Working out a ‘prenup’ proves a capital idea

Being open about financial aspirations in case of divorce can avoid financial headaches

JAMES GERRARD

Marriage figures from the Australian Bureau of Statistics report that 121,197 couples tied the knot in 2014. Of this number, it is estimated that one in three will subsequently divorce, reinforced by the statistics that 27.5 per cent of marriages involved people who had previously married.

The ABS also tells us that the median age of divorce in Australia for men is 45 and for females is 42.5 and the average length of marriage is 12 years before divorce. With such sobering figures, prenups should be a “must have” conversation for anyone getting married with any reasonable wealth or prospect of wealth in the future.

Phillip Briffa, partner from law firm PB Ritz Lawyers says that to help protect against a messy relationship end from a financial perspective is the “a binding financial agreement, or prenup as they are more commonly known”.

It is an agreement to determine how the assets of a relationship will be divided should the relationship break down and can cover issues such as ongoing maintenance and how assets will be split following a partner’s death”. Briffa says that his clients typically put binding financial agreements in place when:

- A person has significantly more assets than their partner at the start of the relationship;
- A person has received, or expects to receive, a large inheritance
- Children from previous relationships are involved.

But why are prenups so taboo? It’s much better to have a parachute prepared even if it’s never used as opposed to a hard landing, right? Vanessa Auditore, a Sydney-based coach, counsellor and change strategist feels that it can be difficult to bring up the topic of prenups as “newly in-love couples can have an idealised view of life and perceive having tough conversations as a sign of lack of commitment and or trust in their partner”.

Disputing this notion Auditore suggests: “Relationships are about two people and it makes sense to me that building a solid foundation for a successful relationship, financial security and family stability requires some important conversations pre wedding.”

Madeleine Tran, principal lawyer from Family Law DIY who provides education and templates to help people minimise legal costs agrees and says: “The best way to approach prenups is to talk openly about it when the relationship starts getting serious.”

Tran often has clients literally running to her front door days from getting married to sort out the binding financial agreement and recommends planning ahead. “Talk about the assets that you both have and if things happen, the last thing anyone wants is the stress and costs of lawyers and court to split assets,” Tran says.

Tran advises her clients to get binding financial agreements in place but notes that “a court can rip up the agreement if it is not fair and reasonable. It’s not like in the USA and it’s not a be all and end all document”.

In regard to other benefits of prenups, Tran adds “at the very least it will detail the assets that each party brought into the relationship which can reduce legal costs upon divorce as a lot of time can be spent in court arguing about who brought what into the relationship”.

To dispel a common misconception, a binding financial agreement is not just for people with millions of dollars in assets. Briffa observes that a large number of divorce disputes are over a few hundred thousand dollars.

Tran advises that a binding financial agreement can be put in place for typically between $1000 and $5000 depending on the level of assets and complexity.

Briffa says: “A common misconception is that these agreements can only be entered into before marriage, hence the colloquial name ‘prenup’. This isn’t true. They can be entered into before, during and even after marriage, and similarly before, during or after the breakdown of a de facto relationship.”

In addition to being fair and reasonable, there are other prenup requirements that must be met such as “both parties need to receive independent legal advice before they sign the agreement”’ Briffa notes.

Auditore recently worked with a couple who had a binding financial agreement in place with very clear instructions if a divorce occurred. It was the second marriage for the man and third marriage for the woman. She has since been working through the behaviours, communication and patterns that has led to their previous failed marriages so as to minimise the chance of it occurring another time round.

“A binding financial agreement doesn’t protect the emotional investment in a marriage. Success both financial and relational, however, is often about planning and making informed decisions that support best outcomes for all parties. This is, after all the meaning of union,” Auditore says.

> ‘Talk about assets you both have’
>
> MADELEINE TRAN
> FAMILY LAW DIY

With the reality that many of us will divorce, having a prenup can help assist with clarity if there is a break up however the best protection against losing assets during a divorce is to be lucky enough to find your ideal partner, maintain good communication, be happy and never separate, although this is easier said than done as is anything to do with mixing money and emotions.

