

Family Law Fact Sheet

Help! My business partner is getting divorced. How do I avoid the fall-out?

The separation and divorce of key management staff and owners within your business structure can have a significant effect on business.

Power of Court concerning businesses

Where a separating spouse is a business owner, a business can be joined to proceedings in the Family or Federal Magistrates Court and orders can be sought against the business. The Court has a wide jurisdiction and can order:

- That the ownership in the business of the separating spouse be changed to include full or partial ownership by their former partner;
- The substitution of one spouse in relation to any debt owed to the business;
- The transfer of shares in a business to the partner of the separating spouse in the event the business is operated by a company;
- Amendment of the Trust Deed in the event the business is operated through a trust;
- The making of certain injunctions against the business.

Protecting confidential information

Even if proceedings between separating spouses do not progress to the extent the business itself is joined as a party of the proceedings, businesses often have to devote significant time to providing documents in the course of disclosure between various parties.

Businesses can also be forced to produce documents and answer questions from forensic accountants appointed as Court experts so the separating spouses' interest in the business can be valued.

Requests for documents can involve issues of the use of confidential information, possible disclosure of trade secrets and provision of commercially sensitive information, including financial statements, client details, level of debt and salaries paid to staff members. This kind of information is all discoverable in the Family Law proceedings and care needs to be taken in protecting business assets, including confidential information.

At Hemming+Hart Lawyers we have a team of specialist family lawyers with a particular speciality in complex property settlement, as well as a Corporate+Commercial team and an Employment Law team. Involvement of businesses in Family Law disputes often involves a consideration of issues from all three legal disciplines and is something which, as a commercial law firm, Hemming+Hart is especially positioned to provide.

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