



## **Selling Your Business: getting the ducks in a row**

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This article, the first of two, outlines some of the key points to consider when preparing to sell a business. Whilst the article is drafted in the context of SME's and businesses that are controlled by an individual or a small number of individuals, the points discussed generally apply to larger companies or subsidiaries that form part of a larger group.

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In deciding to sell your business you will be undertaking one of the most, if not the most, important decision a business owner will ever take. As with any important decision, it is vital that the appropriate planning is carried out and you get your business ready for sale. By taking the time to plan a sale the chances of a more efficient sales process are increased, as are the chances of achieving the best possible price for your business.

The key with successful planning is that it is then up to you to pick the best moment at which to bring your business to the market, rather than being forced to sell at any one particular time. The best time to sell your business is when you do not have to.

### **WHAT TO CONSIDER?**

In considering a sale it is important to ask yourself certain initial key questions:

- Is the business healthy?
- Are the basics in place that make the business an attractive proposition going forward?
- Does the current business have sound financial records?
- Are the relevant 'legals' in order?

By addressing these initial questions the aim of any planning stage is for you to consider in more detail and decide upon a number of factors. These should include:

- Identifying your reasons for selling. For example, do you want a full exit in order to retire or to pursue other ventures, or do you want to stay in your industry post sale? Whatever your reasons consider whether you would be willing to accept restrictive covenants preventing you from competing with the business once you have sold it. A purchaser may be prepared to pay a higher price if you are prepared to stay out of the industry.
- Take an objective look at your Accounts. Many prospective purchasers will want to review

historical accounts spanning back at least three years. Planning ahead can ensure that your business has financial records to make it an attractive proposition.

- Consider likely valuations of your business and whether these are in line with your expectations. Research into your sector is often key in order to consider and assess the market in which your business operates. It is useful to identify recent deals within your sector and assess whether now is a good time to sell.
- Consider who potential buyers might be. Your knowledge of your sector and a bit of research should lead you to be able to identify whether there are trade buyers within your sector. Alternatively, consider whether your senior employees/management team might be interested in a management buy-out.
- Consider the appropriate structures for your sale. Is it to be a share sale, and therefore a sale of the shares held by you as the shareholder of your company; or a business and asset sale, and therefore a sale of specific assets owned by the company itself? Sales of shares (including in private companies) fall within the legislation relating to financial services. There are exceptions, but if you fall foul of the rules, contracts can be void and criminal offences committed. You must take legal advice before you do any pre-sale activities, or have any discussions.
- Consider whether you want all of the sale proceeds up front, or whether you would be willing to accept some form of staged payment or earn out based on the future performance of the business post the sale. You may get a better overall price, but the earn out is under the control of the Purchaser.
- Be aware of the various tax regimes in respect of receipt of the sale proceeds for both the business and you personally. For example, do you qualify for entrepreneurs relief? The aim of course is to achieve the best tax treatment possible and taking the time to obtain tax advice may prove money well spent. The advice received is likely to have a direct impact on the structure of your sale (e.g. whether it is best to conduct a share sale or a business and assets sale (as noted above)). But some tax saving structures increase the risk.
- Understand the need to review your business and its operations to make sure that it is running smoothly. Does the business own everything it needs to operate? Will you need to obtain the prior consent of a third party, for example lenders who have security over assets? A review should also identify any material problems with the business and identify what remedial action (if any) needs to be taken. By conducting this exercise you want to ensure that your business is in the best possible shape to take to the market.

## SUPPORT FROM ADVISORS

Taking appropriate advice early can save you from later problems, a reduced price or failure.

- Accountants can assist with the financial aspects of any proposed transaction, including assessing the financial position of the business, providing valuations and assessing the tax treatment in respect of any proposed sale structure.
- Specialist corporate advisers can assist with the process of selling the business, producing sales/marketing documents, finding and vetting potential buyers, negotiating the sale terms on your behalf and covering you on financial regulation.
- Lawyers can assist with negotiations and with reviewing the key areas of the business, specifically to ensure that:
  - incorporation and constitutional documents are in order;
  - checking that the key legal documents and contractual arrangements are in place and enforceable (be it contracts relating to customers, suppliers, service providers or the premises owned or occupied by the business)

- assessing what third party consents maybe needed for any proposed sale of the business (for example from your funders, major suppliers or customers, landlords in respect of property leases, or from regulatory bodies)
- checking that the business is complying with all relevant legislative and regulatory requirements
- confirmation that there is legal title to, or there is a legal right to use, all of the key assets used in the operation of the business (including, in particular, intellectual property rights)
- assessing any ongoing disputes or litigation relating to the business; and
- checking employment arrangements are in order.

## CONCLUSION

As with any sale process it is important that you are fully aware of the implications and risks of the process that you are to be undertaking. Pre-planning is key to this. It is also important that you do not sign anything with regards a sale of your business without first obtaining the appropriate advice. To do so may have unforeseen ramifications for you.

We are of course available to give you the benefit of our longstanding experience of the questions you may have in these circumstances.

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