

# CORPORATE DIVORCE

7 WAYS TO BREAK UP



VYMAN  
S O L I C I T O R S

# The Problem

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Whilst many joint venture businesses or partnerships last successfully for many years, there are cases where it becomes very difficult for partners to continue in their business relationship.

We know from traditional marriages that problems and frustrations do arise - and similar issues can arise in corporate marriages. Where the business relationship has irretrievably broken down, there may be no alternative but a corporate divorce.



# The Impact

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If and when a business relationship breaks down, this can lead to numerous financial as well as other negative consequences.

- When, for example, the co-founders of a business are no longer getting along, neither or both may lose interest and the business starts to suffer financially.
- Staff morale is undoubtedly affected.
- A profitable business can be turned into a loss making one.
- This is not to mention the stress, tension and worry that can be caused by the double whammy of a strained relationship and the financial repercussions of a floundering business.

## Case Studies

A common situation we come across regularly is that friends or members of the same family have formed and been involved in the same business together for many years. When they first started out, they worked extremely well together and, generally, the business has done well.

However, as time goes on, circumstances change, e.g.:

- Founding partners get married
- They have children
- Their appetite for work may change
- Ill health or retirement
- Their priorities change

The result is that animosity and distrust can arise.

Especially in family companies, we have seen that this has led to considerable mental and physical stress and strain.

### Possible Solutions

1. Mutual Agreement
2. Mediation
3. Deadlock Resolver
4. Demerger
5. Sale to Third Party
6. Liquidation
7. Litigation



# The Solutions

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Whilst we have seen this kind of problem arise in many cases, the solution is not always the same. It all depends on the precise circumstances of your case. A combination of one or more of the following processes may be appropriate in your case:

## 1. Mutual Agreement

This is by far the best solution.

If the relevant parties remain on speaking terms and are able to come to an agreement which is reasonably satisfactory to all of them, they will save themselves a lot of time, expense and trouble.

For example, if the parties are able to agree a buyout by one party or the other or some other arrangement for the future, that is great.

The parties should endeavour to agree Heads of Terms amongst themselves and then seek professional advice in order to finesse those Heads of Terms and put them into effect. This may involve the drafting of a Shareholders Agreement, Share Purchase Agreement, Deed of Dissolution of Partnership, and so on.

It is important to take appropriate legal, accountancy and tax advice in order to ensure that any transaction is structured in the best possible way.



## 2. Mediation

If the parties cannot achieve Solution 1 on their own, maybe they can involve a trusted third party to act as an honest broker and push through a solution that is fair to all sides.

It is important to choose the right person as a mediator. He/she must have some degree of seniority, expertise and experience in such matters and be a person who all sides respect and are willing to listen to. This may well be a solicitor, accountant, business contact or a senior family member.



## 3. Deadlock Resolver

You may find that in, say, a partnership of 2 individuals, neither side is willing to back down. Maybe both sides wish to acquire the business. There are various well established mechanisms which have been devised in the past with a view to resolving such a deadlock.

Quite often, they have exciting sounding names such as Russian Roulette, Texas Shootout or Sealed Bids. They all basically involve undergoing an agreed bidding procedure whereby, usually, the person who is willing to pay most for the business ends up buying it.

If you have a Shareholders Agreement or Partnership Agreement, it is worth checking this to see if such a mechanism is already in place.



## 4. Demerger

We are seeing this as an increasingly common way of partners to split up. It may well be that the business has developed in two or more different directions and that one of the partners is involved in one activity and the other in another. It may well be possible to demerge the two activities and create two separate businesses.

In fact, there have been a number of high profile businesses which have been split in two in this way. Quite often, the result is that the two demerged businesses are more valuable than the original one.

Demerger can be a complex process and, again, it is very important to obtain the appropriate legal, accounting and taxation advice before undergoing such a process.



## 5. Sale to Third Party

This is also an option worth considering. If partners are no longer getting along and business is suffering as a consequence, and the partners are about to retire in a few years' time anyway, it may be worth all partners trying to work together for a little while in order to achieve sale to a third party at maximum value.

You may be able to take advantage of tax reliefs which makes such a sale even more worthwhile.

Again, it is important to take appropriate legal, accountancy and tax advice in order to ensure that any transaction is structured in the best possible way.



## 6. Liquidation

This may be a default remedy, perhaps when all else has failed. If the business is not doing particularly well, the partners may well decide simply to wind it down and allow the liquidator to sell off the assets. Where the company is solvent, this is generally known as a members' voluntary liquidation or winding up. If the company is insolvent, this is known as a creditors' voluntary liquidation or winding up.

