Assessing the Appropriateness of Applying for a Binding Financial Agreement

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If you want to manage your finances either during the course of a relationship or in the event of its breakdown, a binding financial agreement may be of interest. More commonly, phrased a 'prenuptial agreement or prenup', this legal document can alter the normal avenue for the division of property and or assets in litigation.

The purposes for which a financial agreement may be appropriate include:

1. To enable both parties to preserve certain assets of theirs from future claim by the other party, and to limit the agreement to such property (**mutual quarantine**). This type of agreement is generally enforced to protect the future benefit of any children in previous marriagesand is entered into in conjunction with an agreement under the Succession Act.
2. To enable one party to preserve from future claim by the other party certain special assets, and to limit the agreement to that purpose (**limited unilateral quarantine**).
3. After separation has occurred, the agreement may operate as a release from future spousal maintenance on the condition there is a satisfactory property settlement (**release of spousal maintenance**).

There are also other instances where a financial agreement may arise as per the *Family Law Act 1975, however if parties are separated* court proceedings via an application for consent orders are more suited, as it can simplify enforcement if needed.

If you believe that a financial agreement is necessary, then it is important to be aware of some caveats.

a. A financial agreement is not required to be fair (S 90K). On the other hand a property settlement ordered by the court has to be 'just and equitable'(s 79(2)).
b. A financial agreement can also not be set aside on the ground of hardship IFthe parties have no children to each other.
c. A financial agreement (of the prenuptial kind) should be considered against the option of not having one at all (which can allow for freedom to negotiate a settlement should the need arise).

Binding financial agreements whilst important for the future preservation of assets, have extensive considerations that need to be taken into account to assess its appropriateness in your circumstances. A lawyer can advise you of the certain risks and terms that could be included so that your financial interests are protected.