

Managing The Corporate Divorce

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Business Continuity – Avoiding the Corporate Divorce

Understanding The Problem – What Causes Corporate Divorces?

- Lack of rules/playbook i.e., no shareholder agreement/operating manual
- Ego/resentment – I’m better than you or I don’t need you anymore
- Passive vs. Active ownership
- Need for control
- Lack of communication
- Perception of individual “worth” to business
- Change in commitment level
- External events i.e., personal, family, health, finances

Watching The Signs – What Are The “Early Warning” Indicators

- Changes in communication levels
- Everything is a fight
- Increase in secrecy
- Increase in self-interested behaviour
- Change in overall behaviour (engaged people become reserves, etc.)
- Increase in “surprises”

What Can Be Done To Avoid The Corporate Divorce?

- Pick your partners carefully
- Understand how your partner manages his/her household – life leaves clues
- Avoid the “too many cooks” syndrome – Hell’s Kitchen
- Make use of comprehensive operating manual i.e., shareholder agreement
- Establish good communication systems
 - Regular meetings
 - Regular financial/other reporting
 - Share good and bad news
 - Share what you’ve been up to – wins and losses

- Make use of external advisors – accountants, lawyers, advisory board
- Develop and implement “fair” compensation systems
- Watch for “moments of truth” and manage same
- Realize there will be many “bumps” in the road
- Be sensitive to third party influence i.e., spouse, friends
- Be sensitive to external factors i.e., health, family and financial issues

What Are The Benefits Of Avoiding The Corporate Divorce?

- Reduce distractions and stay focused on your business
- Build enterprise value
- Extract enterprise value
- Execute a successful exit

What Happens When You Cannot Avoid The Corporate Divorce?

How To Proceed

- Arbitration vs. The Civil Courts

Arbitration

- Advantages/Disadvantages
- Consider at the outset of the relationship
- Be aware of the limits of the *Arbitrations Act*

Civil Actions

- Injunctive relief
- Oppression remedy/equitable winding up
- Fidiciary Duties
- Restrictive Covenants

Continue to Negotiate

- A bad settlement can beat good litigation
- Remain flexible

Handouts:

- Checklist re How to Better Manage Corporate Divorces
- December 2006 *Bottom Line* Article on “Managing the Corporate Divorce?”