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PRIVATE AFFAIRS

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Special edition: focus on owner managed businesses

2 **Wealth protection for business owners**
- Katherine Kennedy

12 **Preparing your business for sale**
- Hollie Licence

14 **The power of employees in the green transition**
- Jessica Wilkes-Ball

8

Protecting your business from "what ifs"
Prepare to fail, if you fail to prepare.
- Deborah Clark

In this issue

Contents

2 Wealth protection for business owners

5 Will planning for business owners. Getting it right matters.

8 Protecting your business from “what ifs”

10 Preparing your business for sale

12 The power of employees in the green transition

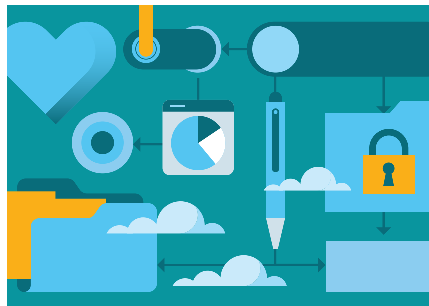
16 Unmarried couples and the family business

2

Understanding why wealth protection is important for business owners in a family law context

5

How having a plan can help business owners avoid the pitfalls of inheritance tax



8

Planning for “what ifs” won’t prevent risks, but it can materially reduce the impact

10

Whether selling a business is part of a long-term strategy or the result of an unexpected offer, getting it right is critical

12

Balancing the opportunities of the green transition alongside external pressures and legislative changes

Welcome from Andrew Playle

Andrew Playle
Partner and Head of Private Wealth
0113 388 8470

andrew.playle@mills-reeve.com

Welcome to this special edition of Private Affairs, which has been put together by our owner managed business and family business team. This team comprises lawyers from a range of legal disciplines across the firm, who work closely together to meet the needs of owners and their businesses.

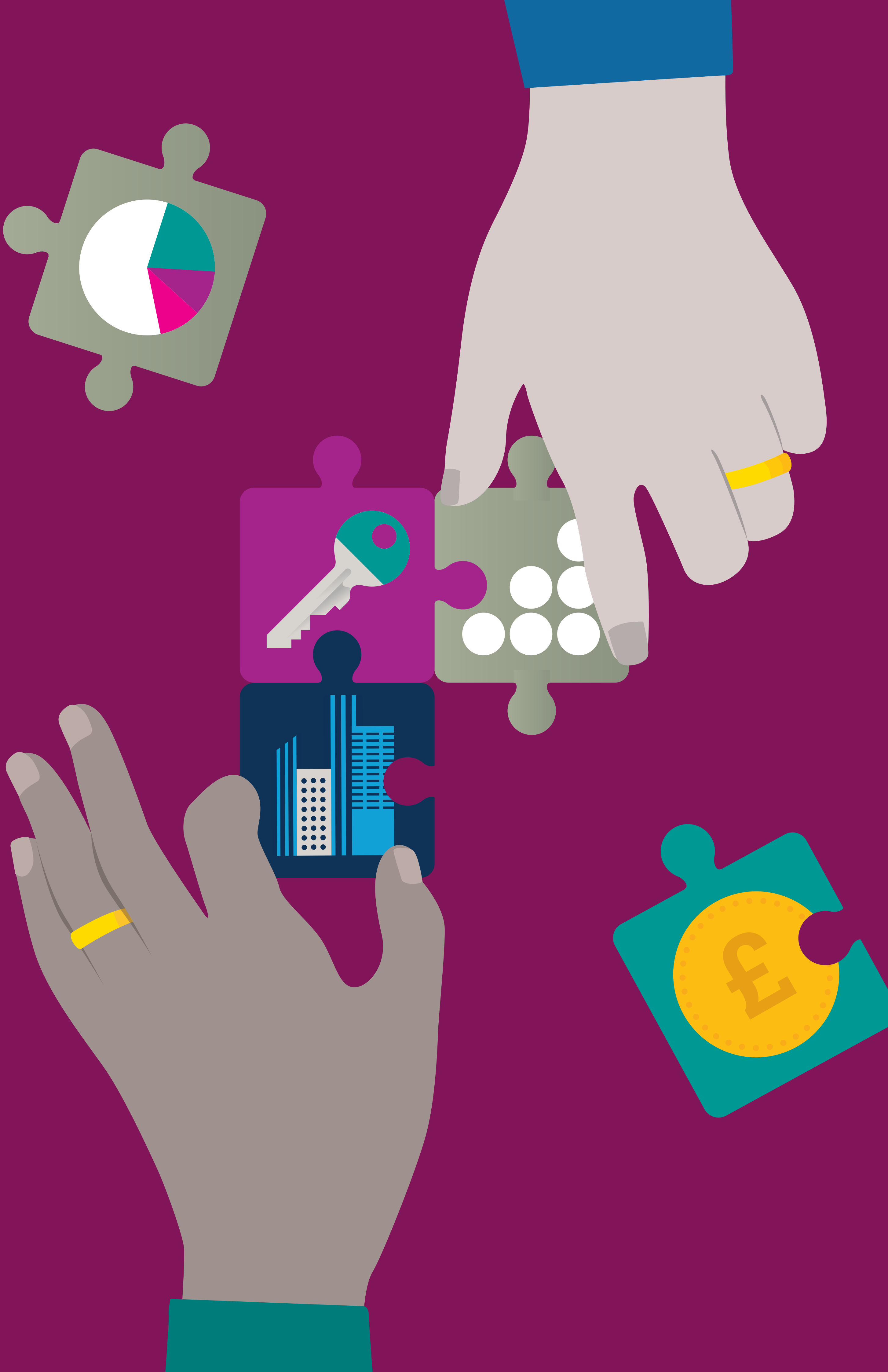
This edition looks at a range of issues impacting business owners – from personal tax planning, to the role of businesses in the journey towards net zero. My colleagues in our family team have shared some interesting insights on safeguarding businesses from the possibility of relationship breakdown, with Katherine Kennedy's article looking at the impacts of divorce, particularly how corporate documentation can provide protection, and Frances Bailey's article looking at situations in which there are shareholders and directors in cohabiting relationships.

