

Preparing your client for selling their business

Jonathan Silverman looks at how to ensure you're the one instructed on the company sale

More often than not, clients only approach their lawyers once a deal has been struck, yet it can be hugely beneficial to a client if you have earlier knowledge of a proposed disposal simply because there is much you can do to help ensure a successful outcome.

Always keep in mind when acting for commercial clients that they might be contemplating a possible exit from the business at some point in the future, especially if the client is reaching retirement age or is a 'serial entrepreneur', who will likely have a strategy in mind but will not necessarily volunteer to share with you unless you show a desire to be involved.

From a practitioner's perspective, the quicker one establishes with the client whether or not a sale is a short or medium-term goal, the easier it is to engage in the process of helping the client prepare for that sale.

Thinking ahead

Encouraging the client to think ahead serves both him and you equally well and enables you to strengthen the relationship ahead of a prospective transaction. While in the past it may have been 'given' that a lawyer who had acted for a business would expect to act on the sale, today the client's accountants may well make a recommendation as to a suitable lawyer to handle a business transaction. Alternatively, the client themselves may decide to shop around in the belief they can

either save money or find a lawyer with greater expertise than you. So how do you ensure that you retain the client for the all-important business sale?

- Try and engage regularly with the client as to their plans for the future. Identify whether they have a viable exit strategy in place and explain the options to them.



Try to convince the client to plan ahead even though a possible sale may be several years away

Maybe you know a prospective buyer?

- Talk through and familiarise the client with the whole process of a business sale well ahead of any buyer coming to the fore so that the client will understand the process. He will be more likely to appreciate your level of expertise and the reason for the level of professional cost which will be incurred in negotiating an agreement aiming to limited their exposure on warranties and indemnities.
- Try to convince the client to plan ahead even though a possible sale may be several years away. Encourage the client to start

considering who suitable prospective buyers might be, in many cases sale to a trade competitor or someone in an allied field might well be appropriate and making the right contacts early enough proves worthwhile.

- Clarify the contractual relationships with suppliers and customers. More often than not, much will have been left to trust and goodwill, an approach which might work well for the client but one that is less likely to impress a prospective buyer or their advisers carrying out the usual diligence process.
- Ensure the client starts to build their 'contract Bible' at an early date. It takes time but is hugely beneficial in avoiding those last-minute rushes to find that photocopier lease or fire alarm maintenance contract; trivial though that may sound crucial time can be lost in negotiations just when the client is looking for swift progress.
- Check the client has copies of all current contracts of employment and service agreements. Go through them ensuring they are thoroughly up to date and contain appropriate non-compete covenants. There's nothing worse than finding a buyer only to be faced with the management threatening to join a competitor.
- Where the businesses operates from premises which are either owned by the trading entity, or by the proprietor personally, or through a pension fund, discuss whether it's appropriate to

include the property in the business sale.

- Do not overlook intellectual property protection. Check that any brands are registered trade marks, and where the business is reliant upon software, check the appropriate assignments have been taken from programmers or designers.
- Discuss with the client well ahead of any sale whether he's envisaging selling for cash or would take shares or is prepared to leave an element of consideration outstanding after completion, maybe with some element of the price dependent upon future profitability. Warn the client that deferred consideration can simply lead to a tax charge or what would happen if the purchasing company were to fail especially if the appropriate safeguards were not included in the contract.

In summary, help the client to recognise your skills and your desire to protect him when he goes into uncharted waters. **SJ**



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