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Divorce and the Family Business



Divorce is a stressful time for families and this can be exacerbated if there is a family business involved. The business forms part of the assets to be shared on divorce and the business is a central part of the financial proceedings and discussions on divorce.

In recent years the impact of divorce on family businesses has been particularly damaging and it is important that the owner of the business obtains specialist legal advice should the marriage breakdown.

The first thing that we would want to do as lawyers at Band Hatton Button is obtain a full history of the business and really get to know our client's role in the business, the assets of the business and the future plans for that business. For many owner managers the company will be one of the biggest assets at stake and a division of the shares or an extraction of cash can seriously damage its health. That is why it is important to understand how the Courts deal with a family business.

From the outset it is important to think about your future intentions for the business. Is it your intention to sell the business, continue running the business or pass it down to the next generation?

If it is at all possible, the Courts tend to leave the business owner with the business and compensate the other spouse with a larger share of the remaining assets or perhaps a maintenance order. However, to enable the courts to do this they will need to know whether the business has any capital value and if so what that value is.

It is important to really think about what approach you want to take. Every business is different and it is important to consider the following points: -

1. Does the business support a high standard of living?
2. Does the business contain property or assets, and do those assets have significant value?
3. Is there a company pension?
4. Is it possible to extract capital sums from the business to provide money for housing for either party?
5. What income does the business produce?
6. Is it possible to borrow against any of the business assets?
7. What is the ownership of the business, do other family members have shares that will need to be considered.

Although the Courts can order a sale of the business it is highly unusual. The Court usually want to preserve the business and to effectively compensate the non-business owning spouse with a greater share of the non-business assets.

It is important to take independent legal advice from a specialist family lawyer as soon as possible. You certainly should not take any steps to make changes to the business without seeking this advice.

For further information about the support which our Family Department is able to provide, please contact Helen Bowns (Email: HLB@bandhattonbutton.com; Tel No: 024 7623 7349) or any other member of our team.

Please also see our website for a slightly more detailed version of this note (Sectors – Owner Managed Businesses).

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