

Family Business Matters

Winter 2011



In this edition:

Divorce and the family business
– beneficial changes in the law

The succession dilemma

Family business and the recession
2011 National Family Business Report

Welcome to Family Business Matters



Welcome to **Family Business Matters**, the newsletter for clients and contacts of the, Veale Wasbrough Vizards family business team.

With the recovery of the UK economy faltering it is clear that the Chancellor George Osborne is still pinning his hopes on the family business rich manufacturing sector leading a “march of the makers” towards economic recovery.

So just how is the family business sector faring? Clearly all businesses are facing challenging times. However our 2011 Family Business Survey carried out in conjunction with the University of the West of England Business School suggests that the family business sector is indeed alive and well and outperforming the economy as a whole.

The survey also highlights several issues on the perennially difficult subject of family business succession. This key topic is examined by Julia Hardy.

The last few months have also seen judicial developments in the family business field with the key decision in *Radmacher* where the English Supreme Court upheld the validity of a pre-nuptial agreement to protect the assets of Katrin Radmacher, a member of a hugely wealthy German business family following her divorce. Andrew Hamilton examines the decision in detail and its implications for business owning families in this newsletter.

I trust that you will find Family Business Matters helpful, interesting and informative. We would be delighted to hear from you with any comments, views and questions you may have, either in relation to this newsletter or wider issues in the family business world.

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Divorce and the family business beneficial changes in the law

The recent high-profile divorce case of *Radmacher v Granatino* has important connotations for family businesses including farming enterprises. It offers a new solution to preventing business assets being lost to the family through divorce.

Divorce has for centuries, proved a cause for concern amongst owner-managers. Adult children, however loyal and dedicated to the business they may be, could marry partners who, on divorce, end up walking away with a large share of a family business through their divorce settlement.

Prior to *Radmacher v Granatino*, pre-nuptial contracts had limited impact on divorce settlements, with Family Courts relying on the principle that marital assets should be divided equally between the couple. However, the case has changed all of that for the better for the family business owner.

The case involved Katrin Radmacher and Nicolas Granatino who married in 1998; Ms Radmacher (a German national) ran a boutique in London and Mr Granatino (a French national) worked for JP Morgan where, at the height of his career, his income was £325,000 per year. The parties and their children lived in London

They had signed a pre-nuptial agreement in Germany where such agreements are legally binding. This agreement provided that neither party was to benefit from the property of the other on any subsequent divorce.

Before and during their marriage, Ms Radmacher had inherited a fortune of over £100 million from her family’s paper company in Germany whereas Mr Granatino, on his own initiative, had left his work in the city and had embarked on research studies at Oxford. The couple had two children during their marriage.

Pre-nuptial agreements

In their judgement, the Supreme Court found that Mr Granatino should be held to the terms of the pre-nuptial agreement, subject to making provision

for the needs of the children. The Court emphasised that the key to any financial settlement is fairness.

To be binding, the parties must enter into the contract voluntarily, in advance of the wedding and must each make full financial disclosure and have independent legal advice. Subject to meeting all the criteria, the Court will only disregard a pre-nuptial agreement, if in the circumstances it would be unfair to hold the parties to it.

As a result, while not absolutely binding on the Courts, pre-nuptial agreements will now be given decisive weight by the Courts.

Post-nuptial agreements

The door has also opened, following another recent case of *MacLeod v MacLeod*, for couples who are already married to regulate the division of assets and income on divorce, during marriage, through post-nuptial agreements. These are becoming increasingly popular ways of regulating asset division amongst couples who are already married.

Accordingly, the outcome of these two cases provides new solutions to owner-managers who wish to pass business shares or indeed land on to their adult children, with the reduced risk of those shares being lost to the family and the business in the event of their children’s ultimate divorce.

If you would like more information, our specialist Family Lawyers within our Family Business Team can provide expert advice and support in this area, including the drafting of tailor-made pre and post-nuptial agreements.



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The succession dilemma

Planning for succession is probably the toughest challenge that many family businesses ever face. It calls for courage to deal with any differences of opinion over which roles the next generation should take. Sometimes the problem is that, nobody in the next generation has the ability or desire to take up the reins.

However, avoiding this key issue is risky, for the simple reason that without a succession plan in place, the business is unlikely to survive the change of baton to the next generation.

The statistics bear this out, as many sources suggest that 60 -70% of owner-manager businesses do not make it to the second generation. Clearly, this can be for a number of reasons, but, a reluctance on the part of the owner-manager to knuckle-down to preparing their succession plan is frequently a key cause. Our 2011 National Family Business Report shows that almost half of the survey respondents were not in a position to reveal even the most basic plan for their business, whether to sell, pass it to the family or management etc.

