

Business Divorce for Majority Owners

What does it mean to be the successful majority owner of a private Texas company? Our majority owner clients tell us that it means commitment, sacrifice, hard work and maintaining a positive attitude in dealing with the inevitable challenges that are sure to arise in the business. One of the more difficult situations that majority owners may have to face at some point is a conflict with other investors/minority owners in the company, who are seeking an exit from the business. During the start-up phase or as the company was growing, the majority owner may have accepted investments in the company from others, including from family members, good friends, private equity firms or employees. Some of these investors may hold ownership stakes in the business without ever having made any capital investment in the company, because they acquired their interest by contributing "sweat equity."

Winstead Business Divorce attorneys assist majority owners of Texas private companies in a variety of ways, including when conflicts arise with minority investors in the business. Disputes are common when one or more minority investors want to exit the business, but they have no buy-sell agreement or any other type of agreement that requires the majority owner to purchase the interest held in the company by the minority owners. The right to require a buyout of the minority interest is known as an "exit right," and the contract that documents this exit right is often referred to as a "buy-sell agreement." A minority investor who lacks any type of contractual exit right will often take steps to become a squeaky wheel in efforts to secure a buyout of the minority-held interest by the majority owner. When this type of conflict arises, lawyers with the Winstead Business Divorce team work closely with the majority owner to assist in maintaining their control over the business and navigating a cost-effective outcome that also preserves the continued success of the business.

Winstead Business Divorce lawyers assist private company majority owners in all of the following types of conflicts that arise with minority investors.

Resolving Business Conflicts with Minority Investors

Winstead Business Divorce lawyers are seasoned trial attorneys, but many conflicts that arise with minority investors in private companies can and should be effectively resolved without resort to legal action. On behalf of our majority owners clients, we focus on resolving conflicts with minority investors without litigation, when possible. In some cases, disputes between owners can be the result of a misunderstanding or simply a lack of transparency in the business. In these situations, our practical approach will address concerns raised by minority investors in a way that is designed to find common ground.

Specifically, we assist majority owners in all of the following ways:

- Responding to requests for books and records
- Conducting meetings of shareholders, managers and boards
- Revising or amending company governance documents
- Helping to prepare initial and periodic reports to minority investors
- Evaluating and responding to specific claims made by investors

This constructive approach to dealing with concerns or claims by minority investors is both pragmatic and result-oriented. If we can assist the majority owner in promptly resolving a dispute with a minority investor that avoids a lawsuit, that will save money for the company (and the majority owner), avoid the distraction that litigation causes in operating the business, and allow the majority owner to keep the company on a successful, profitable path.

Negotiating/Documenting Buyouts of Minority Owners

There are some conflicts with minority investors, however, that can only be resolved through the purchase of the investor's entire ownership stake in the business. In those situations, lawyers who are part of Winstead's Business Divorce team have experience in negotiating, structuring and documenting the terms of the buyout of the minority investor's interest in the company. The issues that we address in the buyout process include all of the following:

- Helping to select an experienced business valuation expert and working closely with the valuation expert in the valuation process
- Assisting in determining the value of the minority interest, including whether minority discounts apply to the minority-held interest
- Determining what collateral, if any, will be provided to the investor during the term of the structured buyout
- Formally documenting the terms of the buyout to secure all ownership interests and rights held by the minority investor in the business
- Preparing a broad release that avoids future or collateral litigation

Our experience in handling buyout negotiations for majority owners of private Texas companies in many different industries allows us to provide our clients with creative business approaches that facilitate the purchase of the minority-held interest. In addition, Winstead's transactional attorneys are also skilled in handling private equity transactions, and lawyers on the Winstead Business Divorce team have the skills required to address the many different types of issues that commonly arise during buyout negotiations.

Representing Majority Owners in Court

When conflicts with minority investors cannot be resolved without legal action, Winstead Business Divorce lawyers aggressively handle litigation for majority owners in state and federal courts, as well as in arbitration proceedings. This litigation often involves the defense of claims by minority investors alleging that majority owners breached their fiduciary duties to the company, as well as claims alleging that majority owners failed to comply with applicable corporate governance documents. These investor claims are often intended to pressure majority owners to engage in buyout negotiations when the minority investors do not have a buy-sell agreement or other contract exit right that requires the majority owner to purchase the minority owner's interest in the business.

The background of Winstead Business Divorce lawyers is particularly helpful in conflicts that take place with minority investors because the team has experience regarding the manner in which the company's governance documents apply in these disputes. In addition, we conduct in all litigation matters an Early Case Assessment (ECA), which involves a deep dive into the facts, an analysis of the governance documents and the law that applies to the claims alleged in the case. The application of this ECA approach enables us to work closely with the majority owner in developing and implementing a comprehensive action plan for the litigation that is designed to achieve an optimal result. This action plan is also cost-focused with the objective of securing the best result for the majority owner as promptly and economically as possible.