

Protecting the legacy of a family-owned business

Family businesses are the lifeblood of a successful economy. Enormous economic contributions are made by family businesses. But there's more. Beyond the taxes counted and the wages paid, these businesses hold a less quantifiable but still crucial place at the heart of our communities. In many cases, a place cemented over multiple generations. They are recognised for their sense of purpose, their values and their care not only for employees but for the local ecosystem in which they operate.

Family ownership brings advantages to businesses but also risks

As a firm with a long history of our own and enduring relationships with many family businesses, we have had the privilege of advising and supporting these organisations generation after generation. What we see is that though every family business is different, as organisations, they tend to share certain characteristics and behaviours. Among these is the ability to pivot fast when external factors demand it – whether an economic shock or an international pandemic – plus a tendency to take a long-term view and plan for sustainable growth rather than purely immediate gain.

It is clear that family businesses derive great advantages from the nature of their ownership. But they also face risks that are specific only to them. One such risk is the damage that can be caused when a relationship at the heart of the business breaks down.

Family businesses thrive through embracing the perspectives and talents of successive generations and of those who join the fold through marriage or civil partnership. But the converse is true when rifts occur.

Quite apart from the emotional fallout, a divorce involving a shareholder can be cataclysmic for the long-term future of a business. The scale of the risk is often not well understood by business owners – particularly those in the early stages of building their legacy.

Divorce can put the future of the business and its reputation in jeopardy

Many family business owners are unaware of the breadth and depth of the English Family Court's powers to make financial orders on divorce.

The potential impact of a divorce involving a shareholder can go beyond lump sum settlements and run to the sale or transfer of shares, pensions and property. What's more, sometimes business owners are unaware that offshore assets are not beyond the reach of the English Family Court. The Court has the power to make orders in relation to a spouse's worldwide wealth – though it is fair to say it will favour more enforceable orders centred on this country.

The ramifications are serious for all shareholders – not just the individual involved in the break-up. Should a family business be co-owned amongst siblings, for example, then knock-on effects could ripple out across the wider family – with repercussions that not only affect the business but also relationships between brothers, sisters, in-laws and cousins.

What we have also seen is that many business owners are unaware that the move towards greater transparency in the Family Courts means there is no assurance that financial proceedings related to marital breakdown will be

private. This means there is a genuine risk that their reputation could be damaged, given the extensive disclosure requirements which can result in scrutiny of tax affairs and hidden assets.

Plan ahead to cut divorce-related risk

The good news is that with the right protections and planning, these risks can be managed effectively. Once business leaders have a handle on what is at stake, they can begin to put in place sensible protections and succession planning to stand the business in good stead, should the worst happen. And what we see time and again is that proper planning not only supports the business, it also functions well to take the heat out of situations fraught with emotion at a personal level.

For a first-generation family business that has not worked through these issues before, the starting point can be as simple as asking the right questions. Would it make sense to have a policy that shareholders should agree a pre-nup in advance of marriage? When a shareholder marries, which assets will be protected? Should spouses joining the family be employed by the family business? Answering these and other simple considerations can save much heart-ache and complication down the line.

The risks of proceeding without a pre-nup

Forward planning can protect the business, and minimise damage to personal relationships. While the prospect of raising the subject of a pre-nup can be daunting, the reality is that the consequences of not having one can be much more severe. Failing to consider the impact of a marital breakdown on a family business can result in long, expensive litigation. It could even de-stabilise a business; damage relationships between family members; lead to shares being transferred; or in the worst case, result in an enforced sale. Planning ahead, therefore, gives families the very best chance of coming through a divorce unscathed.

Practical advice on the protections available

Knowing what legal protections are available to them – and when these measures should be put in place – is crucial for business-owning families. It is with this in mind that I, with input from colleagues within the firm, have written a book that offers business owners practical guidance and support.

Contacts

This document is intended to provide a first point of reference for current developments in aspects of the law. It should not be relied on as a substitute for professional advice. If advice on a particular circumstance is required please contact the lawyer listed below:



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