Selling your business – netting a profit

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Selling a business can challenge an inexperienced owner-manager – from valuing the business to negotiating the deal, closing a successful sale calls for a range of skills and guidance from advisers.

In this special feature, *M&A* looks at the varied issues that arise during the deal and how vendors can ensure they maximise the value from their sale.

Hit the road

(www.mandamag.com/feature.asp?ArticleID=10601)

Selling your business is a once-in-a-lifetime deal for most owner-managers. As part of M&A's special feature, Tim Burke spoke to one vendor about the emotional ups and downs involved.

Glyn Williams started driving his minibus to and from the small Welsh village of Nantgarw in 1973. Each morning, he took a small group of miners across the Glamorgan countryside to work at the village's colliery, and each evening brought them safely home.

From these humble beginnings, Williams and his wife Jean built one of South Wales' best-known bus companies. When the nearby Windsor colliery closed, transferring its workers to Nantgarw, they bought a larger bus to cope with the extra passengers. By the 1980s, Glyn Williams Travel had expanded into European tours and, following market deregulation, operated buses on 30 routes around Cardiff, Newport, Ebbw Vale and the Valleys.

Despite this level of success, Williams admits he had "no real vision for the firm" in its early days, let alone any thought of how he would eventually retire: "I had no real plans to exit the business, it was an exciting business and every day was different."

Nevertheless, Williams was approached several times to sell his company. He turned down all offers until finally, earlier this year, transport group Stagecoach's Red & White Services subsidiary made him an offer – albeit undisclosed – that he couldn't refuse.

"Stagecoach's offer really came at the right time," Williams says. "I was ready to sell my stake in the business and concentrate on something new and have a bit more time for my passion, motorbike riding in far-flung places."

From interrogation to integration

Williams isn't alone in putting off exit planning until later in his tenure as business owner. A survey from Devonshire Corporate Finance last year suggested that 70% of owner-managers lack a formal exit strategy.

Nevertheless, most reach a stage in their career when they want to realise their investment and take a back seat or exit completely. Some will want to break free and get their hands on the cash tied up in the business they've built, others will find that market conditions have shifted and they no longer have the skills, investment or indeed inclination to carry on. Few will be lucky enough simply to hand over to a family member, which makes the process of grooming, advertising and selling the business crucial.

It can be an emotional time, particularly if the vendor has put years of their own time and effort into developing the business. "It's very difficult," says Glyn Williams of balancing the emotional and practical sides of a business sale. "I couldn't let go easily. I actually helped out Stagecoach for the first three days to ensure a smooth transition and hand-over."

Of course, much of the hard work starts before a buyer is found. Valuing your business calls for an objective review of tangible and intangible assets, and a professional valuation firm can be of great assistance in speeding up and clarifying this process. During this process, you'll want to groom your business, leaving it at its most attractive to a potential buyer during the marketing stage.

You'll need to be prepared for high levels of scrutiny from interested parties. Williams describes the due diligence process as "like an interrogation at times", and rightfully so – no buyer wants to invest in a business that could hold any nasty surprises farther down the line.

Advisers, as ever in deal making, can prove vital. Williams, for example, was lucky enough to have built up a relationship with accountancy firm Broomfield & Alexander since starting the business in the 1970s. He describes the firm's help in liaising with other advisers and smoothing out the deal process as "very important".

The art of motorcycle maintenance

Whether or not you remain with your business after selling it depends on several factors, including your career aspirations and whether you sign up to an earnout agreement whereby some of the consideration is deferred.

Following three days overseeing his business' integration with Red & White, Williams is underway with his post-sale plans. Several years ago he bought some local land on which he plans to build 18 houses, selling some and renting out the rest. Later this year he'll be back on his bike and off to Cambodia.

"I meet up regularly with 11 friends from across the world and set of on a gruelling 10-day ride through extreme and remote jungle," he says. "It gives me a real buzz."

Tim Burke

Price is right

(www.mandamag.com/feature.asp?ret_link=%2Ffeature%2Easp%3FArticleID%3D10601&type=notLogged&ArticleID=10602)

For most owners, selling a business is a difficult and emotional time, especially owner-managers who work in the company every day. Phil Burnley, a partner at business consultancy SPS, looks at the issues beyond due diligence that can affect the price of a sale.

Most owners have never sold a business before. It's much more uncertain than selling a house. With a house you can get a reasonably reliable estimate of price or value from the recent history of similar house sales in your area, and will probably get within 10% of that valuation. But all businesses are different and have different valuations depending on who the buyers are and how well structured the business is.

