

## Six top tips when selling a business

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The process of selling a business is not straightforward. Navigating the steps involved requires good planning and a clear strategy. As another generation of business owners prepare to monetize all their hard work, below are our six top tips for mid-cap businesses and their owners as they prepare for sale.

### Tip 1 - Focus on your people

Identify those people who have the specialised knowledge and skills that are key to your business success and involve them in the sale process early. Consider incentivising them with some transaction-based incentives but if this is not possible aim to just support and excite them. For staff who have never experienced a sale before, it can appear to be a daunting process. But it can also be very rewarding, and new career opportunities with the new owners may present themselves. The other side of this coin is to 'identify your gaps'. If you are an owner and you still perform a key function in the business (other than a directorial function) then try to find someone who can replace you - irreplaceable owners make for unattractive sale propositions. Having good people in key positions increases your appeal to a wider range of potential buyers and therefore your chances of selling at a desirable price.

### Tip 2 - Take a closer look at your contracts with key customers and suppliers

Can you improve the life of those contracts and their resilience at sale time? If they are due to expire or can be terminated early for convenience (ie no fault) try to negotiate an extension or a change. If these contracts are potentially at risk on completion of a sale (for example, counterparty consent is required to a change of control), see if you can agree an amendment that either removes or softens the impact of such a clause. Even if you cannot change anything now, it is good to be across these matters as a buyer will likely identify them and they may have a significant influence on the value a buyer places on your business. Alternatively, you may also be able to play down the importance of any 'at risk' contracts (for example, if there are suitable alternatives).

### Tip 3 - Focus on your intellectual property (IP)

If there is any uncertainty around what IP is owned or the strength of key licensing arrangements the business relies on, this can make a buyer nervous and potentially scupper a deal. This means, for example, checking contracts with contracted service providers (including software developers). Make sure it is clear and unambiguous that anything created by any of those persons while working for the business belongs to the business. Or, if not, ensure you understand the arrangement and will be able to address any concerns a potential buyer may have. You can often improve the situation by arranging for parties to assign particular rights to the business. This is much easier to do while a service provider is currently working for the business, rather than after the engagement has ended - hence the importance of getting onto it early.

### Tip 4 - Tidy up related party transactions

Often mid-cap businesses can have informal arrangements in place with their directors, shareholders, related companies or associates. For example, asset sharing arrangements, loans and/or guarantees. If there are a number of these arrangements in place, it can present an untidy picture to potential buyers, raising suspicion about the businesses' ability to trade on its own. Where possible, reverse out such arrangements or otherwise ensure they are clearly documented on arm's length terms. As a word of warning, if too many related party arrangements are put off, to be tidied up at sale time they can soak up a lot of time (and ultimately cost) as advisers are required to consider the impact of such arrangements and potentially deal with them in the sale agreement.

### Tip 5 - Agree early what you want from a sale

It is much easier to sell a business if all shareholders are on the same page. Agree early your preferred sale price and sale structure. This will include decisions about whether you push for share sale or an asset sale and whether you are willing to keep some value in the business after the sale (so a partial exit), or if you are set on a full exit. Your legal and financial advisers can take you through the pros and cons of the various structural options. Generally, you are more likely to appeal to a greater number of buyers if you remain flexible. On risk, a buyer's typical starting point will be to seek a full suite of warranties in the sale

agreement. You will be able to agree various limitations and caps on potential liability under the warranties but generally you should expect that a reasonably significant part of the proceeds from the sale would remain at risk of a warranty claim for a period. If this is something that does not sit comfortably with the seller group, you can talk to your legal adviser about how warranty and indemnity insurance can help to mitigate some of these risks.

### **Tip 6 - Engage with your adviser early**

You simply cannot beat experience when it comes to transactions and therefore tapping into the knowledge of experienced legal and financial advisers early will help you navigate the process and achieve the outcome you want. Advisers can help you understand the prevailing market conditions. The market experienced a 'wait and see' approach when Covid-19 first hit. Then there was a period of strong bounce back during 2021 followed by signs of a cooling off in recent months as the impacts of inflation flow into the economy. Some buyers in particular industries are seeking delayed settlement options for businesses that could be materially impacted by a particular Covid-19 event or mandate (for example, a red traffic light setting) but buyers are generally prepared to commit to completing transactions on businesses that have a proven track record - taking the view that such businesses will bounce back from any Covid-19 related setbacks.

For many people, some of whom may be selling a business for the first time, selling up can be a time consuming and stressful process. If sellers are able to adopt even just one of these tips, we expect that they will be better prepared and ultimately improve their chances of achieving a desired outcome.

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