

I. Introduction

1 Prenuptial agreements were first alluded to in Singapore’s Women’s Charter in 1996 with the introduction of section 112(2)(e). The provision provides that the Court shall, in ordering the division of matrimonial assets, consider any agreement between parties with respect to the ownership and division of matrimonial assets made in contemplation of divorce.

2 Prenuptial agreements appear to have become increasingly popular in many jurisdictions.¹ This development may be attributed to factors such as increased public awareness from media reports on celebrity and high-net-worth divorces,² as well as movies and television serials where prenuptial agreements were used as plot devices.³ Anecdotal evidence from lawyers in Singapore suggests there have been more enquiries about prenuptial agreements in recent years, and that more couples were reportedly entering into prenuptial agreements. It is therefore timely to examine the prevalence of prenuptial agreements in Singapore and their impact on the Court.

3 We begin with some background information on prenuptial agreements to frame our discussion. The next part of the paper explores the literature on the subject by examining aspects of the academic debate on prenuptial agreements and trends in the prenuptial agreements landscape abroad. The paper thereafter covers our research findings. This section discusses the number of prenuptial agreements handled by the courts and the information we obtained from lawyers interviewed for this study. Finally, we conclude with a discussion about the impact and implications of our findings, the limitations of our study, and possible directions for future research.

¹ Eg Michael Waters, “Prenups aren’t just for rich people anymore”, *The New Yorker* (2022) <<https://www.newyorker.com/news/us-journal/prenups-arent-just-for-rich-people-anymore>> (accessed 9 November 2023)

² Emma Hitchings, “A study of the views and approaches of family practitioners concerning marital property agreements” [2011] (accessed 9 November 2023); Tracy Ann, “It’s Over: 16 most expensive celebrity divorces in pop culture history”, *Prestige* (2023) <<https://www.prestigeonline.com/sg/lifestyle/culture-plus-entertainment/expensive-celebrity-divorces/>> (accessed 9 November 2023)

³ IMDB, “Most Popular Movies and TV Shows tagged with keyword ‘prenuptial-agreement’”, *IMDB* (n.d.) <https://www.imdb.com/search/keyword/?keywords=prenuptial-agreement&sort=moviemeter,asc&mode=detail&page=2&ref_=kw_nxt> (accessed 9 November 2023)

II. Background

4 In some jurisdictions, prenuptial agreements are enforceable under local and international laws.⁴ In others, the courts may attach little weight to them as they are seen to conflict with prevailing public policy. A dearth of authority may also exist on whether a court will take a prenuptial agreement into consideration when distributing marital assets.

5 The scope of what is covered by prenuptial agreements also varies across jurisdictions. For instance, New Zealand's law allows couples to enter only into agreements which involve property in the form of contracting out agreements and settlement agreements.⁵ However, prenuptial agreements under Belgian law allow spouses to determine maintenance amounts and how this amount can be revised under the Civil Code.⁶

6 Arriving at a common definition for prenuptial agreements is complicated by definitional differences across jurisdictions. For the purposes of this paper the definition of prenuptial agreements, as offered by Oxford's Dictionary of Law, is 'an agreement entered before marriage, usually to limit the claims one spouse can make on divorce from the other' is adopted as a working definition.⁷

III. Literature Review

7 The literature on prenuptial agreements covers two major areas: 1) issues with prenuptial agreements, and 2) prenuptial agreement trends.

⁴ The Law Office of Jeremy D. Morley website <<https://www.international-divorce.com/prenuptial-agreements-around-the-world-2>> (accessed 17 February 2023)

⁵ Anita Chan, "Family law in New Zealand: overview", *Practical Law - Thomson Reuters* (2020) <[https://uk.practicallaw.thomsonreuters.com/5-569-5667?contextData=\(sc.Default\)&transitionType=Default&firstPage=true#co_anchor_a410919](https://uk.practicallaw.thomsonreuters.com/5-569-5667?contextData=(sc.Default)&transitionType=Default&firstPage=true#co_anchor_a410919)> (accessed 17 February 2023)

⁶ Arnaud Gillard, "Family law in Belgium: overview", *Practical Law - Thomson Reuters* (2020) <https://uk.practicallaw.thomsonreuters.com/w-028-9004?contextData=%28sc.Default%29&transitionType=Default#co_anchor_a807214> (accessed 17 February 2023)

⁷ Jonathan Law, *A Dictionary of Law* (Oxford University Press, 8th Ed, 2015) at p 473

A. *Issues with Prenuptial Agreements*

8 The literature identified some key issues concerning prenuptial agreements. These relate to 1) the short duration between parties entering into prenuptial agreements and getting married, 2) the difficulty in obtaining valid consent, 3) women’s disadvantageous negotiation styles, 4) overoptimism by parties entering into prenuptial agreements, and 5) how prenuptial agreements are predominantly used to protect premarital assets.

9 Regarding the first point, Carter found that out of 474 couples with prenuptial agreements, “64% of couples signed their premarital agreements within fourteen days of their anticipated wedding date; 53% signed their premarital agreements within nine days of their anticipated wedding; and 33% signed their premarital agreements within four days of their anticipated wedding dates”.⁸ This short duration, as explained by Carter and Younger, is intended to compel the spouse with fewer assets and lower earning power to sign the agreement. As Younger notes:

the prospective spouse with the greater assets and earning power wants the agreement, has it drafted by his lawyer, and presents it to the other spouse very close to the time of the impending wedding, when her mind is on wedding preparations, and she has little patience for unromantic legal documents. More often than not the proposed agreement is accompanied by an ultimatum that if she does not sign it, the would-be husband will cancel the wedding.⁹

10 This problem leads to the second point, the difficulties with obtaining consent. Thompson uses Kim’s consentability framework “to parse the discourse around consent to prenups, and the limitations of its meaning in law”.¹⁰ She argues that “consent should not be assumed simply because the consenting party has been properly informed”. Riding on Kim’s work, Thompson posits that there are other factors that can “destroy consent”. This includes “changes in conditions or circumstances, or additional information that was not available at the time consent was

⁸ Elizabeth Carter, “Are Premarital Agreements Really Unfair?: An Empirical Study” (2019) *Louisiana State University Law Center* (accessed 9 November 2023)

⁹ Judith Younger, “Perspectives on Antenuptial Agreements” (1988) 40 *Rutgers L. Rev* (accessed 9 November 2023)

¹⁰ Sharon Thompson, “Using Feminist Relational Contract Theory to Build Upon Consentability: A Case Study of Prenups” (2020) 66 *Loyola Law Review* (accessed 10 November 2023)

constructed”. This point is further elaborated on by Ong, who believes that “it would still be unfair to give effect to an agreement negotiated in “the emotional moment when legal advice is easily brushed aside” and where rational judgment is clouded by “human frailty and susceptibility when love and separation are involved”.¹¹

11 The third point concerns the negotiation styles of women which could disadvantage them in prenuptial agreement negotiations. It has been suggested that “women bargain in a certain way that disadvantages them”.¹² To that end, Ong noted that “it has been argued that gender differences affect how men and women bargain and as women typically hold less power in society and in marital relationships, they are prejudiced in the context of making prenuptial agreements”.¹³ She also found that others “argue(d) that women tend to negotiate or ask for what they think the rules allow them to get”.

12 Regarding the fourth point on overoptimism by parties when signing their prenuptial agreements, Thompson cites research which shows that:

individuals are unrealistic about the probability of divorce, are overly sanguine, and often want to assert their own financial independence despite financial dependency that usually accumulates during marriage. In short, parties to a prenu often do not know how their circumstances may change, and this is frequently to the detriment of the spouse undertaking the domestic and reproductive labour in the relationship.¹⁴

This point is further supported by Ong, who stated that “there is a concern that people are poor at thinking well about events in the future involving contingencies contrary to their optimistic

¹¹ Debbie Ong, “Prenuptial Agreements: Affirming *TQ v TR* in Singapore” (2012) 24 Singapore Academy of Law Journal

¹² Tess Wilkinson-Ryan and Deborah Small, “Negotiating Divorce: Gender and the Behavioral Economics of Divorce Bargaining” (2008) 109 Law and Inequality

¹³ Debbie Ong, “Prenuptial Agreements: Affirming *TQ v TR* in Singapore” (2012) 24 Singapore Academy of Law Journal

¹⁴ Sharon Thompson, “Using Feminist Relational Contract Theory to Build Upon Consentability: A Case Study of Prenups” (2020) 66 *Loyola Law Review* (accessed 10 November 2023)

assumptions. One behavioural theory posits that ‘parties will likely underestimate the probability that they will ever need to rely on their premarital agreement’¹⁵.

13 On the fifth point, Hitchings observed that there could be third-party involvement in the creation of a prenuptial agreement. Such intervention could run counter to the requirement that parties enter into the agreement without duress. She found that on occasion, a client’s family could seek the prenuptial agreement to protect family wealth and inheritances or legacies.¹⁶

B. Trends in Other Jurisdictions

14 Regarding prenuptial agreement trends, our study primarily focused on trends in Australia, Canada, Hong Kong, New Zealand, the United Kingdom (“UK”), and the United States of America (“US”). The findings from this study were used to inform the design of our interview questions posed to lawyers.

15 The study of prenuptial agreement trends was complicated by the difficulty in obtaining quantitative data on their prevalence, as prenuptial agreements generally do not need to be registered. We therefore largely based our findings on qualitative sources such as news articles and research reports.

16 As a number of trends documented in the reviewed literature were dated, the sources we referred to consisted mainly of news articles, which tended to be more recent than the academic sources. This information thus arguably better reflected contemporary trends.

17 The term “jurisdiction” in this context is used loosely here and does not necessarily correspond with national or legal boundaries, as the information in some sources could apply only to certain regions within a country.

¹⁵ Debbie Ong, “Prenuptial Agreements: Affirming *TQ v TR* in Singapore” (2012) 24 Singapore Academy of Law Journal

¹⁶ Emma Hitchings, “A study of the views and approaches of family practitioners concerning marital property agreements” [2011] (accessed 9 November 2023)

(1) Recognition of Prenuptial Agreements

An overview of the status of prenuptial agreements across the abovementioned jurisdictions is reflected in Table 1 below.

