

Business Valuation Basics for Divorce Lawyers

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About Us

Inquesta is an independent business advisory firm that offers insolvency and forensic accounting services.

Typically, Inquesta is instructed to assist legal advisors on such things as:

- Commercial disputes
- Matrimonial disputes
- Loss of profit claims
- Business Interruption
- Fraud and money laundering defence
- Confiscation Orders



Rob Miller
Director of Forensic Accounting

A co-founder of Inquesta, Rob Miller is a chartered accountant, a member of the Institute of Chartered Accountants in England and Wales (ICAEW), and a Practising Member of The Academy of Experts.

With decades of experience in providing specialist forensic accounting services, Rob has been instructed to assist with numerous cases – such as financial investigations, criminal defence and confiscation proceedings, commercial and contractual disputes, valuation matters, and much more besides. He has acted on behalf of claimants, defendants, and as a single joint expert. Rob is regularly instructed to provide expert evidence in Court.

Instructing a Forensic Accountant

TYPICAL INSTRUCTIONS FOR MATRIMONIAL DISPUTE

Inquesta is usually instructed on either a single or joint basis.

We also often act as a shadow expert, assisting the instructing solicitor to review and critique the single joint expert's report.

Typical instructions tend to include (but not limited to):

- 1 The value of the husband/wife's interest in X Limited (including any goodwill) at [specific date]
- 2 The sustainable income the husband/wife can derive from the business
- 3 What, if any, liquidity the husband/wife could extract from the business
- 4 What income the husband/wife receives from the business

We are also able to work in an advisory capacity at the early stages of the dispute, including assistance in collating the Form E.

Business Valuation Basics

VALUATION BASIS

Generally, market value is the most commonly adopted methodology in the UK for valuation of shares.

There are various definitions, but most frequently used is that of the International Valuation Standards Council ('IVSC'), which defines market value as:

"The estimated amount for which an asset or liability should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction, after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

This is a sensible basis to value the shares of a business in a matrimonial dispute setting.

Other terms include Fair Market Value, Open Market Value, Tax Market Value and Fair Value.

It is important to remember that the value of a company/business is only worth what a buyer is willing to pay, and a seller is willing to accept for it. Business valuation is not an exact science and can depend on many factors, including different valuer's interpretations and assumptions.

Valuation Methods

KEY CONSIDERATIONS:

- % of shareholding – minority v majority
- Rights of shareholder – voting rights, control etc
- Type of business – trading, non-trading, property etc
- Profitability of the business
- Future potential – forecasts
- Saleability on the open market

INCOME APPROACH

Assumes that any person acquiring the business will be interested in the profits, out of which it can pay dividends.

Generally, trading companies are bought and sold for the income that they generate. The higher the anticipated return, the higher the value of the company and the price a buyer is likely to pay.

STEP 1: Calculate the maintainable earnings of the business, i.e. the profits which are likely to be achieved in most years. Remember, past trading is not necessarily representative of the future.

STEP 2: There are a number of methods to ascertain the appropriate multiple. Often there are different multiples for different types of business. E.g. a company with long term contracts and recurring income is likely to demand a higher multiple than a project based business with no repeat income.

There are generic indices to obtain multiples, although these are only a guide. For example, the BDO Private Company Index ('PCPI') or UK200 SME Valuation Index.

The best approach is to consider comparable public companies, or sale/purchase transactions of similar companies.

A discounted cash flow ('DCF') is the same basis as the EBITDA multiple, however it is calculated by looking at the expected future cash flows of the business and discounting them back to today's value. It attempts to estimate the value of an investment today, based on projections of how much money it will generate in the future.

DCF tends to be used when a company has historically been loss making, or where past trade is not representative of the future.

NET ASSET BASIS

The net asset basis involves valuing the shares of a company by reference to the open market value of its assets.

To apply this, the market value of the assets needs to be established, as the numbers in the company accounts rarely represent the true market value of the assets.

This method tends to be used to value companies that are either loss making, with no prospect of future profits, or property or investment companies.

DIVIDEND YIELD

The dividend basis is normally used to value a minority shareholding in a company. A minority shareholders' return on investment is the dividend that it receives from the company.