As with everything on sale, the business is only worth what someone else will pay for it. Since this is likely the biggest commercial decision owner managers will have to take, it seems obvious that the sales process should be planned and the owners take the necessary steps to enhance the value. Most businesses take a minimum of a year to sell, even if the owners do not take steps to maximise value. It seems sensible to take a little longer to get a better price.

Owners can do a lot more than simply grooming the business. In general, grooming ensures that there are no hidden issues that would affect the sale or the value the buyers will put on a business. At a minimum the owners must ensure that all the issues the buyer will want to look at during the due diligence process are clear, presentable, and tell a good story.

But this will not, on its own, get the best price. Remember that for every £100,000 you can put into the earnings line, the business value improves by anything between £400,000 and £800,000 – more for a strategic sale, when multiples of 10 to 15 times earnings can sometimes be gained. A good accountant can help maximise the profitability, but this must be done in a sustainable manner. Opportunities to increase sales without increasing overheads in the same proportion should be explored as long as the business has the capacity to deliver. In this scenario more sales, even at lower margins and additional marketing costs, will quickly show in the bottom line and directly increase the expected price.

Businesses don't improve value by having cash in the bank; cash must be working for the business and creating earnings. Asset value alone doesn't improve value. Value is increased only when the assets are working hard for you and generating a strong ROI, adding to the bottom line.

There are many things an owner can do with the business to improve value before the sale:

Implement transparent procedures with measured performance targets

As businesses grow, their internal processes and procedures necessarily change. In many owner-managed businesses these processes are "understood" by the owners and senior managers, but never documented. As Mike Robson, an SPS partner specialising in helping prepare businesses for sale, says: "In general the more systemized the business is and the more its operations are codified, the easier it will be for a new owner to operate the business or integrate it with an existing business and the higher the value they will put on it."

The importance to a business and a potential buyer of documented and measurable processes can be seen in the sales process. The accounts only show the sales history of the business, not what the immediate sales future might be. If a company tracks sales enquiries, enquiries to quotation conversion rate and quotation to order conversion rate on a monthly basis, a prospective buyer can get a pretty good measure of the immediate future.

Develop business plans that show future growth and improved profits

The best way to enhance the value of the business is to demonstrate, through three or five-year business plans, the potential for growth and increased profit. This will show that the true value of

the business is more than the estimated value derived from the profit before tax in the accounts. These plans should reflect the measurable growth indicators and trends developed above. By doing this the plan will have greater credibility and encourage an investor to pay the higher price.

Have well-documented personnel records

All too often the employee records in an owner-managed business are haphazard and inconsistent. The owners rely on their memory and personal knowledge of the employees to "manage" them. The new owners cannot do this and will need full and complete records. Get every employee to complete or update their CV, have job specifications prepared for every level, create an organisation chart and update the personnel records for each employee. The new owners will know who is supposed to do what and who to turn to when they take over.

Reduce risk

Any aspect of a business that is perceived by a buyer as a risk will reduce the value and action should be taken early to reduce the risk. A key issue is the balance of sales between repeat business with established customers and new business. The strongest position is clearly a good balance between the two and a track record of winning repeat business from last year's new customers.

There could be many other issues that need to be looked at. For example, the buyer should see that key employees are likely to stay with the business when the owner leaves because they are benefiting from good performance related incentives.

Remove owner dependency

One of the major challenges when preparing a business for sale is the profile of the current owners – a problem that can be intensified if there is only one owner. "It is often quite difficult to impress on the owner that a major hurdle to overcome in the sales process is preventing the value walking out with him or her," says David Mellor, an SPS partner based in Sussex. He continues: "Quite often this manifests itself in the company's external relationships; it is one thing to affect a relationship handover with the bank – it is used to it. It is quite another to manage the relationship transition with key suppliers and key clients."

It is clear that a business is easier to sell if it is growing and operating successfully without the owner's daily involvement. If the owners can "retire" before the sale, the investor knows they will not have to rely on their expertise and knowledge to keep the company running profitably.

Finally, make sure the business is marketed to strategic buyers

The best way of getting the highest price for a business is to have several competing buyers buying for strategic reasons. In a strategic purchase the benefits to a buyer of owning your business extend beyond the mere profitability now or even the increased profitability in the future. It includes the added profitability to the buyer's business. The value of the new business exceeds the values of the two businesses put together.

"In preparing a business for sale its owners should identify the attributes of their business that will be appealing to external investors and those that will be unappealing," Robson says. "As time allows, they should develop the positive and mitigate the negative attributes so as to develop a business that is attractive to investors, leading to a quicker sale and a higher transaction price."

