

A BRIEF GUIDE TO BUYING OR SELLING A BUSINESS

If you are thinking about buying or selling a business, whilst exciting, it can also be overwhelming to know where to start.

Seeking specialist advice at an early stage is recommended so that you can navigate the process with confidence and know what to expect throughout.

The advice needed will not likely just be legal, but may also be a mix of financial, tax, and marketing advice.

However, to give you an idea of the usual stages you can expect, below is a brief summary of the steps that you can typically expect in a usual transaction.

Confidentiality

As a seller, it is important not to give away key confidential information initially when discussing the sale with potential buyers.

Further, rumours of the sale of a business even before negotiations have begun can be damaging by unsettling employees, suppliers, and customers about the future of their relationship with the business and in turn, this may affect the value of the business.

It is therefore important to think about entering a confidentiality agreement at the outset of any sale/purchase to help protect the business being sold.

Share Sale or Asset Sale?

One of the first questions you will want to consider as a buyer or seller is how the business is going to be sold, i.e., will the sale take the form of an asset sale or a share sale?

In short, in a share sale the only change to the business is its ownership. The seller in this instance is the business owner/s and the buyer takes over the ownership of the business.

In contrast to this, an asset sale is where the trading business itself is the seller and the parties agree which assets from the business will be “cherry-picked” and sold to the buyer.

Before any discussions about the sale price can take place, it will be important to first establish whether the sale will be a share or asset sale as this will inevitably affect whether the price being paid is for only part of the business assets or the whole business.

The two processes additionally have different tax and financial implications and so it will also be key to seek financial and tax advice before deciding if it will be a share or asset sale.

Finding the Right Business and Buyer

Is there someone interested in taking over the business, such as other shareholders, family, or employees? If so, check any restrictions in the Company's articles or any shareholders' agreement that might affect the sale.

Alternatively, consider marketing the sale to a third party. As a seller, think about how to attract buyers and what marketing activities will be most effective.

Buyers should carefully evaluate the market to avoid pursuing a business that doesn't meet their needs.

Take time to ensure you are making the right decision by entering into the transaction and make sure the sale/purchase fits with your overall goals.

Value

As a seller, once you know which parts of the business will likely be taken over and a potential buyer has been found, you will then want to consider and negotiate the price.

Although there are several recommended methods to value a business, there is no set formula. Seeking financial and tax advice is therefore strongly recommended.

You may also find it helpful to obtain a formal business valuation from a valuer to ensure that you are comfortable with the price being negotiated.

One recommended approach is to seek guidance from a valuer who specialises in the particular industry the seller's business operates in.

The negotiation on the price paid could additionally include an arrangement for the price to be part paid on completion or even paid in a range of ways including in cash, shares, or a loan.

Funding

As a buyer, if finance is required to move the transaction forward, look at funding options and make sure the terms suit your circumstances, are available and affordable. Build in sufficient time during the process for the finance to be put in place.

Exclusivity

If you are a buyer, you may also want to consider requesting an exclusivity agreement from the seller.

In short, this protects the buyer from losing out after they begin the process and later the seller deciding to sell to a higher bidder. This will often be provided for a set time period.

Heads of Terms

Once the matters above have been considered, it is usual for Heads of Terms to be prepared. The Heads of Terms set out in writing the intention between the parties to enter the transaction and the key terms which have been agreed between the parties.

Due Diligence and Consideration of Documents

Just like when purchasing a house, any buyer will want to make sure that they know what they are taking on. The same situation applies to business purchases and after the key terms are agreed in principle, a fact-finding and investigation stage takes place, known as due diligence.

The purpose of the due diligence process is to provide as much information as possible to the buyer prior to committing to the purchase. For example, the buyer will want to know that they have a good title to the property of the business but will also want to know what the risks and liabilities of the business are.

As part of this stage, it is not unusual for further queries to be requested and searches to be carried out and so this stage can take a while.

To assist in making the process more efficient, a seller should have all their business paperwork in good order at an early stage. This will also make the business more attractive to any potential buyer.

Acquisition Agreement

To proceed with the sale, a formal acquisition agreement will usually be prepared. As previously mentioned, the type of agreement will vary depending on whether the sale is a share or asset sale.

However, whichever agreement is used will generally incorporate the agreed key commercial terms such as what is being sold/purchased, to whom, the timings, and the price paid, through to warranties (i.e. assurances given by the seller about the business) and restrictive covenants.

It is likely to take a bit of time to get the agreement in a finalised form to suit the interests of both parties, so leave plenty of time for this.

Ancillary Documents

In addition to the acquisition agreement, it is likely that supplemental and ancillary documents will also be required.

Typical examples include stock transfer forms, service agreements, assignments of contracts and real property transfers.

This list is not exhaustive, and the type and nature of the ancillary documents will depend on each particular matter. Again, it is likely to take time to negotiate and agree these additional documents.

Finalising, Signing and Moving to Exchange and Completion

Once documents are approved, final versions are prepared and circulated for signature. After signatures and funding arrangements are secured, the agreement is exchanged, with completion set for a future date or possibly the same day.

At the point of exchange, the parties commit themselves to the transaction and a failure to complete afterwards is likely to have serious consequences.

However, there may be certain approvals and clearances which result in a gap between exchange and completion being required.

Conclusion

The above only represents a snapshot of the various stages involved in the sale and purchase of a business. Therefore, much will depend on the individual circumstances of each transaction.

What is important, however, is that you seek advice at an early stage to ensure you are well equipped for the process.

Please note that the information in this article is not designed to provide legal or other advice or create a solicitor-client relationship. No liability is accepted for any loss caused in reliance upon its content and you should not take or refrain from taking action based upon the same.

This guide was written by Chris Biggs and Emma Locking.

For more information or if you have any questions, please contact them using the information below:



Chris Biggs
Partner | Corporate & Commercial

01844 268 322
cbiggs@lightfoots.co.uk



Emma Locking
Solicitor | Corporate & Commercial

01844 399 782
elocking@lightfoots.co.uk