Table 1: Status of Prenuptial Agreements in Selected Jurisdictions

	Australia	Canada	Hong Kong	New Zealand	UK	US	Total
Binding, albeit varying in their effect ¹⁷	✓	✓		✓		✓	4

18 The sources suggest that:

- a. Australia: Prenuptial agreements, known as Binding Financial Agreements, can be legally binding.¹⁸
- b. Canada: Prenuptial agreements are enforceable.¹⁹
- c. Hong Kong: Prenuptial agreements are not automatically enforceable. In *SPH v SA* [2014] 17 HKCFAR 364, the Court of Final Appeal in Hong Kong stated that the principles enunciated in the UK Supreme Court’s decision of *Radmacher v Granatino* [2011] AC 534 should be regarded as the law.²⁰
- d. New Zealand: Only prenuptial agreements pertaining to property (e.g., agreements set out in the form of contracting out and settlement agreements) can be binding in New Zealand.²¹

¹⁷ Those jurisdictions which can consider prenuptial agreements as binding differ over what they recognise as binding. For instance, New Zealand law considers that only prenuptial agreements pertaining to property can be binding. However, prenuptial agreements in Canada may deal with matters concerning the education of children.

¹⁸ Federal Circuit and Family Court of Australia website <<https://www.fcfa.gov.au/fl/hdi/apply-property-and-financial-orders>> (accessed 30 November 2021)

¹⁹ The Law Office of Jeremy D. Morley website <<https://www.international-divorce.com/prenuptial-agreements-in-canada>> (accessed 30 November 2021)

²⁰ Catherine Por, “Family law in Hong Kong: overview”, *Practical Law - Thomson Reuters* (2020) <[https://uk.practicallaw.thomsonreuters.com/8-573-1065?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1#co_anchor_a711535](https://uk.practicallaw.thomsonreuters.com/8-573-1065?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1#co_anchor_a711535)> (accessed 2 December 2022)

²¹ Anita Chan, “Family law in New Zealand: overview”, *Practical Law - Thomson Reuters* (2020) <[https://uk.practicallaw.thomsonreuters.com/5-569-5667?contextData=\(sc.Default\)&transitionType=Default&firstPage=true#co_anchor_a410919](https://uk.practicallaw.thomsonreuters.com/5-569-5667?contextData=(sc.Default)&transitionType=Default&firstPage=true#co_anchor_a410919)> (accessed 17 February 2023)

- e. The UK: Prenuptial agreements are not automatically enforceable in England and Wales. In these jurisdictions, the fairness of upholding any particular agreement will be considered by the court on a case-by-case basis.²²
- f. The US: Prenuptial agreements are broadly legally enforceable.²³ Prenuptial agreements are governed by the Uniform Premarital Agreement Act (“UPAA”) in 28 states. The UPAA governs the enforceability of prenuptial agreements entered into on or after January 1, 1986. The remaining 22 states that have not adopted the UPAA, still allow for prenuptial agreements but have different rules regarding their enforceability.²⁴

(2) *Overview of Prenuptial Agreement Trends*

19 A summary of the four key trends we identified in the study are set out in Table 2 below.

Table 2: Trends Identified in Selected Jurisdictions

SN	Trend	Australia	Canada	Hong Kong	New Zealand	UK	US
1	More couples entering prenuptial agreements	✓	✓	✓	✓	✓	✓
2	The younger generations are more likely to enter prenuptial agreements	✓	✓		✓	✓	✓

²² United Kingdom, House of Commons Library, *Prenuptial Agreements* (Briefing Paper No 03752, 2017)

²³ The Harvard Gazette website (<https://news.harvard.edu/gazette/story/2003/10/for-many-prenups-seem-to-predict-doom/>) (accessed 30 November 2021)

²⁴ Jennifer Lee, “Till Prenup Do Us Part?”, ABA (10 August 2012) <https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2022/july-august/till-prenup-do-us-part/> (accessed 20 November 2023)

3	Individuals enter into prenuptial agreements to protect wealth		✓	✓	✓	✓	✓
4	More women are entering into prenuptial agreements	✓				✓	✓
5	Prenuptial agreements are popular with couples who have had a prior marriage.					✓	✓

(a) *Trend 1: Increase in number of couples entering into prenuptial agreements*

20 The first key trend, ‘more couples are entering into prenuptial agreements’ was observed across all jurisdictions. This trend is in line with the observations by Hitchings, who found that interest in prenuptial agreements in the West was increasing. Hitchings’s study of the UK found that “18 out of the 39 practitioners who took part in research made reference to the fact that they believed that there had been some form of increase in the number of enquiries or agreements drafted over the past years. This is 46% of the sample”.

- a. Australia: A 2019 survey in Australia by *ME Bank* found that 18% of 1,000 survey respondents had a prenuptial agreement.²⁵ At the same time, *The Sydney Morning Herald* reported that some lawyers observed such arrangements were “taking off in

²⁵ ME Bank website <<https://www.mebank.com.au/news/only-18-percent-of-aussies-have-prenups/>> (accessed 30 November 2021)

suburbia”, and that they had been receiving “more and more inquiries” about prenuptial agreements.²⁶

- b. Canada: A 2017 article by *Global News* reported on a poll which indicated that 8% of Canadian couples had a prenuptial agreement.²⁷
- c. Hong Kong: In 2015, *The Standard* reported that more wealthy people in Hong Kong were signing prenuptial agreements.²⁸ According to Barron’s, representatives from banks and law firms in Hong Kong also believed that there was a “rising trend” towards such agreements in Asia.²⁹
- d. New Zealand: The news media website, *Stuff*, described that the head of a professional membership organisation for financial advisers mentioned that prenuptial agreements were becoming “increasingly popular” in 2020 and increasingly associated with individuals of more modest means.³⁰
- e. The UK: A 2021 survey in the UK by the *Marriage Foundation* asked 1,990 respondents if they had signed a prenuptial agreement. The survey findings indicated that the percentage of couples with such agreements had increased over the past decades.³¹ It found that marriages in the 1970s reflected only 1.5% of prenuptial agreements in the sample. However, this figure increased to 5% for marriages in the 1980s and 8% for marriages in the 1990s. From around 2000, they were present in about 20% of all marriages, save for 2019 where the figure was 31%. A partner at a law firm in England and Wales added that prenuptial agreements were no longer just for the extremely wealthy.³²

²⁶ Michaela Whitbourn, “Prenuptial agreements offer glimpse into secret lives of couples”, *The Sydney Morning Herald* (4 January 2017) <<https://www.smh.com.au/national/prenuptial-agreements-offer-glimpse-into-secret-lives-of-couples-20161206-gt4sa6.html>> (accessed 30 November 2021)

²⁷ Global News website <<https://globalnews.ca/news/3531241/should-you-get-a-prenup-or-cohabitation-agreement-before-settling-down/>> (accessed 30 November 2021)

²⁸ Gary Poon, “Money matters matter in marriage”, *The Standard* (28 January 2019) <<https://www.thestandard.com.hk/section-news/fc/1/204609/Money-matters-matter-in-marriage>> (accessed 30 November 2021)

²⁹ Barron’s website <<https://www.barrons.com/articles/prenuptial-agreements-gain-traction-in-asia-1450409202>> (accessed 30 November 2021)

³⁰ Katrina Shanks, “Here’s why New Zealanders are coming round to prenups”, *Stuff* (20 November 2020) <<https://www.stuff.co.nz/business/opinion-analysis/300163660/heres-why-new-zealanders-are-coming-round-to-prenups>> (accessed 30 November 2021)

³¹ Marriage Foundation website <<https://marriagefoundation.org.uk/wp-content/uploads/2021/08/MF-briefing-note-on-prenups-FINAL.pdf>> (accessed 30 November 2021)

³² Stephenson’s website <https://www.stephensons.co.uk/site/news_and_events/uptodateneews/generation-z-get-practical-not-romantic-ahead-of-tying-the-knot> (accessed 30 November 2021)

- f. The US: An internal survey carried out by the *American Academy of Matrimonial Lawyers* (“AAML”) in 2013 found that 62% of respondents had seen an increase in the total number of clients seeking prenuptial agreements during the past three years.³³ A New York-based family law practice also postulated there had been a fivefold increase in prenuptial agreements over the past two decades.³⁴

(b) *Trend 2: Younger generations more likely to enter into prenuptial agreements*

21 The study also indicated that younger individuals were seeking prenuptial agreements in Australia, Canada, New Zealand, the UK, and the US.

22 Details are as follows:

- a. Australia: The survey conducted by *ME Bank* in 2019 found that 32% of couples aged 18 to 24 had a prenuptial agreement, the highest percentage of all age groups.³⁵ In contrast, 90% of Australians aged 40 to 54 did not have a prenuptial agreement. The survey’s organisers posited that the difference was “a generational thing”, as younger couples were abandoning traditional ideas about prenuptial agreements and were choosing to protect themselves financially. Conversely, the sentiment “what’s mine is yours” was said to still appear to hold true for older generation Australians.
- b. Canada: A lawyer quoted by *Global News* in 2019 observed that more Canadian millennials were asking for prenuptial agreements. This trend had increased over the last five years or so.³⁶ He also noted that the files on marriage contracts at his firm came almost exclusively from millennials. He believed the rise in divorce rates over the last 40 to 50 years and the experience of growing up amidst divorce had conditioned millennials to think differently about relationships and plan for an “exit strategy”.