Stay ready

(www.mandamag.com/feature.asp?ret_link=%2Ffeature%2Easp%3FArticleID%3D10601&type=notLogged&ArticleID=10610)

Ken Dickson looks at the process of grooming your business for sale.

Grooming a company for sale helps to optimise the post-tax benefit to shareholders by enhancing a company's attractiveness to potential buyers. Typically lasting two to four years, the process is undertaken by company personnel along with guidance and support from external advisers.

Strategic planning

Grooming is about putting in place strategies to optimise value while removing factors that may have a negative impact. A common key aspect is transitioning the company from a "lifestyle business" to a more commercial enterprise.

Initial internal due diligence is highly recommended. This provides an indication of how potential buyers would view the activities and functions of the target company.

The action-oriented report might form the basis of a Memorandum of Information which, if kept up-to-date, could be provided to buyers to help speed up their own due diligence and hence the sale process.

Planning is critical. The development and execution of a clear, cohesive and realistic business plan is essential to creating a valuable on-going enterprise. As a business plan is different to the owners' sales plan, the two must be consistent.

Once prepared, the plan should be reviewed regularly and used as the basis for performance management throughout the company.

By considering with corporate finance advisers how best the business should be developed to increase value, structural changes will become apparent. One of these may be the need to increase profitable sales, often by acquisitions. Appropriate management pre- and post-acquisition is important for effective integration.

Finance

Good financial management, tight controls and robust forecasts are necessities for business success and hence value generation in the short and long term.

Good practice requires:
- appropriate financial resources, controls and systems;
- a focus on increasing sustainable, underlying profit;
- reducing all unnecessary expenditure;
- improving operational cash-flow;
- effective internal control processes;
- competent, knowledgeable finance staff.

Management

For long-term success, a management team must have the right blend of comprehensive and complementary skills and be clear about the company's objectives and their own potential rewards from the sale.

Aim to build a competent, independent management team that can run the business successfully without significant ongoing involvement of the owners. Develop good corporate governance and demonstrate clear adherence to regulatory requirements.

Summary

In preparing for sale, do not neglect ongoing operational business management. Potential buyers might approach you unexpectedly. Be prepared and ensure your company is always in "sale-ready" mode.

Ken Dickson is managing director of axiom-e, a strategic financial management consultancy with consultants acting as part-time finance directors to fast-growing companies. For details of axiom-e's services, see www.axiom-e.co.uk or phone 01223 839579.

Focus yourself

(www.mandamag.com/feature.asp?ret_link=%2Ffeature%2Easp%3FArticleID%3D10601&type=notLogged&ArticleID=10603)

Laurence Whitehead explains how to maximise the sale value of your business.

For most shareholders, having a clear and realistic strategy for exit is a major consideration. Selling your business is a complex issue and, if you get it wrong, decades of hard work could be wasted.

Consequently, planning well in advance for the sale can enhance value considerably. This planning needs to focus on genuine change, not just aesthetic improvement.

You need to consider four major areas: financial, management, legal and tax.

Financial

Accounting policies – your profit recognition policies may be conservative compared to competitors and listed companies, leaving immediate scope for higher reported profit levels. Check this out sooner rather than later.

Capital expenditure – a balance needs to be reached between under- and over-investment. If you have invested too little, a potential buyer may use this to negotiate a lower price for your business. However, over-investment may lead to you not realising the full value of this investment upon sale.

Forecasts – realism is essential if the buyer is to gain comfort from his due diligence process. Any attempts at superficial overestimates will ultimately be discovered and dissuade the buyer from proceeding with the acquisition.

Non-recurring costs – you should ensure that these are clearly highlighted to the buyer so that the value is based on a higher underlying / sustainable earnings figure.

Management

A business with a strong management team will be a far more attractive proposition to a buyer. Reliance on the owner alone raises the risk profile considerably, thus reducing the price that a buyer will offer.

Giving management incentives to assist in grooming the business for sale and to stay on post-sale are essential elements of a successful sale process.

Similarly, the buyer may insist that the owner remains involved for a handover period after the sale, to reduce the risk at the outset.

Legal

The buyer will carry out extensive legal due diligence to gain comfort about issues such as material contracts, assets' ownership, environmental issues, Companies House filings, and trademarks and patents.

Therefore, a well-run, "clean" company with no unresolved legal issues will be of far more interest to the buyer.

Tax

You need to ensure that all NIC, PAYE, VAT and corporate tax payments are up to date or that the reason for any delay is clearly documented.

