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Ring-Fencing Matrimonial Assets in Hong Kong: The Strategic Use of Insurance Products to Mitigate Wealth Attrition in Divorce

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Abstract

Hong Kong is a premier global financial hub, hosting a significant population of ultra-high-net-worth individuals (UHNWIs) with complex wealth structures. Consequently, high-stakes divorces in the jurisdiction often involve the dissolution of substantial, multi-jurisdictional matrimonial asset pools, including family businesses, real estate, and discretionary trusts. A primary concern for affluent individuals is the vulnerability of their wealth to the “equal sharing” principle, established by the landmark Court of Final Appeal decision in *LKW v. DD* (2010), which presumes a 50/50 division of marital assets. This paper explores the strategic deployment of insurance products—specifically long-term endowment plans, universal life insurance (ULI) with premium financing, and annuities—as legitimate wealth preservation and ring-fencing tools to mitigate wealth attrition during divorce. While Hong Kong family courts possess broad statutory powers under the Matrimonial Proceedings and Property Ordinance (Cap.192) to identify, value, and divide assets, properly structured insurance policies can provide illiquidity defences, debt offsetting, and satisfy the “needs” of the financially weaker spouse without liquidating core family assets. However, these strategies are not immune to judicial scrutiny. The courts actively apply anti-avoidance measures, such as the “add-back” jurisdiction for wanton dissipation and Section 17 of the MPPO, to reverse transactions intended to defeat a spouse’s financial claims. The paper highlights the critical importance of the “intention test,” timing, proportionality, and beneficiary selection in determining the legitimacy of an insurance structure. Ultimately, the article concludes that while insurance products are effective for long-term wealth transfer, their success in divorce ring-fencing relies heavily on proactive planning, segregation of non-matrimonial funds, and the indispensable legal certainty provided by pre-nuptial and post-nuptial agreements.

Keywords: Matrimonial Assets, Wealth Preservation, Hong Kong Family Law, Insurance Products, Divorce

1. Introduction

Hong Kong is a long-standing global financial centre which is home to some of the largest ultra-high-net-worth individuals and most complex family wealth structures in the world (Hoth et al., 2020). The jurisdiction also experiences a relatively consistent number of affluent divorces each year (Harris, 2009). It is often the case that such “high-stakes” divorces involve more than just two individuals who were married to each other: the true financial impact of these cases is felt by the dissolution of a de facto partnership involving a large number of interconnected economic interests which often straddle multiple jurisdictions (Lo, 2018). As such, matrimonial asset pools in these cases can comprise various asset classes spanning multiple jurisdictions and including shares in privately owned family business groups, international real estate portfolios, discretionary family trusts, and complex financial products (Hewitt, 2014).

The primary concern of high-net-worth individuals entering or exiting a marriage in Hong Kong is the vulnerability of wealth accumulated over many years to an "equal sharing" of that wealth upon divorce (Merry, 2014). In dissolution of marriage cases, Hong Kong family courts are endowed with wide discretionary powers to achieve "fairness" in the division of both parties' assets (LKW v. DD, 2010). The arrangement can result in the splitting of the wealth painstakingly accumulated over decades by one party or even inherited from previous generations. Fears of attrition of personal wealth through divorce have generated an obvious demand for asset protection (Lin & Liu, 2025). This need is driven not only by the spouse seeking to protect their separate assets, but also by the other spouse, who may well be looking to insulate certain wealth to protect independent financial security and retirement planning.

Although the Hong Kong family courts have been vested with wide statutory powers to identify and divide matrimonial assets, the strategic deployment of certain insurance products (specifically long-term endowment plans, annuities and life insurance trusts) can in principle be used to legitimate "lock out" of wealth. However, the application of these products is not foolproof (Singh, 2020). To achieve this aim and avoid the application of anti-dissipation principles, these insurance products must be properly structured with respect to the source of funding, the timing of the acquisition, the legal ownership of the policies, and in conjunction with pre- and post-nuptial agreements. (Sloan, 2020).

2. The Legal Landscape of Asset Division in Hong Kong

2.1. Statutory Framework: The MPPO (Cap. 192)

The general framework for granting ancillary relief (financial provision) is set out in the Matrimonial Proceedings and Property Ordinance (MPPO) (1972). Specifically, s. 7(1) of the Ordinance requires the court to have regard to the conduct of the parties and all the circumstances of the case, giving particular regard to a non-exhaustive list of factors that include the income, earning capacity, property and other financial resources which each of the parties to a marriage have or are likely to have in the foreseeable future, as well as the financial needs, obligations and responsibilities of each party (Matrimonial Proceedings and Property Ordinance, 1972, s. 7).