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Lead and lag indicators vital for picking US golden geese

STIRLING LARKIN
GLOBAL INVESTOR

Behind the investment market sits the real economy that manufactures, serves or consumes anything and everything that industrial and consumer customers require.

This enduring relationship has continued, in one form or another, since Ancient Rome, but what has evolved within modern times is how we assess, gauge and analyse these commercial dynamics.

Now, we must acknowledge the US real economy is stepping down off an ageing bull business cycle which began immediately after the nadir of the Great Recession in 2009 and has run full course until today. And we must also recognise that the US benchmark S&P 500 stock index is hovering just below all-time record highs. Keeping that in mind, it is time to pay heightened attention to what the trusted “lead” and “lagging” indicators from the US are telling us.

US indicators matter to all global investors, whether they be Australian Ultra High Net Worth families, Middle Eastern institutional sovereign wealth fund participants or North American “Mom and Pop” 401(k) pension funds.

And that is why every investor should note that the aggregated average month-to-month improvement across US Federal Reserve district manufacturing indices in March has been the largest on record for a single month — ever.

This alone is significant for the global investor seeking reassurance that the propeller-head of the global economy — US manufacturing — continues to be resilient in the face of global recessionary forces.

All major US Federal Reserve surveys, reflecting the regions recognised for manufacturing, rose meaningfully in March, with Philly Fed (+15.2pt to +12.4), Empire State (+17.2pt to +0.6), and Richmond Fed (+26pt to +22) expanding manufacturing activity for the first time since mid-2015.

The Kansas City and Dallas Fed also improved, even though they remain contractionary due to the stark reality that they suffer higher exposure to US shale and coal industries.

Regardless of how impressive these metrics appear viewed in isolation, the financial tradecraft for global investors is found when these are framed through an investment lens that provides opportunities to tactically position portfolios within and across core S&P 500 constituents.

Global investors need to also consider the following at this time:

- S&P 500 earnings growth is without doubt beginning to slow, reiterated by consensus estimates for 2016 US earnings growth collapsing from 12 per cent last US summer to just 2 per cent today.
- Earnings growth is expected to be negative year-over-year in first and second quarters, with earnings weakness seen beyond US shale. In the past, when earnings rolled over, it was a sign that the cycle was ending, however, in five prior cycles dating back to the 1930s, profits did rebound after rolling over.

> The US real economy is stepping down off an ageing bull business cycle

- US freight transportation data, helpful in assessing economic activity in goods-producing sectors of the US economy, has turned significantly higher in February and March.
- Furthermore, railcar volumes show that non-coal transportation volumes are higher on a year-over-year basis after falling steadily for most of 2015.
- Trucking activity, which is nearly four times as large as rail, rose by 7.2 per cent in February, the largest monthly increase since December 2012.
- Seaborne US container traffic volume data available for February also shows a meaningful increase, rising 11 per cent on a seasonally adjusted basis.
- Resilience identified in US non-energy companies, with business capital spending and payrolls remaining stable.
- Within US energy sector, default rates have spiked to 12 per cent of outstanding issues, but non-energy default rates remain stable at 2 per cent, roughly the same level they’ve been at since 2011.

For Australian global investors attempting to find value within listed US stockmarkets, it is important to note that the S&P 500 Industrials subset has outperformed the S&P 500 by nearly six percentage points since January’s retracement and, similarly, equity prices of transportation firms within the broader Russell 3000 index — which covers 98 per cent of public US firms — such as railways and truckers, have also sharply outperformed the broader Russell 3000 index.

In his 2015 shareholder letter, Warren Buffett stated: “For 240 years it’s been a terrible mistake to bet against America, and now is no time to start. America’s golden goose of commerce and innovation will continue to lay more and larger eggs.”

