

International Prenuptial Agreements Part VI:

European Prenuptial Agreements and the Hague Convention

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As traveling internationally has become more common-place over time, more people are marrying abroad. Prior to marriage, many couples make prenuptial agreements in order to protect and manage their assets. Couples who get married internationally have special issues to deal with when entering into prenuptial agreements. This has left courts all over the world with the task of determining which country's laws should apply to international prenuptial agreements (agreements signed abroad). In a response to this global trend, numerous European nations met at the Hague Convention on Law Applicable to Matrimonial Property Regimes in 1978 to discuss these prenuptial agreements. The nations in attendance drafted 31 articles that would govern international prenuptial agreements. Thus far, five countries have adopted these provisions: Austria, France, Luxembourg, Netherlands, and Portugal. The Convention's articles have important consequences for international prenuptial agreements within Europe. So far, a convention of this nature has not been held in Asia and as such [Thailand law](#) does not consider provisions made by other countries in regards to international prenuptial agreements.

Conflict of Law

The Convention's articles specifically address the conflict of law issues of international prenuptial agreements. A conflict of law exists where there are two countries, each with a strong interest in the case, that have conflicting laws. Courts must decide which of the countries' laws will apply to the case. Quite frequently, international prenuptial agreements have conflict of law issues as there are multiple countries that have an interest in the couple's prenuptial agreement. For example, the country where the couple signed the agreement and the country reviewing the couple's agreement often have a stake in the couple's agreement. The Convention specifically addressed this issue and drafted articles to settle these conflict of law problems. For example, Article 12 of the Convention controls which countries' laws determine whether a prenuptial agreement is valid. The article states that a prenuptial agreement will be considered valid only if it meets either the laws of the country where the agreement was signed or the laws that would ordinarily control the couple's property. This is a simple and easily applicable rule. Similarly, Article 4 determines which country's laws will apply in the event that the couple did not include a choice of law clause (see discussion below). According to Article 4 of the Convention, the couple's property will be controlled by the laws of the country in which the couple establishes their first habitual residence.

Choice of Law

The Convention also addressed choice of law issues for international prenuptial agreements. A choice of law clause is a clause that designates which country's laws will be applied to an agreement or contract. Couples often include choice of law clauses in their prenuptial

agreements. The Convention drafted articles that control the choice of law clauses in international prenuptial agreements. For example, Article 3 of the Convention limits the couple to a choice of only three different countries: where either spouse is a national, where either spouse has his/her habitual residence, or where either spouse establishes a habitual residence after the marriage. Article 12 of the Convention further requires that the clause be in writing, dated, and signed by both spouses.

Prenuptial agreements which are signed or enforced in Europe may be controlled by the laws of the Hague Convention on Law Applicable to Matrimonial Property Regimes. The Convention's articles were only ratified by five of the E.U. countries. This can create complications for a couple's prenuptial agreement. If the couple resides, marries, or has designated the law of a non-Hague Treaty Country, or the divorce case is heard in a Non-Hague Treaty country, the situation becomes strikingly more complex (See Article 4). Expert legal advice is recommended.

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