Getting your business ready to sell

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Selling your business is a lot like selling your house: it should have "curb appeal" and pass a buyer's "home inspection" with flying colors. In this article, we look at some of the steps that you, as an owner-manager or officer/director of an emerging company, can consider taking to get your business ready to sell. In part two, we explore the key topics in due diligence and the questions that sellers must be prepared to answer from buyers.

1. Objectives and planning: What do you want to do and when?

Objectives will vary from sale to sale, but they usually include some combination of business, personal and tax. Business objectives may include spinning off a line of business. Personal objectives may include freeing up the money in your business so that you can lock in your gains. Tax objectives may include ensuring that the sale fits your estate plan.

In terms of planning, allow plenty of lead time to ensure the business is in the best possible shape prior to being put on the market. Preparing for and executing a sale can take as much as 12 months from start to finish, especially if there are multiple suitors in an auction situation. The actual sale process, including negotiating with the preferred buyer and closing the deal, often takes up to half of that time, if things go smoothly, or it may take longer, if you are not prepared or if the buyer identifies material issues when conducting its due diligence.

2. Sale process: Are you prepared to take all of the steps between now and closing?

Selling a business is a very involved process that will require a significant amount of time and attention from individuals, directors and shareholders. You should project-manage the process, to ensure that distraction is minimized, all stakeholders are working together and that the sale is completed in a timely manner. From testing the waters before you put your business on the market through to tying up loose ends once your business is sold, there are many steps to complete the sale of any business.

3. Value: What is your business worth?

It is a manager's and director's duty (and a shareholder's desire) to get the best price possible for the company. While it is not as simple to get comparable prices for your company as it is when selling a home, there are sources worth exploring to get a sense of deals done (and prices paid) in your company's industry. Typically, different industries have different valuation multiples or conventions (such as one times revenue or seven to eight times EBITDA).

At the end of the day, your management team and other key employees, intellectual property, goodwill, customer lists, and earning capacity are likely your most valuable assets. However, buyers may value these core assets differently: a financial buyer may put more value on the current management team than will an industry buyer that has its own management team in place already. Consider having a chartered business valuator (a specialized designation some chartered accountants attain), a corporate finance advisor or an accountant (with the appropriate expertise) appraise your business so you can set a realistic price target. In negotiating the purchase price, parties should spend nearly as much time on how and when that purchase price

will be paid as they do on the dollar value itself. Will the entire purchase price be paid at closing? Will there be a holdback or an earnout? Will there be a loan from the seller (also known as a vendor takeback)? For what term? At what interest rate? With what security?

4. Team of advisors: Whose help do I need?

The issues that arise on a sale are typically so complex that prudent companies regard it as foolish to negotiate and close the transaction on their own. Early in the sale process, you should determine which professional advisors you need to retain. At a minimum, you will need to engage lawyers and accountants with transaction experience. An experienced lawyer will ensure that all legal requirements are met and will know what terms and conditions in the purchase agreement and other documents are "market" for your type of deal. Accountants will help ensure that your financial picture is clear and current and can help you work through the financial implications of tax and other structuring issues that may arise. M&A advisors can help identify prospective buyers and market your business to them. M&A advisors can draft compelling information/marketing documents about the company and realistic terms sheets, coordinate the flow of information to and from buyers (particularly in an auction process), and run financial analysis of sale scenarios.

5. Buyers: Who are the potential buyers of your business?

Potential buyers typically fall into one of two groups: (1) industry buyers (also sometimes referred to as "strategic" buyers); and (2) financial buyers such as private equity funds. You may also come across strategic buyers who have partnered with a private equity house – together, they constitute a "hybrid" buyer. Industry buyers are usually looking to grow their existing businesses by acquiring, for example, the product lines, capital assets of complementary businesses. In contrast, financial buyers typically have access to less expensive capital than industry buyers. They tend to target businesses that will generate a desired level of return within a fixed investment horizon (for example, five years). They often look for companies that have solid businesses in place but whose valuation could be boosted by implementing operational efficiencies or by injecting new capital into the business. Once you have identified one or more prospective buyers, you should try to confirm that each potential buyer is genuinely interested in acquiring the business, has the expertise and financial wherewithal to close the deal, and has the experience and ability to run the business once they have bought it.

6. Corporate structuring: Does your current structure make sense for the deal?

Your company's corporate structure may be the same as the day it was incorporated or may have evolved in response to changes in the business. While the current structure may have made sense in the past, it may not be optimal for the purposes of selling the business due to a variety of factors that may arise in the sale process. Several considerations come into play when analyzing the pros and cons of a given corporate structure: tax, applicable regulations, third-party consent rights, shareholder approval thresholds and other matters.

As soon as a deal is on the horizon, you should review all aspects of the structure with your advisors and with prospective buyers. What type of entity is used to carry on the business: a corporation, partnership, limited partnership, sole proprietorship? How do shareholders hold their respective interests in the business: directly or through holding corporations or trusts? How does the company own its material assets and lines of business: directly or through subsidiaries or affiliates? If you determine that a different structure would be better suited to the deal, then you may have to plan a reorganization prior to or as part of the closing.

Conclusion

It is always easier to sell a home that has been properly maintained over the years. One important thing to remember when running your business is that, unlike with your home, a sale is always a possibility, at any time. You want to make sure that you are always prepared for that possibility. Once you have decided to sell your business, the next step will be to prepare for the due diligence process. Please see our article here where we discuss due diligence from the seller's perspective and the questions that every seller must be able to answer to help avoid unexpected obstacles in the deal.

The authors would like to acknowledge the contributions of Youssef Aziz and Rachel Kurtzer, Articling Students, DLA Piper (Canada), in the preparation of this article.
