

DIVISION OF MATRIMONIAL ASSETS IN DIVORCE PROCEEDINGS

With the upcoming launch of self-help portal for parties to file their divorce papers without the help of lawyers, knowing how the court might rule on the division of matrimonial assets can serve as leverage for parties during the negotiations.

Couples will soon be able to file their divorce papers online without having to go through lawyers through a new online portal tentatively known as “[Litigation Assist](#)”. This platform offers a simplified track for spouses who are not contesting the divorce and have agreed on all the ancillary matters.

However, the acrimonious nature of divorce proceedings renders any negotiation on the ancillary matters extremely challenging. This is especially so for the division of matrimonial assets. The respective positions of parties are generally far apart, with each party trying to get as much out of the other party. To reach an early settlement, each party is eventually forced to compromise.

It is therefore important for parties to appreciate how the Courts may probably rule on the division of matrimonial assets so as to avoid the risk of being short-changed during the negotiation process. This is where lawyers may be able to assist parties – in helping them reach to a reasonable settlement that is more or less consistent with the current state of the law.

IDENTIFICATION OF MATRIMONIAL ASSETS

Generally, all assets acquired during the subsistence of marriage should be included in the pool of matrimonial assets that will be subject to division. Common examples of such assets include the matrimonial home, family car, savings, and cash balances in the spouses’ CPF accounts.

To exclude an asset from the pool of matrimonial assets, the disputing spouse must be able to prove that the asset was acquired by way of a gift from a third party or through inheritance, or that the asset was acquired before the marriage.

Gifts between spouses will generally form part of the pool of matrimonial assets unless the gift was acquired by way of inheritance or gift from third parties, or where the value of the gift is considered insignificant compared to the total value of the matrimonial assets.

Assets that were acquired before the marriage can also be “transformed” into a matrimonial asset if: -

- the asset had been substantially improved during the marriage by the non-owning spouse or both spouses; or
- the asset had been ordinarily used by the family as part of family life during the subsistence of marriage. Such usage must be usual and relatively prolonged rather than casual.

The “substantial improvement” of a pre-marriage asset or inherited asset must entail some form of economic contribution or investment into the improvement of the asset. A mere increase in the value of the said asset would not be considered an “improvement” – efforts must have been expended.

For instance, where the owning spouse continues to pay for the pre-marriage asset during the marriage with income that would have been a matrimonial asset had it been saved up, the proportion of the value of the asset that was paid for during the marriage would form part of the pool of matrimonial asset.

Another instance of “substantial improvement” would be where the asset is a business belonging to one spouse – the development of the business by the other spouse or by both spouses during the marriage could “transform” the business into a matrimonial asset as well.

The identification of matrimonial assets is generally a challenging exercise for spouses, especially for couples with a long marriage where documentary evidence of their respective contribution or expenditure to the asset is lacking. In the absence of evidence to the contrary, the Court will generally include the full value of the assets into the pool of matrimonial assets.

APPROACH TO DIVISION OF MATRIMONIAL ASSETS

In the exercise of the division of matrimonial assets, the parties will generally have to determine their respective contribution to the household during the subsistence of marriage.

Dual-Income Marriages or Short Marriages – “structured approach”

For dual-income marriages, the Singapore Courts will generally take a structured approach towards the division of matrimonial assets (see [*ANJ v ANK \[2015\] SGCA 34*](#)), which involve three steps: -

- ascertaining the ratio of each party’s direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets;
- ascertaining the ratio of each party’s indirect contribution to the well-being of the family relative to that of the other throughout the marriage (both financial and non-financial); and
- derive the parties’ overall contributions relative to each other by taking an average of the two ratios above, bearing in mind that one of the two ratios may be accorded more significance than the other.

In assessing the respective parties’ indirect contribution, the Courts will apply a broad-brush approach and take into account different factors such as the length of marriage, number of children, and which spouse was the children’s primary caregiver.

As a general principle, direct contributions would be accorded greater weight than indirect contributions at the last step if the pool of assets are extraordinarily large or where all the assets were accrued by one party’s exceptional efforts.