2.2. The "Fairness" & "Equal Sharing" Principles

The interpretation of s. 7 was effectively rewritten by a Court of Final Appeal (CFA) decision in LKW v. DD (2010). Before that case, Hong Kong courts had adopted the approach of evaluating the "reasonable requirements" of the financially weaker spouse. However, LKW v. DD (2010) stated that Hong Kong should follow the House of Lords decision in White v. White (2000), where the courts in England and Wales famously stated that there is "no longer any place for discrimination between the parties and their respective roles, whether as breadwinner or homemaker" (Daniell & McCullough, 2013).

In LKW v. DD (2010), the CFA set out a five-step process that, in short, requires the court to start with a 50/50 equal sharing of the matrimonial pot (LKW v. DD, 2010). It follows from the equal sharing starting point that, where the parties' wealth is generated during the marriage by either or both parties, then that wealth will usually be seen as the product of a joint enterprise and will be subject to equal division (Chan, 2011).

2.3. Matrimonial & Non-matrimonial Assets

The main block against equal sharing is the classification of certain assets as "non-matrimonial". Non-matrimonial assets usually include assets acquired by one spouse before marriage or, after marriage, by inheritance or gift from a third party (Lo, 2018). However, the CFA confirmed in Kan Lai Kwan v. Poon Dickson (2014) that the court could order the division of non-matrimonial assets for meeting the needs of the other party, unless, after looking at the assets of the other party, the matrimonial assets are enough to meet their needs. In that case, the non-matrimonial assets should usually be excluded from the sharing principle and retained by the party who owns them (Villalta Puig, 2013).

3. Identifying Wealth Risks in a Divorce

3.1. Mixing of Assets

Commingling of assets is the most common risk to pre-marital or inherited wealth. Depositing an inheritance into a joint account used to pay for family expenses or improvements to a property held as tenants-in-common will be seen as dissipating the separate character of the asset (Lo, 2018). The courts will likely find that the funds have been brought into the family economy and have been transformed into a matrimonial asset to be divided equally.

3.2. Liquidity Crises & Valuation Disputes

In high-net-worth divorces, many assets are illiquid. If the court orders a huge one-off payment to be paid by one spouse to achieve a 50/50 division, the paying spouse may be forced to sell assets at a bad time, resulting in capital gains tax liabilities or a fire-sale business, which will completely erode the value of the family wealth (Hoth et al., 2020).

3.3. The "Add-Back" Jurisdiction (Wanton Dissipation)

If a spouse attempts to hide wealth/assets or recklessly spends assets to defeat the other spouse's claim, the court can notionally "add back" the value of the dissipated assets into the matrimonial pot (Martin v. Martin, 1976). There must be clear evidence of wanton dissipation, or the court will not intervene. If an insurance product has been purchased for the primary purpose of hiding money from a spouse, the court will add the premium amounts back into the matrimonial pot.

4. Insurance Products as a Wealth Preservation Tool

Insurance for a UHNWI client is seldom just insurance for their mortality risk. Insurance is an asset class in its own right. Structured correctly, modern insurance products can be used for forced savings, retirement planning, and as an intergenerational asset transfer tool. Most types of "investment" insurance policies on the market today are of the ULI, Whole of Life or long-term endowment variety (minimum term of 10-15 years). These policies have dual characteristics: providing a death benefit and accumulating cash from the underlying investment vehicles. They are also legal contracts with a specific maturity date and surrender penalties. Thus, with reference to the characteristics, three strategies are proposed, summarised in Table 4.1 to Table 4.3.

