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BUSINESS LAW

You're Ready To Sell, But Is Your Business Ready For Sale?

If you're contemplating selling your business, picture yourself as the prospective buyer. What questions would you ask and what records would you want to see in making your decision?

The answers to these questions will tell you what you need to do to get your business ready for sale. For those business owners who keep their records in order, this will be a relatively easy task; for those less prone to do so, it may prove to be very time-consuming. Set out below are some of the things to think about in preparation for an ultimate sale:

1. Are the financial records up to date?

One of the first things that prospective buyers want to review is the financial records of the business for the current fiscal period and at least the previous three annual periods. It is also important to insure that your accounting systems are appropriate for the type of business. I have seen transactions fall apart when prospective buyers have discovered failings in the financial reporting systems of a business.

2. Are the corporate records up to date?

A prospective buyer will review, among other things, the 'constating documents' of the business, as well as any public filings. Sellers should ensure that all of their corporate records are up to date and reflect the current stakeholders, board of directors and officers of the business.

3. Are the material contracts of the business easily accessible?

As part of their due diligence, prospective buyers will want to review all of the material contracts relating to the business. While it may not be necessary to set up a formal data room at this point, it is never too early to start collecting signed copies of all material contracts, client lists, licenses, registrations, permits, etc. so that they are easily accessible in a central location. The challenge may be to do so without raising employee suspicion about a potential sale.

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Allan is a partner in our Business Law and Corporate Finance Groups. He has built his practice by advising clients on corporate finance and corporate/commercial legal issues. Allan provides counsel on transactions as well as day-to-day activities for a wide range of clients, including manufacturers, distributors, developers, venture capital firms, private equity/ merchant banks and many others.

4. Are there any outstanding issues with customers or suppliers?

It is important to resolve such outstanding issues as old payables, old receivables, warranty claims, discount or rebate issues, or any other issue that could indicate to a prospective buyer that you have an unhappy customer or supplier.

5. Are the employment terms relating to key employees adequately documented?

Where certain employees are key to the success of the business, ensure that their terms of employment are sufficiently documented in appropriate employment agreements or consulting agreements. Consideration should also be given as to what effect, if any, a sale may have under the terms of any such employment or consulting contracts including applicable restrictive covenants.

6. Are all shareholder loans documented?

Repayment of shareholder loans is one of the most tax-effective ways to repatriate some of the sale proceeds. Quite often owners lend money to the business and don't properly document such loans. Prospective buyers become suspicious when told about such loans at the last minute.

7. What consents are required in connection with a sale of the business?

It is important to know in advance what consents are required in connection with a sale of the business. For example, consent may be required from the entity's landlord, from a third party to a material contract or licence, or from the lenders to the business. An assessment should be made as to when might be the appropriate time to approach such parties regarding obtaining the appropriate consents.

8. When do leases expire?

Review your real estate leases, especially if your business is tied to its location. Make sure the lease does not expire or require renegotiation within the time frame that you plan to sell the company. If the company's location will discourage buyers, consider moving the location before you place the business up for sale.

9. Is there a list of company assets?

Fully evaluate and catalog company assets, from property to warehouse inventory to employees.

If company assets include real estate, separate or sell the property before the company hits the market. Real estate can devalue a business simply because it complicates the financial records, which in turn can make potential buyers hesitant to assume a new business with added expense.

10. Do I need to consider any type of tax planning?

It is very important for the sellers to review the current ownership structure with their tax advisors and to discuss any available tax planning strategies. Far too often sellers leave this to the last minute when, in some cases, certain strategies are no longer available.

In general, it is always best to be well prepared for the due diligence process, as this will save time and money in the end.

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