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The division of matrimonial assets under the Act is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts. The contributions of both spouses are equally recognised whether he or she concentrates on the economics or homemaking role, as both roles must be performed equally well if the marriage is to flourish. When the marriage breaks up, these contributions are translated into economic assets in the distribution according to s 112(2) of the Act.

NK v NL [2007] 3 SLR(R) 743

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The “structured approach” was applied in the recent case of *UZK v UZL [2020] 3 SLR 1248*, which involved a 18 year-long dual-income marriage.

In respect of the parties’ respective direct contributions to the purchase of the immovable properties, the parties agreed on a 50:50 ratio even though from the evidence, the wife made more financial contributions to the purchase of the property.

In determining the parties’ respective indirect contributions, the Court found that the wife’s indirect contributions were greater than the husband’s such that the ratio of 60:40 in favour of the wife would be fair and equitable.

In doing so, the Court observed that the Wife was the more financially secure partner in the marriage. She took charge of the management of the immovable properties and bore the burden of payments in respect of the property. She also eased her husband’s relocations, cared for him after he was assaulted, and supported him even after they separated (at [58] to [60]).

The final ratio for division was 55:45 in favour of the wife, after taking the average of the two ratios above. The Court did not consider it necessary to adjust the average ratios taking into consideration the circumstances of the marriage.

Apart from dual-income marriages, the Court of Appeal recently clarified that the “structured approach” will also be applicable to short marriages.

In the case of *USB v USA and another appeal [2020] SGCA 57*, the divorce proceedings involved a short marriage of 5 ½ years that was preceded by a long period of cohabitation. The Court of Appeal observed that unlike a long marriage,

direct contributions can be fairly accounted for as parties would generally have in their possession evidence of their direct contribution (at [38]). It is also important to note that contributions made by respective parties during the cohabitation period pre-marriage should not be taken into consideration when determining the extent of parties' contributions to the marriage (at [49]).

Single-Income Long Marriages – tendency towards equal division

Unlike short marriages or dual-income marriages, non-financial indirect contribution to the household forms a significant part of contribution to the marriage for the non-working spouse. Applying the “structured approach” would therefore unduly favour the working spouse over the non-working spouse as financial contributions would be given recognition under both the 1st and 2nd steps of the “structured approach”.

Accordingly, the Court of Appeal observed in TNL v TNK [2017] 1 SLR 609 that for single-income long marriages, the Courts will generally tend towards an equal division of matrimonial assets to acknowledge the equally important contribution of the homemaker to the partnership of the marriage.

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Contributions in the form of parenting, homemaking and husbandry, by their very nature, are incapable of being reduced into monetary terms. No mathematical formula or analytical tool is capable of capturing or accommodating the diverse and myriad set of factual scenarios that may present themselves to court as to how the parties may have chosen to divide among themselves duties and responsibilities in the domestic sphere. It is in making this determination that what is known as the broad brush approach would have to come into play. What values to give to the indirect contributions of the parties is necessarily a matter of impression and judgment of the court

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ANJ v ANK [2015] 4 SLR 1043

With that being said, if the single-income long marriage involved an exceptionally large matrimonial asset pool, this tendency towards equal division will not apply.

In the case of Yeo Chong Lin V Tay Anq Choo Nancy [2011] 2 SLR 1157, the divorce proceedings involved a 49-year marriage where the husband was the breadwinner, and the wife was a full-time homemaker throughout the entire marriage. The

Court of Appeal upheld the 65:35 distribution in favour of the husband despite the marriage being a single-income long marriage because of the exceptionally large matrimonial asset pool of about S\$69 million.

JUST AND EQUITABLE DIVISION

Based on the foregoing principles espoused by the Singapore Courts, the ultimate goal of the exercise of division of matrimonial assets is to reach a fair and reasonable division. There is no presumption of equality, but rather, a respect and recognition for the respective spousal contributions, be it in the economic or homemaking spheres. The division of assets should also be considered holistically with other ancillary matters such as spousal maintenance and child maintenance.

Parties should therefore bear these principles in mind when entering into negotiations to reach a settlement in respect of the division of matrimonial assets.

At **Infinity Legal LLC**, we can advise, provide guidance and legal representation on all aspects of family law matters including divorce, property division, maintenance, and children.

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