



A guide to selling your business

with the Wilson Browne Corporate & Commercial Law Team

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“Have dealt with them over many years for various reasons and have full trust in their responsibility to give the best service.”

“Wilson Browne Solicitors have been outstanding. Act quickly and keep in touch with progress. Very safe hands!”

“...genuine care for the client’s welfare and a great communicator with both clients and counterpart professionals.”

“A very polished and professional service. Approachable and clear explanation of services provided and costs.”

“Very professional. Quick to respond. Did everything we asked... excellent.”

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Part 1: Considerations when preparing for sale

Crucially, get the right team behind you!

Our corporate and commercial team specialises in providing legal solutions to businesses at every stage of their journey. From assisting ambitious startups in navigating the complexities of business formation to advising multi-million-pound SME's on strategic growth initiatives and exits, our dedicated team of

professionals is committed to guiding you through the entire life cycle of your business.

We offer a client-centric approach, prioritise swift and clear communication, tailored strategies to suit your business plans and meticulous attention to detail.

Our goal is to empower your business to thrive in an ever-changing environment and support you in making informed commercial decisions for your business. In short, it's all about how we can best help you.

Whether it's M&A, Disposal and Exit, Contracts, Company formation, Shareholder Agreements... and more, whatever your business, whatever its size, we can help.



Considering your options

There are many forms that an exit can take, including:

- a management buyout
- establishing an employee trust and selling it your employees
- private investor/ private equity deal
- or, a trade sale.

Each has its pros and cons. Determining which is right for you means careful consideration and collaboration with experts, including your financial advisor, accountant and solicitor. When planning and choosing your exit strategy, you need to consider:

- the structure of your business and the sale
- your future intentions
- property and company assets
- historic trade including financial performance
- compliance matters
- and, human resources.

Preparing for sale

Step one is to get your 'house' in order when contemplating selling your business. A well-planned sale maximises the efficiency of the process and avoids unnecessary delays and costs. Failing to do so can cause complications and avoidable stress.

Whatever exit option is right for you, you need to ensure that you plan carefully for the sale to ensure both you and your business are exit ready by...

- Addressing any issues which may impact a purchaser's willingness to buy or what they would pay
- Detaching yourself from the business and ensuring you have a strong management team to carry on without you
- Ensuring that the accounting records for the business are clear and concise to ensure accurate forecasting
- Making sure that your personal financial goals are clear, you understand what you need from a sale, and the tax and lifestyle implications for you in the long term
- Considering your exit strategy – do you plan to stay in the business or want a complete exit?
- Familiarising yourself with the sales process and documents: it can be much more involved than selling a house and needs commitment from you to see it through
- Undertaking any pre-sale restructuring work, such as demerging to separating parts of the business or the property
- Considering any employee shareholders or options that have been granted and how this will affect the transaction.



Preparation: Pre-Due Diligence

This can be the most time-consuming part of a transaction (information requires time to compile, issues need addressing, and you'll probably want to keep it confidential from employees). We recommend a pre-sale review of your business to ensure your house is in order. This includes:

- Reviewing your company structure, any share schemes or options and ensuring that all is in order – fundamental points for any buyer
- Considering any charges, hire-purchase or lease arrangements, what they relate to and whether they need to be discharged pre-sale; and to understand the consents and authorisations required for your transaction
- A review of which customers and suppliers are vital to the business and the terms of their engagement to mitigate the risk of losing customers because of the transaction.
- Identifying and gathering information regarding intellectual property, including both registered rights such as trademarks, designs and patents; and also unregistered rights such as business names, logos, domain name, website content, know-how, etc.
- Review of compliance matters, including data protection, GDPR, Health and Safety and registrations. Non-compliance can result in substantial fines and risks that would likely deter a buyer
- Review of employment contracts to make sure the business is compliant with employment legislation.
- Considering the company's assets (including property, whether leasehold or freehold) to ensure there are no issues or concerns with the condition, terms, or the buyer ultimately having the benefit of those assets post-transaction.

You should start planning what relevant information should be shared with your accountant. As well as preparing forecasts and/or pipeline/order book. Forecasts can be beneficial to show any expected uplifts in trading due to new products, services or clients.



Part 2: The Sales Process

Pre-Due Diligence

The previous page summarises only some of the key areas of consideration for a buyer. However, there is a lot to work through, and one of the most challenging questions for you is going to be, what is the buyer looking for?