In addition, Deborah Clark has written about how to protect against wider risks for family businesses, whether that be fall out within the family, or disagreements about business decisions. The common theme – getting the right documents in place is key.

We've also included insights from our corporate team in relation to the key steps in preparing a business for sale. The article is worth a read for all business owners, whether you're looking to sell or not.

We've covered a number of these topics in previous webinars, so if you prefer to digest your content in video form, see our webinar library.

I hope you enjoy the articles in this edition and, as always, if you'd like to discuss any of the issues in more detail, do get in touch with the author of the article or your usual Mills & Reeve contact.



Katherine Kennedy
Partner, Family

katherine.kennedy@mills-reeve.com

Wealth protection for business owners

In order to understand why wealth protection is important for business owners in a family law context, you need to understand how a court might deal with finances on relationship breakdown.

Businesses and personal wealth are structured for all sorts of reasons – tax efficiency, succession, inheritance planning and, of course, relationship breakdown/divorce. You're unlikely to be able to tick every box for all scenarios at the same time, so awareness is key, then decide where your priorities lie.

Finances in divorce are decided by reference to statute (in section 25 Matrimonial Causes Act 1973) and then by the application of that statute to specific cases. The "section 25 factors" that a court should consider include length of marriage, ages, financial resources, earning capacity, housing needs, standard of living, contributions... the list goes on.

21st century law – equal share of the assets

In 2000, the case of *White* ushered in a new dawn with equality, applying to both parties in recognition of equal contributions to a marriage in differing ways at different times. Before that, more often than not, a court could limit claims of the homemaker, often then the wife, to meeting their reasonable requirements which meant leaving the vast majority of assets, such as a valuable business, with the "breadwinner", often the husband.

Society changes and so too does the law. Sharing the assets built up during the marriage equally now tends to be the starting point and can be the end point provided that meets the needs of both parties, and in particular any minor children.

But what happens when there has been a business built up on one side of the family, perhaps preexisting the marriage in one way or another? Or where the really hard graft in establishing a business was undertaken by one party prior to the marriage?

Businesses can look like they're worth little in their infancy, but with a great product, an established management team and some fairly warm contacts, it can be a valuable asset already. A business owner can feel rather aggrieved at having to share all that came even before the relationship.

The family court has wide ranging powers. Judges have complete discretion to reallocate assets, this includes shares and interests in private companies, business premises, directors' loan accounts, cash and income streams, which can all be "invaded" to achieve a "fair" outcome in matrimonial proceedings.

Assuming marriage is on the cards, some valuable wealth protection tools are discussed below.

Company structure and documentation including shareholders' agreements

- Pre-emption rights/first refusal are going to increase the chances that spouses aren't given a shareholding. The company documentation makes it clear to the judge that a transfer of shares in a divorce won't be accepted by fellow shareholders and will likely be unworkable.
- Consideration should be given to how shareholdings can be valued and approached. Hopefully, this will also support post-separation negotiations.
- Make sure that spouses or other family members don't have the ability to create a stalemate and block company progress and stability pre or post settlement

There are so many options available now and court really should be seen as a last resort. Fire tends to feed fire in our experience.

- Anti competition provisions in shareholders' agreements and in employment contracts can stop family members setting up on their own
- Thought should be given to who should be a shareholder and why. Consider whether family members should become employees and/or shareholders. Aside from potentially tax efficient extraction of profits to the family, do they need to be involved?
- Shares in a business can be held within a trust structure, which can be a really helpful layer of wealth protection.

Nuptial agreements

Nuptial agreements can formulate before or during the marriage. These are increasingly important and can include the following:

- Ringfencing of the value of the business from sharing
- Putting a value on your business now with evidence for what one party contributed to the marriage
- Allowing income generated from business assets to be ring-fenced; or ring-fencing assets acquired from the income.
- Stipulations around the sharing of a business built up and grown during the marriage, but not any pre marriage element nor any post separation/pre divorce accrued value.
- For the non-business owner, it can include indemnities from their partner to ensure they're not affected by business dealings which cross the divide, eg personal guarantees or tax liabilities.
- If a company or partnership has a business policy that requires all existing and incoming business shareholders to have a pre-nup, this is good business sense to protect the company and makes it easier to introduce the concept of a pre-nup to the other party.

If the worst happens...

Think very carefully about the approach you take when trying to resolve financial matters following a separation.

There are so many options available now and court really should be seen as a last resort. Fire tends to feed fire in our experience. All cases have an outcome in the end, and that outcome falls within a range that an experienced family lawyer will be able to guide you on. Litigating may be the right option for you, but it can also come with an unpredictable cost both emotionally and financially. A negotiated outcome means you settle for certainty and you can structure an outcome a court may simply not impose.