Strategy	The "Retirement Endowment Strategy" & Illiquidity Defences
Mechanism	Assume that one spouse plans their retirement and purchases a long-term endowment plan.
Purpose	To convert a liquid cash asset into an illiquid long-term contract tied to a specific and legitimate use: their post-retirement subsistence.
Efficacy	A spouse purchases a long-term endowment insurance policy and funds the policy to a value that would allow them to subsist comfortably. They then lock away that sum of money in an endowment policy with a maturity age of 65. The argument is then made that this asset is specifically and intentionally intended for their retirement (the conversion of an income-generating asset into an illiquid asset with a specific purpose), to which the court may agree. Whether and when the court would value such a policy. It is also common for family courts to disregard the policy's plain meaning on paper. The general rule, as set out in Z v. Z (2012), is that the court will look at the CSV of the policy as at the date of trial, rather than the policy's maturity value. But the court also added that if realisation would cause a serious financial penalty/force immediate surrenders/cause disproportionate losses of the asset's value, then the court will exercise its discretion to allow the spouse to offset the policy with other assets (defer realisation) or allow the policy to be set off against other cash assets. In a well-structured endowment policy, where the surrender penalty for the first few years is grossly punitive, one may make a persuasive economic argument that offsetting the policy against other assets (to be realised in the hands of the other spouse) would be financial suicide on the part of the asset-owning spouse. A steep early-surrender penalty in an endowment policy acts as a very strong deterrent for the other spouse to "cash out" the asset against their will (by a lump-sum payment), therefore preserving the policy intact.

Table 4.1: Illustration of the Strategy of the "Retirement Endowment Strategy" & Illiquidity Defences

Strategy	Premium Financing & Debt Offsetting
Mechanism	A premium financing strategy for a Universal Life Insurance (ULI) policy, where a spouse borrows money from a private bank to pay the premium, using the policy itself as collateral.
Purpose	To allow the purchasing spouse to obtain a high-value asset with a minimal initial cash outlay.

Efficacy	If the bank loan is a bona fide commercial loan, financing the insurance premium creates a hard liability on the purchasing spouse's balance sheet. In Hong Kong family law, bona fide commercial debts would be deducted from the gross asset pool for assessment of the net divisible matrimonial pot (PD v. KWW, 2010). By "borrowing" money for an insurance premium, the spouse has "acquired" a high-value asset (dependent on the policy investment performance). They have also added an equal liability to their net worth. As long as there is a genuine debt obligation on the part of the borrowing spouse (debt is not collateral or contingent and the lender has clean hands), the asset/liability "pair" would be offset from the overall divisible matrimonial pot. In the worst-case scenario where the court deems the loan to be a sham designed to defeat the claims of the other spouse, the divisible net asset value added to the matrimonial pot will be only the unsecured portion (premium financed) and the long-term death benefit and the core wealth transfer utility of the policy remain intact.

Table 4.2: Illustration of the Strategy of Premium Financing & Debt Offsetting

Strategy	Annuities & Satisfying the "Needs" Principle
Mechanism	Purchase of an annuity.
Purpose	Buying an annuity is the process of turning a lump sum of capital into a fixed annuity stream for a set period or for life, at a locked-in rate.
Efficacy	In a divorce case, the financial needs of the parties are the most critical factor the courts will consider in determining whether to order an equal or other division of capital. The problem for wealthy families is that liquidating core family assets to divide the matrimonial pot is often disproportionately detrimental to the weaker spouse. However, if the wealthier spouse bought an annuity from their share of the assets for the weaker spouse, they have effectively guaranteed a secure income stream for the weaker spouse that will satisfy their "needs" and allow the wealthier spouse to ring-fence their core assets such as family businesses or family real estate. Courts, as in YPC v. SSHL (2015), have accepted that buying an annuity for the weaker spouse is one way to enable a "clean break." In this case, the wife had bought annuities with her share of the asset, satisfying more than half of the wealthier spouse's income requirements. The spouse's claim for a lump-sum share of the assets was effectively denied on the ground that his needs could be better guaranteed by an insurance company than by his former wife. By using the annuities first, a spouse may ring-fence their income-less but capital-appreciating assets, as courts are satisfied by the annuity-protected income stream in satisfying the "needs" principle.

Table 4.3: Illustration of the Strategy of Annuities & Satisfying the "Needs" Principle

5. Practical Legal Pitfalls: Traps for the Unwary

Insurance wealth preservation solutions can be highly effective wealth-planning vehicles. However, they are not inviolate. Hong Kong family courts have powerful anti-avoidance statutory weapons that can be deployed to unwind a trust or insurance vehicle that a court finds has been used to hide assets with the intention of defeating a spouse's claim for financial provision.

5.1. The Sword of Inclusion: Cash Surrender Value (CSV) & the Duty of Disclosure

The number one misunderstanding made by high net-worth spouses is the mistaken belief that they can transmute liquid cash into an illiquid contractual right under an insurance contract that is outside of the matrimonial pot and is somehow "invisible" to the family court. This common misconception is completely antithetical to the principles of Hong Kong family law.