³³ CNBC website <<https://www.cnbc.com/2015/01/20/prenups-not-just-for-the-1-percent.html>> (accessed 30 November 2021)

³⁴ Cision PR Newswire website <<https://www.prnewswire.com/news-releases/prenuptial-agreements-on-the-rise-finds-survey-300353444.html>> (accessed 30 November 2021)

³⁵ ME Bank website <<https://www.mebank.com.au/news/only-18-percent-of-aussies-have-prenups/>> (accessed 30 November 2021)

³⁶ Global News website <<https://globalnews.ca/news/5270415/how-to-talk-about-prenups/>> (accessed 30 November 2021)

Another article by *CBC News* noted that prenuptial agreements in British Columbia were on the rise among younger newlyweds.³⁷

- c. New Zealand: An article from *Stuff* in 2020 observed that the trend of entering into prenuptial agreements in New Zealand was especially pronounced among millennials.³⁸ One factor that was said to be driving the increase was the number of millennials who had grown up in reconstituted families. It was hypothesised that they were hence more inclined to think ahead due to an innate awareness regarding the impact of divorce.
- d. The UK: A 2019 *YouGov* survey of 2,064 people in the UK featured by the Law Society found that those born from 1996 onward, “Generation Z”, were more likely to seek to protect their assets before marriage.³⁹ It noted that of the 136 respondents aged between 18 and 24, 42% of women and 36% of men said they would likely sign a prenuptial agreement. A UK law firm partner posited that younger individuals were likely influenced by celebrity culture, as the details of prenuptial agreements for modern-day celebrity couples were widely circulated online.⁴⁰ She held that this generation was much more accepting of discussing contracts, net worth, and assets with their significant other. She also mentioned that the stigma attached to consulting a solicitor before marriage had “long ago disappeared”.
- e. The US: In the US, 51% of the attorneys surveyed by the AAML in 2016 observed an increase in the number of millennials requesting prenuptial agreements.⁴¹ A former president of the AAML believed that most millennials who entered into such

³⁷ CBC News website <<https://www.cbc.ca/news/canada/british-columbia/millennials-more-open-to-pre-nups-than-older-generations-says-b-c-family-lawyer-1.3853756>> (accessed 30 November 2021)

³⁸ Katrina Shanks, “Here’s why New Zealanders are coming round to prenups”, *Stuff* (20 November 2020) <<https://www.stuff.co.nz/business/opinion-analysis/300163660/heres-why-new-zealanders-are-coming-round-to-prenups>> (accessed 30 November 2021)

³⁹ The Law Society Gazette website <<https://www.lawgazette.co.uk/news/generation-z-likely-to-demand-prenup-survey/5101227.article>> (accessed 30 November 2021); Stephenson’s website <https://www.stephensons.co.uk/site/news_and_events/uptodatenews/generation-z-get-practical-not-romantic-ahead-of-tying-the-knot> (accessed 30 November 2021)

⁴⁰ Freya Drohan, “The rise of the practical pre-nup: Half of young couples intend to sign pre-marital agreements that include stipulations about their pets, cars and WHISKEY collections”, *Daily Mail* (23 August 2019) <<https://www.dailymail.co.uk/femail/article-7388305/Half-young-couples-signing-prenups-including-pets-cars-booze.html>> (accessed 30 November 2021).

⁴¹ Cision PR Newswire website <<https://www.prnewswire.com/news-releases/prenuptial-agreements-on-the-rise-finds-survey-300353444.html>> (accessed 30 November 2021)

agreements approached it as a business deal and attached little emotion to it.⁴² She posited that this stemmed from how both parties sought to protect their independence and what they had been working for. Articles from *The Wall Street Journal* and *Insider* also supported this conjecture by describing how prenuptial agreements were being drafted by younger adults of all income levels.⁴³ *The Wall Street Journal* reported that younger adults in the US were also entering into prenuptial agreements to address societal realities that were not necessarily present or common years ago, such as “a desire to keep finances separate, student debt, social-media use, embryo ownership and even pet care”.⁴⁴ *Insider* reported that some millennials aimed to keep their finances “separate and business-like”, as such a setup would allow them to leave a marriage without many strings attached.⁴⁵

(c) *Trend 3: Some individuals enter into prenuptial agreements to protect wealth*

23 The desire to protect wealth also appeared to be a strong factor which encouraged individuals to enter into prenuptial agreements in all the jurisdictions studied. Such wealth could belong to the party or parties seeking the prenuptial agreement, or their family members. Details are as follows:

- a. Canada: According to a *Global News* article in 2019, millennials in Canada were believed to be spurred in part to enter into prenuptial agreements to protect inter-generational wealth.⁴⁶ They were also said to be acquiring more wealth and income before getting married by staying in school and working longer compared to 30 to 40

⁴² Susan Shain, “The Rise of the Millennial Prenup”, *The New York Times* (6 July 2018) <<https://www.nytimes.com/2018/07/06/smarter-living/millennial-prenup-weddings-money.html>> (accessed 18 February 2020)

⁴³ Cheryl Winokur Munk, “Millennials Embrace Prenups—but Through a Very Different Lens Than in the Past”, *The Wall Street Journal* (21 January 2021) <<https://www.wsj.com/articles/millennials-embrace-prenupsbut-through-a-very-different-lens-than-in-the-past-11611252036>> (accessed 30 November 2021); *Insider* website <<https://www.businessinsider.com/why-sign-a-prenup-marriage-divorce-2018-9>> (accessed 18 February 2020)

⁴⁴ Cheryl Winokur Munk, “Millennials Embrace Prenups—but Through a Very Different Lens Than in the Past”, *The Wall Street Journal* (21 January 2021) <<https://www.wsj.com/articles/millennials-embrace-prenupsbut-through-a-very-different-lens-than-in-the-past-11611252036>> (accessed 30 November 2021)

⁴⁵ *Insider* website <<https://www.businessinsider.com/why-sign-a-prenup-marriage-divorce-2018-9>> (accessed 18 February 2020)

⁴⁶ *Global News* website <<https://globalnews.ca/news/5270415/how-to-talk-about-prenups/>> (accessed 30 November 2021)

years ago. Greater awareness of divorce rates and access to online information were also said to have encouraged them to “approach relationships from a ‘risk-management’ point of view”.

The executive director of the Canadian Research Institute for Law and the Family at the University of Calgary noted in 2017 that it was most commonly parents who wanted their children, mainly their children’s spouses, to enter into a prenuptial agreement for “swearing an interest in the family business or family fortune”.⁴⁷ A *Global News* article mentioned that millennials stood to inherit more inter-generational wealth through their parents or grandparents.⁴⁸

- b. Hong Kong: In 2023, the *Financial Times* reported that more wealthy people were signing prenuptial agreements.⁴⁹ The available information also suggested the trend towards prenuptial agreements in Hong Kong was partly driven by older family members who wanted to protect familial wealth for subsequent generations.⁵⁰ Their increased awareness about the potential for marital breakdowns was said to have spurred them to urge younger family members to enter into prenuptial agreements.
- c. New Zealand: The 2020 *Stuff* article attributed the increase in prenuptial agreements in New Zealand to people getting married later and entering relationships with more assets and debts.⁵¹ Millennials with divorced parents were also said to be inclined to think ahead to protect their assets.
- d. The UK: A survey conducted by the Marriage Foundation in England and Wales in 2021 found that respondents who wedded after the 2000s were more likely to enter into prenuptial agreements if they came from higher income groups, with 44% of respondents in “higher managerial” occupations signing them compared to around 16%

⁴⁷ Global News website <<https://globalnews.ca/news/3531241/should-you-get-a-prenup-or-cohabitation-agreement-before-settling-down/>> (accessed 30 November 2021)

⁴⁸ Global News website <<https://globalnews.ca/news/5270415/how-to-talk-about-prenups/>> (accessed 30 November 2021)

⁴⁹ Financial Times website <<https://www.ft.com/content/dee05496-f17c-497e-a146-a003763c8ea6>> (accessed 8 December 2023)

⁵⁰ Barron’s website <<https://www.barrons.com/articles/prenuptial-agreements-gain-traction-in-asia-1450409202>> (accessed 30 November 2021)

⁵¹ Katrina Shanks, “Here’s why New Zealanders are coming round to prenups”, *Stuff* (20 November 2020) <<https://www.stuff.co.nz/business/opinion-analysis/300163660/heres-why-new-zealanders-are-coming-round-to-prenups>> (accessed 30 November 2021)

to 20% for other groups.⁵² In addition, it was observed in a *Daily Mail* article that respondents' "top priorities" related to homes, savings, and investments.⁵³

- e. The US: A financial planning firm representative featured in *The New York Times* attributed the popularity of prenuptial agreements among US millennials to the fact that they were marrying later.⁵⁴ This change was said to have enabled them to accumulate more wealth and debts, and their greater store of life experiences led them to accept there was a greater probability of a marital breakdown.

The AAML survey in 2016 found that those who entered into prenuptial agreements in the US could also be concerned about inter-generational wealth.⁵⁵ "Inheritance rights" appeared at fifth place with 42% of prenuptial agreements covering it in agreements. This view was supported by an *Insider* article observing that prenuptial agreements could seek to safeguard assets that individuals might acquire later, such as "an inheritance from their family or gifts that they want to protect".⁵⁶

(d) *Trend 4: More women are entering into prenuptial agreements*

24 News sources from Australia, the UK and the US suggested that the increase in prenuptial agreements was partly driven by women. This trend contradicted Mahar's earlier findings that "women are less likely to consider suggesting a prenuptial agreement".⁵⁷ The details are as follows:

⁵² Marriage Foundation website <<https://marriagefoundation.org.uk/wp-content/uploads/2021/08/MF-briefing-note-on-prenups-FINAL.pdf>> (accessed 30 November 2021)

⁵³ Freya Drohan, "The rise of the practical prenup: Half of young couples intend to sign pre-marital agreements that include stipulations about their pets, cars and WHISKEY collections", *Daily Mail* (23 August 2019) <<https://www.dailymail.co.uk/femail/article-7388305/Half-young-couples-signing-prenups-including-pets-cars-booze.html>> (accessed 30 November 2021)

⁵⁴ Susan Shain, "The Rise of the Millennial Prenup", *The New York Times* (6 July 2018) <<https://www.nytimes.com/2018/07/06/smarter-living/millennial-prenup-weddings-money.html>> (accessed 18 February 2020)

⁵⁵ Cision PR Newswire website <<https://www.prnewswire.com/news-releases/prenuptial-agreements-on-the-rise-finds-survey-300353444.html>> (accessed 30 November 2021)

⁵⁶ Insider website <<https://www.businessinsider.com/millennials-are-driving-an-increase-in-prenuptial-agreements-2019-8>> (accessed 18 February 2020)

⁵⁷ Heather Mahar, "Why Are There So Few Prenuptial Agreements?" (2003) Discussion Paper No. 436, The Harvard John M. Olin Discussion Paper Series

- a. Australia: The 2017 *The Sydney Morning Herald* article noted that prenuptial agreements were gaining in popularity among women in Australia as they were “more and more self-made”.⁵⁸
- b. The UK: An article by the Law Society in England and Wales in 2019 noted that of the 136 respondents aged 18 to 24, 42% of women intended to sign a prenuptial agreement vis-à-vis 36% of men.⁵⁹ A partner at a law firm observed that young women felt comfortable discussing money and wanted to protect their assets, and it was indicative of the increasing number of senior roles taken up by women in business.
- c. The US: The AAML’s survey in 2013 saw 46% of the attorneys reporting an increase in women initiating enquiries on prenuptial agreements.⁶⁰ A lawyer hypothesised the trend could be due to female millennials wanting to protect their financial interests given how women were “attaining college degrees at higher rates, accessing higher wages than ever before, and... purchasing homes more often than single men”.⁶¹ Indeed, an article in *The New York Times* noted that while just 13% of women who lived with a male partner earned at least half the couple’s income in 1980, that number has nearly tripled today.⁶²