Negotiations can be facilitated by lawyers focused on this approach within a mediation forum using a collaborative law approach.

With the correct approach, it's possible to safeguard the business and reach a negotiated deal in a reasonable timeframe. The focus should be allowing the entrepreneur/owner to resume concentrating their energies on building a business that can thrive.

Will planning for business owners. Getting it right matters.

Emma Geale
Principal Associate, Private Client
emma.geale@mills-reeve.com

Many business owners know that their business assets may receive relief from inheritance tax, but they can fall into the trap of thinking that makes their affairs "simple" and that they don't need advice on inheritance tax and estate planning. In practice, the opposite tends to be true.

Not only are there a number of pitfalls to be avoided, but proper planning can maximise the application of the valuable reliefs. We've set out an example of how well drafted wills can help to double the relief.

Business relief

Business relief (BR) is an extremely valuable relief and it's, therefore, important to understand which assets qualify. After a person dies, inheritance tax (IHT) is charged at a rate of 40% on the value of assets exceeding the available nil rate band of the deceased person, unless an asset qualifies for business relief.

Business relief applies to interests in a trading business (100% relief) and assets owned personally but used in a business (50% relief), which have been held for more than two years. The relief is available provided that the business isn't "wholly or mainly" an investment business or, put another way, it's wholly or mainly a trading business. Viewed in the round, the trading side of the business must outweigh the investment side. A careful eye must be kept on assets held by the business, which aren't actually used in the business, as these could result in relief being denied on the value of these excepted assets. Examples include properties used by the owner and their family, or large cash holdings that aren't required for the operation of the business.

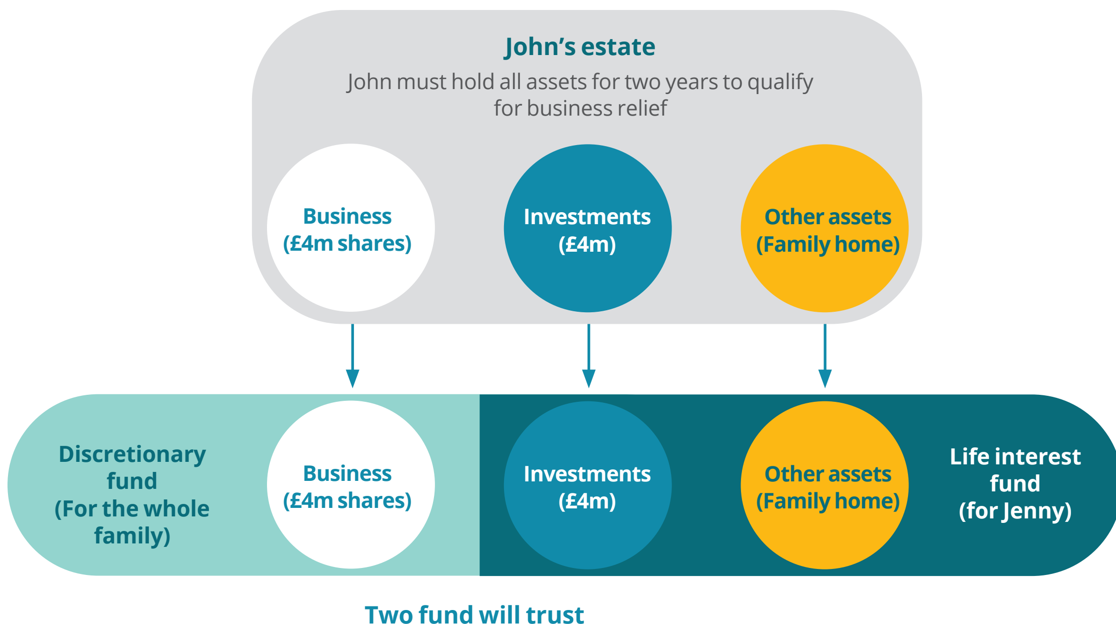
While it can be tempting for couples to rely on spouse exemption and simply leave everything, including their qualifying business assets, to the other on the first death, this strategy wastes a great tax planning opportunity that can result in benefitting from business relief on both the first and second deaths of a married couple. This potential for double relief is explained below.

Two fund will trusts – a case study

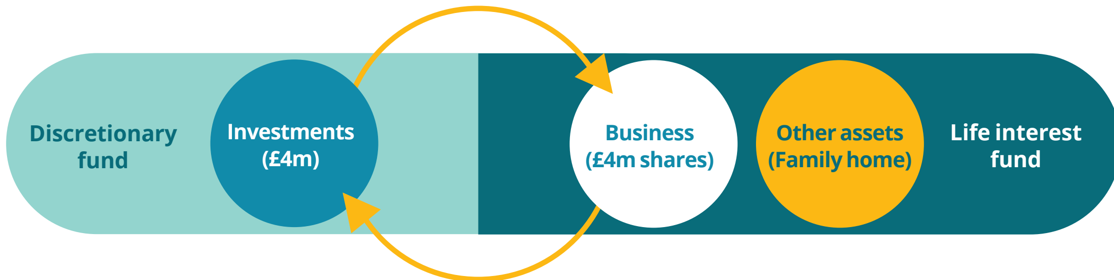
John is married to Jenny and has two children, a son from a previous marriage and a daughter with Jenny. John owns shares in a trading business which he runs with Jenny and their son. The shares are worth £4m, and an analysis confirms that they will benefit from business relief in full. In addition, John also has a portfolio of investments worth another £4m and owns the family home worth £2m.

