

Postnuptial agreement is a contract between spouses, signed during marriage. Generally, the postnuptial agreement can be divided into two types. First is an agreement on personal relationship between husband and wife such as a separation agreement, bond and divorce agreement by mutual consent agreement. While the other is an agreement on the division of property, which covers the management community property agreement, partition of community property agreement and transmutation agreement. According to local and international laws—including both the common law legal systems recognized in Canada's Ontario and United States of America's Minnesota, California, Texas and Nevada, and the civil law legal systems recognized in Germany, Switzerland and Spain—spouses can draft and enter a postnuptial agreement on different terms. However, for a postnuptial agreement to be valid, an agreement must be in writing and, if it is an agreement on property, it must be executed and signed at the presence of officers. If a husband or a wife is considered mentally incompetent, almost every country requires that the postnuptial agreement must be signed with the consent of court or those appointed by law. Moreover, the common-law countries state that, to enter a postnuptial agreement, spouses are to disclose their property and debts so that each of them can take that information into account in their decision-making.

After studying and comparing international with Thai laws, I would like to put forward some proposals. First, changes should be made in the 1469 section of the Civil and Commercial Code, providing the court with the rightful authority to consider effect of avoidance postnuptial agreement on division of property so that the spouses are entitled to fair benefits. Secondly, a postnuptial agreement on the spouses' property should be interpreted to include an agreement on the division of property after the dissolution of marriage. Thirdly, the law should specify the regulations especially for the mentally incompetence who want to enter a postnuptial agreement. Last but not least, spouses planning a postnuptial agreement should be granted the right to opt for the separation of property system to manage their property.