(e) *Trend 5: Prenuptial agreements are popular with couples who have had previous marriages*

25 Sources from the UK and the US suggested that the prenuptial agreements are popular with couples with prior marriages. The details are as follows:

⁵⁸ Michaela Whitbourn, “Prenuptial agreements offer glimpse into secret lives of couples”, *The Sydney Morning Herald* (4 January 2017) <<https://www.smh.com.au/national/prenuptial-agreements-offer-glimpse-into-secret-lives-of-couples-20161206-gt4sa6.html>> (accessed 30 November 2021)

⁵⁹ The Law Society Gazette website <<https://www.lawgazette.co.uk/news/generation-z-likely-to-demand-prenup-survey/5101227.article>> (accessed 30 November 2021); Stephenson’s website <https://www.stephensons.co.uk/site/news_and_events/uptodateneeds/generation-z-get-practical-not-romantic-ahead-of-tying-the-knot> (accessed 30 November 2021)

⁶⁰ CNBC website <<https://www.cnbc.com/2015/01/20/prenups-not-just-for-the-1-percent.html>> (accessed 30 November 2021); Cision PR Newswire website <<https://www.prnewswire.com/news-releases/prenuptial-agreements-on-the-rise-finds-survey-300353444.html>> (accessed 30 November 2021)

⁶¹ Insider website <<https://www.businessinsider.com/why-sign-a-prenup-marriage-divorce-2018-9>> (accessed 18 February 2020)

⁶² Susan Shain, “The Rise of the Millennial Prenup”, *The New York Times* (6 July 2018) <<https://www.nytimes.com/2018/07/06/smarter-living/millennial-prenup-weddings-money.html>> (accessed 18 February 2020)

- a. The UK: A 2011 research report for the Law Commission cites a study in which lawyers were asked about the types of clients that wanted prenuptial agreements. One of the more frequent responses referred to individuals who were “getting married for the second or third time”,⁶³ and who wanted to “protect their pre-existing assets, possibly for the benefit of children of their first relationship, or because they”⁶⁴ “had their fingers burned on a previous occasion”.⁶⁵
- b. The US: In her 2019 study, Carter found that “prior marriage does appear to be correlated with entering into a prenuptial agreement”⁶⁶ and that:

Slightly more than half of the premarital agreements in the study (51%) involved couples where both parties had been married. The remaining couples were a different story. About a quarter (24%) of the premarital agreements involved couples where neither spouse had been previously married.⁶⁷

(f) *Conclusion*

26 The discussion above suggests that prenuptial agreements are on the rise in the jurisdictions examined. It also appeared that individuals are more likely to enter into a prenuptial agreement if he or she is a millennial or from Generation Z. An interest in protecting one’s personal wealth and inter-generational wealth are also factors which would encourage entering into a prenuptial agreement. It also appears that more women are seeking such agreements and that prenuptial agreements are popular with couples with prior marriages.

IV. Research Study

27 This section presents the details of our research study. Part 1 documents our efforts to better understand the numbers of prenuptial agreement cases dealt with by the Singapore Courts. Part 2 documents our findings on prenuptial agreement trends arising from our interviews with Singapore

⁶³ Emma Hitchings, “A study of the views and approaches of family practitioners concerning marital property agreements” [2011] (accessed 9 November 2023)

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ Elizabeth Carter, “Are Premarital Agreements Really Unfair?: An Empirical Study” (2019) *Louisiana State University Law Center* (accessed 9 November 2023)

⁶⁷ *ibid*

law practitioners. The information from the literature and other jurisdictions was used to design the questions posed.

A. Part 1: Numbers of Prenuptial Agreements Dealt with by the Singapore Courts

28 Our investigation revealed that the number of cases involving prenuptial agreements from 2016 to 2018 was negligible.

(1) Methodology

29 We extracted records of past divorce applications from the Singapore Court’s divorce case management system, eLitigation. These records covered applications heard by both the High Court and District Courts. In total, we examined more than 18,000 applications filed from 2016 to 2018.

30 Cases from 2016 to 2018 were specifically selected so as to avoid including applications from more recent years which could still be ongoing. If a case involved a prenuptial agreement, the research team examined the terms of the agreement.

(2) Findings

31 Our examination indicated only two divorce cases in the period 2016 to 2018 which involved prenuptial agreements.

32 In one instance, the District Judge set aside the prenuptial agreement as he/she was not satisfied that the agreement had met the statutory requirements of being made “in contemplation of divorce”.⁶⁸ The document was instead held to represent, at best, a commitment by one spouse to perform certain acts during the marriage save that the spouses were not to interfere with each other’s dealings concerning specified assets.

⁶⁸ Women’s Charter 1961 (Cap 4, 2020 Rev Ed) s 112(2)(e)

33 An appeal based on this same prenuptial agreement was subsequently dismissed by the High Court for several reasons. Among other things, the High Court Judge noted that the prenuptial agreement was signed just days before the marriage, and that the plaintiff did not have legal advice nor the time to reasonably consider the matter. The lack of clarity over what the document meant to the parties also led the Court to find that it would not be fair to hold the plaintiff to it.

34 In the other instance, the District Judge did not find the prenuptial agreement to be binding, and the parties did not proceed to appeal against the decision.

35 These findings suggest that prenuptial agreements were not making their way to the Court in significant numbers in this period 2016 to 2018.

36 At the same time, we recognise that the rarity of pre-nuptial agreements that feature in divorce applications do not necessarily co-relate to the prevalence of prenuptial agreements in Singapore. There could be more parties entering into prenuptial agreements that have not yet made their way to the Court.

B. Part 2: Prevalence of Prenuptial Agreements in Singapore

37 The next part of our study assessed the prevalence of prenuptial agreements in Singapore through interviews with practising lawyers. The interviews suggested that more parties might be entering into prenuptial agreements in Singapore than what the Singapore Courts data suggests.

(1) Methodology

38 We interviewed practitioners from law firms which filed higher volumes of applications at the Family Courts, as they were more likely to be aware of trends relating to prenuptial agreements.

39 We sent invitations to the 150 firms which, on average, handled the most applications from 2018 to 2020. This was based on court records. To account for how COVID-19 might have disproportionately affected certain firms in 2020, the firms were selected based on the average

number of applications they filed over the three years. We also made the option to participate in the interviews available to all members of the Family Bar through an invitation placed in the Family Law Practice Committee’s newsletter.

40 Selected firms received a written invitation from the Registrar of the Family Justice Courts (“FJC”) with an overview of the study and the use of the information from the interviews. Each firm was requested to nominate a representative for the interview. The firms were notified that the interviews would take place via the Zoom video platform, that their consent would be sought prior to the recording of interviews, and that the identities of participants would be kept confidential.

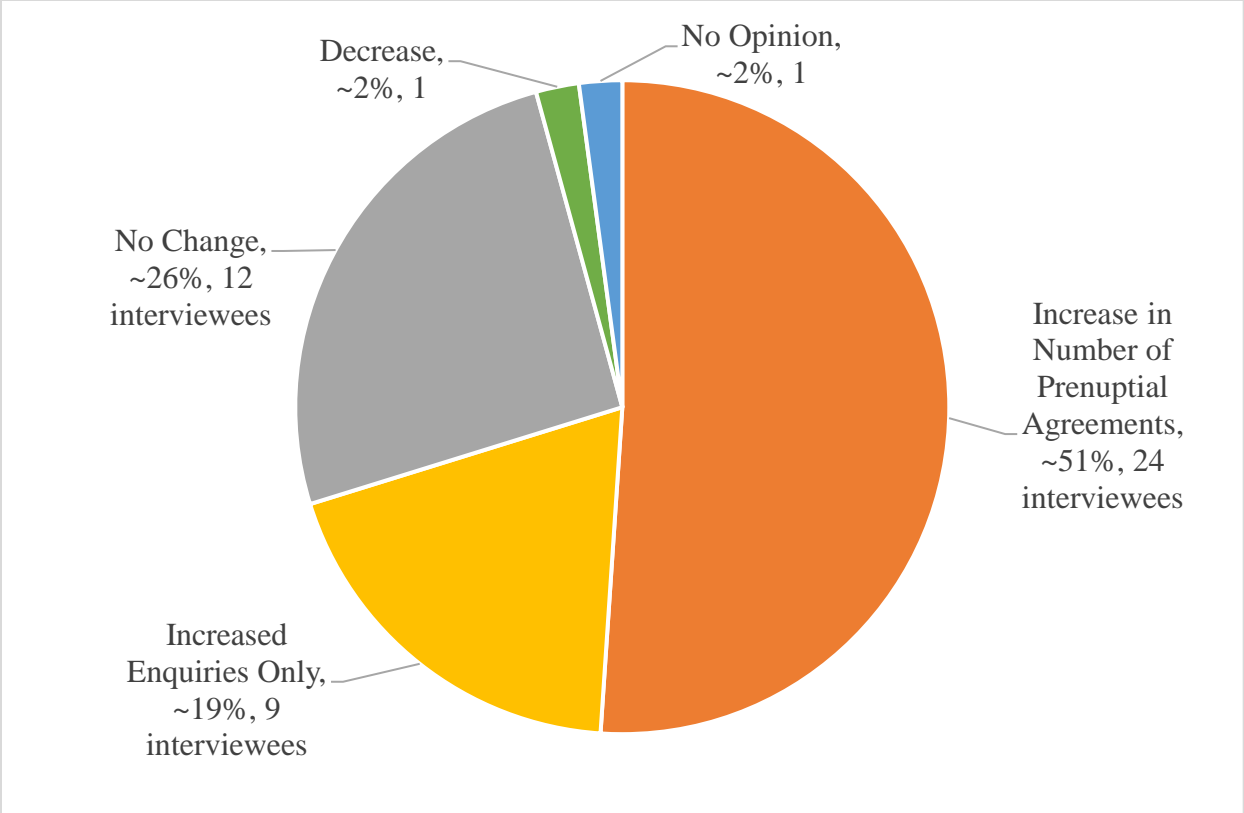
41 The discussions were conducted through semi-structured interviews which featured a mix of standardised questions supplemented by follow-up questions to the interviewees’ responses. This approach ensured that the core aspects of the study were covered during each interview while allowing for new lines of inquiry to be explored. The standardised questions sought to assess whether there were any recent trends relating to the entering of prenuptial agreements by parties and the underlying reasons for this.