John is keen to maximise the benefits of the inheritance tax relief but also ensure Jenny is provided for after his death. Eventually, he would like his two children to benefit equally from his estate.

We advise John to put in place a "two fund will trust" in order to achieve these aims. His will would pass his assets that qualify for business relief (that is, his shares in the business) into a fund of the trust which would be fully discretionary.



Two fund will trust



His personal representatives can claim relief on the shares and hold these on flexible trusts for the benefit of Jenny and his children. John's remaining assets would pass into a fund in which Jenny had a life interest, so that spouse exemption could be claimed. As "life tenant", Jenny would be entitled to all the income arising from the assets in the life interest trust, as well as the right to remain living in their home. Jenny would also be a beneficiary of the discretionary fund of the shares.

A key part of this planning is that the relievable and non-relievable assets are held within two funds of the same trust. This means, if appropriate to do so, the trustees can choose to exchange assets of equivalent value between the funds, without incurring a capital gains tax or stamp duty land tax liability. If these assets were 'swapped', the shares would subsequently be held on life interest trusts, and the investments would be held on discretionary trusts.

Assuming Jenny survives for two years, the shares will again qualify for business relief. The shares can either be held in the fund until her death and business relief claimed at that time, or she can choose to make a gift of the shares. This gift would be free of tax if she survived seven years from the gift, or, if she died sooner, the shares would still receive relief at that time. Regardless of whether the shares are gifted or retained, there would be a £1.6m in inheritance tax saved compared to Jenny's fund holding non relievable investments.

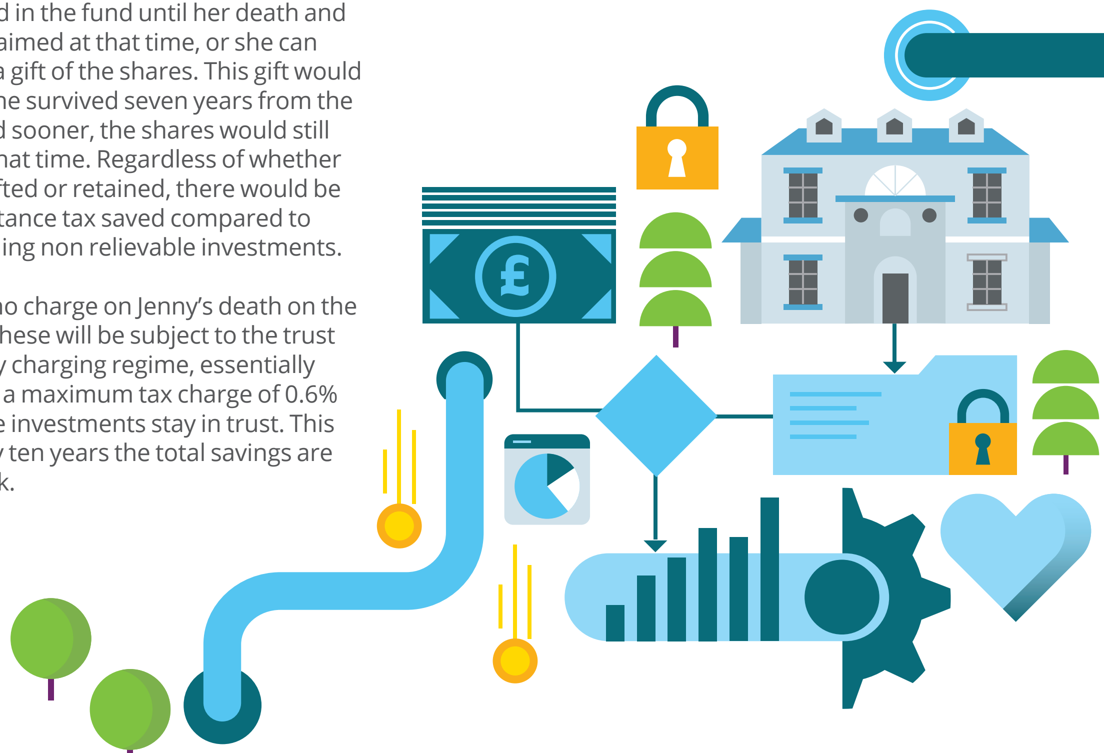
There would be no charge on Jenny's death on the investments, as these will be subject to the trust relevant property charging regime, essentially meaning there is a maximum tax charge of 0.6% for every year the investments stay in trust. This means that every ten years the total savings are reduced by £240k.