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During the course of any ancillary relief hearing, both parties are under a strict, continuing duty of "full and frank disclosure" of all assets and sources of income, primarily through the mechanism of the mandatory "Form E" financial statement. An undisclosed insurance policy is treated as contempt of court, will be met with grave displeasure by the judge, and will invite automatic negative inferences.

If a policy is included and properly disclosed, it must then be valued by the court. In this context, a spouse is often tempted to argue to the court that because the endowment plan's "terminal payout" (death benefit or maturity value) is not payable until many years into the future, the capital invested into the plan should not be divisible because it is effectively tied up. The courts generally deal with the issue of valuing a policy as of the date of trial by ascribing to the policy a value equal to its Cash Surrender Value (CSV) – the amount that the insurance company will pay out to the policyholder in the event of a voluntary surrender of the contract on that day.

If the endowment plan or life insurance was acquired out of matrimonial funds (income earned or assets acquired during the subsistence of the marriage), then the court will automatically treat the CSV as a matrimonial asset. Even if the policy is very illiquid and surrendering it would attract substantial surrender penalties, the court will include the CSV as a line item on the matrimonial pot spreadsheet. The spouse holding the policy will generally be permitted to keep the policy in her own name. Still, she will have to offset that advantage by giving the other spouse a correspondingly higher share of other liquid assets (such as cash or property) to achieve an overall equal split.

5.2. Section 17 of the MPPO: Avoidance of Disposition

If a party anticipates a divorce and then disposes of an insurance asset, in an effort to conceal it from the matrimonial pot (say, by transferring the ownership interest in a $5 million life insurance policy to a sibling, new spouse, or offshore shell company), he or she has run directly afoul of Section 17 of the Matrimonial Proceedings and Property Ordinance (Cap. 192).

Section 17 is the family court's first line of "clawback" recourse. This powerful section empowers the court to set aside (cancel and reverse) any "disposition" of property if the court is satisfied that the transaction was made with the intention of defeating the claim of the other spouse for financial provision.

In practical terms, Section 17 contains a powerful evidentiary presumption that operates to benefit the financially weaker spouse. Section 17(3) contains a rebuttable evidentiary presumption that if the disposition of the asset (e.g., the insurance policy or the payment of a massive premium into an irrevocable trust) took place within three years before the application for financial relief, and had the effect of defeating the spouse's claim, the court will automatically assume that the intention was to shortchange the spouse. The onus of proof is then shifted entirely to the disposing party to prove, with compelling evidence, that the intention to transfer the property to a third party was for a valid, independent purpose (genuine commercial reason) and not to defeat the claim of the spouse.

5.3. The "Intention" Test: Legitimate Planning or Perpetrating a Fraud?

Because judges cannot read minds, the key to the defence of an insurance structure or a trust holding an insurance policy is the objective evidence the husband or wife presents to the court explaining why and when it was created. Courts apply an "intention test" to distinguish between legitimate, long-term, prudent wealth planning on the one hand and a dishonest attempt to conceal assets on the other. In making this assessment, the court often focuses on several "badges of fraud" or circumstantial red flags (Lynn, 2015), summarised in Table 5.1.

Consideration	Details
The Timing of the Transaction	The number one most important piece of evidence, by far, is the timing of the purchase of the insurance product. An endowment plan purchased in the 5th year of an otherwise happy marriage and as part of a sophisticated, long-term, balanced retirement plan will generally not be questioned by the court. However, if a spouse suddenly cashes out joint investment accounts to pay for a massive, irrevocable offshore life insurance policy within weeks after the couple started sleeping in separate bedrooms or saw a marriage counsellor, the court will very likely view the disposition as a deliberate attempt to conceal wealth.
Proportionality of Wealth Deployed	The court will want to know what percentage of the family's overall net worth is being converted into this insurance product. It is a well-accepted standard of financial planning for an affluent spouse to hold a life insurance policy or annuity valued at 5% to 15% of the household's net worth. However, if a spouse all of a sudden decides to funnel 80% of her liquid wealth into an endowment plan, the court will view this as an unusually high and one-sided dissipation of marital assets. The arrangement is especially applicable if it leaves the rest of the family without sufficient cash flow to support the parties' standard of living or pay for the children's college tuition.
The Genuine Nature of the Beneficiaries	The identity of the beneficiary of the policy is also relevant to the "intention" analysis. If the beneficiaries of a new life insurance trust are the children of the marriage, a party can plausibly argue that the policy is a bona fide intergenerational wealth transfer vehicle. On the other hand, if the beneficiary of the insurance policy is suddenly changed to an undisclosed paramour, an unrelated stranger, or a shell company over which the purchasing spouse exercises secret control, the court is likely to "pierce the veil" of the structure, rule it a sham, and "add back" the value of the premiums paid into the divisible matrimonial pot.