42 In total, 47 interview records were analysed as part of this study. The numbers provided in the following discussion may however not always correspond with this figure as we left it to the discretion of the interviewees to address the questions asked.

C. Findings

(1) Overall Trend

Figure 1: Trend in Prenuptial Agreements Over the Past Five Years



43 The results suggest that there has been growing interest in prenuptial agreements in Singapore in recent years, as seen from interviewees’ reports on greater numbers of enquiries and actual prenuptial agreements being entered into.

44 Of the 47 people interviewed, 24 interviewees (about 51%) reported seeing an increase in the number of couples entering into prenuptial agreements over the last five years.

45 Nine interviewees (about 19%) reported an increase in the number of enquiries they received about prenuptial agreements over the last five years. While these enquiries might not necessarily lead to an agreement, they do indicate an interest in the topic.

46 12 interviewees (about 26%) reported no change in the number of couples entering into prenuptial agreements over the same period. Most of these interviewees had encountered only a small number of couples, or no couples, entering into agreements with their firm. However, one

reported handling around 30 agreements in a year, while another reported handling around four to five agreements in a year.

47 There was only one interviewee who reported a decline in the number of prenuptial agreements encountered. Another interviewee did not wish to provide his views on trends.

48 Based on the responses from most interviewees, it is possible that prenuptial agreements have increased in prevalence in Singapore. This development would be in line with the trend abroad in Section III.

(2) *Number of Enquiries*

49 The results suggest that there is growing interest in prenuptial agreements in Singapore in recent years, as evinced through the increase in enquiries encountered by interviewees.

50 As Singapore Law Firms are not required by the Singapore Government or the Singapore Courts to track cases, the numbers that the interviewees provided are estimates based on their personal experiences. Based on the data gathered, it appeared that firms received 12 enquiries a year on average.

51 The firm which reported the next highest number of enquiries encountered “about five enquiries (each month)” in a year, which added up to approximately 60 enquiries a year. The interviewee we spoke to noted that this number had increased significantly over the past year, as her firm had around ten enquiries in total in the six months before the study period.

52 At least nine firms reported figures within the range of 12 to 50 enquiries a year, and at least 19 other firms reported figures in the range of one to ten enquiries annually.

53 One interviewee also commented that she had encountered more prenuptial agreements in the last five years than in the previous 20 years. Another interviewee observed that there had been

an uptick in prenuptial agreements since *TQ v TR*.⁶⁹ Two interviewees noted that they had not encountered prenuptial agreements earlier in their practice or even from a few years back during their training.

54 The rate at which enquiries translated into actual prenuptial agreements was also inconsistent across firms. There were firms which experienced low or no follow-up after the enquiry, while others could see almost all enquiries progressing to become actual agreements.

(3) *Number of Prenuptial Agreements*

55 Enquiries received by firms tended to exceed the actual number of prenuptial agreements entered into. The number of actual prenuptial agreements handled by a firm in a year was much less than the number of enquiries it received.

56 Some possible reasons for this (as advised by interviewees) are as follows:

- a) parties were discouraged from pursuing a prenuptial agreement after discovering that such agreements were not automatically enforceable in Singapore;
- b) the value of their assets might not have justified the accompanying legal fees;
- c) they were dissuaded by lawyers from entering into an agreement for the above reason;
- d) they were unwilling to strain their relationship further from pursuing the agreement; and
- e) they enquired with multiple firms and followed up with only one.

57 The firm which reported the highest numbers of enquiries each year also reported encountering the highest numbers of prenuptial agreements, as “about 30” enquiries would lead to actual prenuptial agreements.

⁶⁹ *TQ v TR and Another Appeal* [2009] 2 SLR(R) 961 at [63]. In this case, a prenuptial agreement was entered into by a Dutch citizen and a Swedish citizen in the Netherlands that there shall be no division of matrimonial assets. The Court of Appeal discussed the principles to be applied when considering the effect of such agreement in determining such division.

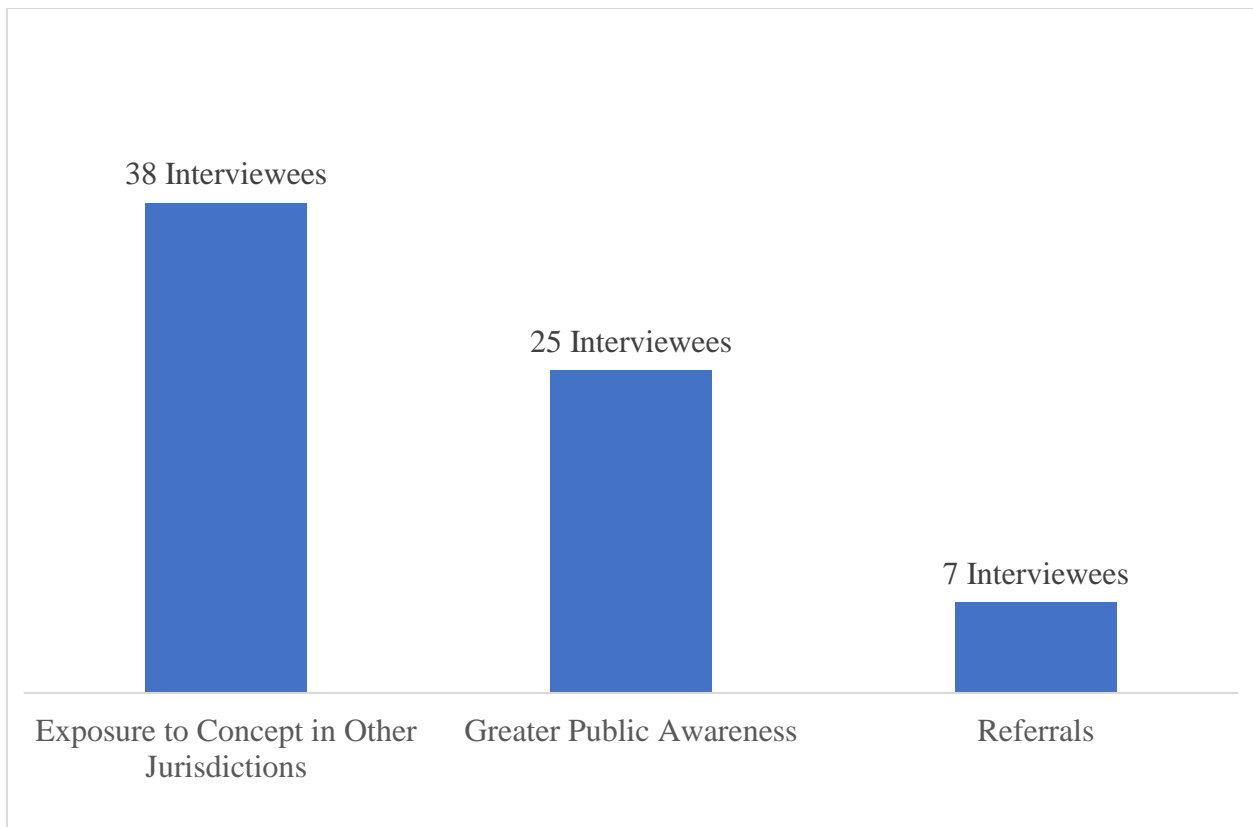
58 One interviewee reported that around 40% to 60% of his firm’s 20 to 40 enquiries would result in a prenuptial agreement, which would translate to eight to 24 agreements annually. Another interviewee reported having handled about 15 prenuptial agreements in a year.

59 At least eight interviewees reported handling five or more prenuptial agreements in a year. At least seven interviewees reported working on one to four prenuptial agreements annually. Three interviewees could confirm that they did not see any parties entering into prenuptial agreements.

(4) *Reasons for Interest in Prenuptial Agreements*

60 Greater public awareness, exposure to the concept of prenuptial agreements in other jurisdictions, and referrals appeared to be the main reasons driving increased interest in prenuptial agreements.

Figure 2: Reasons for Interest in Prenuptial Agreements



61 38 interviewees mentioned that the change could be attributed in part to individuals who had been exposed to the concept of prenuptial agreements in other jurisdictions. This group could involve foreign couples, or couples which comprised one Singaporean and one non-Singaporean. In such instances, the foreign nationals could already be accustomed to the idea of entering into a prenuptial agreement before marriage. For instance, one interviewee noted that it was “the norm” for wealthy Indonesians to seek a prenuptial agreement due to the jurisdiction’s community property regime. Singaporeans who had lived abroad, such as for studies and work, were seen by three interviewees to have greater interest in prenuptial agreements.

62 25 interviewees mentioned that the interest in prenuptial agreements was due in part to greater public awareness. It was suggested that this awareness might have been raised through television, the internet, and social media, for instance through celebrity culture. The public could also have read about recent court decisions involving prenuptial agreements in the news. They might also have heard about it through word-of-mouth from family and friends. Greater awareness about the impact of divorce and divorce rates might also have encouraged individuals to seek prenuptial agreements. It was suggested that individuals could be more receptive to the idea of having a prenuptial agreement today than in the past.

63 Seven interviewees suggested the change was driven partly by referrals. One interviewee noted that “all” the banks who did private wealth planning had been recommending prenuptial agreements to clients. Another interviewee mentioned such behaviour could come from foreign banks with a presence in Singapore. Referrals could also come from other law firms so that the party asked to sign the prenuptial agreement would receive independent legal advice. Alternatively, they could come from within a firm, as lawyers in different practice groups could send over interested clients.

(5) *Profiles of parties who Entered into Prenuptial Agreements*

64 The information from the interviewees suggested that couples who entered into prenuptial agreements tended to possess certain common traits.

(a) *Higher-Net-Worth Couples*

65 The couples who entered into prenuptial agreements typically appeared to possess, or would come to possess, some measure of wealth. 37 interviewees estimated that most, if not all, of the couples they encountered that entered into an agreement had, or would have, a net worth of at least SG\$1 million. Many were assessed to be worth “a few million” or “tens of millions”. Four interviewees reported that their firms had worked with billionaires.

66 While it was not always possible to estimate the wealth of couples, interviewees made the following observations.

67 The parties who entered into prenuptial agreements could have a disparity of wealth between them or be equally wealthy. According to 23 interviewees, it was more common for parties who entered into an agreement to have, or would come to have, a lopsided distribution of wealth, with one party having significantly less wealth than the other. 13 interviewees posited that there was a roughly even mix of unequally wealthy and equally wealthy couples entering into prenuptial agreements at their firm. Three interviewees found that their clients consisted of more couples that were evenly matched in wealth than couples with uneven distributions of wealth.