Getting into a buyer's mindset can be difficult, especially if you haven't done an acquisition yourself. There may be aspects of your business which you have taken a view on, or consider to be a commercial risk... but to a buyer, they could be a concern. This is where we, working with your other advisors, can help.

How do we support you?

- Meet with you to discuss your business and goals
- Raise legal due diligence enquiries on your business as if acting for a buyer
- Review your responses to enquiries and flag any areas of concern
- Work with you to rectify any issues before you engage with a buyer
- Advise you on the upcoming sales process and what to expect
- Attend to legal aspects of any pre-transaction restructure
- Collating responses and supporting documents in a data room, ready for disclosure when you have a buyer lined up
- Consult with your other professional advisors to align legal, financial and tax aspects of your business and sales process.





Initial discussions with a Buyer

At the start of a sale process, a buyer will want to engage in discussion with you to understand more about the business – this inevitably includes sensitive information.

For example, a buyer may wish to discuss the business's financials, sales, marketing, IT, service offering (business model), lead times and/or tendering process, competitors and growth opportunities.

To protect the business during initial discussions with interested parties, you should have them sign a non-disclosure agreement (NDA), which could be a standard, bespoke or mutual NDA. We can assist in drafting an NDA that works for all parties.



Heads of Terms

Non-Binding Terms – subject to contract

Once a deal has been agreed in principle with a buyer, both parties will usually sign a letter of intent or “heads of terms”.

The heads of terms will set out the commercially agreed terms by the parties (this typically includes the purchase price, deal structure, and any other agreements, such as future employment).

Although this part of the heads of terms is not legally binding at this stage, it can be challenging to re-negotiate the core terms of a deal later on in the transaction, which is why it is essential to resolve any dealbreakers at this stage.

Binding Terms

The legally binding terms of the heads of terms (which should be clearly identified as binding) tend to include clauses in relation to, confidentiality, exclusivity for the buyer, and how costs are to be dealt with.



Due Diligence

Following the agreement of the heads of terms, a buyer will raise legal, financial and commercial due diligence enquiries to you via a questionnaire.

The questionnaire enables a buyer to make information requests on their purchase to fully understand what they are buying, and that this aligns with their expectations.

Based on how extensive the questionnaire is, this phase can be pretty lengthy, particularly if certain information needs to be compiled. There may also be multiple questionnaires issued, and you may receive separate questionnaires for

legal, financial, tax and commercial aspects of your business.

You will need to address everything in the sales process, and managing this can be challenging, especially while still running the business.

The questionnaire is designed to capture a wide range of topics that a buyer may raise. However, the amount of information required will depend on the individual buyer.

Example sections of the legal due diligence questionnaire:

- Corporate Structure and records
- Share Capital and Shareholders
- Finance and banking
- Business, contracts and trading
- Assets
- Intellectual Property
- Insurance
- Consents and Compliance
- Litigation and disputes
- Employment and pensions
- Property
- Environment
- Health and Safety

Governing Legal Documents

Alongside the DD, subject to whether you are selling shares or assets, there will either be a share purchase or asset purchase agreement to be drafted.

Share Purchase Agreement (SPA)

An SPA typically includes 'operational' provisions, the terms relating to the sale and purchase of the shares, purchase price and when this is due, warranties, a tax covenant where the seller undertakes to be responsible for historic tax liabilities, limitations to the seller's liability and restrictive covenants on a seller (i.e., restrictions concerning competing with the business post-completion).

Additionally, for a sale of shares to be valid, the sale must be compliant with the Companies Act 2006, the company's articles of association and any shareholders' agreement.

Typical ancillary documents include:

- stock transfer form (which will need to be sent off for stamping)
- board minutes and resolutions as necessary

- letters in relation to Person of Significant Control
- appointment/resignation of directors/secretaries
- the Companies House returns required to update the public records of all the relevant changes.

Every transaction is different, so various other ancillary documents may also be required; in particular, additional procedures or steps may need to be taken if either the Articles or a Shareholder Agreement have restrictions surrounding the transfer of shares.



Asset Purchase Agreement (APA)

If your business is not incorporated, or if you are only seeking to sell off assets from your business, then the sale will be governed by an Asset Purchase Agreement.

An APA typically includes a detailed list of assets to be acquired, purchase price, obligations, warranties, limitations and apportionments, and prepayments (if required). In addition to the APA, you may need to provide an assignment of goodwill to vest the goodwill associated with the business in the purchaser.