It is calculated by taking the maintainable dividend divided by the required rate of return. For example, if a dividend of 5p per share was paid, and the required rate of return was 5%, the value of the share would be £1.

OTHER CONSIDERATIONS:

How money is extracted from businesses:

- Wages/PAYE
- Pension contributions
- Dividends
- Directors loan account

Directors loan accounts can complicate matters, as often money is taken out of a business in advance of a dividend being declared.

Liquidity of the business

We are often asked to assess how much can be extracted from a business.

It is important to consider the cash position of the business, together with the working capital required to run the business.

Remember, dividends can only be declared if they are legal.

General Information Required To Value Businesses

FINANCIAL INFORMATION

- Full financial statements for the past five years and details of any changes to accounting policy in the last five years or deviations from UK GAAP
- Most recent available management accounts
- Projections, budgets and financial forecasts
- Fixed asset schedules including freehold/leasehold properties
- Schedule of intangible assets such as patents, trademarks or other intellectual property (whether or not they appear on the balance sheet) and purchased goodwill together with professional valuations if any or details of how the valuations reached and amortisation policy
- Details of financial systems and controls
- Details of bank facilities and security
- Aged debtor and creditor analysis
- Details of other debtors and other creditors and the constituent balances.
- Details of inter-company balances, charges and loans to or from directors or related parties
- Explanations of any major items in the profit and loss account or balance sheet especially those unlikely to recur or of an exceptional nature
- Details of the dividends paid to each individual shareholder for the last five years

- Copies of the tax returns, including supporting calculations and backing schedules, for the last three years for any director, shareholder or employee who is also a party to these proceedings
- Copies of Forms P11D (“Benefits in kind”) including supporting calculations and backing schedules, for the last three years for any director, shareholder or employee who is also a party to these proceedings
- A copy of the parties respective Form E’s

COMMERCIAL INFORMATION

- A brief description of the activities undertaken by the business and an explanation of any significant changes in the past five years
- Details of the businesses’ strengths, weaknesses, opportunities and threats with particular regard to its position when compared to its major competitors.
- Details/copies of contracts/agreements with customers/suppliers including agency agreements, distribution agreements etc
- Analysis of turnover by product/geographic region
- List of five major customers or other sources of income and details of turnover with each
- List of major competitors
- Details of any company pension schemes. If final salary schemes, details of any surpluses or deficits and most recent actuarial valuations.
- Details of planned expansions or changes to the business including envisaged flotations, takeovers, part sales, mergers etc
- Analysis of promotional/advertising expenditure and copies of brochures
- Details of the balance, if any, on each director’s loan account and details of the movements on the loan account for the last five years. State whether any interest is paid on the loan account.
- Copies of any recent newspaper/media articles relating to the business or the sector in which it operates
- Details of any businesses considered to be comparable

OTHER MATTERS

- Details of any share sales or allotments in the last five years
- A copy of the Memorandum and Articles of the business (if it is incorporated) and copies of any relevant partnership or shareholders’ agreements
- Details of any business acquisitions or sales in the last five years including details of any offers by third parties to acquire the business
- Details of any capital commitments and any contingent liabilities including those under assigned leases
- List of trading premises or other property owned by the company including, for each, any professional valuations and estimates of any potential claims for dilapidations
- Details of any current, pending or threatened litigation or legal proceedings by or against the company
- Any other matters that may be relevant to a valuation of the company including details of any surplus assets and future intentions for the business

OTHER AREAS A FORENSIC ACCOUNTANT CAN ASSIST WITH

- Assisting solicitors with gathering information. This can be conducted through our niche business intelligence service offering. We will be able to identify shareholdings, directorships both within the UK as well as overseas, identify adverse media that could impact credibility of the parties etc
- Asset tracing exercise - we can identify if there are any hidden assets such as additional directorships / shareholdings , assets such as properties etc. We can review and analyse large data to obtain any patterns (spending patterns or assets etc)
- Review financial documents and provide the solicitors with advice in relation to further disclosure.
- Assist with negotiations.

BUSINESS INTELLIGENCE

- Gathering information on an individual and/or company to assist with the dispute.