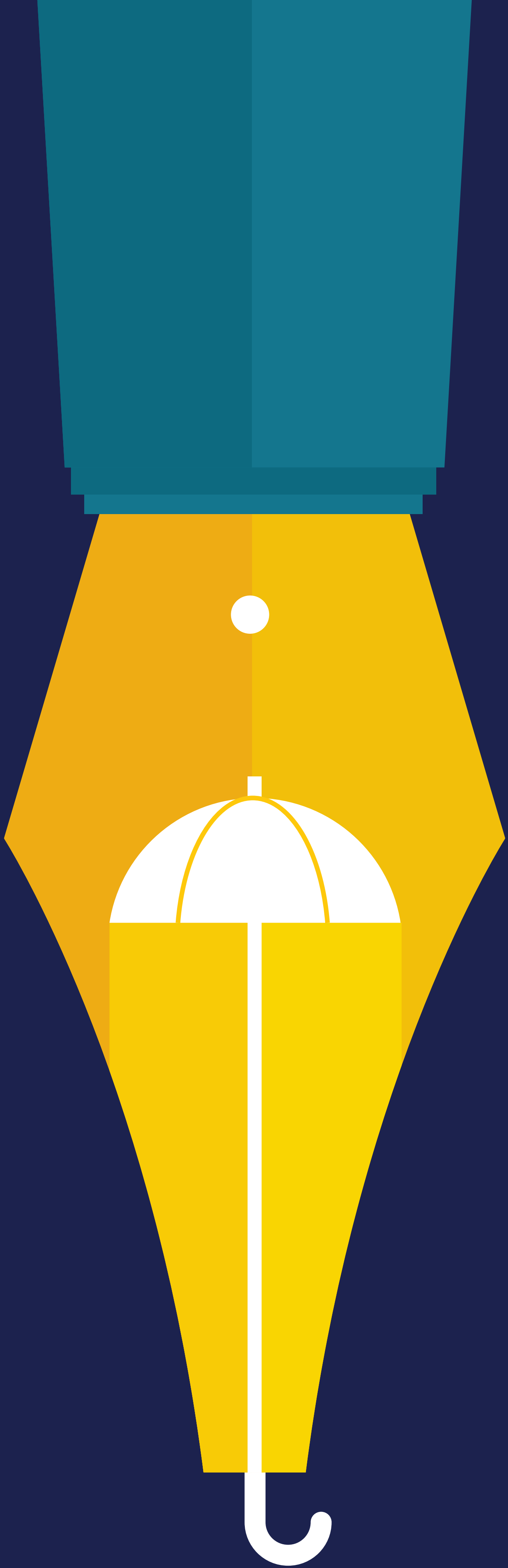
After Jenny's death, the trustees may choose to keep the assets in the trust, or distribute them to the children or grandchildren, in accordance with John's wishes. There's flexibility as to how this is done, for example the children can benefit from an equal share in each asset, or business assets could go to one child, and investment to another.

Conclusion

There are a number of options available to the trustees along the way, as flexibility is built into the structure at every step. This means the trustees can take whatever action is in the best interests of the family at the time, be that maximising tax savings, asset protection or something else. The trustees can decide to wind up the trust if the planning is no longer appropriate, or not needed at the time. This means that including this sort of planning into a will can ensure the trustees are in the best position possible.

If you'd like to know more, do get in contact with any one of the private client team.





Deborah Clark
Partner, Private Client

deborah.clark@mills-reeve.com

Protecting your business from “what ifs”

Successful business owners tend to have a natural appetite for taking risk, and while they’ll be alive to commercial risks that will impact their business, they often don’t give much thought to the risk of falling out with their fellow business owners or family members.

Often, it’s not until they experience such a situation, or see someone else they know do so, that they appreciate the real value in thinking about, and planning for, the “what ifs” that can have a material impact on their business.

So how can you protect a business?

Clearly legal documents won’t prevent a fall out, but they can materially reduce the impact of a fall out on the business in two important ways:

- First, just the process of discussing what would happen “if” can really help to identify potential issues which can then be resolved before ever escalating into a problem
- Secondly, if a problem does arise, the method of solving the problem is already set out

It’s much easier to agree the solution before the problem arises.

What are the potential “what ifs”?

The typical issues that can arise include:

- **Falling out between shareholders or board members** – any disagreement between key individuals can start to impact a business, often leading to decisions not being taken appropriately and causing tensions within the workplace.
- **A shareholder who wants to exit** – when a shareholder wants to exit this may mean the business has to find cash to help fund the exit. This isn’t always easy and negotiating the terms can be tricky if there’s no agreed process of what will happen.
- **Divorce of a shareholder** – at the very least this can be a big distraction for a business, but it can also mean the business has to find cash to help the shareholder settle financial claims, or it may mean shares have to be transferred either to or from the divorcing spouse.

- **Disagreements on the direction of the business** – some may want to invest and grow the business or move into new markets, while others are keen to maintain the status quo and not take risks or seek external investment.
- **Disagreement over the distribution policy** – shareholders not working in the business may just want a return on their investment and may not agree to reinvest profits, alternatively shareholders may just have different objectives.
- **Arguments over succession of ownership or board appointments** – succession can be a difficult topic, especially for a family business. Must it be a family member that takes control or someone external? Do you have to work in the business to have shares?
- **Involvement of family members** – do family members have a right to employment or shares in the business?

The list can go on and the solution to each will vary on the circumstances and existing ownership structure of the business, but the impact of each of these issues can be addressed through a combination of a family charter, shareholders' agreement and bespoke articles of association. Not all these documents are needed in every case, but each have a role to play in different circumstances.

A family charter can be a really useful document for large family-owned businesses or businesses where a family has a material stake. It provides clarity for all the family on what's expected of them and what they can expect from this key family asset.

A family charter

A family charter is a document that sets out the relationship a family has within its business and sometimes more widely with their family wealth. It's a private document and is often not legally binding, as it covers more principals rather than legal obligations.

