



myerson

Agriculture Newsletter

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Welcome to Myerson's Agriculture Newsletter

At Myerson Solicitors, we have the experience and expertise to provide advice to those working within the agricultural and farming communities. Our agricultural specialists are proud to have been recommended as 'Top Tier' by the Legal 500 (an accredited legal directory), who described the team as 'very amenable, knowledgeable, sensible and well-informed'.

In this issue of our Agriculture Newsletter we will discuss:

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Farming Divorces

Farms often involve complex ownership of the farmland, inheritance and third-party issues. This can create complications on divorce.

As the farm is often a “lifestyle business”, the matrimonial home usually forms part of the farm itself. The farming business is usually set up as a partnership, sometimes without a formal partnership agreement being put in place, and/or as a limited company, with other family members as shareholders. Naturally, the involvement of family members creates issues of third party rights, as the divorcing spouses are not the only interested parties in the financial outcome.

Farmland is often extremely valuable and farmers are becoming increasingly entrepreneurial in their approach. Further income may be generated by diversification, by for example setting up produce farm shops or workshops, cookery schools, retail outlets, fish farms or opening land or property for tourism and housing development. In this way, the value of the farm and the income it produces can be considerable.

The courts may be reluctant to make an order which is likely to damage the core activity or profitability of the farm, particularly when this may result in damage to the livelihoods of other family members who have an interest. Although the court is unlikely to order the sale of the farm as a whole, it may be necessary to sell off part of the farm or surrounding land and/or buildings to raise capital. Alternatively, the spouse who is retaining the farm may have to borrow money against the property.

Ownership of the farm may be protected by a trust, which may have been in place for a number of years in order to

ensure that the business stays within the family. However, on divorce, the court may examine the purpose of the trust arrangement and may encourage the settlor or trustees to make assets available to meet the needs of the divorcing spouse.

Farmers and landowners are well advised to enter into a pre or post nuptial agreement before or shortly after marriage. Although nuptial agreements are not technically legally binding, recent case law shows that courts will attach considerable weight to the contents of the agreement if certain criteria are satisfied. Nuptial agreements help the court to clarify the couple’s intentions in relation to the division of their assets. This is particularly important, as farms are often inherited and therefore any property or money that was acquired before the marriage, needs to be protected.

At Myerson, we have extensive experience of dealing with the broad issues faced by people going through a divorce involving a farm. We work closely with trusted agricultural accountants and surveyors to ensure that the farm is valued appropriately, taking into account all assets.

We can also advise on trusts and wealth protection and have specialist experience in advising on land ownership, options, overages and development schemes. Further, we have expertise in corporate and partnership issues.

Myerson are well regarded as a leading firm in the agricultural sector, having ranked in the ‘Top Tier’ of Legal 500. For more information, **visit our dedicated Farming Divorces section here** or speak to one of our specialist Family Lawyers today by calling **0161 941 4000**.



Future-Proofing Your Life

We confront a range of daily challenges in our business and personal lives. Much of our time is spent focusing on the day-to-day problems arising, rather than thinking strategically and trying to anticipate future issues. Even when we do plan for the future, do we consider the risks and pitfalls which we might encounter on the way?

There are many ways we can future-proof our businesses and our personal lives but only if we take that proactive approach. Yes, we need to deal with snags as they develop but it is possible to reduce the risk of such problems arising by future-proofing.

What do we mean by that?

In a business context an enterprise which operates “on a hand shake” is more likely to be vulnerable to adverse issues arising in the future. Such a business may not have negotiated commercial contracts with its customers or suppliers, might not provide its employees with written contracts, might occupy its premises informally without a written lease arrangement or perhaps has not undertaken succession planning for the handing over of the business to future generations.

In a personal context, clients who have not yet written their Will, who do not undertake estate planning, or who have not thought, when undertaking an extension to their home, to have a written contract with the builder, are increasing the risk of problems arising in the future.

Analysing your needs

We recommend that our clients and contacts regularly review their business and personal circumstances.

The basic aim of the review is:

- to identify areas of concern, risk, change or uncertainty;
- to identify the chances of such risks occurring and what the impact of such events might be;
- to take steps to assess those risks by taking appropriate professional advice from experienced professional advisers including lawyers, accountants, agricultural experts, land agents, surveyors, etc. as appropriate; and
- if important risks are identified, then to analyse and ascertain what options are available to minimise the risk and which options are most suited to the client's needs.

