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## Law of Division of Matrimonial Assets in a Divorce

Family and Matrimonial Practice Series

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## ❖ A Quick Glance at the law of Division of Matrimonial Assets in a Divorce

### ❖ Determination of Matrimonial Assets

# A Quick Glance at the law of Division of Matrimonial Assets in a Divorce

In the event of a divorce, all matrimonial assets belonging to the divorced parties are liable for division.

In an uncontested divorce, the parties' assets are divided in accordance to parties' agreement. In a contested divorce where the division could not be agreed upon by parties, the Court determines the division of the assets based on prevailing laws and case precedents.

This article aims to provide a summary of how assets are divided in the event of a contested divorce.

### Determination of Matrimonial Assets

As stated above, all matrimonial assets are liable for division. Therefore, the Court is required to first ascertain what constitutes matrimonial assets belonging to the parties, so as to determine the pool of the matrimonial assets to be divided subsequently.

# Section 112 of the Women's Charter

**Section 112 of the Women's Charter** defines "matrimonial asset" as follows:-

"(10) In this section, "matrimonial asset" means –

(a) any asset acquired before the marriage by one party or both parties to the marriage —

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) **any other asset of any nature acquired during the marriage** by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage."



In the recent case of **USB v USA and anor appeal [2020] 2 SLR 588; [2020] SGCA 57**, the Court of Appeal further examined and classified assets that parties to a divorce may possess into four broad categories, at [19]:-

“(a) **Quintessential matrimonial assets**” (to use a term first adopted by Justice Debbie Ong in *TNC v TND* [2016] 3 SLR 1172 at [40]): these are assets which either spouse derived from income earned during the marriage or to which either spouse or both spouses obtained legal title during the marriage by applying their own money, and the matrimonial home, whenever and however acquired. The entire value of these assets assessed as at the ancillary matters date (generally) will go into the pool.

(b) **“Transformed matrimonial assets”**: we use this term to denote assets which were acquired before the marriage by one spouse (or, more rarely, by both spouses), but which have been substantially improved during the marriage by the other spouse or by both spouses, or which were ordinarily used or enjoyed by both parties or their children while residing together for purposes such as shelter, transport, household use, etc. Once transformed, the whole asset goes into the

pool but if there is no transformation then, subject to (c) below, any asset acquired before the marriage even if acquired by both parties would be dealt with in accordance with general principles of property law.

(c) **“Pre marriage assets”**: these are assets that either spouse acquired before the marriage and which the other spouse does not thereafter improve substantially or which are not used for family purposes. These stay out of the pool unless, as discussed below, they are partially paid for during the marriage by the owning spouse with income that would have been a quintessential matrimonial asset had it been saved up rather than expended on the pre marriage asset. Then, the proportion of the value of the asset that was acquired during the marriage should go into the pool.

(d) **“Gifts and inherited assets”**: these assets whenever acquired by either spouse are not part of the pool unless transformed by substantial improvement or use as the matrimonial home. If transformed they should be treated in the same way as other transformed assets.

# Substantial Improvement & Ordinary Usage during the course of Marriage

With regards to the issue of whether an asset (whether pre-marital assets / gifts / inherited assets) has been substantially improved causing it to be transformed to a matrimonial asset, the improvement must have **an economic connotation**. Firstly, there must have been an investment of some kind in the asset (eg. renovation works in a commercial or residential property).

Secondly, the improvement must arise from effort which can be understood as having economic value (eg. substantial participation by one spouse in the development of the business of the other spouse resulting the business to increase in profitability over time). (see [22] of **USB v USA**).

In a similar vein, individually owned assets of the above nature can also be transformed into a matrimonial asset if it is regularly used or enjoyed by the members of the family or for the benefit of the family. Such “use” must however be frequent and relatively prolonged rather than casual.

Once the asset is transformed into a matrimonial asset, then the entire value of the asset will go towards the pool of matrimonial asset liable for division.

Once the Court has ascertained the entire pool of matrimonial asset and its value, the Court would then proceed to determine the proportion to be divided among the parties.

