25. YYY's Separate Property

- 25.1. All assets gifted to or inherited by YYY received or owned by her and held in her sole name now or in the future shall constitute YYY's Separate Property.
- 25.2. YYY shall hold and freely dispose of YYY Separate Property wherever it may be situated and wherever it is now owned by her or may hereafter be acquired by her (or by trustees/nominees for her benefit) in her sole name or jointly with another or more persons free from all rights of XXX therein under the laws of any jurisdiction.
- 25.3. Subject to the provisions of this Deed, XXX hereby renounces and release all capital income, pensions and property adjustment claims he may have under the laws of any jurisdiction to YYY's Separate Property and any property or assets inherited by her during the marriage in the event of a judicial separation, divorce or annulment of the marriage.

Kommentiert [BS12]: Siehe vorheriger Kommentar

Marital Property

26. The following shall constitute Marital Property of the parties ("Marital Property"):

- 26.1. Assets and income belonging to XXX and YYY that do not fall within the definitions of
- (i) XXX's Separate Property (and which for the avoidance of doubt shall therefore include those listed at A.2 in Appendix A annexed and described as xxx Personal Assets); or
 - (ii) YYY's Separate Property as defined herein shall constitute Marital Property.

Provision upon Divorce

27. In the event of judicial separation, divorce or annulment:

- (i) XXX and YYY agree that XXX shall retain XXX's Separate Property and YYY shall retain YYY's separate Property.
- (ii) The Marital Property shall be divided between XXX and YYY either by agreement or as determined by the Court.

28. Nothing in this Deed shall preclude either party from voluntarily making lifetime gifts of a capita nature to the other, or from voluntarily making provision for the other by way of will, codicil, trust or otherwise.

Kommentiert [BS13]: Neben diesen Regelungen zum Vermögensausgleich können die Parteien natürlich auch zahlreiche weitere Regelungen treffen, etwa zum Unterhalt oder zum Umgang mit (späteren) Kindern, wobei alle Kinderbezogenen Inhalte vom Gericht natürlich daraufhin überprüft werden, ob diese dem Kindeswohl entsprechen.

29. This Deed shall be for the benefit of and shall be binding upon XXX and YYY, their heirs and assigns.

30. This Deed may not be changed, discharged or terminated orally.

31. **Jurisdiction:**

- (i) The Parties agree that the Courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation following the breakdown of the marriage irrespective of where the parties are living at the time of the breakdown of the marriage.
- (ii) In the event of there being a foreign jurisdiction other than England and Wales contemporaneously able to entertain divorce or other proceedings in relation to the Marriage, then the Parties elect that the Courts of England and Wales will have exclusive jurisdiction to hear such proceedings and agree that any foreign proceedings will be stayed.
- (iii) If, contrary to Clause 31 (i) above, either of the Parties commences proceedings before any Court or tribunal for divorce, annulment, judicial separation or financial remedy proceedings against the other in any jurisdiction other than England and Wales, each Party agrees that they will invite such Court or tribunal to uphold and implement the terms of this agreement whether under its own law or by applying the law of England and Wales.
- (iv) If either of the Parties makes an application to the Court in respect of spousal maintenance, the Parties agree that the Courts of England and Wales will have exclusive jurisdiction to deal with any such application in accordance with Article 4 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations ("the EU Maintenance Regulation").

32. The invalidity or unenforceability of any provision of this Deed shall not affect the validity or enforceability of any provision and any invalid and unenforceable provision shall be severable.

Kommentiert [BS14]: Da englische Familiengerichte IMMER englisches Recht anwenden (also u.a. die hälftige Vermögensteilung bei Scheidung), ist diese Klausel 31 gefährlich für den reicheren Partner, vor allem, wenn der reichere Partner nicht Brite ist oder/und seinen Aufenthalt nicht dauerhaft in UK plant. In solchen Konstellationen sollte man eine Formulierung wählen, wonach das Pre-Nup nur dann zur Anwendung kommt, wenn englische Gerichte - unabhängig vom Pre-Nup - für eine Scheidung international zuständig sind.

In witness therefore the parties hereto have signed this agreement as their deed in the presence of the persons mentioned below:

Signed as a deed by XXX:

In the presence of:

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

Signed as a deed by YYY:

In the presence of:

Signature witness:

Name of witness:

Address of witness:

Occupation of witness

LIST OF APPENDICES

Appendix A

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...

Kommentiert [BS15]: Mindestens nötig sind die Anlagen „Vermögensaufstellung XXX“, „Vermögensaufstellung YYY“, dann die jeweils ausgenommenen Vermögenswerte sowie die Bestätigungen der jeweiligen Family Solicitors, dass diese eine der Parteien unabhängig beraten haben.