

7 tips when preparing your business for sale

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If it has come to the time in your life, or the life of your business, where you're considering selling your business, then you should plan carefully for that sale. A business well presented for sale will certainly go a long way to enhance its value. Thoroughly preparing your business for sale will save you time, frustration and often, money when it comes time to progress and finalise the transaction.

There are some key issues to consider when selling a business, and in this blog, we highlight our top 7 tips.

Get your accountant on side

This is by far the first matter to address when preparing your business for sale. And in doing so, the first question is, do you sell the business, or do you sell the company which runs the business?

The answer will often be driven by tax considerations, and your accountant is best placed to work with you and your lawyer to understand the most favourable framework for the sale of the business.

But, apart from tax, there may be other issues which influence the choice of selling the business or the company. For example, where there is a licence to operate the business, which may be difficult to transfer from one owner to the next, that may drive the need to sell the company which operates the business.

It will be a matter of balance between advice from your accountant, based on accounting and taxation issues, and advice from a lawyer as to achieving an outcome which would be acceptable to a purchaser.

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Get your business' financial records in order

No doubt, a purchaser of your business will want to see the financial viability of the business, so up-to-date accounts will be necessary for the purchaser and the purchaser's accountants.

If you are looking to sell the business at a time when the most recent financial and tax returns are more than three months old, you may need to discuss with your accountant the preparation of updated draft accounts to be able to present to the purchaser.

Make sure your lease is current and in place

The lease of the premises from which the business operates (a commercial lease) is often one of the most valuable assets of the business. This is particularly important for the purchaser who would want to remain in the premises and continue operating the business with just a change in ownership/management.

You need to look at your lease and see how much longer you have under the lease, which can be passed on to the purchaser. If the lease has expired, you should try to negotiate a new lease with the landlord immediately.

If the lease only has a short period to go, such as one or two years with no option to renew, it may be worthwhile talking to the landlord about your intentions and seeing whether the landlord is open to further extending the lease or is open to negotiating a new longer-term lease with a new tenant, being the purchaser of the business.

Review your material contract arrangements

If you have material contracts for the supply of goods or services to your business, then you need to review those contracts to ensure that they are capable of being assigned to a purchaser of the business.

Some contracts will require consent of the supplier, and a clear example of this is if the contract is a franchise agreement. If consent to assign the contract is required, you may want to check with your supplier as to what it requires before it will consent to the assignment of the contract to the purchaser.

Equally, if you have some material contracts with customers or clients which are valuable assets of the business, then you need to consider your contracts to see whether you can assign the benefit of the contract to a purchaser of the business without having to seek the consent or approval of your customers or clients.

If consent is required, then you should take steps to be ready to seek consent from each customer or client. This could perhaps be done by way of an initial discussion with them or even consider renegotiating the contract to permit an assignment of the benefit of the contract without having to obtain the customer or client's consent.

Get your employee records in order before selling your business

You will need a list of all the employees, which includes the following information:

- Whether they are permanent, full-time, part-time or casual;
- A copy of any written employment contracts;
- What award(s) they may be under;
- If there is an enterprise agreement in place;
- The date that each employee commenced with the business; and
- Any employee entitlements that have accrued for each employee, including personal/carer's leave, annual leave, long service leave, parental leave, bonuses and so on.

Get your business records in order

Depending on what you are selling specifically, you should collate all your business records, which should be included in the contract for the sale of the business.

This might include:

- a certificate of registration of the business name;
- a list of plant and equipment which will be included in the sale;
- an estimate of the value of stock held;
- a list of work in progress if the business sale includes the transfer of ongoing contracts;
- a list of material contracts for supplies to the business;
- a list of material contracts for supply or manufacture for customers;
- equipment finance leases and other finance contracts secured against the business;
- all licences that are needed to operate the business;
- domain name contracts;
- any notices from government authorities that may affect the business;
- if the business is a franchise, the current franchise agreement;
- a copy of the current lease of the premises; and
- a certificate of registration of a trade mark or patent or design.

Be prepared for what a purchaser may want when negotiating the sale of your business

A purchaser will want to be sure that it can obtain the whole of the business and understand how it is run on a day-to-day basis. Although the purchaser may be experienced in the marketplace in which the business operates, each business has its own idiosyncrasies, know-how and methods.

Some issues to consider would be:

- having a period in which the purchaser may undertake due diligence to understand the business. This should be linked to an obligation of confidentiality on the part of the purchaser so you can protect your information.
- having a period, once a Contract for Sale has been entered into, in which the purchaser might work in the business for a number of days for training purposes. That would be on the basis of training only and not being paid during that period.
- having a period, after completion of the sale transaction, in which you attend upon the business to assist in training the purchaser. You would need to consider whether you would expect to be paid for that period and the extent of time that you would apply to assist in the training.
- committing to restraints from operating a similar business in opposition to the business being sold. Those restraints would be both as to time and to the geographical location from which you are excluded from operating a similar business.

A Contract for Sale of a business or the sale of the company that owns the business requires a lot of work to ensure that you achieve a successful sale. The more you can prepare for the sale of your business before engaging with a broker, the better.

Get help from a commercial lawyer

E&A Lawyers is highly experienced in all aspects of sale (and purchase) of a business. We can advise you from the time you decide to sell your business through to drawing up your Contract of Sale and right through to completion of the transaction.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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