The parties to a family charter will not only include shareholders, but wider family members who may be employed in the business or have an expectation of becoming a shareholder one day, or perhaps are a beneficiary of a family trust that owns shares. A family charter will cover a wide range of topics, including:

- **The family's long-term ambitions for the business** – will it always be a family-owned business; will it always maintain its current location; will it follow certain ethical guidelines; does it have a role in the local community if it's a key local employer?
- **The family's engagement with the business** – will a family member be on the board of directors; will they be entitled to get a job in the business and on what terms; will they be encouraged to seek experience in other businesses first; what sort of qualification will be needed before they are considered eligible to join?
- **It's helpful to set out how a family will interact with the business** – will they be given a copy of accounts and budgets; will there be an annual meeting to report on the business results; will non shareholders be able to attend? For large families it may be appropriate to elect a smaller family, council that monitors board performance more closely or perhaps elect one member to have a position on the board.
- **An important topic will be ownership of shares** – should this include spouses or be restricted to family blood line; can shares be transferred and if so, to who; can non-family members hold shares, such as a non-family managing director or non-executive? Connected to this will be the importance of protecting family wealth and whether there's an expectation family members will have a pre or post marital agreement, for example.

A family charter can be a really useful document for large family-owned businesses or businesses where a family has a material stake. It provides clarity for all the family on what's expected of them and what they can expect from this key family asset. Managing expectations can really help to avoid disputes.

Shareholders' agreement

A shareholders' agreement is a legally binding agreement between shareholders that sets out how shareholders will interact with each other and with the company. They also tend to be a private document, like a family charter. They can cover similar topics to a family charter, but given they're legally binding, they tend to be more focused on matters that benefit from a formal agreement.

> **Planning for potential disputes can often be given low priority, until a problem arises. It's a bit like paying for insurance, you only really value it when you need it.**

A shareholders' agreement can set out how the shareholders will exercise their voting rights. Company law may dictate what shareholder approval is needed for certain actions that a company may wish to take, for example, a special resolution is needed to change the articles of association, which means 75% or more of the voting rights have to approve the change. But shareholders can agree that a change can only happen if all the shareholders agree to it, or if the board of directors have authorised the change.

Under company law, the directors have day to day management of a business, which actually gives them extensive powers. For a widely owned business, this level of control given to directors may not be desirable and shareholders may prefer to be consulted on certain big decisions, such as taking on debt or reinvesting profits. A shareholders' agreement will often set out the decisions (commonly referred to as "reserved matters") where the directors need to seek the shareholders' approval before proceeding.

One common area for potential dispute is the distribution and/or reinvestment of profits and setting out a distribution policy is a great way to avoid disputes. A shareholders' agreement can establish the financial principals on when profits are retained and reinvested and when they will be distributed to shareholders. This can particularly help the board with setting budgets and a long-term investment strategy.

It's also a good place to set out the mechanism for dealing with disputes.

Articles of association

A company's articles of association is the internal rule book for the company. It sets out the relationship between a company, its board of directors and its members. It's a public document, as a copy of the current version must always be filed at Companies House and can be downloaded by anyone. A company is also governed by company law and the articles will reflect a lot of that law, but they're also capable of being quite bespoke.

The articles will include rules around:

- How the board will be appointed or dismissed and how they make decisions
- Share rights
- Share ownership (what is or isn't a permitted transfer and circumstances when shares must be transferred)

Conclusion

Planning for potential disputes can often be given low priority, until a problem arises. It's a bit like paying for insurance, you only really value it when you need it. As lawyers, we see many situations when having good documents that set out the procedure for making decisions or taking the necessary steps to deal with an issue would have saved time, costs and, most importantly, unnecessary pressure on a business and its owners.

Preparing your business for sale

For many of our clients, taking the decision to exit is an opportunity to reap the rewards of years of hard work and sacrifice. Whether an exit is part of a long-term strategy or the result of an unexpected offer, getting it right is critical.

Hollie Licence
Senior Associate, Corporate

hollie.licence@mills-reeve.com

Price. Painting the best possible picture of your business at the outset is important. A prepped business and seller is likely to achieve better pricing terms during early-stage negotiations and to preserve that expected price until the deal is concluded. A buyer is less likely to seek to reduce the price to account for legal issues in the business.

Risk. A buyer will usually require a seller to provide contractual assurances as to many legal and operational aspects of the business, covering areas such as employment, litigation, pensions, contracts, computer systems, real estate and tax. Dealing with any issues before a buyer conducts due diligence investigations can reduce the extent of such assurances being required and/or reduce the likelihood of being sued after the deal for breach of them. All businesses have exposure to a range of legal risks – demonstrating an awareness of these and showing that there's a strategy for dealing with them gives sellers a far stronger negotiating position.

Time. The time and effort required from owners and managers during an exit process is often hugely underestimated. For many clients this'll be a novel process. Exits require momentum and, more often than not, significant time investment. This must be balanced with the continued running of the business and all of life's other commitments. Starting preparations early can drastically reduce this pressure.

Common issues

Share history and ownership. All companies must keep registers and make filings at Companies House regarding their shareholdings. We frequently encounter companies that have no registers evidencing share ownership or have registers that are outdated or inconsistent. Have there been any transfers, buybacks, or issues of shares?

These must be made in accordance with company law requirements, which are often very prescriptive. A void buyback of shares from a shareholder, for example, is treated as if it never took place at all. Who owns the shares goes to the heart of value and can quickly stop a deal in its tracks. We often explain to surprised owners that they don't legally own the shares they think they do. Addressing such issues before a potential buyer identifies them can make it far easier to find a solution.

