



## Why Divorce is Everyone's Business

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A divorce is something nobody plans for and the implications for everyone involved can be stressful and upsetting - and in the absence of a prenuptial or postnuptial agreement, there is a lot to consider when it comes to protecting your assets, particularly when it comes to business, writes Davidson McDonnell's Rachael McKee.

Alarming, many business owners, shareholders and investors fail to consider what a divorce might mean for them and their assets, which in many cases can form a substantial part of a couple's matrimonial property.

While many have a bricks-and-mortar property at the forefront of their mind, what happens if you or one of your co-shareholders initiate a divorce? The reality is, without a pre-agreed solution, any asset belonging to a spouse has the potential to become 'matrimonial property' and could be split as part of any final settlement.

Grappling with your business assets as part of any divorce is far from ideal, triggering a possible buy-out, uncomfortable discussions, new pressures and complications during an already difficult time.

Of course, getting advice on how the impact of divorce might be mitigated is rarely on the 'to do' list of many business owners or investors, but it can help to avoid any stressful or costly disruption further down the track.

Before deciding on any split, the parties and their advisors must consider what will be deemed matrimonial property and non-matrimonial property. This involves reviewing all assets, both personal and commercial, owned jointly or solely. All matrimonial property will be divided on separation and if agreement cannot be reached between the parties, a judge will decide.

What the court aims to achieve, where possible, is a clean break, which allows parties to go their separate ways financially independent of each other and without any continuing liabilities - except in respect of any children.

As always in business, it is best to prepare. Remember to consider these practical points:

- Minority shareholdings
- Family businesses
- Pre- and post-nuptial agreements

If it's too late to prepare and a divorce process is pending, seek advice from a family and matrimonial team who have experience of dealing with high value, complex, business assets as early as possible.

As always in business, it is best to prepare. Here are some practical points to consider:

**Minority shareholdings:**

If you hold a minority interest in a business, the courts will usually consider the value of this asset in a hypothetical sale. Typically, courts speculatively value minority shareholdings with a discount applied (often 50 percent or more) for the purpose of calculating its value as matrimonial property.

A discount will usually not apply if the company is deemed a quasi-partnership where both spouses are actively involved.

Courts will also usually not apply a discount in cases where historic, non-discounted share buybacks have been evidenced. Consideration should therefore be given to the method of valuing shares for the purpose of any share buy-back, as any discounts applied (or not applied) might set a precedent for how shares are subsequently valued.

**Family businesses:**

It is not unusual for the Family Court in Northern Ireland to have to deal with family businesses where a spouse is an equal, majority or sole shareholder whilst having little daily input. It also does not necessarily follow that spouse A with a holding of 50 to 100 percent shareholding of a company operated solely by spouse B will be awarded exactly this value.

Courts also look at the intentions and purposes of the shareholding arrangement and can consider that the value of the business is based on the person at the helm, not the person on the share register. Evidencing the intentions of the parties by way of an ancillary agreement can be useful in these circumstances.

**Pre- and Post-Nuptial Agreements:**

Seeking legal advice on prenuptial and postnuptial agreements to mitigate the risk of commercial interests being split by the Family Court is a practical step. Whilst those agreements remain relatively uncommon in Northern Ireland, they are gaining traction, with many couples seeing mutual benefit in agreeing how a clean break can be quickly and fairly achieved if they part ways.

Given the potential complexities where business assets are involved, entering into a prenuptial agreement should be considered, particularly now when the courts are increasingly taking note.

*“Of course, getting advice on how the impact of divorce might be mitigated is rarely on the ‘to do’ list of many business owners or investors, but it can help to avoid any stressful or costly disruption further down the track.”*

**What if it's too late to prepare and a divorce process is pending?**

If you find yourself in the situation where business assets are being brought into divorce proceedings, or you think they should be for you to reach a fair settlement with your former spouse, you should seek advice from a family and matrimonial team who have experience of dealing with high value, complex, business assets as early as possible.

The last thing you need is for your business to be a bone of contention, particularly if you run it together.

**Guidance:**

If you require further information about anything covered in this briefing, please contact **Rachael McKee** or your usual contact at the firm on **+44 (0)28 9099 8207**. This publication is not designed to provide legal or other advice and does not deal with every important topic or cover every aspect of the topics with which it deals. Publication date: March 2023.

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