# A guide to family law business valuations

# Property in family law

The objectives of the court in determining a property settlement under the Family Law Act 1975 (Cth) are to “make such orders as will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them”. (s81 FLA).

The court adopts a four-step process:

1. Identify the assets and liabilities and financial resources of the parties
2. Assess the contributions of the parties
3. Evaluate each parties future needs
4. Then the court will make orders that the court is satisfied , in all circumstances is just and equitable

A business is one of the items included in the property of the parties.

# Must we have a valuation performed?

It is not mandatory to have a formal valuation undertaken, if the parties agree on the value of the assets.

If the parties cannot agree on value, the parties may jointly agree to appoint a Single Expert Witness to prepare a report to the court in relation to the matter of conflict. The court may also make an order to appoint a Single Expert Witness.

endeavour capital

# What is the role of a 'Single Expert Witness'?

A Single Expert Witness is appointed to prepare a report to assist the court in determining the issues in conflict. The duty of the Single Expert Witness is to the court, not to the parties that appointed and pay them.

The Expert Witness duties include giving an objective and unbiased opinion that is also independent and impartial of matters that are within the Expert Witness' knowledge and capability.

In addition, Chartered Accountants have professional obligations in their codes of practice including Statements issued by Accounting Professional & Ethical Standards Board, APES 215 Forensic Accounting Standards and APES 225 Valuation Services.

# Why can't my accountant do the valuation?

A Single Expert Witness must be both independent and an expert in the field. Your accountant may not be a valuation expert and they may not be independent because of relationships and other services provided to the parties.

Chartered Accountants Australia and New Zealand (the new name for Institute of Chartered Accountants) has introduced a new CA Business Valuation Specialist accreditation. The Institute recognised that business valuation is a specialist skill and not all Chartered Accountants have the necessary knowledge and experience to professionally undertake business valuations.

Australian Institute of Business Brokers has also developed a Registered Business Valuer qualification.

# How are businesses valued?

There are many factors to be taken into consideration when valuing a business for family law purposes and for this reason valuation methodologies vary depending on the size and type of business being valued.

Every business valuation is different and the valuer must select the best approach for the particular circumstances.

# The most common methods of valuation

### Capitalisation of Earnings

A valuation under the capitalisation of earnings method is derived by capitalising future earnings using an appropriate multiple. In order to apply this method it is necessary therefore to estimate future earnings and the capitalisation rate most appropriate to those earnings. The amount of debt is deducted from this enterprise value to calculate the value of the share.

### Discounted Cash Flow (DCF)

Shareholders own businesses' to generate cash flow and the valuation of all businesses is the present value of future cash flows arising from that business. DCF calculates the value of a company today, based on projections of how much cash it is going to generate in the future. It is described as discounted cash flow because the cash to be generated in the future is discounted as cash in the future is worth less than cash today. The principle is that the buyer should be compensated for having to wait to realise their cash and a risk premium to insure against the probability that the cashflows never materialise.

### Net Tangible Asset Value

The value of the business enterprise's tangible assets (excluding excess assets and non-operating assets) minus the value of its liabilities. The net tangible asset approach is usually not appropriate for profitable operating businesses.

### Industry 'Rule of Thumb'

Many industries have valuation rules of thumb which give an indication of value. The challenges with rules of thumb are that not all businesses in an industry are the same and industries attractiveness changes over time and this changes is not usually reflected in static rules of thumb.

# What factors influence the value of the business?

As business valuers, we will seek to identify key factors influencing the value of a business. Typical factors influencing the value of the business include:

### Recent profit history and cash flow

The current level of profitability and cashflow are usually key factors in the value of a business. After all, the primary reason to own a business is to generate an income.

### Profit potential

As well as recent profit history, the forecast sales and profits of the business will influence the value of the business.

### Strategic positioning

Some businesses have greater value because of their strategic importance, whether that be their market share, technology or location.

### Market factors – demand and supply

The level of demand of a particular business and its products or services will influence the value. Business and products go in and out of fashion.

### Economics conditions

Economic factors such as economic growth, exchange rates, interest rates, confidence and the cost and availability of capital (both debt and equity) will affect the value.

### Tenancy

For most businesses, especially retail businesses, the total cost, term and conditions of property leases are important factors in determining the value of a business.

### Risk

The level of risk in the business impacts value as buyers of higher risk businesses would naturally be expecting to receive a higher rate of return for taking high risk. Risk factors may include customer or supplier concentration risk, technology risk and key person risk.

### Other shareholders rights

Many business have multiple shareholders or partners. The existence of other parties in the business and the contents of any shareholders agreement may impact the value, including factors such as no goodwill practices, pre-emptive rights, classes of shares and voting rights.