68 Prenuptial agreements could come in various forms and could differ between clients and lawyers. There were parties and counsel who preferred to create detailed schedules and inventories to support the agreement. Others believed that any schedule should define or outline only specific assets which the parties wished to protect. In many cases, the prenuptial agreements contained only general terms which stated that each party would not have a claim on the other’s wealth.

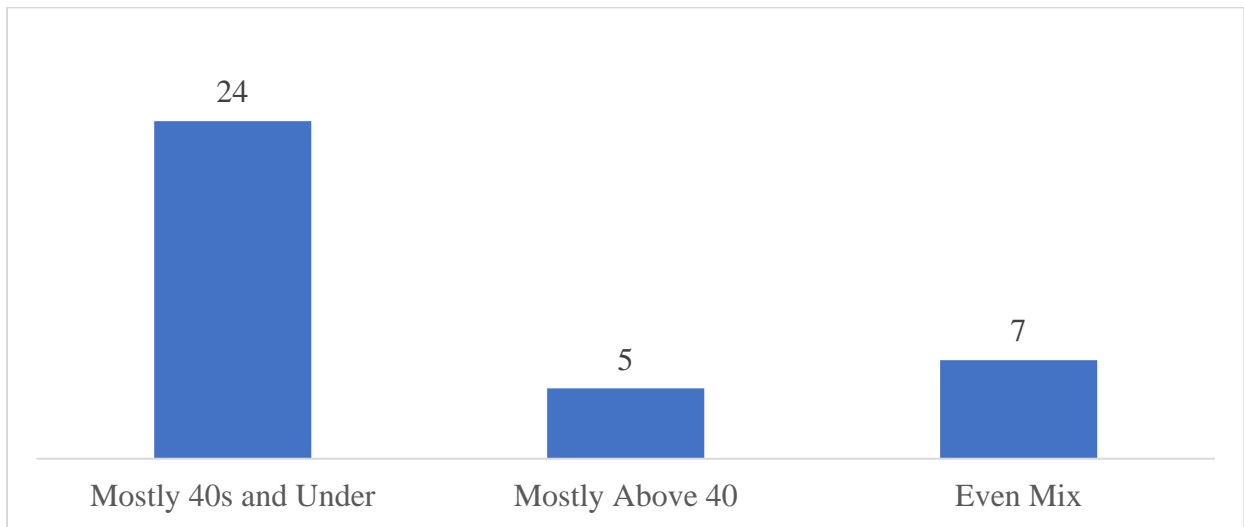
69 In instances where the interviewees were unsure about the exact extent of a client’s net worth, they offered an estimate of their client’s wealth based on factors such as the client’s income level, assets owned and occupation.

70 There were also instances of outliers . 13 interviewees reported seeing one to a few couples that were worth less than SG\$1 million and did not expect to inherit wealth entering into prenuptial agreements. They noted that such cases were uncommon. The interviewees who encountered such cases listed the following as possible motivations for the agreements:

- (a) the prospective spouses could include professionals and businessowners who anticipated having substantial earnings in the future;
- (b) one or both parties could have had acrimonious divorce experiences and wished to avoid an acrimonious divorce;
- (c) at least one of the prospective spouses perceived the need to protect premarital assets, such as property, for children from previous marriages; and
- (d) the prospective spouses could include foreign nationals from jurisdictions where it was customary to enter into prenuptial agreements.

(b) *Couple's Age*

Figure 3: Estimated Age of Couples When Entering Agreement, According to Law Firms



71 The figures on clients' age could be approximates, as interviewees could be uncertain about their exact ages. As reported, 24 interviewees reported that most of their clients who entered prenuptial agreements were in their 40s or younger. Seven mentioned that their clients were mainly

in their 20s to 30s, while nine interviewees recalled seeing clients mostly in their 30s to 40s. Eight interviewees considered most of their clients to be under 40. Two interviewees saw this trend as tying in with demographic patterns, as second and third generation descendants of wealthy Singaporeans would be around the age for marriage.

72 Five interviewees encountered clients that were mainly above 40 when they entered into their prenuptial agreements.

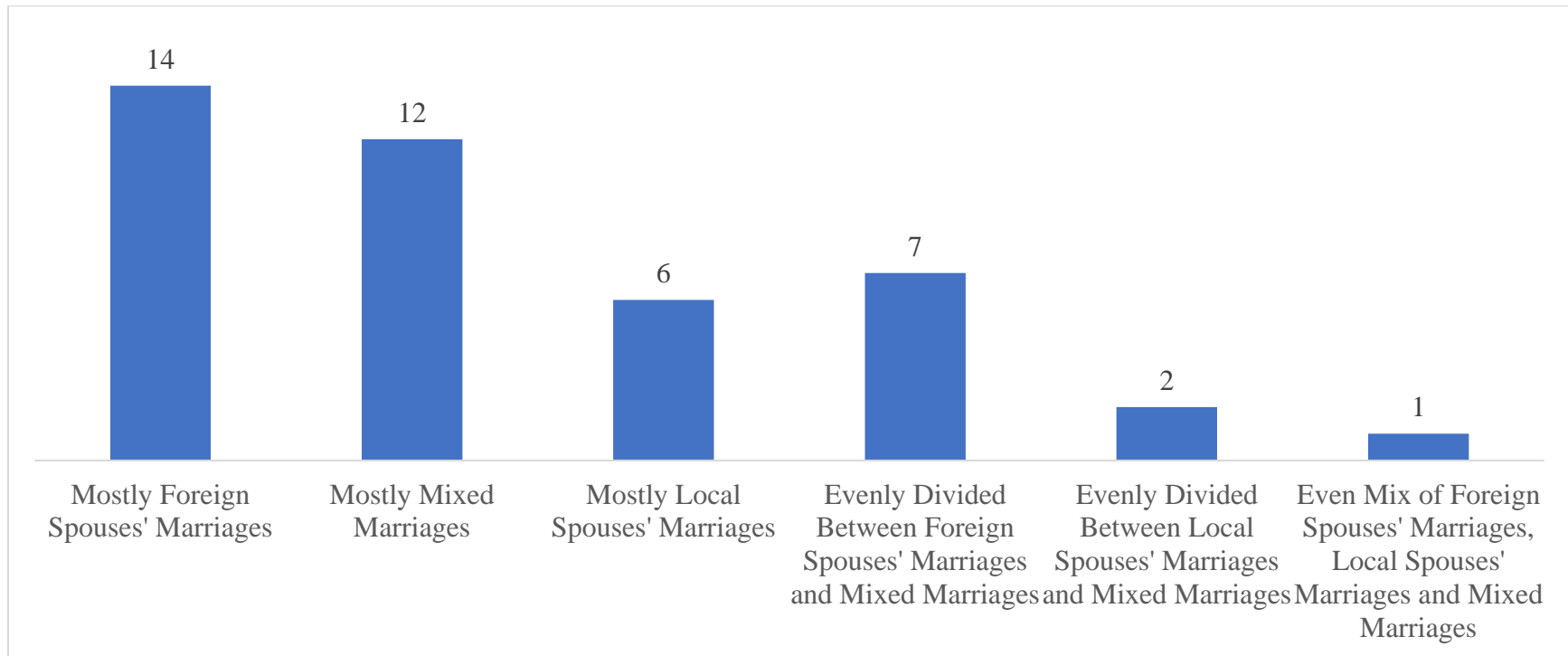
73 Seven interviewees found a roughly even mix of couples below and above 40 entering into prenuptial agreements.

74 In relation to age gap, 19 interviewees informed us that most of the couples who entered into prenuptial agreements at their firms did not have a notable age gap. On the other hand, nine interviewees considered that most of the couples they saw had a notable age gap, which included couples with a difference of 30 to 40 years between them. There were also cases of individuals in their 70s marrying spouses in their 20s.

(c) *Couple's Nationality*

75 A substantial number of interviewees reported that the couples who entered into prenuptial agreements involved mostly foreign spouses and mixed marriages.

Figure 4: Nationalities of Couples Entering Prenuptial Agreements, According to Law Firms



76 Marriages between 2 foreign nationals are referred to as “foreign marriages”, marriages between 2 Singaporeans are referred to as “local marriages” and marriages between 1 Singaporean and 1 foreigner are referred to as “mixed marriages”.

77 The interviews indicated that many of those who entered into prenuptial agreements were between foreign nationals. 14 interviewees found most of their firms’ prenuptial agreements consisted of foreign marriages, while 12 interviewees reported such agreements mostly involved mixed marriages. Only six interviewees found that most of their agreements involved local marriages.

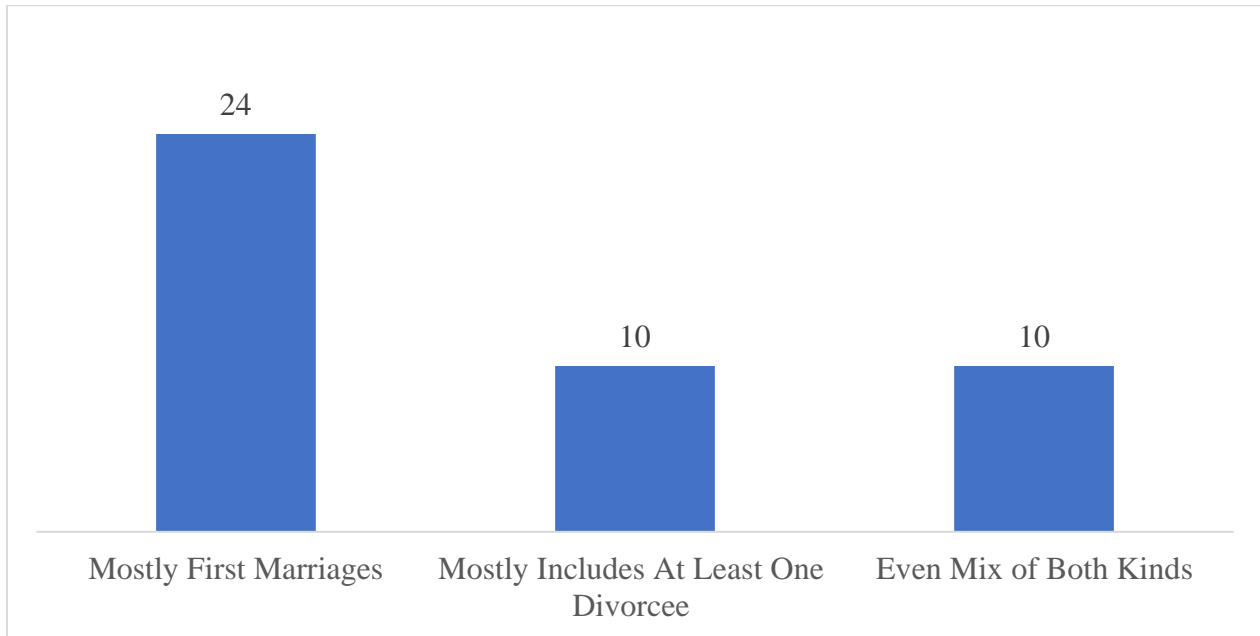
78 In terms of distribution, seven interviewees found that most of their clients for prenuptial agreements were evenly divided between foreign marriages and mixed marriages. Two interviewees found that most of their clients were evenly divided between local marriages and mixed marriages. One interviewee saw that there was an even mix of the three groups entering into prenuptial agreements.