Contracts. Missing contracts, verbal agreements and onerous clauses in contracts are common. Depending upon the importance of the contracts, this may be a concern for the buyer as it's often the contracting arrangements that underpin a company's business operation and performance. You should also consider any contracting terms which might be impacted by the sale – are there any changes of control provisions which mean the other party can terminate the contract as a result of the transaction? Putting in place or amending contracts now is far easier than in the throes of a deal process.

Employees. Are staff engaged on terms acceptable to a buyer? Are they compliant with employment law? We often find that many contracts for key/senior staff don't contain restrictive covenants preventing them from poaching customers and staff. You may want to keep a sale process confidential, at least initially, and that's much easier to do if any changes are made ahead of a sale.

Constitution. All companies will have articles of association which are essentially a company's "rule book", as agreed between the shareholders. These are often out of date and inconsistent with current law (demonstrating less than ideal governance to a buyer), but may also contain restrictions on transferring shares or other onerous provisions, which would directly impact upon a sale. Articles can usually be amended almost immediately by agreement between 75% of the shareholders. Forward-looking business owners may want to go further and consider bespoke provisions regarding an exit event.

Intellectual property. Whether it's the website or the secret recipe for your widgets, IP is often sitting in the wrong place, such as with employees, business owners or even third-party contractors. Buyers need to know that the company it's buying owns the IP that it relies upon to run its business, or has sufficient arrangements in place for its use. Assignments of IP and/or licences of IP may be required and should be sorted out well in advance, and crucially before any inadvertent owner of IP realises they have leverage.

Conclusion

There are a multitude of potential issues that can give a potential buyer cause for concern. The good news is that it's nearly always easier to sort these out before a buyer starts reviewing the business in detail – the earlier issues are identified, the easier any rectification will be. The important point is to take the initiative, speak to your advisors and kick the tyres of the business now – it's never too early to start!

Jessica Wilkes-Ball
Senior Sustainability Manager

jessica.wilkes-ball@mills-reeve.com

The power of employees in the green transition

State of the nation

In September 2023, Rishi Sunak spoke to the nation about his future for the UK's approach to its net zero target and announced a number of major changes:

- Delaying for 5 years the sale of new petrol and diesel cars – the requirement for all new cars will now come in to force in 2035 rather than 2030
- 2035 will also be the new date for the ban on fossil fuel heating for off-gas-grid homes
- Increase of 50% to the Boiler Upgrade Grant to £7,500 for households who need help to replace their gas boilers
- There are no changes to the ban on the sale of new gas boilers in 2035 – there will be exemptions for poorer households
- Removing the requirement for landlords to have all their rental properties at a grade C or higher Energy Performance Certificate (EPC) from 2025

For the UK to achieve its net zero target by 2050 it needs to reduce emissions by 68% compared with 1990 levels, in line with the Paris Agreement. So how do businesses balance the need to adapt and innovate alongside external pressures and legislative changes?

Sustainability is now firmly on the agenda for consumers and investors concerned about climate change and there's increasing pressure on businesses to ensure transparency and honesty is built in to all ESG reporting, both internally and externally.

Responsible business is under the magnifying glass and is increasingly being seen as the biggest selling point of businesses, moving away from financial performance alone.

Empowered employees

Sustainable actions can drive consumer preference, with upward of 70% of consumers surveyed on purchases in multiple industries saying they would pay an additional 5% for a green product if it met the same performance standards as a non-green alternative.

A major study found that businesses with social engagement activities were perceived to be beneficial by public and social stakeholders. These businesses achieved demonstrably higher valuations than competitors with lower social capital.

Across all ages, 82% want to be able to link their values and principles with the organisation they work for, and children of business owners are starting to ask probing questions about where money is invested. Millennial and Gen Z children are keener than ever not to inherit what they think of as "dirty money".

When it comes to workforce demands, 50% of workers want their employers to demonstrate climate and social commitments, with 33% for those aged 18-24 turning down a job if environmental, social and governance (ESG) factors were deemed lacking. This suggests that companies needing to be open about their environmental and social commitments could become a common trend over the coming years to attract employees and new business.

More businesses are committing to deliver on the 1.5-degree goal, but this cannot be led from the top alone. Empowering and upskilling employees will be the making of businesses who are taking on the climate challenges and opportunities that lie ahead.

Millennial and Gen Z children are keener than ever not to inherit what they think of as "dirty money".

Employees who are informed on a business' climate goals feel integral to the delivery of these and are prepared to embrace change while being given the tools and knowledge to help lead the green transformation. This will be the cornerstone to the long-term survival of businesses.

Reputation

Consumers, employees and legislators are now more than ever examining the sustainability claims businesses make. Net zero is the biggest growth opportunity of the 21st century and to achieve this all businesses must ensure their sustainability claims are verifiable.

All sectors will become more competitive and proving they have delivered on their promises will help them ensure financial sustainability. Adapting to the changing demands from legislators and wider society, businesses will have to adopt efficiencies in the design, production and delivery of goods and services to consumers.

While competition will lead to companies wanting to achieve net zero in line with the Paris Agreement, its collaboration and innovation that'll ensure success.

Frances Bailey
Principal Associate, Family

frances.bailey@mills-reeve.com

Unmarried couples and the family business

In the world of business, family dynamics can play a significant role in shaping the success and longevity of a company. The breakdown of a relationship between co-directors and shareholders can cause significant issues for the business.

