LYRA CONSULTING

A quick guide or an aide memoir to assist Sellers in the sale of their business or shares in their company compiled from frequently asked questions.

SALE OF BUSINESS

Lyra Consulting's Quick Guide for Sellers

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Thinking of Selling your business?

Lyra Consulting's Quick Guide for Sellers

Selling your business is a major life decision. Whether you're deciding to retire, planning to emigrate, wanting to explore new opportunities, or need to liquidate an asset due to financial difficulties, understanding the process of selling your business can make all the difference.

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Business Optimisation for Sale or Exit

As a business owner, you want to make sure that you're taking all necessary steps to optimise your business for sale or exit. It doesn't matter why you're selling or exiting the business, whether it's to pursue a different venture, or to free up cash for another venture, you still need to ensure you're selling at the maximum price possible. Here's how you can optimise your business for sale or exit:

a. Get organised.

Your business is most valuable when it's organised and runs like a well-oiled machine. This means making sure you have financial systems in place, that your paperwork is up to date, that you have the necessary licences and permits to operate and that your business policies are clear and concise. Review all contracts and make necessary amendments. Having solid management in place adds great value as it ensures business continuity for the seller and it dramatically reduces the risk in the business.

b. Improve your processes.

If you want to optimise your business for sale or exit, it's important to make sure your processes are as efficient and effective as possible. This means streamlining any processes that take too long, automating processes whenever possible and making sure all employees understand their roles and responsibilities.

c. Maximise profits.

The actual sale or exit value of your business is directly related to its profitability. Most valuations are based on free cash flow, which is generated by the assets (equipment, staff, contracts) of the business. The value of these assets is captured in the value of the cash flow. This is especially important if the business has dormant assets such as mothballed equipment. These may be valued separately or sold separately as long as they do not affect the running of the business. Therefore, it's important to get your costs under control and focus on increasing your profits. This may mean cutting out unnecessary expenses and looking for new revenue opportunities. This is especially relevant to those seeking to retire or emigrate as prospective purchasers are often interested in how they may grow the business. Sound advice based on the experience of the owner may offer encouragement and opportunity.

d. Diversify your investments.

Diversification is key to long-term success, and it's just as important when you're looking to optimise your business for sale or exit. Consider investing in different products and services or different markets and geographic areas to ensure you're not putting all your eggs in one basket.

Business optimisation for sale or exit is something that all business owners should consider. By following the tips outlined above, you'll be setting yourself up for success and maximising the value of your business.

Regulatory authorisations or notification requirements

Always obtain advice on whether the proposed transaction requires notification or authorisation of a Regulator.

The Competition Commission must be notified of all intermediate mergers and acquisitions if the value of the proposed merger equals or exceeds R600 million (calculated by either combining the annual turnover of both firms or their assets) and the annual turnover or asset value of the transferred/target firm is at least R100 million. If the combined annual turnover or assets of both the acquiring and transferred / target firms are valued at or above R6.6 billion, and the annual turnover or asset value of the transferred / target firm is at least R190 million, the merger must be notified to the Competition Commission as a large merger.

In addition, companies in regulated industries may have to notify their regulator. For example, any transfer of ownership or control of an insurer must be reported to the Registrar of Long-term insurance.

Assets and Liabilities & Valuation

A crucial step in selling your business is determining the value of your business. There are several valuation methodologies depending on the stage of maturity, the more common are the free cash flow (discounted cash flow "DCF") and the EBITDA multiple valuation methodology.

Valuation should be done independently and professionally by valuation experts, who will review various factors such as revenue, expenses, liabilities, assets and market trends. This will help you determine a reasonable asking price for buyers. It is important to understand the assets and liabilities and the basis of the valuation of the company that is being sold to ensure that all aspects related to the transfer of the business are accounted for.

Tax implications

A key question is whether to sell the business or sell the shares of the company because this would have a significant tax implication.

Often the buyers would want to buy the business but not the shares in the company while the sellers would prefer to sell the shares because there may be outstanding risks in acquiring the shares but a due diligence can reduce the risks of acquiring the shares in the company.

If one sells the shares in the company, the main implication is Capital Gains Tax on sale of shares at 18 % if the Seller is an individual and at a higher rate for a company or a trust holding the shares. If the shares are sold then, depending on who the seller is, there would be no vat implication if the seller is an individual who's not registered for vat.

For a sale of business there would still be CGT payable at the higher rate applicable to companies. It is possible to zero rate the transaction so long as the contract of sale provides the relevant specific provisions of the sale of a going concern so the zero rating would apply. The other potential tax cost is that if the business is sold there could be potential recoupments of capital allowances allowed before the sale.

The sale of the business is often more expensive for the sellers because not only there may be a higher capital gains tax there may also be a recoupment of allowances but also that the company now has the cash which is the sale proceeds of the business and when that is declared through the shareholders this can only be done through a dividend and there is dividend tax payable on the declaration of dividends at 20 percent.

