

Safeguarding the Golden Egg



Fiona Craig discusses the impact of divorce on owner-managed businesses.



Divorce is said to be one of the three most stressful life experiences. Anyone going through family breakdown faces a time of great uncertainty and acute worry about the future. For the business owner one additional worry often dominates all others. Will the divorce destroy the business?

The reassuring answer is, almost certainly not.

Related to that is a second question. Will the law ignore their business interests? The answer again is, almost certainly not.

As a divorce lawyer I am frequently called upon to act for people who have built up successful businesses from scratch. The business owner may expect his lawyer to suggest ways to conceal business assets and may already have moved assets to make the business look less profitable than it is.

In most cases such steps are futile. Even the most labyrinthine paper (or paperless) trail can be followed if the spouse's lawyer is tenacious enough.

Full and frank disclosure

The legal position is clear. In divorce proceedings both parties must make full and frank disclosure of their financial circumstances. The duty is far reaching. It is not enough to answer whatever questions are asked in the hope that some assets will be overlooked. You are expected to voluntarily disclose every asset you own or control, not just personal assets but also all business and even trust interests and assets overseas as well as the UK.

The business owner who tries to conceal assets risks a lot. The most immediate risk is discovery. Your spouse will almost certainly know more about your business than you imagine. Your family's lifestyle will offer clues. Then there is the paper record. All businesses have accounts in some form. The divorce courts can order production of these and any other relevant documents. In extreme cases they can also compel other people to produce documents.

A failure to make full and frank disclosure has two potential consequences. Firstly the court can impose costs penalties. Secondly the Court may conclude that the business owner has still more, as yet undisclosed, assets.

Safeguarding the business

Assuming you recognise the futility of attempting to conceal assets and make full financial disclosure, how then can you protect your business? The answer is, you probably do not have to. The divorce

courts are very reluctant indeed to interfere with successful businesses. Some years ago a reported case referred to the family business as "the goose which laid the golden egg". The metaphor caught on and is now repeated by divorce lawyers everywhere. The meaning is plain. In many cases the business is the source of income not only for the business owner but possibly also for the children and even the former spouse.

The business owner may also have partners or fellow shareholders. It would be grossly unfair to them if the business were wound up in order to fund a divorce settlement. So, to stretch the metaphor, the courts do their utmost to achieve a fair settlement without killing or even wounding the golden goose.

"A fair share"

So the usual approach will be to offset business assets against other non-business assets. This may mean giving the spouse the house, or a large proportion of personal savings, or a share of a private pension. It is not an exact science. In fact it is often a very imprecise exercise indeed. What the court tries to achieve is a fair share of the assets, having regard to factors such as age, dependent children and length of marriage, with a reasonable spread of those which are risky and those which are "copper bottomed".

However it is not always necessary for the court to decide how the family assets should be divided. Very often a court-imposed settlement suits neither party. The business owner who wishes to protect his business can do a great deal himself.



Once you have made financial disclosure you can take the initiative and put forward settlement proposals. You can and should make full use of your lawyer and your accountant to assist you. In other words you should approach it like any other business deal and look at it from all aspects such as tax-saving and timing.

Provided what you put forward is fair you can expect a positive response from your spouse's lawyer and although there may be a certain amount of fine-tuning you will be well on the way to achieving a settlement on your terms, leaving your business intact and on course to greater success.

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