It is essential to note that unlike with a share sale, the business's contracts will not automatically be inherited by a buyer, and will have to either be assigned or novated to the buyer.

Employees have protected employment status under the Transfer of Undertakings (Protection of Employment) (TUPE) regulations and must transfer with the business or risk falling foul of these regulations.

To satisfy TUPE, you will need to adhere to procedural requirements when dealing with employees.

Warranties

Both the SPA and BSA will typically include warranties: whether these are limited or extensive will be subject to the nature of the deal. Warranties are important to a buyer to affirm the state of the business before the sale. Once the SPA/ APA has been signed, the warranty statements form a binding contractual promise (from the seller to the buyer) in relation to business – usually from the date of the seller's ownership until the sale date.

An example of some common warranties are as follows:

- that the seller has the authority to sell the sale shares/the capacity of the seller to sell the assets
- that any financial information is accurate and or compliant with the relevant standard/policies; or
- the business/company complies with relevant regulations and applicable legislation.

Warranties tend to cover a wide range of areas, such as ownership, accounts, finance, business contracts, stock, tangible and intangible assets, property, employees, pensions, insurance and compliance, to name a few.

If a warranty turns out to be untrue post-acquisition and you haven't disclosed against it, this may give rise to a claim against you.

Disclosure Letter

A disclosure letter details the relevant disclosures against the warranty statements in the SPA/APA to limit the seller's liability, as no claim can be made by the buyer so long as there has been an adequate disclosure.





Completion and Post-Completion – Shareholders' Agreements

When all due diligence has been done, legal documents have been agreed upon, and everyone is ready to press 'go,' we deal with completion. This involves delivering signed documents, company records, keys to the doors, and, from your perspective, most importantly, being paid what is due to you.

There may also be post-completion obligations to consider, for example, undertaking a handover, introductions to key customers, or documents to govern any post-completion residual relationships (e.g. employment contracts or Shareholders' Agreements if you retained an interest). All of this needs considering as a part of your deal.

Jargonbuster

Some commonly-used terms in business sales to be familiar with

APA: Asset Purchase Agreement, the governing document for your transaction when you are selling specific assets or parts of a business only.

Articles: the articles of association for a company.

BSA: Business Sale Agreement, the governing document for your transaction when you are selling all of your business which isn't in the form of a share sale.

CA: the Companies Act 2006, the governing legislation for companies in England and Wales.

Charge holder: person holding the benefit of any Security Documents.

CH: Companies House

DD: Due Diligence enquiries, being the questions raised by a buyer in anticipation of the sale.

DDQ: Due Diligence Questionnaire, being the questionnaire containing due diligence enquiries.

Debenture: a form of security document granting someone a charge over all assets of a company.

Deferred Consideration: monies which are being paid after the date of completion.

Demerger: the process of separating part of the business or its assets.

Disclosure Letter: the formal letter from you to a buyer containing disclosures against the warranties.

Disclosure: formal notification to a buyer of a matter, fact or circumstance which caveats warranties asked of you.

EBITDA: Earnings before Interest, Taxes, Depreciation and Amortisation.

HOTS: Heads of Terms.

ILA: Independent legal advice.

Indemnities: agreement to be, and remain, liable for a specific fact, circumstance or issue on a pound for pound basis (even if the buyer knows about it already).

Multiplier: A valuation technique whereby an industry standard multiplier is applied to your EBITDA to achieve a sales value.

Novation: a legal term that describes the process by which the rights and obligations of a party to a contract are transferred to another.

PG: Personal Guarantee, being agreement to be personally liable for the debts of another.

PSC: Person of Significant Control.

RLE: Relevant Legal Entity.

Security Documents: compilation of documents giving a charge holder a right over assets of a Company (or person) to secure a debt due (which may include Deferred Consideration). This may include a Debenture or a Share Charge.

Share Charge: a fixed charge over shares in a company, so that they cannot be brought or sold without agreement of the charge holder.

SPA: Share Purchase Agreement, the governing document in share sales.

Statutory Books: a company's official records, comprised of a register of members, register of directors (including usual residential addresses), register of persons of significant control, register of allotments and register of transfers. Copies of all board minutes and shareholder resolutions should also be stored with these books. (Please note that these are different from the public records held at Companies House).

Warranties: contractual promises which the sellers give to induce a buyer to enter into the contract.



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All the help you need

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