Accepting that US politics may have a material impact on the nation’s fiscal realities post November’s presidential elections, now appears to be the time for Australian global investors to assess how and where they allocate portions of their core portfolios or indeed SMSF’s towards the US economic machine.

For those content with the market performance, or “beta” of the US’s bourse, it is difficult to look past BlackRock’s iShares S&P 500 Australian Dollar Hedged ETF (IHVV: AU), Core S&P Mid-Cap ETF (IJH: AU) or their Russell2000 ETF (IRU: AU).

But for those seeking active returns or pockets of untapped value, a more sophisticated approach remains the best option.

And whichever of those are chosen, the facts remain the same, meaning that all that is left to decide, is how to assess, gauge and analyse these commercial dynamics and, accordingly, proactively invest.

With further risks laying ahead should the US dollar appreciate as we approach further rate hikes tion that should be asked is not whether we invest in the US economy today but when should we seek a timely and profitable exit.

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Cash just won’t cut it; focus on companies that are growing

ROGER MONTGOMERY

Make no mistake. The good times are over. That’s about as succinctly as I can put it. From now on returns from property and stocks in aggregate will be mediocre. Of course, the very best quality companies and properties will produce better returns but the averages, as measured by the All Ordinaries and median house prices, will disappoint.

To put it another way, if you resent the fact the All Ordinaries index is at about the same level it was a decade ago, prepare for continuing frustration.

Since 2014, quantitative easing has been unwinding. The collective bond purchasing of the Bank of England, the European Central Bank, the Bank of Japan and the US Federal Reserve, along with the foreign currency reserve buying of Switzerland, Saudi Arabia and China has amounted to $US10 trillion ($13 trillion).

But since the second half of calendar 2013 when the G7 bought about $US200 billion of bonds and high quality credit, bond buying has been declining steadily. In the six months to December 2015 the collective bond purchasing had fallen by two thirds to just $US50bn.

Unsurprisingly, since the capital injections began declining, equity markets have gone nowhere and the price of just about all commodities have collapsed, as have emerging market currencies.

All of this is coinciding with a realisation that high debt levels at the country, corporate and individual level have rendered zero interest rates no more effective at stimulating demand than “pushing on a string”. It appears we have indeed reached what hedge fund titan Ray Dalio described as the limit of spending growth financed by debt and free money.

The impact of low interest rates caused a migration out of cash and into alternative assets such as shares, pushing asset prices higher and rewarding those who had bought early. Sadly, however, because the cash injections through QE were directed to financial institutions, it was the upper class who were enriched, not the middle class. The funds injected into the financial system stayed in the financial system. Is it any wonder Donald Trump is receiving such a hearing?

The result of the asset price appreciation has been that additional returns available on alternative investments to cash have not been sufficiently higher than cash to warrant investment.

In turns this explains the debate around the lack of investment for growth and why Australian companies are acquiescing to shareholder demands for more income and increasing their dividend payout ratios.

When long-term rates of return are the same as short-term rates, there is little or no incentive to invest for the long term. Growth is therefore absent and harder to come by.

And that’s why you must focus on the share of companies that are growing. There are plenty of companies growing and growing fast and/or with long-term growth runways.

But there are risks too. Investors in the shares of companies offering high dividend yields but little or no growth are likely to find that the asset price is not supported by earnings growth and are vulnerable to sell-offs upon bouts of fear. And that’s the other thing to expect — bouts of panic.

And yet, importantly you must be invested. Cash simply won’t offer the returns that will maintain your purchasing power. If you are going to invest in stocks, however, you must be invested in companies that are able to retain capital and redeploy it at high rates of return. Look for companies offering high rates of return on incremental capital.

Alternatively seek out funds that have a solid framework for shorting stocks of companies that are in structurally deteriorating industries, are being disrupted permanently or engaging in aggressive accrual accounting.

One last thing: At acute risk are retirees invested in high yielding shares whose asset prices are unsupported by earning growth because company CEOs have acquiesced to shareholder demands for more income and raised payout ratios.

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