Table 5.1: Consideration of Courts in the Intention Test

6. Insurance & Protection Before & After Marriage

To complete the ring-fencing process, insurance structures must be supported by a solid legal segregation of wealth before, during, and after the marriage.

6.1. Before Marriage: Pre-Matrimonial Assets & Pre-Nuptial Agreements

All pre-marital assets are generally non-matrimonial. If a husband bought an insurance policy with his own funds before his wedding, he must continue to pay the premiums from his non-matrimonial assets after the marriage. Once the wife starts contributing towards the premiums, the policy is likely to become mixed with matrimonial funds.

The best protection is a pre-nuptial agreement. In a much-publicised 2014 case (SPH v. SA, 2014), the CFA, for the first time in Hong Kong, adopted the English UK Supreme Court approach in Radmacher v. Granatino (2010) and held that parties can contract out of the equal sharing principle by way of pre-nuptial agreements. Provided it would not be unfair to hold the parties to their agreement, the CFA made it clear that such agreements are to be given full effect. A spouse can therefore ring-fence an insurance policy purchased before the marriage by specifically listing it in a pre-nuptial agreement, as a pre-matrimonial asset not to be shared with the other spouse (Sloan, 2020).

6.2. After Marriage: Post-Nuptial Agreements & Post-Separation Accrual

Protection can also be planned after the marriage has started. If the husband were to receive an inheritance during the marriage and decided to buy an endowment plan with the proceeds, he could do so in reliance on a post-nuptial agreement. A very persuasive Privy Council decision for Hong Kong, MacLeod v. MacLeod (2008) (UK Supreme Court), has confirmed that a post-nuptial agreement is an ordinary valid contract between the parties which can only be set aside in the court's supervisory jurisdiction if it is unfair to hold the parties to the agreement.

Wealth protection is also possible after the parties have separated but before the divorce has been made absolute (post-separation accrual). In a recent case, C v. C (2013), the Hong Kong Court of Appeal considered post-separation wealth. If a spouse uses their post-separation income to buy an insurance policy or pay the premiums, that asset can be argued to have been created outside the marital partnership and therefore outside the equal sharing principle, if the needs of the other spouse have already been provided for.

6.3. Irrevocable Life Insurance Trusts (ILITs)

An advanced planning technique is to place the funds into an Irrevocable Life Insurance Trust (ILIT). The wealthier spouse could settle his non-matrimonial funds into an irrevocable discretionary trust of which an independent professional trustee is a co-trustee, and such trustee can purchase the endowment plan for the benefit of the wealthier spouse's children. However, the courts in Hong Kong will look behind the trust structure if they suspect that the trust is not bona fide and will pierce the trust veil in cases involving nuptial settlements or financial resources available to the spouse (Kan Lai Kwan v. Poon Dickson, 2014). The CFA emphasised that when using such "special trusts" to protect assets, the controlling factor is whether the asset is held for the spouse's benefit and is effectively available for the spouse's use and disposal (Lynn, 2015).

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7. Conclusion

Planning at the intersection of family law and wealth in Hong Kong is complex and highly technical. The newly enshrined principle of “equal sharing” in LKW v. DD (2010) has made wealth protection extremely difficult. Insurance products are excellent vehicles for retirement planning, business succession, and wealth transfer, but the premiums paid to an endowment plan, a premium-financed universal life policy, or an annuity do not have a “magic” statutory ring-fence like the CPF. For insurance to be used effectively, planning needs to be proactive rather than reactive. The insurance premium needs to be segregated and paid from non-matrimonial assets, and, if possible, there should be a legitimate commercial purpose for the structure. Trusts are highly suspect in the Hong Kong courts, and the spouse must not be a directing mind or a proper beneficiary of the trust. Most importantly, pre-nuptial and post-nuptial agreements provide invaluable legal certainty that protects the family’s wealth at any time before or after the marriage.

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