# Approach to Division of the Assets

## A. Division in Dual Income Marriages

In a divorce, where parties have a relatively short marriage involving dual-income families (ie. both parties are working), the applicable framework for division of matrimonial assets should follow the structured approach as set out in **ANJ v ANK [2015] 4 SLR 1043**. This approach involves three steps:-

(i) First, the court ascribes a ratio that represents **each party's direct contributions** relative to that of the other party to the marriage, having regard to the **amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets.**

- Here, the Court would usually examine the documentary evidence (eg. mortgage documents, bank slips, CPF statements etc) showing the direct financial contribution of the parties. In the event where the documentary evidence falls short of establishing

exactly who made what contribution and/or the exact amount of monetary contribution made by each party, the court is entitled to exercise its sound judgment, by using the “broad brush” approach and making a “rough and ready approximation” of the ratio / figures (see [23] of **ANJ v ANK**);

(ii) Secondly, the court ascribes a second ratio that represents **each party's indirect contribution to the well-being of the family** relative to that of the other.

- Here, the Court would apply a “broad-brush approach” in ascertaining the extent of parties' indirect financial contribution (eg. renovation fees, contribution to family expenses etc) and non-financial contribution (eg. efforts made in the form of parenting, home-making, husbandry etc) taking into account all the relevant facts of each case (see [24] of **ANJ v ANK**).

(iii) Thirdly, the Court derives each party's average percentage contribution to the family using each party's respective direct and indirect percentage contribution. With the average percentage contribution, the Court is entitled to **make further adjustments to the ratio after taking into account the other factors enumerated in Section 112(2) of the Women's Charter.**

- The average ratio is a non-binding figure. After obtaining the average ratio, the Court must engage in a **non-mathematical balancing exercise** to determine the appropriate weight that should be accorded to the parties' collective indirect contribution as against their collective direct contribution, so that the outcome would be just and equitable. There are several circumstances which might compel the Court to shift the average ratio in favour of one party against the other, taking into consideration the non-exhaustive list of factors stipulated in Section 112 of the Women's Charter. In **ANJ v ANK**, the Court highlighted at least three broad categories that should typically be

considered eg. the length of the marriage, the size of the matrimonial assets and its constituents and the extent and nature of the indirect contributions made by parties. (see para [26]-[28] of **ANJ v ANK**)

- Other factors that might be considered includes but are not limited to: needs of the children; the presence of an agreement between the parties with respect to the ownership and division of matrimonial assets; period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party, whether adverse inference should be drawn against any party who fails to provide full and frank disclosure of their assets etc. (see para [28]-[29] of **ANJ v ANK**)

## **B. Division in long Single-Income Marriages**

For divorces involving long single-income marriages, typically where one party is the sole income earner, while the other plays the role of a home-maker, the Court of Appeal held that the structured approach stated above does not apply (see ***TNL v TNK and anor appeal [2017] 1 SLR 609***).

Instead, looking at case precedents, the Courts tend towards an equal division of the matrimonial assets. The rationale behind this is that the law acknowledges the equally important contributions of the homemaker to the partnership of marriage (see [85] of ***Tan Hwee Lee v Tan Cheng Guan [2012] 4 SLR 785***). In ***Yow Mee Lan v Chen Kai Buan [2002] 2 SLR(R) 659***, the High Court further stated at [43] that:-

*“With due respect, that approach no longer accords with the legislation which takes a wider view. It recognises that a marriage is not a business where, generally, parties receive an economic reward commensurate with their economic input. It is a union in which the husband and wife work together for their common good and the good of their children. Each of them uses (or should use) his or her abilities and efforts for the welfare of the family and contributes whatever he or she is able to. The partners often have unequal abilities whether as parents or as income earners but, as between them, this disparity of roles and talent should not result in unequal rewards where the contributions are made consistently and over a long period of time. [emphasis added]”*





For more information on the article, or if you wish to learn more about the topics discussed, please contact:-

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