

# Selling your business: pre-sale planning and preparation

## INTRODUCTION

Pre-sale planning and preparation is an important step when contemplating a sale. Ultimately it can increase the price you achieve, save time and cost when the sale process commences and avoid the risk of an aborted sale.

If, having considered this guide, you would like to know more or to discuss your own circumstances in greater detail, please speak to your usual contact at Stevens & Bolton or a contact listed at the end of this guide.

## PREPARATION OF THE BUSINESS

It is never too early to start preparing your business for a sale. If your files are in order and, in particular, your commercial contracts are clearly documented and easily understood, you will save considerable time and cost during the transaction. Being on top of your paperwork will also give a good impression to your potential buyer of the way that the business has been run, both legally and commercially, which may improve the price you achieve.

As advisors will be all too familiar with, businesses with messy paperwork tend to have messy problems, which may only come to light later in the sale process, leading to more complicated (and costly) negotiations and buyers becoming nervous with the way in which the business has been run.

A high level legal audit can be a useful way to ascertain the areas of your business which need tidying up prior to any sale and those which will need to be carefully handled with buyers in any sale process. Typical areas for review are: share structure and ownership, identification of assignment and change of control clauses in key commercial contracts, ownership and licences of intellectual property, bank facilities and security, employment contracts and employee benefits, pensions, property, any historical or ongoing litigation and tax planning.

Likewise, a review of the business's accounting records and financial statements is a prudent course of action. Financial information will of course be of key importance to a prospective buyer. If it is easy to access, fully up to date and well presented this will provide confidence to a buyer about the financial affairs of the business and help minimise the risk of price reductions after the sale process has commenced.

## TAX PLANNING

It is worth taking tax advice at an early stage, as there may be steps you can take to minimise your tax bill on any sale. Getting this advice sooner rather than later can avoid any need to restructure the deal late in the day, reduce delay through unexpected tax clearances being needed and reduce wasted or duplicated costs.

## MANAGEMENT INCENTIVISATION

The existing management of the business will be a key factor to a buyer of the business. A properly incentivised and motivated management team may be decisive in achieving both a high level of interest in the sale process and the best price and sale conditions. A common way in which to incentivise management is to grant share options or allot shares to them or to offer bonus payments on completion of the sale, but tax advice should be taken to ensure such incentives are properly put in place and in a tax efficient manner so there are no "surprises" later. Where incentive schemes have not been correctly put in place and administered this can lead to additional legal, accounting and tax costs on a sale.

## YOUR ADVISERS

You will, of course, seek advisers with the right skills and experience for the job, but in addition you should consider whether their cost proposition is competitive, and whether they are sufficiently focussed on efficient project management. You will need to decide whether to appoint a corporate finance advisor and, if so, agree the terms of their appointment and remuneration. An effective corporate finance advisor can add real value in terms of achieving a good price for the business.

As far as legal advice goes, your existing advisers may be able to deal with the transaction (and, if so, you may save the time and cost of ensuring that a new adviser understands your business), but it is worth shopping around. Bear in mind, however, the false economy of choosing advisers purely on the basis of cost. Your legal fees will usually be a fairly low proportion of the price you achieve and you will need skilled and experienced advisers on your side during the negotiations to both protect you from unnecessary risks and achieve the deal you want.

Ensure that your advisers properly understand your intentions and motivations around the deal, and the nature of your business. They need to be able to distinguish between interesting (but possibly unimportant) legal issues and real business risks. Experienced advisers will also help project manage the transaction to completion whilst ensuring sensible terms are agreed without unnecessary risks and costs being incurred.

## TAKE THE FIRST STEP

As you can see, there are a number of things you can do to prepare yourself and your business for a sale, and it's never too early to start. But don't be daunted – take it one step at a time, get some good advice, and try not to let the sale process take over. Remember that your main priority should be to manage your business, as ultimately, you need to have a successful business before you can achieve a successful sale.

## CONTACT US

For further information about any of the issues raised in this guide, please contact:



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*The information contained in this guide is intended to be a general introductory summary of the subject matters covered only. It does not purport to be exhaustive, or to provide legal advice, and should not be used as a substitute for such advice.*

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