On the other hand, where the business has failed and, perhaps as a consequence of the partners' intransigence, it is insolvent, HMRC or other creditors may force the company into liquidation. This is known as compulsory liquidation.



## 7. Litigation

If a shareholder in a company considers that another shareholder has behaved in a manner which is unfairly prejudicial to his interests, he can issue legal proceedings in the Companies Court and seek a variety of orders, for example, that he should buy out the other shareholder's shares. This really is like the family divorce situation since, in order to obtain an order from the Court, you do have to demonstrate bad behaviour on the part of the other shareholder.

If a shareholder thinks that it is just and equitable to wind up the company, he/she can petition the Companies Court to do so. If the Companies Court agrees, the company may be wound up and it may be possible for the partners to bid for the business as a going concern and acquire it from the liquidator. Generally, this is not to be recommended since liquidation costs are likely to be high and the planning advantages of an agreed transaction will be forgone.

In the case of a partnership or LLP, the appropriate remedy is to approach the Court for a dissolution of the partnership.

Such processes are usually the last resort because they are likely to be costly, time consuming and stressful.

However, when all else fails, the threat of such action be usefully deployed in order to pressure the other shareholder(s) or partner(s) to accept one of the other solutions set out above. If the pressure of litigation can force a party to agree a sale, a sealed bids procedure or some other solution, perhaps with the help of a mediator, such litigation (or the threat of it) may well be justified. If all else fails, of course, the Court will decide the matter.





## Next Steps

If you are experiencing a corporate divorce type situation or are considering any of the steps referred to above, you can take advantage of our free initial 15 minute Corporate Divorce Consultation with one of our corporate divorce experts. During our Corporate Divorce Consultation, we will explore with you the history of your current situation and help identify one or more possible steps towards achieving a solution to your current problem. Hopefully, by the end of the Corporate Divorce Consultation, you should have a clearer idea of what steps you need to take towards achieving a resolution.

In order to take advantage of the Corporate Divorce pathway Consultation, please call Laila Farjallah in order that she can arrange a 15 minute call with one of our experts. Alternatively, you can email Laila on [laila.farjallah@vyman.co.uk](mailto:laila.farjallah@vyman.co.uk).

## Act Now

Above all act quickly. Whilst there are a number of ways in which such situations can be tackled, you must act quickly and not sweep the problem under the carpet hoping that it will go away. Experience shows that the longer you delay, the worse the problem becomes, and the financial, mental and physical strain will be prolonged.



## About The Authors

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Anup qualified and trained with Herbert Smith, one of the pre-eminent commercial and litigation law firms in the City of London. He initially practised in commercial litigation, dealing with large-scale commercial, contractual and shareholder disputes.

He was then appointed as Assistant General Counsel by the UK branch of JP Morgan, the US investment bank, where he gained considerable international experience.

In 1998, Anup co-founded Vyman Solicitors with Gurnam Mander and his practice now includes a wide range of commercial litigation cases, property and business transactions.

He has a particular expertise and is known for his knowledge of corporate divorce situations. He is represented many parties involved in such situations where the value of assets involved have run into tens of millions of pounds.



### **MARCELLA COX**

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Marcella is a Commercial Litigation Solicitor, with over 25 years' legal experience. She previously worked in-house for a transportation company and has also been a Partner at a renowned North London law firm.

Marcella has extensive practical experience in the field of commercial litigation, including shareholder, partnership and general contractual disputes. She takes a pragmatic approach to legal disputes, with a view to reaching the most favourable and cost-effective solution for clients.



### **PANKAJ PATEL**

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Pankaj has more than 30 years' experience as a solicitor. He trained with the West End and later City firm of Brooke Blain Russell and Quinn, where he gained tremendous experience undertaking commercial transactions for well-known High Street retailers and printers (including franchising agreements, sales and purchases, shareholders agreements, and international purchases). Pankaj has wide ranging skills and understanding in many areas of commercial and business law and litigation. His all-round commercial outlook and capabilities, together with an understanding of insolvency practice and law, has assisted distressed companies in their restructure. Pankaj has also acted on behalf of clients in the registration of their trademarks, and in bringing and defending infringement actions. He takes a keen interest in new business start-ups, including technology based companies, advising them on structures and terms and conditions. After setting up his law firm, PKP French, in 1992, Pankaj went on to merge that firm with Vyman Solicitors in 2018.