Guide: Selling your business

Taking the business to market

The seven key stages of taking the business to market are:

1. Preparing the information memorandum
2. Agreeing what is being sold, price and terms
3. Marketing and enquiry management
4. Purchaser completing due diligence
5. Negotiation
6. Contracts
7. Completion and post completion issues

Developing the information memorandum

The purpose of the information memorandum (IM) is to:

- Showcase the business
- To provide a high level of overview about the business
- To act as an information library
- To provide a focus for the purchasing process

The IM may also include a sales, market and product analysis, organisational structure and personnel analysis and a summary of business strategy.

It is important to sign off a confidentiality agreement with the purchaser before you provide the IM or even enter any informal discussions about any aspect of the business. Commercially sensitive information is involved once discussions reach this stage, particularly where the buyer is a competitor or potential competitor.

Price and terms

It's important to consider price and terms at the same point in time. It's a relatively common experience for price to be agreed only to find when the sale and purchase agreement is drawn up that one or more terms are a major sticking point.

Terms that may need to be canvassed include:

- The level of vendor assistance in the transition period
- Staff issues around accrued leave and other benefit entitlements
- The valuation of trading stock
- Working capital adjustments where debtors/creditors are being assumed by the buyer
- Delayed/deferred settlements
- Warranties and indemnities, including:
  - Trade restraints
  - Ownership of intellectual property
  - Full and complete disclosure of liabilities and contingent liabilities
  - No material events that should be disclosed

- Good title to unencumbered assets
- Financial statements and reports
- Representations made
- Statutory compliance
- Full and complete disclosure

Warranties can be a high risk area. The name of the game should be to disclose if in doubt and to seek expert advice from your legal counsel, whose input at the agreement and terms stage is vital.

Marketing options

Options Include:

1. Discreet advertising
2. Using a business broker
3. Inviting private enquiry from a competitor or supplier
4. Dealing directly with a known interested party
5. Using a tender process

Completion and post completion issues

The number of matters and issues to consider prior to and post settlement of the business can be surprising, including:

- Communication to customers
- Notification to suppliers and other contacts
- Preparation of apportionment statements for income and expense items that 'cross over' the settlement date
- Preparation of working capital schedules where the purchaser has acquired debtors and creditors
- Managing any residual employment issues or obligations, particularly any redundancy issues
- Run-on professional indemnity insurance
- Final financial statements
- Finalising tax calculations
- Company minutes and resolutions
- Formally winding up the non trading entity

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