

# Business Divorce for Minority Investors

Owing a substantial minority stake in a privately held Texas company can be an exciting, profitable experience. Minority investors may get in on the ground floor of a new company. Investments in fast growing private businesses often have a strong financial upside and they may be truly ground-breaking in their industry — think of Uber, Snapchat, AirBNB and Dropbox to name a few. And yet, private company investments can also be notably high-risk endeavors, the company is generally not as regulated; it may be controlled by majority owners who are unscrupulous and if investors are not careful, they may find themselves locked into ownership in the business with no exit—no way to monetize their liquid interest in the company. Recall the hit movie, *Social Network*, which depicted the plight Eduardo Saverin, whose ownership in Facebook was substantially diluted. This led to heated litigation with Mark Zuckerberg, the well-known founder, and ultimately, a pricey settlement.

## Overview of Experience and Pragmatic Approach to Legal Conflicts

Winstead Business Divorce lawyers represent minority investors who have substantial investments in all kinds of private Texas companies (LLC's, S corporations and limited partnerships) in a wide variety of different industries that include technology, real estate, manufacturing, energy, banking, health care/pharmaceutical, insurance, construction, restaurants and online sales. We are retained to assist minority investors when their rights are abused by the company's majority owners, which can arise in a variety of ways.

Some of our investor clients have been improperly forced out of the business, others have been denied the opportunity to receive their fair share of profits from the company and others have been barred from actively participating in the management or operation of the business without the proper procedures being followed. In many cases, the majority owners exploited their control over the business to engage in acts of self-dealing for their own benefit in breach of the fiduciary duties that they owe to the company.

In all cases, we work closely with our minority investor clients to determine their business goals, and we then develop and aggressively implement a detailed, customized plan to achieve those objectives. Legal action may be necessary in some matters, and our lawyers have extensive experience in state and federal courts, as well as in arbitration proceedings. Our approach, however, is that legal action should not be the first option when conflict arises. Instead, we view litigation as an important tool, but one that is to be deployed by the minority investor only when the majority owner has refused to negotiate a reasonable business solution that will achieve a win-win Business Divorce that is in all of the parties' best financial interests.

## Scope of Services for Minority Investors

Winstead Business Divorce lawyers provide a broad array of services for our minority investor clients, including all of the following:

- Preparing Exit Plans – buy-sell agreements and redemption contracts
- Reviewing and negotiating executive employment agreements
- Issuing books and records requests to obtain financial/business records
- Securing and documenting Business Divorce exits from the company
- Modifying corporate governance documents, e.g., Bylaws, LLC Agreements
- Litigating claims against majority owners (and officers and directors)

At the end of the cycle, when the time comes for an exit from the business, we help the investor to secure a buyout on favorable terms either voluntarily, or when necessary, through legal action to enforce and protect our client's rights as minority owners. In litigation matters, we often retain and work closely on behalf of our clients with well-qualified expert witnesses, who include forensic auditors and business valuation professionals. These experts are engaged to determine the scope of wrongdoing by majority owners and assess the value of the minority-held ownership interest in the business. Our focus remains at all times on securing a result that meets the clients' business objectives as promptly as possible, and on a cost-effective basis.

We assist our minority investor clients from the time that they first consider an investment in a privately-held company all the way through their exit from the business. We negotiate the terms under which they acquire their interest in the company and take steps to assure the investor obtains a binding contract exit plan. When information is improperly withheld from the investor, we assist our clients in obtaining access to books and records to be able to evaluate the company's performance and the value of their minority stake in the business.