

What to consider when selling your business

When selling your business, the foremost concern is usually getting a fair price for all of the hard work you've put into building your company over the years. However, there are also important legal considerations to take into account to ensure the transaction progresses smoothly and is mutually beneficial to both the buyer and to the seller; with this in mind, here are a few key points that all business owners should consider before selling.

1. Market Valuation

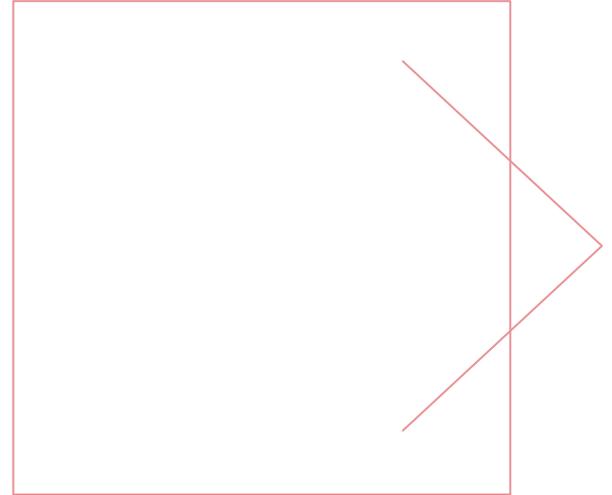
Firstly, make sure that your business' market value has been accurately gauged. Unlike 'fair value', which is often used when conducting enquiries in sale transactions, market valuation refers to the true underlying value of your business.

A business appraiser should be hired to determine the value of your business using various valuation methods and approaches to get you the best possible sale price. The appraiser should be someone experienced in your line of business or industry as valuation methods can vary, for example, the norm for a tech business could be different to one that operates in retail or leisure.

If you think your company still hasn't achieved its peak market value or that its valuation isn't fair, consider keeping your business and growing it before selling.

2. Exclusivity

Nothing is wrong with giving exclusivity to your preferred buyer when you begin the process of selling



your business. This can be granted in the early stages of a formal sale document, in the form of a letter of intent or heads of terms agreement between you and the preferred buyer.

By granting a period of exclusivity, you cannot sell to or negotiate a sale with any other prospective buyer. However, this can be beneficial to you as the seller, since the letter of intent can be used to support further negotiations or to oblige the buyer to pay legal fees if they decide not to pursue the acquisition.

3. Anti-embarrassment Clauses

In a share purchase agreement, an anti-embarrassment clause prevents the buyer from on-selling the company's shares or assets at a higher price than what was paid to the original seller, without adequately compensating you.

These clauses protect you from the potential 'embarrassment' of having the buyer fetch a higher selling price for your company during a fixed period following the completion of the acquisition.

The provision could also stipulate that the purchase price must be recalculated and raised if the buyer does indeed sell on at a higher price within the pre-determined time frame. Whilst there is nothing wrong with a buyer doing business this way, an anti-embarrassment clause ensures that you as the first seller also benefit from future uplifts in price.

4. Security for Deferred Consideration

By granting the buyer deferred consideration, you are deferring all or part of the proceeds of the sale of your business until the buyer generates enough cash from the business to pay the balance.

In other words, you are effectively lending the buyer the deferred part of the purchase price. This is a good option if your preferred buyer cannot obtain funding from a bank or another third party, but you must then secure your 'loan' and protect your own interests as a creditor.

Timing, conditions, interest payments and the ongoing involvement of the seller are all factors which must be carefully negotiated in setting up an agreement for deferred consideration.

For security, a bank guarantee or cash held in escrow can be used, or security may be in the form of a charge over the buyer or target company's assets. Failing to secure the deferred monies in this way puts you in the position of an unsecured creditor who will have to go to court to make a contractual claim against the purchaser which can be an undesirable and costly situation.

If you're thinking of selling your business, or if you need expert advice on how to structure your business in order to offer it for sale, contact us today at Carter Bond Solicitors for a free consultation.

For more information, or for expert advice on business or personal legal issues, call us on +44 (0)20 3475 6751 or via email at info@carterbond.co.uk

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