What Inquesta can Do

- Perform background checks on a company or person
- Uncover indicators of beneficial ownership
- Conduct a check of negative news
- Check sanctions watchlists, blacklists and politically exposed persons (PEPs)
- Review a subject's public records and litigation history
- Learn about a company's business and management structure, financial health, and & activity
- Learn about the subject's business structure
- Scan negative news for a baseline assessment of the risk of doing business with the particular subject and / or in a particular country
- Predict potential financial risks

BENEFITS AND HOW THE INFORMATION CAN BE USED

- Perform a search on a company or an individual according to your company's due diligence approach. Default preferences can be set at an organisational level to ensure process consistency across all users. Detailed searches are undertaken on a company or individual to provide your business with confidence.
- Searches undertaken are performed using our experts and provide you with a customised report of findings.

- The information can be used to access new business relationships.
- The information can be used as part of risk assessment and due diligence.
- Customise reports by prioritising the information as required.
- Inquesta can assist you to continue to monitor ongoing activity such as negative news and Sanctions & Watchlists.

Case Study

Matrimonial dispute involving approx. £1.5m investment properties within ABC Ltd.

- Husband claimed within his Form E that he had no significant interest in the property business ABC Ltd. Husband claims he had more liabilities (i.e., car finance, debt, loans) than assets (salary from employment).
- Wife claims Husband has not conducted full disclosure in Form E, and also claims she has 50% interest in ABC Ltd as financially contributed to the purchase of assets.
- Husband claimed that ABC Ltd belonged to his parents and he had no interest.

What we did as forensic accountants

- During the early stage of the dispute, we were instructed by the Wife's solicitors to conduct business intelligence in relation to the Husband and ABC Ltd and to identify the Wife's financial contribution into ABC Ltd.
- Business Intelligence: We carried out searches on husband and ABC Ltd, and connected people such as Husband's immediate family. Our searches identified that he also had directorships in further companies that were not disclosed within his Form E, resulting in our solicitors asking for further disclosure and this impacting Husband's credibility.
- Asset Tracing Exercise: We conducted an analysis of the wife's bank accounts (approx. 8 bank accounts over the past 7 years) to identify her financial contribution to ABC Ltd and the purchase of properties. We identified that the wife did financially contribute to purchase the properties

albeit the title deeds were not in her name, however were in the Husband's name. A significant amount of the wife's salary during the course of marriage was used to purchase properties held within ABC Ltd.

- We were able to create a timeline based on what we identified and support this with other evidence such as accountants' certificates, accounts, text messages to strengthen the case. Our findings were used as part of the statements and negotiations.
- We advised in relation to the Wife's financial contribution based on the evidence.

Outcome of the Case

- Based on the work conducted by the Forensic Accountant, the solicitors were able to put pressure on the Husband to respond in respect to the wife's financial contribution and we were able to request specific disclosure to support the wife's claim.
- Overall the case was settled for approx. £400,000 and did not result in trial.

What are the Benefits of Involving a Forensic Accountant during the Early Stages?

- In this particular scenario, the Forensic Accountants identified further directorships to overseas companies that were not disclosed within the Husband's FORM E.
- The Forensic Accountants worked alongside the legal team and were advising throughout to assist with building the case.
- The Forensic Accountants were able to identify the wife's financial contribution into ABC Ltd at the early stage of the case. This resulted in identifying settlement figures earlier on and saving on time. Also, the solicitors were one step ahead in respect to requesting specific disclosure.

Why Work with Inquesta

With decades of experience in forensic accounting, Inquesta are perfectly placed to assist. We offer a truly bespoke service that is tailor made to suit your requirements and provides assistance whenever you need it. No matter the complexities involved, our team will leave no stone unturned during the course of our investigation – so you can be confident you are receiving the highest standards of service.

As a forensic accountant and licensed insolvency practitioner, Inquesta is able to offer a holistic service that is difficult to match. We operate in a wide range of areas and have a deep level of knowledge in the intricacies involved. Achieving the best possible result for our client is our number one priority so you can be sure you are working with a company you can rely upon to assist.



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Book a Consultation

If you could benefit from the services of a specialist forensic accountant, contact us for a free consultation.

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