Gaby Hardwicke SOLICITORS

Briefing Note: Preparing Your Business For Sale

Introduction

This article highlights the ways you can prepare your business for sale and increase its value before you sell. It is never too early to prepare, and the key to a successful sale is planning. It doesn't matter whether you are looking to sell in the next year or 10 years; a carefully planned disposal strategy will maximise your return. This Briefing Note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note
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Legal Steps to Boost the Sale Value of Your Business

Selling your business is an opportunity to reap the rewards of many years of hard work or to cash in when the time is right. Just because we are in a difficult economic period, does not mean there isn't a buyer out there willing to pay a good price. Deals continue to be done and many buyers are always on the look out for the opportunity to expand through acquisition.

Whatever your circumstances, if you are thinking of selling your business in the short, medium or long term, the outcome of the sale can be either disastrous or rewarding in a financial (and emotional) sense, depending on the sale process.

The level of care, effort and preparation you put into the process has a major influence on the price you receive for your business and how smoothly the sale process goes.

1. Maximise Tax Efficiency

One of the key objectives in a business sale is to minimise the tax payable. The tax you pay will, to a large degree, depend on the type of corporate structure you operate.

There are two main ways to sell your business: either as a share sale or an asset sale. The two processes are fundamentally different, even if the commercial effect is the same, that is, you have "sold your business".

On the sale of shares, tax is normally payable on any chargeable gain made by the selling shareholders, but the availability of the generous Entrepreneurs Relief can significantly reduce your tax liabilities. On the sale of assets a variety of taxes may be payable by the seller and there is the potential for double taxation if it is a company selling its assets, that is, corporation tax is payable by the company and income tax is payable by the shareholders on distribution of the proceeds of sale.

2. Protect Intellectual Property

Intellectual Property is the term used to describe trade marks, patents, copyright and other "property of the mind". Although less obvious than the physical assets of a business, intellectual property may be the most valuable asset a business has. Every business has intellectual property but many business owners do not realise this. For example, the trading name of the business is a trade mark and to maximise value you should look at protecting it by registering it as a trade mark.

Failure to own or protect the intellectual property of a business will at best reduce the purchase price and at worst may jeopardise the deal.

3. Put Employment Contracts In Order

Are your staff handbooks, employment contracts and policies up to date? Do your policies comply with the latest legislation and the latest disciplinary and dismissal procedures? Having in place properly drafted up-to-date documents will not only minimise the chances of a claim from employees whilst you are operating the business, but will ensure that the buyer does not find reasons to reduce the price during the sales process when he finds that you don't have the proper documentation in place.

Do your contracts of employment contain the necessary provisions to protect the business (for example restrictive covenants for key employees to prevent them leaving and joining a local competitor or setting up in competition)? Do they contain the necessary provisions to protect confidential information?

4. Terms & Conditions And Supply Agreements

All businesses purchase and supply goods and services. It is vital to know and set out clearly the terms on which they do so.

Incorrectly worded terms and conditions of business could mean you inadvertently find yourself bound by the terms and conditions of business of your customer or supplier. You may not realise this until it is too late, that is, you try to enforce *your* terms and conditions of business only to find that they are not the ones that apply to the transaction.

You should review them now. If you do not have standard terms and conditions, you should have them drafted and use them in your business. Taking action at this stage means that when the buyer conducts their review, they will be comforted by what they find.

5. Website

Nearly all businesses now have a website and the internet is increasingly the source of new business. It is easy enough to set up a website but does it adequately protect you? For example, does your website contain properly drafted disclaimers, privacy policies, copyright notices and terms and conditions for business carried out online?

Without these your business is vulnerable to claims from users of your site.

6. Ensure Correct Ownership Of Assets

The assets used in your business may not be owned by who you think. If asset ownership is split between different people or companies, the buyer may become concerned and seek to lower the price or, worse still, withdraw altogether. Rectifying this problem at short notice could be costly.

In particular you should check things such as leasing agreements, property leases, freehold properties used by the business to ensure, for example, that they are not in an individual's name when the rest of the assets are owned by the company.

7. Don't Allow The Business To Over Rely On Its Owner

When valuing a business, a buyer and their accountants will look at various factors including the cost of replacing key members of staff. Therefore, if you are the lynch-pin in the business and will be retiring on completion of the sale, you need to ensure that sufficient systems are in place to enable the business to continue successfully without you. This may include putting in place a reliable management team and ensuring that you do not leave the business with key information "in your head". If the business is over reliant on you, it will almost certainly lose value. This may cause a buyer to insist that you stay on after completion, which may not have been your plan.

8. Ensure Shareholders Pull Together

If you operate your business through a limited company and there are shareholders other than you, you need to ensure that when it comes to a sale all shareholders are in agreement. If you fall out with shareholders (and this does frequently happen), you could find that someone - perhaps only a minor shareholder - refuses to sell and the buyer will not continue on this basis. Potentially, one shareholder could hold the others to ransom for the pettiest of reasons. This is frustrating for you and a buyer is unlikely to hang around long enough for the problem to be resolved. By having a shareholders agreement in place now, you can avoid such a scenario.

9. Solve Your Problems

Every business encounters problems. Many people automatically assume their business is 'clean' and the sale will go through without any hiccups. Whilst this may be true, the majority of companies do have issues which, if not resolved early in the sale process, will give the buyer another reason to change the structure of the deal or look to reduce the price.

Try to ensure that any actual or potential litigation is resolved before the sale process starts. For example, make sure your accounts are filed on time, tax is paid up to date, employee disputes are settled, etc.

10. Keep Your Eye On The Ball

Once you have decided to sell you will be caught up in a whirl of legal and accounting demands, and unless you have been through the process before, you will be amazed at the amount of time you will spend dealing with the buyer's accountant, lawyer's enquiries, on contract negotiations and so on. Whilst all this is happening, you will of course have a business to run and it is vital to have systems in place that ensure that the business runs efficiently throughout the sale. If your orders and sales targets drop prior to completion, your buyer may seek to change the deal or reduce the price. You should also remember that if the sale falls through, you will have to manage your business until another buyer is found.

11. Appoint The Right Team

It is important to appoint the right solicitors and accountants at the start of the sale process.

The sale of your business is one of the most significant transactions you will undertake, so it is crucial to have the right team around you to guide you through the maze. Selling a business is not like selling a house and you really do need specialists on your side. Do not be fooled by cheap quotes as this often indicates that the adviser is not experienced in business sales. More often than not, you will end up losing considerably more than you save on fees.

If you would like to know more about this topic or our legal services, please contact Mark Williams on 01323 435955 or mew@gabyhardwicke.co.uk

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