

Business Update:

Selling Your Business - Initial Steps & Considerations

The sale of a business requires preparation and there are many aspects of a proposed sale to be considered by a prospective seller before putting the business on the market. The initial preparation saves time, effort and money in the long run and helps to avoid problems once the sale process is underway. If you are considering selling your business, you may find some of the following tips helpful:

Initial Steps

- Consult with your legal advisers at an early stage and, wherever possible, before entering into discussions with any prospective buyer.
- Check that there are no legal, regulatory or contractual restrictions which may preclude you from approaching, or entering into a legally binding contract with, a prospective buyer. (For example, where the business is regulated by the Isle of Man Financial Services Authority, consider what regulatory notification and consent requirements may be relevant, together with their potential impact on the overall timing of the transaction).
- Try to identify and, if appropriate, rectify any issues that may put off a potential buyer.
- Take advice about whether it is more efficient for you to sell the business itself or, if the business is being carried on through a company, whether you should instead structure the transaction as a share sale.

Marketing

In consultation with your advisers, agree how the business should be marketed; this is likely to be influenced by its size and the anticipated level of interest from prospective buyers.

Consider whether it is worthwhile producing an “information memorandum”. This is designed to assist prospective buyers in understanding the business and its operations and is usually circulated with a view to procuring initial offers and to generating some competitive tension.

Any information memorandum should be prepared with great care and every effort should be made to ensure that the information included in it is accurate and not misleading in order to minimise the risk of liability (civil or criminal) for errors in, or omissions from, the information.

Confidentiality

No information relating to your business or its operations should be provided to prospective buyers unless they have signed and returned a confidentiality agreement. Remember that irrespective of whether a prospective buyer has signed a confidentiality agreement there may still be certain information which it is not appropriate to make available until very late in the negotiations (and possibly not until the signing of legally binding sale documentation).

Take advice if you have information that you believe may be (i) subject to a confidentiality agreement in favour of a third party, (ii) commercially sensitive (such as trade secrets or pricing information), or (iii) which, if disclosed, could result in loss of legal professional privilege.

Exclusivity

You may be asked by a prospective buyer to enter into an exclusivity agreement which, going forward, may materially affect the manner in which the transaction can be conducted and restrict your ability to enter into discussions with other buyers. Consult your legal advisers before entering into any form of exclusivity commitment with any prospective buyer.

Due Diligence

Virtually every prospective buyer will wish to investigate your business and its operations before reaching the point where it is contractually committed to proceed. The scope of the due diligence will vary depending upon the nature of your business and the approach taken by the prospective buyer.

Due diligence will usually take the form of the prospective buyer (in conjunction with its professional advisers) considering documents:

- provided by you in response to a due diligence request; and/or

Business Update: Selling Your Business - Initial Steps *continued*



- provided via a “data room”, being either a physical room or a virtual room hosted on a password protected website, populated with all the information which a buyer would normally expect to see and information which you consider a buyer would be interested in seeing (having regard to any information you would not wish to distribute).

In conjunction with your advisers, try to anticipate the information that you will need to provide in connection with the due diligence exercise and try to make sure that all of the books and records relating to the business are up to date and that the due diligence information is collated and stored in a readily accessible and easily understandable manner. This will certainly benefit all parties involved in the transaction.

Summary

The sale process can be full of potential legal and commercial pitfalls. However, by being clear about what you are aiming to achieve from the outset and by engaging professional advisers at an early stage, many of the potential pitfalls that await an unsuspecting seller can be avoided.

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Please note that this guide is intended to provide an introduction to the Isle of Man and the possibilities that exist for establishing various types of structure in the jurisdiction. It seeks only to give the reader an overall view of the subject and is not a substitute for specific advice.

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