



myerson

Myerson **Family**

Our guide to business valuation on divorce

0161 941 4000 | myerson.co.uk | lawyers@myerson.co.uk

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](#).



Business Valuation on Divorce

How to value a business

Usually, when a Court looks at the value of a shareholding in a business in the context of family law proceedings, it looks to ascertain a valuation that a willing buyer would pay to a willing seller for that shareholding. The Court is therefore looking at the true market value. If a shareholding is in a company that is listed on the stock exchange, that is more straightforward, because there is a transparent market value for each shareholding.

Methods of valuation – Future Maintainable Earnings Method

Generally, when a private trading company is to be valued, the main business valuation method used is the “**Future Maintainable Earnings Method**”. This method seeks to establish the amount of earnings in the form of Earnings Before Interest, Tax, Depreciation and Amortisation ("EBITDA"), which a company can sustain for the foreseeable future. This sum is then multiplied by a factor representing the number of future years' earnings, which a purchaser might consider acquiring. When using this method, the reported profits are adjusted to smooth out any unusual transactions and to recognise the fact that in private companies, management and staff remuneration may be higher or lower than normal market rates.

In simple terms, this methodology looks at how much profit the business can be expected to make each year. It is reasonable to assume that a buyer is prepared to pay a multiple of these profits, as the buyer will expect to get at least those profits back each year.



The multiple is lower where there is downward risk attached to the profits and higher where there is a lot of growth potential. A standard multiple for a small, privately held business is between 3 and 6 times the EBITDA.

Methods of valuation – Net Asset Method

The “Net Asset Method” values a company by reference to the realisable values of its net assets less liabilities. This valuation method is usually applied to an investment company, where the valuation of the company is directly linked to the value of the investments. It can also be used for companies with low profitability, where there is limited or no value to the future profits and limited expectations of growth.

Valuation Evidence

It may well be necessary to have the benefit of business valuation evidence within financial remedy proceedings.

The rules on expert evidence are set out in the Family Procedure Rules and the Practice Directions.

An application to rely on business valuation evidence must be made before the first hearing, known as the First Directions Appointment (FDA). Where possible, the parties should agree on the instruction of a Single Joint Expert (SJE).

Before placing any business valuation evidence before the Court, that party must seek permission from the Court to do so. The Court will have to consider whether the valuation evidence is necessary before granting permission.



What questions are asked of a Single Joint Expert?

- What is the value of the shareholding?
- Are there any minority shareholder discounts to take into account?
- What are the tax consequences of any disposal or transfer of the shareholding or any cash extraction, if applicable?
- What is the capital liquidity available to the shareholders?
- What is the likely future gross and net sustainable income available for the shareholders now and in the future?

Challenges to Business Valuation evidence

If one party is dissatisfied with the valuation evidence, the starting point is to raise questions with the expert. If those questions do not resolve the issue, there is the option to either cross examine the expert at the final hearing or, make an application to rely on another expert.

Liquidity

Liquidity of a business is very important and is often a source of conflict between parties. Very often, there is no or limited capital funds that can be extracted from the business without damaging its performance. The ability to continue trading to provide an income for one or both parties is fundamentally important.

The Family Court recognises that there is a difference between risk laden assets (like business assets) and copper-bottomed assets, like property and cash. It is extremely unlikely that the Court would make an order which results in one party retaining all the risk laden assets (the business), leaving the other party to retain all the copper-bottomed assets (cash and property). Usually, it would be more appropriate to spread the risk between the parties.



How do the Courts treat business assets?

The Court has a wide discretion when resolving how businesses should be treated on divorce:

- A transfer of shares from one spouse to the other, subject to a lump sum payment;
- A transfer of shares from one spouse to the other, subject to the payment of spousal maintenance payments;
- A transfer of shares from one party to the other without any further payment upon the basis that the other spouse has more of the nonbusiness assets. However, this would result in the spouse who retains the business retaining more of the risk laden assets, and therefore this may produce an unfair result;
- Each spouse retaining their interest in the business subject to a Shareholders' Agreement to clarify how the business is to be run in the future;
- An order for sale of the business.

You will need to complete an ARB1FS Form (for financial matters) and an ARB1CS (for children matters) available at www.ifla.org.uk.



You're in safe hands!

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

Call: 0161 941 4000

Click: myerson.co.uk

Email: lawyers@myerson.co.uk



Proudly
employee
owned.



Myerson Solicitors

Grosvenor House, 20 Barrington Road,
Altrincham, Cheshire, WA14 1HB

Tel: 0161 941 4000 | lawyers@myerson.co.uk
www.myerson.co.uk



Myerson and Myerson Solicitors are trading styles of Myerson Limited, a company registered in England & Wales number 15557117, whose registered office is as above. The term "Partner" used in connection with Myerson Limited and its trading names, refers to a director of Myerson Limited or a senior employee of equivalent or similar status and does not create nor indicate any relationship of any legal partnership as between any of the persons so designated and/or by any such persons and Myerson Limited. A list of Partners is available for inspection at our registered office. This firm is authorised and regulated by the Solicitors Regulation Authority number 8007783. VAT Registration Number: 380 4208 70.