Where the couple in question were married, or in a civil partnership, the family court has the power to make extensive orders dealing with the parties to the marriage's assets. This could include orders for the transfer of shares, or indeed, in certain circumstances, the sale of the family business. But what are the implications for the couple themselves, and the family business, when the couple involved weren't married or in a civil partnership?

Unlike marriage or civil partnership, cohabitation in England and Wales doesn't bring with it the wide-reaching financial claims in the case of separation and relationship breakdown that those who have taken steps to formalise their relationship enjoy. However, this doesn't mean that the breakdown of a cohabiting relationship between co-directors and shareholders will have no repercussions for a family business.

In this article, we delve into the challenges faced by unmarried couples in a family business when their relationship breaks down, and cover some options for those in a cohabiting and in a business relationship.

What claims do cohabitees have on relationship breakdown?

Unlike many other countries, including Scotland, the breakdown of a cohabiting relationship doesn't automatically give rise to financial claims in England and Wales. A cohabitee has no right to claim for themselves maintenance, capital lump sums, a transfer of property (or company shares) or a share of their former partner's pension, claims which automatically come into existence on divorce or dissolution of a civil partnership. If the couple has children, a cohabitee will be able to claim maintenance on behalf of that child (usually assessed by the Child Maintenance Service), as well as potentially provision for housing during the child or children's minority and ancillary costs associated with raising a child (eg a car, repayment of debts, furnishing of any property, education costs etc). Otherwise, no personal claims arise under family law in England and Wales.

That isn't to say that the financial implications of a cohabiting relationship breaking down are straightforward, far from it. Instead, a cohabitee may rely on a range of other areas of law to regulate and untangle the couple's financial

situation on relationship breakdown. Typically, disputes between cohabitees involve one party relying on property law principles to establish and/or realise an interest in the couples' former home, or an investment property portfolio. However, much wider issues can and do come up in the context of a family business.

Cohabitees and the family business

Often interlinked difficulties arise upon the breakdown of a cohabiting relationship involving a family business, which sees lawyers from private wealth, family, corporate, commercial litigation and employment trying to resolve the complex issues together.

Common scenarios giving rise to these issues include:

- Businesses co-founded and co-run by cohabiting couples
- A cohabitee being brought into their partner's business, or partner's family's business, whether as a director, employee and/or shareholder
- The cohabiting couple's home being offered as collateral for business borrowing
- Joint monies being invested in, or lent, to the family business
- Intercompany transactions between each cohabitee's businesses

Avoiding issues

The starting point will always be for family business owners to consider the situation carefully before involving a family member's partner in the business. While there may be other reasons (not least, tax benefits) behind, for example, giving an unmarried partner a shareholding in the business or employing them in some capacity, doing so will intermingle the business and the personal life. Simply put, if a cohabiting partner is kept entirely separate and apart from the family business, they're unlikely to be able to mount a claim against the value in that business in the event of a relationship breakdown, given the lack of standalone claims for cohabitees in England and Wales.

However, it's appreciated that there will be some circumstances where the benefits of involving the cohabitee outweigh the risks, or where the business in question is very much a joint venture between the cohabitees. In those circumstances, it's vital not to fall into the 'informality trap'. As with any business relationship, where parties in an intimate, personal relationship are also embarking on a business relationship together, the relevant documentation should be put in place from the outset. Whether that's an employment contract, shareholders' agreement or loan agreement, the terms should be clear, agreed and in writing at the start, to set the tone for what then follows. While having clear documentation is no guarantee against relationship breakdown and consequential difficulties for the business, it should mean the opportunity for legal argument as to construction or interpretation of any unwritten agreement is limited.

Aside from the necessary commercial/employment documents, the cohabitees themselves can enter into a cohabitation agreement. Cohabitation agreements are used to set out both how the parties intend to regulate their finances during their cohabiting relationship (payment of bills, contributions towards mortgages, liability for debts, ownership of, and underlying interests in, property etc) and upon any future, hypothetical, relationship breakdown. Properly drafted, and with both parties having legal advice, a cohabitation agreement will bridge the overlap between the personal and business relationship, and work alongside the commercial documentation, avoiding costs, stress and emotional upset if the relationship doesn't work out.

Finally, if a dispute arises between cohabitees in relation to a family business, an early referral to a specialist mediator with specific experience in relation to family businesses can help all interested parties work towards a constructive, cost effective and tax efficient solution, preserving the family business going forward.

Summary

While cohabitation doesn't bring with it the far-reaching claims that married couples have on relationship breakdown, it would be naïve for any family business owner to assume that their business is necessarily "safe" from the impact of relationship breakdown.

The safest course will always be to avoid the intermingling of the "personal" and "business", but where that isn't possible, informality should be avoided. As with much in business, spending some time at the outset discussing and, most importantly, documenting the financial arrangements between cohabitees, and the basis upon which the cohabitee will become involved in the family business (if at all), is strongly recommended.

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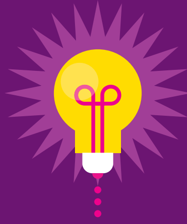

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www.mills-reeve.com

Co-editors

Emma Geale
01223 222512
emma.geale@mills-reeve.com

Catriona Attride
0121 456 8390
catriona.attride@mills-reeve.com

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