

FAMILY LAW SERVICES

PROTECTING YOUR BUSINESS

Burgess Mee

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We are an award winning family law firm. We are experts in our field and are based in Clapham Common and Moorgate with meeting rooms in Hammersmith.



Divorce and separation can have a profound and lasting impact upon your business. At Burgess Mee we have a team of family law experts who are used to taking steps to minimise this impact and to help protect your business interests.

A pre or postnuptial agreement is a contract between a couple, entered into before marriage, or after in the case of a post nuptial agreement. It seeks to determine the financial claims that might be made if the marriage comes to an end. It can be a very effective way of protecting the existing value in a business and any increase or accrual in value which occurs during the marriage (which might otherwise be shared).

Such agreements are routinely made by people who have nascent or existing business interests, in order to protect their value and any investment made in them. Prevention is better than a cure and the disruption which might be caused by a separation and divorce is something to be avoided at all costs.



WHAT HAPPENS IF THE MARRIAGE BREAKS DOWN?

If the marriage breaks down and there is no pre or post nuptial agreement, the court will look at all the circumstances of the case. This includes the value of any business interests held by one or other party to the marriage.

If it is not clear what the value of the business is (for example because there are shares in a private company or a minority interest) then the court may order a valuation. This can be disruptive in itself as it will likely involve an external accountant looking at internal documentation, company accounts and forecasts.

If the business is a company, then it is possible that some of the shares may be transferred to the other spouse as part of a settlement. Sometimes this is done subject to a shareholders' agreement.

If the business is the most valuable asset, it may not be possible to offset the value of the business interests against other assets (for example property, investments and pensions). In these circumstances it might be necessary for there to be a buy-out over a period of time. This might be a series of payments spread over several months or years and there may be a discount given for the fact that there is risk involved in the retention of the business interest.

Often it will be necessary to involve accountants to help with the structuring of any proposals for settlement. Our firm has significant experience in businesses across the range of industries including professional services, health and wellness, tech, property and farming.



WHAT ARE THE ALTERNATIVES TO LITIGATION?

Litigation can be very disruptive for business owners. Quite apart from the cost and stress of going through proceedings, the frequent interruption, constant rounds of disclosure and the provision of information can be time consuming and a distraction, all against the ongoing demands of your business.

As an alternative to litigation, we can support business owners and entrepreneurs through alternative dispute resolution processes. These might include mediation with lawyers present or a private Financial Dispute Resolution (FDR) appointment with a focus on negotiation or arbitration. All of these options can still involve a valuer.

A private FDR is where you appoint a private tribunal or “judge” (usually a barrister, solicitor or retired judge) who gives a non-binding indication as to what the outcome of the case would be if it went to a final hearing and helps the parties to negotiate an outcome.

An arbitration is similar to a private FDR but the private ‘judge’ in this process (known as an ‘arbitrator’) makes a binding decision. If you would like more information about these different processes, we would be happy to discuss them with you. The benefit to business owners of engaging in these non-court dispute resolution processes is the extent to which the process can be tailored to their circumstances and the fact that the process will be quicker than formal litigation through the courts.

WHAT ABOUT VALUATIONS?

If you are going through a divorce or financial process the court will require you to provide a copy of any written valuation obtained within the last couple of years.

However often such valuations are commissioned for different reasons. For the purposes of the separation, it may be necessary to appoint a “single joint expert” who is an expert to the court and who will provide a report about the value. Such reports often also include advice about liquidity issues and tax. Further specialist advice may also need to be taken in respect of the latter.

At Burgess Mee we have significant expertise in the instruction of experts such as this.

We are accustomed to dealing with issues such as minority discounts and “key person” issues.

TECH BUSINESSES

Recent start-up businesses which are in the tech space can often have particular features. These may include valuations which fluctuate. The business could be loss making in the first instance but still have capital value.

We have had a significant number of cases involving businesses in the tech space. We have experience in dealing with businesses in their early stages and, where possible, we seek to shield such businesses from the rigours of a litigation process.



PROTECTING YOUR BUSINESS

If you would like to speak to one of the partners about protecting your business through relationship difficulties, please do **speak to us**.



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