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How to divorce in business?

When people set up a company together they are full of positive plans; it's all about sharing future profit and about building a business. Those who are prudent have a lawyer draw up articles of association and often in addition to that a joint venture agreement. The lawyer will talk about selling the company, about winding the company down, about Russian roulette, about arbitration and courts. This is often difficult to understand for the parties. Unfortunately, real life is different. Research shows that roughly 70% of all joint ventures fail. One of the most common causes is 'cultural differences', and the fact that times simply change. When a company starts selling its products in a new unknown market, working with an agent who is very knowledgeable about the local market can be a solution. A few years later that person may become more of a burden. You (sub)lease part of your office space, but then business picks up and you need the space for yourself.

What we lawyers try to do when drafting contracts is to predict the dark future (that's why we are so much fun at parties). After all, when all goes well (you build a great company together, take it public, and spend the rest of your life managing your investments from the pool side) who needs contractual clauses? A contract shows its true value when things go wrong. Good contracts contain clauses on how to part ways when business partners don't see eye to eye anymore.

Unfortunately, people sometimes find themselves with a contract they would desperately like to get out of, but it seems they can't. For these situations, the Polish Civil Code provides some remedies.

Error

Article 84 of the Polish Civil Code ("CC") allows a party to withdraw from an agreement if the party can prove that it signed the agreement based on an error caused by the other party. The error has to be such that had the party not acted under the erroneous assumption, it would clearly not have signed the agreement. If the error was caused on purpose, we are dealing with deceit (Article 86) in which case the deceived party can withdraw even if the error caused is not material. Article 87 allows one to withdraw from an agreement if it was signed under threat. Please note, however, that the right to withdraw expires within one year after the discovery of the error or within one year after the state of fear ceases (Article 88).

Rebus sic stantibus

Some weeks ago most of Poland was waiting for the 'habemus papam', I am glad to be able to throw in some Latin of my own. Art. 3571 CC allows a party to ask the court to change the conditions of or even terminate an agreement in case of an extraordinary change of circumstances causing great difficulty in the performance of the agreement or a serious loss for such party.

Termination of continuous obligations

Based on Art. 3651 CC, a continuous obligation unlimited in time can be terminated not only by observing contractual or statutory notice periods, but also customary ones. With that the lawmaker clearly wanted to make sure that agreements cannot last forever.

The above list of examples is not exhaustive, and whether or not these articles will be applicable will depend on the specifics of the case. For those who find themselves in a contract they really want to get out of, it is good to know that the Civil Code provides means to achieve this even if the contract does not include any termination clauses. ★



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The Art of Forecasting

No, don't worry, this column will not deal with Tarot reading, crystal balls and other mystical tools that are used by various fortune-tellers to predict love, financial or childbearing prospects of those who believe in magic and are ready to pay for the service.

I am writing about serious, scientific ways to predict the future; in this case consumer values and aspirations, in order to strategically enhance the company's performance concerning new product development, brand building and, generally, long-term business planning.

Growing globalisation and interdependence as well as increasing acceleration of the speed of political, economic and social changes all over the world make forecasting increasingly difficult and, paradoxically, increasingly necessary. Those who fail to predict the values and aspirations of their consumers with sufficient accuracy will not survive.

As Michael Gilliland from SAS argues, however, forecasts are often wrong for one or a combination of the following reasons: the forecaster lacks skills or experience;

the forecasting instrument (e.g. software) or method applied is weak or inadequate; objectivity and reliability are biased by political or emotional pressures to obtain particular forecasting results. Sometimes, however, it is the nature of the subject being forecast that makes predictions impossible beyond the random level. If this nature is not detected, predicting is similar to just guessing and only pretends to offer a better result.

Another problem is the choice of indicators used to make predictions. Most forecasts address only basic economic indicators like GDP or GDP per capita, inflation, public debt and unemployment. These data, undoubtedly useful, are insufficient to base decisions concerning new product design, production or brand building. For these predictions, much more effort is required. This is why good cultural foresight models are so difficult to build and hardly available, in particular if the aim is to cover a period of at least 5 to 10 years.

The precondition, as Krzysztof Najder from Stratosfera argues, is to adequately define the building elements of the current cultural and ongoing changes, and then to identify their causes and directions. The more areas of everyday life where changes occur that are covered, the more comprehensive the analysis will be. The sources of change can be called cultural trends. Generally speaking, they take place in four major areas: economy, technology, environment and demography.

Najder refers to nine civilisation drivers prevailing nowadays: "1. more affluent women; 2. the plague of obesity; 3. the population getting older; 4. cities becoming the natural human habitat; 5. the ever-present internet; 6. increasingly over-processed food; 7. easier and cheaper travel; 8. a deteriorating environment and depleting natural resources; and 9. worldwide economic slowdown".

Within these nine most salient drivers, people are confronted with options or dilemmas and they have to make choices referring to the values and aspirations they have. The way they choose as consumers should determine business decisions as to new product development and brand building if commercial activities in the long-term are to be successful. ★