Each of the possibilities needs to be analysed in detail and tested by the professional team working together to assess the pros and cons of taking a course of action. For example you might be considering selling some land with development potential. There are various ways you could secure that sale while a planning application is made, but what is best in this situation? Will an option agreement provide enough certainty or would a conditional contract be more suitable? If funds are limited, will a land promotion agreement limit additional costs for the landowner?

Of course, what you want and what you are likely to get can be two different things. The team can help you to set realistic goals by researching and advising as to the likely attitudes of the other parties to the transaction, their previous track records, their potential pricing stance, their aims and

preferred outcomes and, importantly, identifying which party has leverage. Only that way can a practical strategy be formed.

Implementing the strategy

Once the strategy has been identified then further preparatory work will be needed. In our example of selling development land, this will usually involve:

- approaching the other parties to prepare and negotiate final agreed heads of terms to provide a framework for the deal documentation
- negotiating the correct documentation once the terms of the deal have been agreed at Heads of Terms stage
- drafting and negotiating the documentation to ensure that it contains the necessary protections you require and that it reflects the agreed Heads of Terms.

The team needs to ensure that during the document negotiation stage, deal momentum and a collaborative focus is maintained. The intention is to avoid sticking points and to prevent points of dispute derailing the process.

Conclusion

Planning for the future will help you focus on what is important to you, anticipate potential problems and try to prevent them before they come to fruition, while giving you a sense of progress.

At Myerson, not only do we have a team of experienced lawyers who can help you to future-proof your business and your life, but we can also help you to build a team of trusted advisors suited to you and your needs through our extensive network of professional contacts.

For more information, **visit our Corporate Commercial section here** or speak to one of our specialist lawyers today by calling **0161 941 4000**.



Joint Ventures

Participation in a joint venture can provide attractive commercial advantages to your rural or farming business, particularly in circumstances where you are looking to diversify your business into new areas or expand your offering. A joint venture can take a variety of forms but broadly involves any arrangement where two or more existing parties agree to co-operate and combine resources to target a specific business project. Such a project is often a new enterprise, but a joint venture may also be aimed at enhancing the operation of your existing farm business. A joint venture can also spread and dilute risk where the parties typically share the initial investment (including the contribution of finance and/or assets) and share any on-going liability of the project.

You have been thinking about opening a shop on your farm. Your neighbours have recently sold their successful soft-play business in town so that they can work closer to home and are looking for new premises. Between you, you come up with the idea of a combined shop, café and children's play area. But how do you join forces in a way which will allow you to work together while protecting your existing interests and business?

Why do it?

The co-operation between joint venture parties can be prompted by the fact that a new project requires more resources (money or otherwise) than each participant has available or is prepared to devote to the project on its own. There may be other more specific reasons for collaboration. Typically, these may include:

(a) allowing a business to tap into the resources and specialist skill-sets of another, for example this

may include land and buildings, skills, know-how, equipment, technology or manpower;

- (b) a business may wish to accelerate expansion by sharing sales staff or sales channels;
- (c) joint venture partners may wish to extend the reach of their businesses where they can tender for projects that are too large for their resource base;
- (d) collaboration may enable the parties to maximise profits by combining facilities enabling the parties to take advantage of economies of scale;
- (e) a party may benefit from diversifying this revenue stream, and thereby reducing this reliance purely on one revenue stream. In our case study, this is precisely what you are trying to achieve.

In our example, the neighbours have skills which you want to utilise, they will have contacts in the play equipment sector and some money which they want to put into the project. You have the premises from which to operate the business, stock to sell in the shop and you also have some money to put in. You will benefit by diversifying your business from pure farming, so a joint venture looks like a viable solution.

How to do it

The structure used to conduct the joint venture will usually take the form of a private company, a limited liability partnership (LLP), a partnership or simply a contractual agreement between the parties.

Inevitably, a joint venture involves a sacrifice of the control and flexibility which otherwise may have applied had a party undertaken a business project independently. The various forms of joint venture reflect different degrees of integration of the interests of the parties in the joint venture. The use of a corporate entity involves the vesting of all the trading activities relating to the joint venture business in that corporate entity. On the other hand, where the joint venture is purely contractual, the parties remain as independent contractors. In these circumstances, there may well be no pooling of assets and no general sharing of revenues and costs. This type of agreement is often referred to as a co-operation agreement. Such a contractual arrangement would suit circumstances where the parties decide to retain their own independence.

The advantages of a private company, including limited liability and the separation of management (directors) and ownership (shareholders), are such that for most business joint ventures, this is commonly the most appropriate vehicle. For smaller operations, projects of a specific duration (e.g. construction projects), a contractual structure is often used. For ventures in which a number of individuals actively participate, a partnership or an LLP may be appropriate.

