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Selling a Business

A complete guide

Here to Help

There are many factors to consider when selling a business and it isn't something that should be entered into lightly. Every business is different and your reasons for selling can be varied so getting the right professional advice early is crucial to ensure you get the best outcome.

For some, it can be a very emotional and stressful time, particularly if it's a business you put your life and sole into over many years. We're here to help. By taking the right legal advice at the outset and throughout the transaction, you can be clear of the likely implications that may arise during the process.

Our top 5 important things to consider:

1

What are your sale objectives?

One of the first things any adviser will ask you is why you want to sell, as this can impact on the deal structure proposed. A trade sale to another business, typically in the same sector, is the most common exit route, although alternatives can include a management buy-out, passing the business to your family or floating your business. Some of the more common objectives include:

- Retiring/ill health, so looking for a cash payout at a target price, and/or by a set date
- To secure the future of the business and the employees
- To minimise your personal tax liabilities

You will need to have a commercial legal adviser on your side as well as a corporate finance adviser and an accountant to advise you on tax. If there are employees you will also need to have an employment law adviser. You may also want to think about a personal wealth manager to ensure that any proceeds are invested in the appropriate way.

> I have dealt with Andrew Fielder on many matters over the last few years and have found him approachable and friendly, with excellent advice given in good layman terms.
>
> Mr B, Chesterfield

> We have been clients of Banner Jones for more than 5 years and we are very satisfied with the level of service along with the practical and commercial approach. As a business we are very happy with everything Banner Jones Solicitors have done for us.
>
> Eldon Estates

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When is the best time to sell?

A mistake business owners often make is selling too early, rather than taking the time to groom the business ready for a sale.

We find that business owners often panic and sell when the market is in decline, rather than waiting it out, but we can advise you of such implications. By taking your time (often months), you can present your business in a very different way and therefore maximise the sale value.

You need to be able to show prospective buyers that your business is under control with accurate management information. You should also look to improve planning, performance and profitability in all areas. In addition, you need to make sure you have suitable contracts for employees and suppliers, as well as resolving any outstanding disputes and tightening up your finances.

We would advise that you:

- Create a stable financial plan for the year.
- Sell any redundant equipment and property
- Tighten up stock control, making provision for old stock as appropriate
- Make sure the premises look well maintained and tidy

3

How to find a buyer

Once you feel that your business is ready for sale, your legal adviser will draft a 'sales memorandum' which effectively highlights the key features of the business, including basic performance indicators such as turnover and profit. At this stage confidential information will not be disclosed.

There are specialist commercial sales agencies that can help to market your business to prospective buyers and we can help you select one if necessary. Often the business name will be hidden until serious interest has been registered by a buyer.

Once a serious buyer comes forward then they will be asked to sign a non disclosure agreement before any information is shared with them. You may want to consider telling key employees of your intentions at this stage before any on-site meetings/tours begin taking place.

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Weigh up your offers

There are different ways to fund the purchase and take over of a business and this may affect how you draw up a short-list. You should consider how the buyer is proposing to pay for your business as some offers will be more attractive to you than others. Offers may include cash payments, guaranteed deferred cash payments, share swaps, or payments can often be linked to future business performance in the form of 'earn-outs'. It's best to discuss any offers with your advisers to ensure you pick the right option for you. You should also be prepared to negotiate with prospective buyers before asking for final offers.

Some other factors that may affect your decision might be if the buyers have any plans for the business, i.e.

- Will they sell parts off?
- Will it become part of a wider group?
- Will there be any redundancies?
- Will you be able to retain some management control if you want to?

As a front runner emerges, your lawyer will draft up a 'Head of Terms Agreement' which will include the main points of the deal including, what the purchaser is offering to buy, how the price will be calculated and the agreed payment terms. At this stage, other interested buyers are kept in reserve while you try to finalise the deal.

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Be transparent when finalising a deal

Before committing to the deal, the purchaser will want to carry out detailed due diligence checks into every aspect of your business. You will probably be contacted by the buyer's lawyers and accountants who will want to see your accounts, supplier contracts, employee contracts, property deeds and so on. You should be as transparent with them as possible and you'll often be required to give warranties that the information you have provided is true, and asked for indemnities to protect the purchaser from any specific risks. You may also be asked to enter into restrictive covenants so that you cannot set up a competing business.

One of the legal requirements of selling a business is to decide what happens to your employees when you sell your business. In the case of a share sale, your employees will remain with the business and the buyer will inherit the control over your employees. They will be transferred to the new buyer through the TUPE process.

We have experienced employment law solicitors who can guide you through this. In a situation where the buyer may state that they do not want to take one, all or some of your employees that may leave you to terminate their employment. In such a case, you must tread very carefully as you may be left with liability for claims arising from the dismissals.

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We know that selling your business is a huge decision and a challenging task, with many tax and legal implications to consider. Our experienced commercial property teams in Chesterfield, Sheffield and Mansfield have had many years experience in helping business owners exit their business. We can help guide you through the selling process, discussing possible options as well as highlighting the potential risks.

Talk to Banner Jones - We are ready to help you

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