79 Clients come from Australia, Belgium, Cambodia, Canada, China, Denmark, France, Germany, Greece, Hong Kong, Indonesia, India, Italy, Jamaica, Japan, Malaysia, Myanmar, the Netherlands, New Zealand, Norway, the Philippines, Puerto Rico, Russia, Spain, South Africa, South Korea, Switzerland, Taiwan, Thailand, Vietnam, the UK, and the US. Regions such as Eastern Europe and the Nordic countries were also mentioned.

(d) *Couples’ Marital Status*

80 Most of the interviewees reported handling more prenuptial agreements from individuals entering into first marriages.

Figure 5: Distribution of Marital Status of Couples Entering Agreement



81 24 interviewees reported that most of the prenuptial agreements they handled were by couples getting married for the first time. Conversely, ten interviewees reported encountering more prenuptial agreements involving couples which included at least one divorcee. Another ten interviewees found that there was an even mix of both types of couples.

(e) Couple's Education Level

82 Most of the interviewees believed that most, if not all, of their clients entering into prenuptial agreements had at least one party with tertiary education.

83 38 interviewees believed that most, if not all, of the couples who entered into prenuptial agreements featured at least one party who possessed at least tertiary education. While the interviewees might not always be aware of their clients' educational qualifications, they believed that many of their clients were graduates due to factors such as their occupations and the categories of employment pass which they possessed. Yet, three interviewees noted that one's education level did not necessarily influence the likelihood that one would enter into a prenuptial agreement. They

observed that individuals were more likely to enter into prenuptial agreements due to factors like wealth and awareness.

(f) *Gender and Enquiries*

84 According to the interviewees, gender was not as strong a factor for the level of interest in a prenuptial agreement as compared to other factors such as an individual's net worth or the influence from third parties such as parents.

(6) *Purpose of Prenuptial Agreements*

(a) *Protecting Inter-generational Wealth*

85 24 interviewees indicated that the goal of protecting inter-generational wealth was a notable factor in their clients' decision to enter into prenuptial agreements. Such wealth could be in the form of expected wealth which would pass to these clients through inheritance, or assets which were already in their names.

86 25 interviewees observed that family members, in particular senior family members, played a notable role in encouraging their relatives to enter into a prenuptial agreement. This trend applied mainly to younger individuals seeking a prenuptial agreement as their wealth or expected wealth could come from their parents or grandparents as a few had expressed the need to consult their family members on details pertaining to the agreement. In other instances, the enquiry for the prenuptial agreement originated directly from family members. Such instructions could come from the family of one prospective spouse, or from the families of both prospective spouses. In some cases, enquiries for prenuptial agreements were initiated by family members, with terms being discussed or "dictat[ed]" by the said family members with little say by the couple.

87 Four interviewees observed that enquiries which were at the behest of senior family members tended to see a higher take-up rate. This is so as entering into a prenuptial agreement could be a condition imposed on one or both parties before they were allowed to inherit their

family's wealth. In addition, a prospective spouse could feel less offended if the request was made by the other party's family than if it was raised by the other spouse.

88 Seven interviewees had the impression that junior family members could seek a prenuptial agreement due to pressure from their elders. There were instances where junior family members appeared to face repercussions if they did not comply, which could see them being disinherited and perhaps losing the seed funding for their business if they did not obey. It was also mentioned that some trusts stipulated that descendants who did not enter into a prenuptial agreement would be ineligible to continue as beneficiaries.

89 There were incidents where prospective in-laws exhibited distress over the prenuptial agreement, with at least one potential daughter-in-law being observed to have been "quite emotional" at the law firm. Some parties were also reported to have been "not interested" in a prenuptial agreement but entered into it only at their parents' insistence.

90 Three interviewees mentioned that they did not notice any pressure by senior family members for junior family members to enter into prenuptial agreements. One interviewee said that junior family members could be "understanding" as they saw that their elders were trying to protect wealth which they did not earn. Yet, another interviewee acknowledged that counsel might not be aware of what occurred behind the scenes.

(b) Protecting Against Spousal Debt

91 31 interviewees mentioned including some form of provisions to protect the parties against incurring spousal debt. These provisions could protect against spousal debt incurred before and during the marriage and could provide comprehensive protection against any debts and liabilities incurred by the spouse or be limited to items such as loans and business debts. Three interviewees found such provisions to be quite standard that did not provide much of a discussion point.

92 Eight interviewees did not include such provisions in the prenuptial agreements. One interviewee noted that spousal debt was already kept separate under the existing legal regime.

Another mentioned that her firm's clients did not require such provisions as many of them had properties elsewhere in their own names and serviced their own mortgage loans, with these being sole assets.

(c) *Arrangements Before and During the Marriage*

93 29 interviewees had encountered provisions dealing with other arrangements before and during the marriage. Examples of such arrangements included spelling out monthly spousal maintenance and relocation benefits for a spouse to compensate for possible job loss if the parties moved abroad. There could also be provisions which stipulated establishing a joint spending account along with monthly contributions to this account based on an agreed percentage of each spouse's earnings. Some agreements included details covering the suspension of payments during maternity leave, as well as when payments would resume. There could also be stipulations on each party's financial obligations for the mortgage, children, and overseas trips, as well as provisions fencing off future rental income from the pool of shared assets.

(d) *Regulatory Aspect*

94 Five interviewees indicated that the Additional Buyer's Stamp Duty and other property cooling measures could have encouraged prenuptial agreements. One interviewee observed that wealthy individuals could purchase properties in the names of their children and grandchildren to avoid such taxes. Such a move would allow them to avoid taxes levied on owning multiple properties. Consequently, these individuals would seek to protect their investments by having their descendants enter into a prenuptial agreement before marriage.

95 It was suggested that foreign laws could incentivise clients to seek out prenuptial agreements. For instance, an interviewee observed that clients could believe that Indonesian law requires a prenuptial agreement to safeguard the property of a citizen in an international marriage. This requirement was intended to preclude foreigners from owning certain types of properties in the country. Chinese nationals were reported to have enquired about prenuptial agreements as it resembles a practice in China, where a checklist of what each spouse possessed before marriage

was notarised to reduce potential conflict later. Americans were also said to be interested in prenuptial agreements as US laws would typically award an equal proportion of assets to each spouse in the absence of an agreement.

96 One interviewee noted that business partners and relatives with family-run businesses could encourage an individual to enter into a prenuptial agreement to prevent negative repercussions on the business as divorce could adversely impact an individual's shareholdings.

(e) Provisions on Children

97 25 interviewees had encountered prenuptial agreements with provisions about children, but the extent of their clients with such provisions varied considerably. Two interviewees mentioned that provisions on children featured in "all" or 90% of the prenuptial agreements they worked on. For others, prenuptial agreements with provisions on children factored into only a few agreements.

98 The provisions on children also varied widely in scope. There were agreements which discussed issues ranging from children's maintenance to their future education, nationality, custody, and care and control. In other instances, any provisions on children were confined solely to financial arrangements. Some of these prenuptial agreements dealt only with children in existence from a previous marriage, while others aimed to deal with children who might be born in future.

(f) Provisions for Graduated Division of Assets

99 17 interviewees encountered prenuptial agreements which contained provisions for a graduated division of assets. These provisions stipulated that an increasing proportion of a couple's wealth would be allocated to a spouse the longer he or she stayed in the marriage. Such provisions could originate from wealthier spouses who wanted to encourage the other spouse to stay in the marriage. At other times, it was the less well-to-do spouse who requested such provisions in the prenuptial agreement to protect themselves should things go awry during a long marriage.

100 One interviewee mentioned that he had included such provisions as it would not be realistic to expect that a prenuptial agreement which did not adequately provide for one spouse would be given weight in Singapore. However, another interviewee noted that such provisions had fallen out of favour in some jurisdictions as it was seen to incentivise undesirable behaviour by encouraging parties to prolong or end a marriage in view of an approaching milestone.

101 Two interviewees had clients who wanted prenuptial agreements which based the division of assets on “good” or “bad” behaviour. For instance, they wanted to stipulate that the party who had an affair during the marriage would incur a financial penalty in the division of assets. However, one interviewee mentioned that she would attempt to dissuade her clients from including such provisions as it would be difficult to determine who is at fault. Another interviewee attempted to discourage her clients from adding such provisions as she believed the Court was not likely to give weight to it. Moreover, it could contribute to “bad will” between the parties and affect the reasonableness of the agreement.

(g) *Provisions to Review Prenuptial Agreements After Marriage*

102 Seven interviewees had dealt with provisions which allowed for the review of prenuptial agreements after the marriage. This option would enable the couple to update their agreement to account for changes in circumstances to enhance the enforceability of the agreement, while rendering the terms of the agreement fairer for the parties. This review might then better reflect circumstances of the marriage. In some cases, the parties were provided with the option to review the agreement later if both spouses were agreeable. In others, the need for a periodic review, for instance every five years, was stipulated in the agreement. There were also agreements which stipulated that the parties would be obliged to discuss recalibrating existing terms in the agreement if circumstances changed materially. The definition of what constituted material changes in circumstances could be set out in these agreements. On the other hand, one interviewee saw that it was not desirable to include such provisions, as the purpose of entering into a prenuptial agreement could be to avoid discussion of financial matters later in the marriage.

V. Comparison of Prenuptial Agreement Trends

103 The findings from our study appears to be generally aligned with the trends documented in the literature review. To recap, these documented trends are as following:

Trend 1: Increase in number of couples entering into prenuptial agreements;

Trend 2: Younger generations more likely to enter into prenuptial agreements;

Trend 3: Some individuals enter into prenuptial agreements to protect wealth;

Trend 4: More women are entering into prenuptial agreements; and

Trend 5: prenuptial agreements are popular with couples who have had a prior marriage.