When should you start planning?

Typically, owner-managers are forced to confront succession planning as their own retirement approaches. However, many continue to evade the issue well beyond that point. Even Henry Ford held on to power well into his eighties and almost destroyed the car manufacturer in the process. The answer is that succession planning should start as soon as possible for the already well-established business and, ideally, it should involve all the family. The plan should reconcile the strategic possibilities for the business with the needs and aspirations of the family members.

A simple starting point is to hold a family meeting where each family member's ideas can be discussed openly. This helps to prevent unpleasant surprises cropping up further down the line. A lack of communication about what role each member plans or hopes to play in the future business is another common block to effective progress.

Pick your moment to start discussions sensibly...

There is no point in scheduling meetings to discuss the future management of your business at the busiest time of the year. Highlight a time in the business calendar which is likely to work and invite everyone in the family, not just those who work in the business to attend.

Our experience of working with family businesses in our consultancy work tells us that the views of the family members who do not work in the business can prove as important and influential as those who do. This is because, it is impossible to take the family out of the family business. Owner-managers who recognise this fundamental key to understanding the dynamics of a family business have a far greater chance of success than those who do not.

Seeking advice

Once you have outlined an idea of what you hope to achieve, your next step is to seek specialist advice.

Solutions to ownership succession can include options such as a partial management buy-out, where the senior management team are given some of the equity in the business, but a proportion of the ownership is kept by the founder member, for the benefit of the next generation.

Planning for retirement and securing enough income for the owner manager and their spouse or partner is another driving force for most owner managers. Advisers can help meet these needs by reorganising shareholdings between family members and/or by establishing family trusts and shareholder agreements.

It is also important to have a professionally drafted Will and to take advantage of any tax relief available, such as Business Property Relief for inheritance tax. It is often beneficial to set up discretionary trusts to capture this hugely valuable tax relief for the benefit of the next generation and the business.

The key message to all owner managers is: to ensure success, start planning now rather than putting it off until it is too late if you want to successfully pass the baton on to the next generation.

How do I take this further?

The specialist lawyers within our Family Business Team will be happy to tailor our advice to meet your individual needs. We can also offer consultancy advice on taking the first steps towards succession planning if you find this area a minefield as many of our clients do.



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Family Business Matters

Family business and the recession 2011 National Family Business Report

Against the backdrop of the toughest economic times in living memory, family businesses seem to be not only surviving, but thriving, according to our recently published 2011 National Family Business Report prepared in conjunction with the University of the West of England.

Clearly many businesses have not survived the recession in family ownership. However the message from the report is that for the family business sector as a whole the outlook is bright, with over 50% reporting that they had increased both market share and profitability during these tough economic times. This is set against a perception that non family owned competitors are struggling. In the survival of the fittest, family businesses have come out fighting.

Equally family businesses have proved well able to survive the credit crunch with over half of respondents being concerned about raising finance or the availability of funds. For those working in, or owning family businesses, this may not come as a great surprise. Family businesses tend to have their eye on longevity and sustainability for future generations, focusing on reinvestment of profits and low gearing.

The unique characteristics that family businesses exhibit - in a word "familiness" - are also confirmed by the survey. Whilst the majority of respondents confirmed that the primary aim of the family business was to put bread and butter on the table of the immediate owning family, the survey suggests that family businesses have a strength and depth of vision way beyond immediate revenue building. A sizeable proportion of respondents pointed to family orientated aims such as building a legacy for future generations as key drivers for their business.

The sense of custodianship often felt by the current generation gives them a reason for survival beyond their own immediate needs. These characteristics appear to have provided family businesses with the financial shock absorber needed to survive the recession and outperform their non family owned counterparts.

Familiness can also be seen in the high degree of flexibility in the decision making process of family businesses. Partly this is reflected in a fluid and flexible decision making process. Also most respondents recognised the influence of family considerations on decision making. Only 37% of family business owners said that business factors always came first. Family businesses therefore appear to be thinking and strategising in a different way to their non family owned counterparts. We believe that the holistic nature of their decision making, when coupled with a long term strength of vision, provides a more solid, rounded basis for decision making and helps to explain why family businesses have proved so adept at surviving the credit crunch.

In addition to charting the progress of the family business in the current difficult economic waters the report also looks at perennial family business themes such as succession (considered separately in this edition) and governance (to be looked at later).

If you would like a copy of the report, please contact Charlotte Iles on 0117 314 5367 or at ciles@vww.co.uk or alternatively visit our website www.vww.co.uk.

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