Jeff and MacKenzie Bezos Are Divorcing. So, Who's Protecting That Little Asset Called Amazon?

The lesson here is that pre- and post-nuptial agreements are what will protect your company, not just goodwill toward your ex.

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These days, Amazon sells just about everything you can think of. But remember when the retail giant sold only books? Jeff Bezos surely does, and he remembers consulting his wife about the idea.

Related: Here is What Entrepreneurs Can Learn from Jeff Bezos' Divorce!

The Amazon founder and CEO, whose divorce is currently making headlines, was only 30 when he came up with the idea to create Amazon. He was just one year into his marriage, at the time. "I told my wife MacKenzie that I wanted to quit my job and go do this crazy thing that probably wouldn't work since most startups don't, and I wasn't sure what would happen," Bezos told CNBC in 2017.

The executive is likely no longer consulting his wife on his next business move; in fact their 25-year-old marriage is over. And the resulting divorce of Jeff Bezos from MacKenzie Bezos is likely to become the largest in history, since his fortune is estimated to be $137 billion. Because Bezos founded

Amazon *during* his marriage, his entire ownership stake in the company could be deemed to be marital property, and subject to division in the divorce dispute. It has been reported that the couple did not have a prenuptial agreement.

So the Bezos divorce begs the question: Did they have a post-nuptial agreement, and what can we learn from this very public news about the richest man alive? What should Jeff Bezos have done, or what should any entrepreneur in a similar position do, to ensure that instability at home has no negative impact on the operation or value of the company the entrepreneur founded?

Here are three important considerations:

1: Prenuptial agreements are the first line of defense.

First and foremost, the best method to protect a company, or any asset, from a marital dispute, is through the use of a prenuptial agreement, which is an agreement a couple makes *before* they marry, and which concerns the ownership of their respective assets.

When a high net worth entrepreneur is considering marriage, a prenuptial agreement is a critical consideration. While it may be a complicated discussion to embark on before a wedding, it’s one that entrepreneurs should look at carefully.

A 2016 survey from the American Association of Matrimonial Lawyers found that more people, particularly millennials, polled said they were requesting prenups; they said their most common reason was the “protection of separate property.”

High net worth divorces involving prenuptial agreements are typically resolved quickly, quietly and without much expense. Without a prenuptial agreement, however, things can get dicey in a hurry.

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Case study: We once represented a husband who started a business, got married, then grew his business to be worth close to $100 million. He employed his wife as part of the business, but it was largely his premarital creation. When he filed for divorce, his wife decided that the business should be given to her and engaged in a bit of "self help" by setting up a competing business with all of his employees and all of his intellectual property.

The court did its best to stop what was occurring, but the resulting chaos destroyed the business; both parties lost everything and both had to settle for pennies on the dollar. Had there had been a prenuptial agreement, however, the parties' respective rights would have been clear and there would have been little room for the wife to maneuver in the destructive fashion she did.

2: Post-nuptial agreements are essential for companies founded during a marriage.

The most ironproof method for protecting a company founded during a marriage is to use a post-nuptial agreement. This is a contract written *after* a couple marries, and it specifies the couple's individual affairs and assets in the event of a divorce, much as a pre-nup would. Importantly, there's no shame in a post-nuptial agreement: As *Harpers Bazaar* detailed in 2017, the view that post-nups are often associated with infidelity or other marital distress is just simply antiquated.

Instead, these agreements are important for entrepreneurs who

want to protect key assets or a family-owned business. They can be written to have a limited scope, and can even focus almost exclusively on protecting the business in the event that a divorce case is filed.

If such an approach is followed, getting a founder's spouse on board is often easier, as the need to protect the business does not then force the married couple to confront every issue that could potentially arise during their divorce.

Responsibility for the success of an entrepreneurial business can of course become a sticking point, with both spouses claiming a personal contribution. This situation clearly complicates the negotiation of a post-nuptial agreement, but even so, the founder really needs to consider what might happen to the value of the business, both financially and in terms of public perception, in the event of a divorce.

Case study. Take the 2010 divorce of Steve Wynn, casino mogul and entrepreneur, and his wife Elaine Wynn as an example. It appears that, as part of the divorce settlement agreement, the couple split their stake in Wynn Resorts Ltd. Thereafter, the parties battled for years regarding voting control over Elaine Wynn's shares. Ultimately, and after years of litigation, Steve Wynn resigned as CEO and sold his 12 percent stake in the company, leaving Elaine Wynn as the company's largest individual shareholder. Infighting of this nature is usually lose-lose-lose, meaning that the husband loses, the wife loses and third-party investors lose.

3: Protecting IP assets is also a factor.

Entrepreneurs often have intellectual property (IP) assets, such as patents, software, trademarks, copyrights and trade secrets. These are sometimes called "intangible assets," as it is tricky to place a specific value on the ownership of an IP

asset. Like all other assets of a business, however, IP assets must be analyzed in any discussion of a pre or post-nuptial agreement.

If an IP asset appreciates in value during the course of a marriage, the value of that increase could be subject to division in a divorce. A pre or post-nuptial agreement can protect these assets for the entrepreneur. In the absence of a full “nuptial” agreement, entrepreneurs can include language in their corporate documents, e.g., operating agreements and bylaws, which attempt to limit a spouse’s rights in the event of a divorce.

While these provisions might not be enforced by the court, they are at least a starting place. Also, it is easier to convince spouses to sign off on such documents when they are part of the company’s governing documents, as opposed to something that attempts to define who gets what in a divorce.

4. The enforceability of an agreement can come up.

Keep in mind that any pre- or post- nuptial agreement must be validly executed according to applicable state laws. Each partner should independently hire a lawyer and, even then, such agreements are sometimes deemed to be invalid. The best protection against a challenge to a pre- or post-nuptial agreement is usually full disclosure and fair provision for one’s spouse. In other words, they should not be viewed as an opportunity to take advantage of anyone.

Conclusion: The parties should compromise for the sake of the

company.

Ultimately, the biggest takeaway from the Bezos divorce announcement, particularly as contrasted with the Wynn divorce, is the most prudent way to protect a company. And the answer to that is non-contentious proceeding governed by a binding pre- or post-nuptial agreement that adequately and precisely addresses what will happen to a company in the event of divorce.

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Entrepreneurs who are getting married, or are already married, should consult with financial and legal advisors and be prepared to compromise the terms of a pre or post nuptial agreement. While it's hard to determine where Jeff and MacKenzie Bezos are in their divorce process by simply reading their public statement, the lesson for entrepreneurs is clear: Consider the current and future value of your business, discuss scenarios in the event of a divorce and be ready to compromise on the road to negotiating an enforceable pre or post nuptial agreement.

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