# What information is required?

In order to complete a valuation, the valuer requires information on the business such as:

- Financial statements, income tax returns, BAS statements, management accounts
- Background on business – history, products, customers, suppliers, competitors
- Corporate structure – shareholders and directors, shareholders agreements
- Company constitution
- Material agreements
- Related party transactions, including remuneration
- Details of banking and other borrowings

# Duty to disclose

The Family Law Rules require that all parties have a general duty of disclosure and there is required to be "a full and frank disclosure of the party's financial circumstances".

If you consider that any information provided does not comply with these obligations, please consult your solicitor.

# What is in a valuation report?

Whilst all of our valuation reports are tailored to the specific instructions and circumstances, the report is likely to include the following sections:

- Executive summary
- Purpose of valuation
- Background on business
- Strengths, Weaknesses, Opportunities and Threats
- Information provided and relied upon
- External Factors and Market Conditions
- Discussion on alternative valuation methodologies
- Rationale for valuation method adopted
- Market evidence
- Valuation calculation
- Valuers qualifications and experience
- Independence declaration
- Limitations and disclaimers

*We seek to ensure that our valuation reports are clear, concise and logical.*

endeavour capital

# Can I object to the valuation?

After the Single Expert Witness report is lodged and party may ask questions of the expert within seven days of the conference or, if no conference, 21 days of receipt of the report.

Any questions to the witness must:

a) be writing and put once only
b) be only for the purpose of clarifying the expert report
c) not be vexatious or oppressive or require the expert witness to undertake an unreasonable amount of work to answer

# How much does it cost and how long to prepare?

The price of a business valuation varies depending on the size of the business and its complexity. Endeavour can provide a fixed quote for a valuation prior to engagement.

Again the time to produce a valuation report will vary depending on the business, its size and complexity as well as the quality and quantity of information provided. For smaller less complex valuations, we target a turnaround time of two weeks from receipt of all information. Larger and more complex valuations will take longer.

The fees of the Single Expert Witness are generally paid equally by the parties and the Single Expert Witness is not required to undertake any work until their fees are paid or secured.

# What is a shadow valuer?

The appointment of a Single Expert Witness does not preclude a party from appointing their own expert, called a Shadow Expert. The appointment of a Shadow Expert is not mandatory and whether or not such an appointment is justified depends on the nature and quantum of the case.

Shadow Experts are more common in larger and complex cases, however they can also be used effectively for smaller businesses. For very small businesses it may be acceptable to the parties to obtain a most probable selling price estimate rather than a full valuation.

The Shadow Expert's role is to advise their client and review the report of the Single Expert Witness. The activities of a Shadow Expert may include:

- Preparing an indicative valuation to assist in preparing your Financial Statement and/or for settlement negotiations
- Review the valuation report of the Single Expert Witness
- Consider the methodologies adopted
- Prepare questions to the Single Expert Witness on the valuation report
- Assistance in the cross examination of the Single Expert Witness
- Investigate the information provided by the other party including disclosure of income and assets

# Who are Endeavour Capital and Peter Wallace?

Endeavour Capital are experts in answering that all important question for many smaller and mid market businesses "So how much is my business worth?" We have the combined skills as Chartered Accountant Business Valuation Specialist, as well as Registered Business Agents and Registered Business Valuers. We pride ourselves on having both the technical skills and market awareness to make an informed assessment of value.

Endeavour Capital is an independent corporate advisory firm established in 1998, focusing on smaller and mid market companies. Our services include business sales, business valuations, corporate advisory services and exit planning.

Peter Wallace is the founder and Managing Director of Endeavour Capital. He has over 25 years' experience in advising smaller and medium businesses across many industry sectors including distribution, financial services, healthcare, information technology, manufacturing and retail.

He has a Bachelor of Commerce and Masters of Business Administration, is a Chartered Accountant Business Valuation Specialist, a fellow of the Australian Institute of Company Directors, an Associate of the Australian Institute of Business Brokers (AIBB), Registered Business Agent, Registered Business Valuer (AIBB) and a Certified Practicing Business Broker. He was NSW President of AIBB.

Endeavour has undertaken valuations for numerous reasons including: family law, commercial litigation, taxation, purchase price allocation and exit planning.

Peter Wallace
Managing Director
BCom, MBA, CA, FAICD, CPBB, RBV
CA Business Valuation Specialist
Registered Business Valuer

pw@endeavourcapital.com.au

Direct 02 8096 9220

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Registered Business Valuer RBV

Disclaimer - This is publication is of a general nature and does not purport to be all factors to be considered for your circumstances and is not a substitute for specific professional advice. Endeavour Capital, its employees, directors and associates accept no responsibility for any loss sustained by any person who relies on this publication.

endeavour capital