

## **BUSINESS & DIVORCE**

### **What happens to company assets?**

There are many factors to consider when divorcing and owning a business will add to this complexity. It is vitally important that you do not lose control of such an important asset and seek advice as soon as possible. It may be that you and your partner are Directors of a company or, indeed, that there are other Directors of the company who, perhaps, have a greater sense of control over the assets. Not only will the divorce be a very worrying time for you but if your business is central to your financial well-being, then this will add further instability and concern.

We have a hand-picked and trusted choice of independent advisers who can assist you. It is our aim to provide you with a multidisciplinary approach to make what is a very stressful time, as less stressful as possible.

Advice is needed, therefore, to ensure that ownership and control of the business is discussed and agreed, and financial settlement for any outgoing party is ultimately effected. Amongst many things to be considered is the value of your business and how your business is structured; and it may be necessary to look at the Memorandum of Association, for instance. This will allow an expert to ascertain who has what shares and who plays what role. Those who are just sole traders in business, are potentially the easiest to value as the interests are for one person only. Of course, if this business is the only income of the marriage, then a valuation will be necessary.

### **Dividing assets and divorce**

All assets to the marriage, whether owned by either party (and to include other properties, other businesses, savings, pensions, investments etc), may be divided by the Court during a divorce process. The usual aim for the Court is to attain a 50-50 split of all these assets. There are, of course, factors that are considered by the Court which may cause the shared split to be unequal between the parties and which may be dependent upon e.g. health issues,

childcare issues, and financial disparity between the parties. In some cases, non-matrimonial assets, such as a business and its retained assets, may be considered by the Court if there is a financial disparity or a significant need to do so. Ultimately, the purpose of settlement is to achieve fairness for both parties to allow them to go forward and be financially independent of each other. So, what if your business falls into that consideration? How do you know what your business is worth?

We work with chosen independent professionals who can provide you with the expert advice that you need. The financial appraiser will be able to review your business and assets to provide an accurate report on what your business is worth. This valuation may then be used to consider whether or not the business is continued unilaterally by one, with the other party being 'bought out'. Sometimes it is necessary to instruct such an appraiser on a joint basis - in this instance, that appraiser will act as a 'Single Joint Expert' (SJE). The instruction to that SJE is by virtue of a Letter of Instruction jointly written and containing agreed questions to be put to the appraiser. Such reports do, however, come at a cost. It will also be necessary for the Expert to come up with a valuation of the property as at today's value, as well as giving a clear view of the expected profit due to the company whilst it trades.

## **What happens to the business while we are going through the divorce?**

Your business should continue to trade as normal. If you are Directors, then you have an obligation to each other as Directors and a duty in law to ensure that your business continues to run effectively. There are sanctions in law against Directors/Co-Directors for mismanagement of business dealings, if these are used negatively without the business needs being at the forefront of any particular deal. There is, of course, the worry that you may lose your business because of the divorce. The aim is to ensure that you still have your work and your financial stability; however, the outgoing party must be compensated for their share and/or any profits/dividends due.

It is possible to sell your business if you're going through a divorce but be aware that any net proceeds of sale of that business may be held to joint order pending settlement as they will form part of the matrimonial assets. If you jointly own a business and want to sell, then both/all Directors must agree; without this consent, sale will not be possible.

You may consider that you want to start up a business as you're going through a divorce, especially if you do not see yourself going forward in business together. Advice is essential here to ensure you are not in breach of any restrictive covenants of your current business.

## Valuing your business

Depending on the size and structure of your business, this will depend on how easy it is to value. Of course, assets as well as debts have to be considered along with e.g. Directors loans and dividend shares etc.

A small business is relatively easy to value and, moreover, you and your partner may be able to quickly establish the value of the business without the need for independent expert advice. The same cannot be said for business partnerships and all limited companies. It would have to be established whether you had a Partnership at Will, for instance, or whether there was a partnership agreement in place. Similarly, with a limited company, it would be necessary to search Companies House to ascertain the setup as well as reviewing the accounts for all company setups, whatever they may be. Further consideration would have to be given as to whether or not there were other owners of the business outside of the marriage; what share of the company do they own? Our independent experts can help provide you with the essential knowledge that you need to move forward into settlement in the divorce proceedings.

For further advice and assistance, please contact one of our family lawyers who will be happy to help.