One can see from the various commercial and tax implications that is crucial for buyers and sellers to take legal and tax advice before the transaction to ensure that all the various commercial, legal and tax risks are fully analysed, understood and the proper decisions are taken based on this.

Potential buyers, Going to Market

Putting your business on the market is usually a discreet process as such information made public may affect staff morale, customer loyalty and supplier terms of sale. Your choice could be to go through a business broker, contact direct buyers that specialize in particular industries, or seek out corporate acquisitions. Your lawyers or accountants may also have potential buyers. Whichever method you decide, you'll want to make sure that you vet your potential buyers for trustworthiness, reliability and reasonable expectations of how the sale would materialize.

It is advised to use a broker or intermediary whose role it is to compile a business brief providing just enough information to attract the interest of purchasers, as well as to determine if they are willing and able candidates. The broker is able to field general questions without divulging sensitive information. Only once a good fit is established, and the identity of the potential purchaser is disclosed to the seller, is more specific information provided.

If appropriate, the broker hosts the meeting between the purchaser and seller, ensuring that protocol is observed. This is important as the dynamic between the parties may inform such factors as handover periods, availability for consultation, periods of restraint and other permutations of the deal structure.

Sale Mandate

Where you have a business broker or similar party, you may enter into a sales mandate in which you would stipulate the price and other terms which are important to you in the sale of your business as well as a non-disclosure agreement.

Confidential Information & Non-disclosure Agreement

With any potential purchasers it is essential to enter into a Confidentiality / Non-Disclosure Agreement to ensure the proposed terms of the sale transaction and your confidential business information, especially financials, remain confidential for the period of the transaction and thereafter. Confidential information may include a wide variety of valuable assets of the company including intellectual property such as patents, trademarks, designs , copyrightable work, trade secrets, details of products, services, processes, details of customers, suppliers, investors and all financial and tax information.

Funding of acquisition

It is important to determine how the buyer will be acquiring the business, is it a cash sale, are they are going to finance a large portion of the purchase price? Are the funds in the country or abroad and requiring exchange control approval?

Sale Agreement

A key step is of course to negotiate and sign the sale contract. It's important to have your lawyer review any contract prior to signing to anticipate potential problems and ensure that your interests as seller are adequately protected. Please note the sale of a business is different to the sale of a company as are the resultant legalities.

Standard clauses in both a sale of business and a sale of shares agreement:

a. Purchase Price and Payment – A description of the purchase price, any deposit and payment terms.
b. Purchase and Sale of Assets – A description of what is being sold, including assets including intellectual property, goodwill and any other assets subject to the sale.
c. Closing Date and Conditions – The date the sale is scheduled to close, and any conditions that must be met before the closing can occur.
d. Transfer of Ownership – The transfer of ownership of the shares in the company or the business including any stock, assets or liabilities.
e. Due Diligence – The seller usually provides certain information and documents for inspection by the buyer that would be needed for the buyer to assess the value of the business or company.
f. Representations and Warranties – The seller makes certain representations and warranties about the company and/or its business, such as financial statements, compliance with laws and other pertinent information.
g. Obligations of the Parties – Specifies which obligations each party must fulfil in order to effect the sale, such as the transfer of remaining assets, assumption of liabilities, etc.

Due Diligence

The next step is preparing for due diligence. This step is where potential buyers conduct a comprehensive review of your business to further investigate your finances, assets, and liabilities. Having this information prepped and organized prior to beginning negotiations will help ensure the process goes smoothly and quickly. It is important to set a time period for the due diligence.

Most importantly it's advisable to keep your legal and financial people involved throughout the due diligence process.

Transfer of Ownership (Closing)

The final step is closing the sale. This involves transferring the ownership of the business to the buyer, transferring legal obligations and authority, and settling any differences between the parties. It is important to ensure that the transfer of ownership is conducted properly and that all the necessary paperwork has been completed and delivered to the correct party. It's important for the seller to keep a close eye on the transition process to ensure all obligations are completed so that the business sale can be finalized. In most cases the lawyers actively run this process.

Conclusion

It is essential to seek legal, tax and commercial/financial advice from professionals who are knowledgeable and experienced in sale of business transactions. This will help ensure the transaction is conducted properly and legally. **Lyra Consulting provides all this expertise in house.**

Selling your business can be a daunting process, but always remember to stay persistent and trust the experts. Working with a reputable firm can help make the process less overwhelming and help ensure that the sale is properly executed.

Authors:

Alexandra Burger (Legal)

Johan Troskie (Tax)

Rael Koping (Business)

LEGAL -TAX - BUSINESS ADVISORY –

BUSINESS OPTIMISATION- VALUATIONS-

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RISK REVIEW-TRANSACTIONAL SERVICES

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