104 For Trend 1, the literature suggests that the number of couples entering into prenuptial agreements in Australia, Canada, Hong Kong, New Zealand, the UK and the US has been increasing. Our study found that the majority of lawyers interviewed saw an increase in the number of couples inquiring about prenuptial agreement from 2018 to 2022. While these enquiries might not necessarily lead to an agreement, they do indicate a growing interest in the topic.

105 For Trend 2, the literature suggests that younger people in Australia, Canada, Hong Kong, New Zealand, the UK and the US were more likely to enter into prenuptial agreements. Our study found that the majority of lawyers interviewed had served clients mostly in their 40s and under. This is aligned with Trend 2.

106 For Trend 3, the literature suggests that the desire to protect wealth appeared to be a strong factor which encouraged individuals in Australia, Canada, Hong Kong, New Zealand, the UK and the US to enter into prenuptial agreements. While our study also found that wealth protection was a key reason for entering into prenuptial agreements, there were other key reasons as well. This included: 1) Protecting against spousal debt; 2) Codifying living arrangements during marriage (e.g., spousal contributions to finances during marriage); and 3) Codifying provisions for children. The focus on these aspects could likely be due to the nature of divorce laws in Singapore where marital assets are split based on the couple's direct and indirect contributions, and also based on the needs of the child. Our study also found that most couples who entered into prenuptial agreements typically appeared to possess, or would come to possess, some measure of wealth.

107 For Trend 4, the literature suggests that the take-up of prenuptial agreements in Australia, the UK and the US was partly driven by women. In our study, it was found that gender was not as strong a factor for the level of interest in prenuptial agreements. This could likely be due to the nature of divorce laws in Singapore where marital assets are split based the couple's direct and indirect contributions. This in effect provides women with a base level of protection in marriage.

108 For Trend 5, the literature suggests prenuptial agreements were popular with couples who have had previous marriages. Our study however found that this trend was reversed in Singapore. The majority of our interviewees shared that most of the prenuptial agreements that they handled involved couples getting married for the first time. This could also likely be due to the unique nature of divorce laws in Singapore whereby prenuptial agreements today are not binding.

VI. Conclusion

109 Our study sought to examine trends on prenuptial agreements in other jurisdictions and Singapore, assess the number of prenuptial agreements dealt with by the Singapore Court in the years 2016 to 2018, and the prevalence and nature of, and reasons for, such agreements in Singapore through interviews with practising lawyers.

110 Our findings indicated that prenuptial agreements had made their way to the Singapore Courts in negligible numbers from 2016 to 2018. Nonetheless, our interviews with lawyers suggested more couples had entered into prenuptial agreements in the last five years.

111 However, the profiles of individuals entering into prenuptial agreements in Singapore may be dissimilar from parties entering into such arrangements in the jurisdictions we assessed for trends. Notably, non-Singaporeans may account for a significant proportion of parties entering into agreements. Couples who entered into prenuptial agreements in Singapore also tended to be wealthier individuals. Additionally, the increased interest in prenuptial agreements did not appear to stem from any particular gender.

112 Lastly, senior family members appeared to play a significant role in the decision in the terms of agreement, and their involvement seemed to increase the probability of the finalisation of a prenuptial agreement. Indeed, the impetus for such arrangements could arise mainly from parties' families. This finding supports the view by Hitchings, who noted that third-party involvement in prenuptial agreements can occur.

A. *Impact and Implications*

113 The apparent increase in prenuptial agreements over the last five years suggests that the Judiciary may encounter more cases involving prenuptial agreements in future.

114 Any near- and medium-term increase might consist of prenuptial agreements of couples with one or both spouses of foreign nationality. This could be due to the relative popularity of agreements for this group and the data from FJC indicating that a significant number of divorce applications involve couples where one or both spouses were non-Singaporean.⁷⁰

115 Also, s 93 of the Act provides that the Court shall have jurisdiction to hear divorce proceedings if either party to the marriage is domiciled in Singapore at the commencement of the same or is habitually resident in Singapore for a period of three years preceding its commencement. With Singapore becoming more globalised, the Court may encounter more prenuptial agreements amongst non-Singaporeans contemplating divorce who meet the jurisdictional requirements.

116 This is in line with the data from Singapore's Ministry of Manpower ("MOM") which illustrates that the number of higher-net-worth foreigners coming to Singapore has been rising. Based on MOM's Employment Pass ("EP") data,⁷¹ which accounts for 94% of higher-income

⁷⁰ Joyce Low, Lee Meng Chung & Cha Yoo Jin, "International Divorces in Singapore: A Study of Trends From Cases Filed In The Family Courts" (2019) 31 SAL Practitioner

⁷¹ Of the 1.47m non-residents in Singapore in 2021, employment pass holders accounted for ~11% of these. The other categories which make up the total number of non-residents in Singapore are: 1) S Pass Holders (11%) which have a minimum qualifying monthly salary of between \$3,000 to \$3,500; 2) Non-Construction, Marine Shipyard and Process Sector work permit holders (19%) and Construction, Marine Shipyard and Process Sector work permit holders (20%) which do not have a minimum qualifying monthly salary; 3) Migrant Domestic Workers (16%) which do not have a minimum qualifying monthly salary, but who are typically paid at around \$600 a month (Source:

migrants,⁷² the number of foreigners earning more than SGD 5,000 monthly has steadily increased since 2021. As of June 2023, this number stands at 197,300 pass holders, an approximately 22% increase.

117 The Singapore Government's October 2023 *Forward SG* report (a roadmap on the Government's future direction) has also reiterated the need for Singapore to keep its economy open and to continue to attract and anchor quality investment. It specifically states that "We must continue to welcome foreign manpower from around the world to complement Singaporeans". It has also emphasised the importance of "stay(ing) open ... to continue to attract the best companies and top talent to Singapore".⁷³

118 The Court could also encounter more cases of Singaporean couples with prenuptial agreements as descendants of wealthier families get married.

119 Individuals of more modest means may also seek to enter into prenuptial agreements in time, due to its growing popularity and shifting cultural norms.

<https://www.channelnewsasia.com/cnainsider/foreign-domestic-worker-maids-moonlighting-employers-law-review-575126>); 4) Dependents of Citizens/PRs/Work Pass Holders (18%); and 5) Students (4%). (Source: <https://www.population.gov.sg/files/media-centre/publications/population-in-brief-2021.pdf>).

⁷² In addition to EPs, MOM also issues other work passes for high income earners. This includes: 1) Tech Pass for individuals earning at least \$20,000 a month; 2) Personalised Employment Passes ("PEP") for individuals earning more than \$22,500 a month; 3) Overseas Networks and Expertise Pass ("One Pass") for individuals earning more than \$30,000 a month; and 4) Entre Pass for individuals who are starting business in Singapore (no minimum income criteria) and 5) The Global Investor Programme ("GIP") for individuals who are able to demonstrate an investment of at least SGD 10 million.

The trends of these additional work passes have not been explicitly mentioned in the main body of the paper as their approval numbers by year are not made publicly available. From the limited data that is available in the public domain, we understand that 1) there were around 250 approvals for the Tech Pass between Jan 2021 and Jul 2022 (~167 approvals per year) (Source: <https://www.mti.gov.sg/Newsroom/Parliamentary-Replies/2022/09/Written-reply-to-PQ-on-EntrePass-and-TechPass>); 2) ~1,771 PEP approvals in 2020 (1% of new EPs being introduced in 2020) (Source: <https://sprs.parl.gov.sg/search/#/sprs3topic?reportid=written-answer-5987>); 3) ~9,365 One Pass approvals in 2022 (5% of new EPs being introduced in 2022) (Source: <https://www.mom.gov.sg/newsroom/speeches/2022/0912-ministerial-statement-on-work-pass-framework-enhancements>); 4) ~200 GIP approvals from 2020 to 2022 (~67 per year) (Source: <https://sprs.parl.gov.sg/search/#/sprs3topic?reportid=oral-answer-3081>).

These numbers when added together amount to ~6% of the 2023 EP numbers (~11,370).

⁷³ Prime Minister's Office website <<https://www.pmo.gov.sg/Newsroom/DPM-Lawrence-Wong-at-the-Singapore-Economic-Policy-Forum-2022>> (accessed 10 November 2023).

120 Consequently, the situation in Singapore could gradually become more reflective of trends seen abroad, with prenuptial agreements becoming more widespread in the coming years.

121 Alternatively, individuals could choose to avoid marriage and turn to cohabitation to protect their wealth.

B. Limitations

122 The Judiciary could encounter more prenuptial agreements than suggested by the interviews as such agreements could be entered into by non-Singaporeans outside Singapore. While such trends have been alluded to in this study, investigating these developments is outside the scope of this paper.

123 The study did not include input from international law firms. Interviews conducted as part of the study were confined to local firms with higher volume of applications filed over 2016 to 2018. Perhaps, if the international firms are added, they could provide a more holistic view of the prenuptial agreements landscape in Singapore.

124 It is also possible that law firms with more exposure to prenuptial agreements are overrepresented in the study. In sending out invitations to firms, we received a minor number of replies which declined the invite as the firms believed they lacked adequate expertise on the subject. Thus, it is conceivable that firms which encountered fewer or no prenuptial agreements might be underrepresented in the data.

125 The data obtained from the study may be less complete than it could otherwise be, as there were instances where we could not access further aspects of the information, such as clients' nationalities and the sources for referrals, due to interviewees' concerns over confidentiality. In addition, the interviewees were occasionally hesitant or unable to provide further details when asked.

126 The numbers cited by the interviewees may be estimates as their firm may not compile statistics for prenuptial agreements.

C. Directions for Future Research

127 Given the salience of non-Singaporean parties entering into prenuptial agreements, future research could reach out to international law firms and wealth management professionals with a presence in Singapore to assess whether they have clients entering into such agreements. It could also account for the use of cohabitation as an alternative to prenuptial agreements.

128 A further study on the types of issues which may arise as a result of the increasing prevalence of prenuptial agreements could also be considered. For example, reference could be taken from other countries which have experienced an increasing use of prenuptial agreements on the kinds of legal issues which these judiciaries have been presented with. This will shed light on how the Singapore Judiciary may be better equipped, such as through judicial education and training, to deal with similar issues which could arise here in Singapore eventually.
