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Myerson **Family**

Our Guide to The Impact of Divorce on a Business

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Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



How can a divorce impact upon your company?

A divorce, (whether that is your own or the divorce of another shareholder) can have a significant impact upon your shareholding. Shares in a company are considered to be an asset in divorce proceedings, and their value must be quantified within any negotiation or court proceedings.

The extent of the impact on divorce depends on several (non-exhaustive) factors:

- Whether you held shares in the business prior to your marriage;
- Whether your spouse has also been involved in the business (i.e. as an employee or consultant);
- How the business has grown during the marriage;
- Whether the business forms the main source of income; and
- The overall value of your marital assets.

The Family Court has power to make the following orders:

- An order that one spouse transfers shares to the other spouse.
- An order to join a company in family proceedings, allowing for direct orders to be made against it.
- An order that a spouse pays a lump sum to the other from company profits.
- A freezing order to prevent a company's assets from being moved or sold by a spouse.
- An order allocating more of the non- business assets to the non-business owner.
- An order to compel a shareholder to provide full and frank financial disclosure about their interests in a business (e.g. full set of annual accounts for the last 2 years, details of the directors and shareholders of the company, the asset register and up to date management accounts). It should be noted that Directors and shareholders may be compelled to give highly sensitive, commercial information to the Family Court during the course of financial remedy proceedings and disclose whether there are plans to sell the business or whether there have been any offers to purchase the business.



- A Single Joint Expert (SJE) may be appointed to prepare valuation reports of fixed assets and further, a SJE forensic accountant may also be appointed to value the business as a whole. It should be noted that these valuations are undertaken by experts appointed by the court and not by the company's accountant.
- An order for immediate or deferred sale of the business. Whilst this is rare, as the business usually forms the bedrock of the family's finances and its sale might impact on earning capacity going forward, the court may order the sale of the business if there is no other viable alternative.

How can a divorce impact upon your company?

When setting up a company, you might consider the following helpful steps:

Amendment of the pre-emption rights in the company's Articles of Association to restrict or prevent the ability of a shareholder to transfer shares to a spouse on divorce.

Drag Along Rights to be included in the company's Articles of Association to ensure that a potentially hostile shareholder can be compelled to sell shares in circumstances where a majority shareholder wishes to sell the entire share capital to a third party. These are useful where spouses are in business together and one spouse is seeking to prevent a sale of the business.

Compulsory Transfer Provisions to ensure that a spouse is compelled to offer their shares for sale on divorce.

A Shareholders' Agreement which makes clear the rights and obligations of the shareholders. These are often used post-divorce as a means of minority shareholder protection when spouses remain in business together. The spouse who remains a shareholder and has no direct involvement in the business can be suitably restrained from interfering with the day-to-day decision making of the business by a carefully worded Shareholders' Agreement.



A Family Investment Company (FIC) structure can be implemented where you have a business involving several members of the family. Typically, each member of the family holds a different class of shares and the rights attaching to each class of shares are tailored to achieve the most tax efficient outcome in the long term. A FIC structure can also have the advantages of protecting family wealth (particularly with reference to inheritance tax) and ensuring the security of the business in the event of a divorce of any of the shareholders.

FIC's should be used in conjunction with pre or post nuptial agreements to limit claims against the business on divorce. Spouses marrying into the family can be awarded non business assets as part of the divorce settlement in a nuptial agreement. If the company is being restructured as part of a family wealth protection strategy, this makes it easier to introduce a conversation about a nuptial agreement. FICS and nuptial agreements should be considered in conjunction with tax planning, estate planning & wills.

Pre and Post Nuptial Agreements govern what should happen to the business in the event of marital breakdown. Nuptial agreements are the most popular way to protect business assets ahead of marriage or during a marriage.

Often a spouse is a Director, shareholder or an employee of the company. This can cause problems on divorce. Whilst couples may seek to minimise their tax burden during the marriage by paying salaries and distributing dividends to each other or use the Directors' Loan Account to fund standard of living expenses, this may no longer be appropriate once shareholders separate. The Myerson Employment Team can assist in negotiating exits from the business and Settlement Agreements.

Marriages can break down due to problems in the business. The Family Court has wide ranging discretion to make orders which affect the business. A Shareholders' Dispute involving married spouses who are separating should be dealt with by a Family Lawyer rather than a Commercial Litigation Lawyer as the Family Court has the power to order full and frank disclosure against parties who own a company.



Impact of divorce on a business

As a result of a divorce, there may need to be a corporate restructure such as:

- Amendment of the Articles of Association
- Creation of a Share Purchase Agreement or share Buy Back Agreement
- Sale of the Company
- Transfer or sale of shares by an existing spouse
- Demerger of related companies
- Liquidation of the company
- The payment of dividends

Specialist tax advice is required before taking any steps in all circumstances.

Beware of transferring assets to the third party ahead of divorce proceedings

Occasionally, business owners seek to limit their financial exposure on divorce, by transferring shares or other assets to third parties prior to divorce proceedings taking place.

However, the Family Court has wide discretion to make the following orders if the transactions were made with the intention of defeating the other spouse's financial claims on divorce pursuant to section 37 of the Matrimonial Cause Act 1973 and the transaction was within 3 years:-

- An injunction to freeze assets
- An order to set aside a transaction after it has been made. However, the court cannot set aside a transaction if it was made for market value to an innocent third party
- Orders which provide the non-business owner with more of the other assets to factor in the loss of the business asset, provided the transaction was of significant value and impacts upon the assets available for distribution.



You're in safe hands!

If you would like further information about how we can help you with **businesses and divorce**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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