When planning the structure of a joint venture, there are a number of issues to be considered. These include for example, identifying the underlying objectives of the parties, the period of time during which it is intended the joint venture will operate, the physical location of the operation, the extraction and pooling of profits, the resources that each party will commit, requirements for employees, decision-making, accounting considerations and regulatory (e.g. competition) issues. Also the parties will need to consider whether the structure chosen for the joint venture provides the best tax treatment for each of them as well as for the joint venture itself.

Plan to get out

Planning a clear exit strategy from the outset and providing for this in the legal documentation is advisable. If the joint venture makes good progress, it can always be extended or modified. If the joint venture does not go as planned, a clear exit strategy can help ensure minimum financial and credibility damage (e.g. in the event of a dispute either party could buy out the other or the joint venture could be sold or

wound up).

In our example, we would need to explore with you what your aspirations for the project are; what will be the proposed return to the different parties, how do you envisage getting your investment back, do you want a day-to-day involvement in running the venture, or will each party be allocated specific responsibilities etc.? Once we have this information from you, we can advise as to the best structure and exit plan for your particular needs.

Get the right advice

Due to the variety and complexity of the issues which need to be considered when planning a joint venture, it is important to get specialist legal and accounting advice at an early stage. The Corporate & Commercial team at Myerson has a wealth of experience of advising clients on a wide variety of joint ventures, from large-scale national projects through to small locally-based undertakings. If you need assistance putting a professional team together, we can also recommend other trusted advisors from our extensive network of professional contacts best-suited to your project. Whatever your joint venture idea, we can help you put it together.

For more information, **visit our Corporate & Commercial section here** or speak to one of our specialist lawyers today by calling **0161 941 4000**.



The Importance of Planning

When you have a business to run and a family to provide for, it's often hard to find the time to think about planning for the future. Planning for individuals in the agricultural sector is essential for a number of reasons; to make the most of any tax reliefs available, to protect your assets for the beneficiaries you wish to inherit and to ensure that your business can continue to run smoothly in whatever circumstances arise in the future.

All too often we come across disputes in farming families when one or both of the parents have died, or lost mental capacity, and it is not clear what is to happen to the assets. Often the dispute could have been avoided if the parents had sought professional advice during their lifetime. If you do not leave a valid Will then there is a set of rules that states what will happen to your assets called the "intestacy rules". These rules will likely not be adequate for your circumstances and may not direct the assets where you want them to go. It is much better to make a Will so that you can ensure your assets are protected and you are able to take advantage of any tax thresholds available.

Often people put off talking about what will happen if they lose capacity or if they die, because their circumstances are complicated and they feel that there is no clear solution. For example, perhaps one of three children works in the family business and they do not know how to divide the estate to provide fairly for all three. Perhaps they want someone to benefit but do not want to give them the money directly for whatever reason. We often come across second marriages and/or children from different relationships. In these circumstances, people struggle to decide how best to look after the surviving spouse or partner, as well as protecting the children. It is always better to have these discussions in advance so that you have time to get the best advice, consider your options and put things in place.

A suitably qualified professional will be able to come up with different structures and solutions to achieve what you wish. They will also be able to advise you on what records to keep to enable your family to claim certain tax reliefs.

When there is a farming business involved there are additional considerations to ensure that you pass things on to beneficiaries in a tax efficient way, making use of any reliefs available. Depending on the size and structure of the business, it is essential that there is a clear plan in place to enable your business to continue to run smoothly if that is the intention. While carrying out a full review of your affairs and estate planning it is a chance to make sure partnership agreements/shareholders agreements, articles, cross option agreements and insurance policies are in place and up to date.

People often overlook the fact that as well as planning for when they die, they should also put in place Lasting Powers of Attorney ("LPAs") to allow people to make decisions on their behalf if they are no longer able to make decisions for themselves. There are two types of LPAs; Finance and Property Affairs, and Health and Welfare. If you do not make an LPA, and you lose capacity, no one will have authority to deal with your affairs. Your family will need to apply to the Court of Protection which is expensive, time consuming and a lot more hassle. If you have a business then you may need a separate LPA in respect of running the business should you lose capacity.

At Myerson we have experts with extensive experience in advising individuals on the best way to plan for the future. For more information, **visit our Wills, Trusts & Probate section here** or speak to one of our specialist lawyers today by calling **0161 941 4000**.



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