

ADR Insights on Business Divorces: Money, Money, Money
(Part 7 of 9)

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Money, money, money, must be funny in the rich man's world.
Money, money, money, always sunny in the rich man's world.
(ABBA's Money, Money, Money)
(Written by Benny Goran Bror Andersson and Bjoern K. Ulvaeus)

This is the seventh in the “*Breaking Up is Hard to Do*” nine-part series exploring dispute resolution for business divorces.

While emotions swirl in a business divorce, very often the primary substantive issue is money. Depending on the situation, “money” may mean value, compensation, buy-out price, or something else.

Common areas of disagreement regarding money include valuation procedures, measures of value, application of discounts (if any) to minority interests, assumptions underlying estimated value, financial reporting methods and reliability, access to books and records, and who gets how much.

On the front end, with careful advance planning, parties may be able to mitigate some of the money issues by adding specific provisions to their corporate formation and governance documents. For example, the owners may choose to incorporate a robust buy/sell provision specifying triggers, mechanics, and valuation methods and procedures. Similarly, they may incorporate provisions regarding financial reporting requirements, audit rights, and access to books and records, including how these processes work if there is a dispute amongst the owners.

On the back end, in the arbitration context, parties and/or arbitrators may choose to have valuation experts present concurrent evidence (a/k/a hot tubbing). While the process can be tailored to serve the unique needs of each dispute, generally, this process entails each expert producing a report, then a meeting of the experts



to discuss their reports and the underlying issues, followed by the issuance of a joint report by the experts, and culminating in the concurrent testimony and questioning of the experts during the arbitration hearing. Concurrent evidence is not a good fit for every case, but for the right dispute, the process narrows the issues of contention and allows for a more focused and detailed exploration of the disputed issues during the hearing.

In my experience, whether in mediation or arbitration, the most notable aspect of disputes over money is not where the parties disagree, but where they agree. And often those areas of agreement lay the foundation for finding the path to resolution of the dispute.

Disclaimer: "You're So Vain, You Probably Think This Song is About You" (written and sung by Clary Simon). Please note that this series is drawn from over 30 years of experience as counsel or neutral in business separations, reconciliations, and divorces. Nothing in this series is based on any specific dispute in which I have been involved. In addition, nothing contained herein constitutes legal advice nor does it create a professional relationship.