In this respect, sale and purchase agreements include extensive warranties and indemnities and you, as the seller, must provide them in writing as part of the legal documentation.

To conclude: the more prepared you are when the sale process commences, the easier it is to negotiate from a position of strength. Grooming your business for sale is therefore an essential part of the sale process and is neglected at your peril.

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In the middle

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Adrian Ward, managing director of AMS Business Sales Ltd, looks at the role of an intermediary during deal making.

Valuing and selling a business calls for considerably greater skills than most people realise. I've seen too many vendors get too little money when it comes to the sale –most are lost without the help of an adviser who understands the process.

Using an intermediary to handle a sale gives a vendor the benefit of its experience. At AMS we're consistently selling businesses, so we're very comfortable with the marketing, negotiating, project management and completion stages of the process.

Of course, we can't make any guarantees. A business is worth as much as a willing buyer is prepared to pay and a willing seller is prepared to sell for. But while demand sets market price, experience gives you an understanding of where the market is heading and lets you give clients guidelines. A quality intermediary firm is just able to make sure what a vendors business sells for if the best market value.

We give vendors a personal service and get the best price for them. We'll get together for a meeting to discuss the valuation, working out the financial and managerial strengths of the business and its possibilities in its marketplace. We then give the owners a valuation based on that information. If they like what they hear we write an information memorandum. We're very hands-on in the service we give, providing a bespoke sales and marketing strategy for each sales project we undertake – using our existing database, the Internet and mail shots.

Once the purchasers are on board we handle all negotiations and attend every meeting between vendor and purchaser. We take the offers to a conclusion everyone's happy with, then work out heads of terms and from there project manage the sale to completion.

A purchaser recently told us that he's always pleased to find a business we're not representing because he knows he'll buy it cheaper than if it came through us. That's good news for us to hear – an agent's role is to maximise the selling potential of a business, and we have the time and experience to do that.

Expect the unexpected

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Neil Humphrey, a divisional director at Waterman Environmental, looks at adding value through vendor due diligence.

Business vendors are increasingly taking control of the sale process to avoid unexpected negotiations at the 11th hour, which often adversely impact the value of the transaction or place the deal in jeopardy.

While environmental issues are rarely deal stoppers, they are often used to negotiate price reductions or weighty indemnities which in turn impact the vendor's balance sheet.

About 25% of companies discover environmental liabilities post-deal, with many of the unforeseen costs attributable to inadequately scoped due diligence. In cases where environmental due diligence has been poorly scoped, this often means that the process has to be repeated during the sale process, wasting management time and resources and inevitably delaying the deal completion.

Well-scoped and managed vendor due diligence, undertaken at a suitable time pre-sale, can enable identified issues to be resolved or managed, adding value to a business and expediting the sale process. In addition, selling with information can protect the vendor from future claims, assuming that the sale and purchase agreement is appropriately drafted.

When scoping VDD, it is imperative that vendors liaise with their consultants on the expected deal process, and ensure that reliance on the reports can be passed to the purchaser and respective funders easily. It is also advisable that the terms of reference of the VDD be disclosed to the purchasers so that they have confidence in the scope of work undertaken.

For this reason EDD is now an accepted part of wider transaction due diligence, reflecting the fact that the environment has moved up the corporate agenda. Vendors and purchasers must get to grips with an increasingly complex regulatory regime, and appreciate the commercial and reputational risks linked to environmental issues. By understanding these issues pre-sale, vendors can either develop mitigation strategies to manage these risks, or at the very least be prepared to answer likely questions during the purchaser's due diligence.

When done well, vendor due diligence can add value to a transaction, expediting the deal process and giving the purchaser the confidence that the business is well managed and commercial risks appropriately identified.

For more information, contact Neil Humphrey on n.humphrey@waterman-group.co.uk or 020 7928 7888, or visit www.waterman-group.co.uk.

Under cover

(www.mandamag.com/feature.asp?ret_link=%2Ffeature%2Easp%3FArticleID%3D10601&type=notLogged&ArticleID=10604)

Richard Wrigley, a partner at law firm Martineau Johnson, investigates warranty and indemnity insurance and the issues that arise for sellers.

Warranty and indemnity insurance is most useful where there is a commercial gap between the warranty cover offered on the sale of a company and the amount of warranty cover desired by the buyer.

This typically arises in the following scenarios:

- One or more of the sellers is a VC that as a matter of policy refuses to give warranties;
- The seller is returning the consideration to lenders or shareholders;
- One or more of the sellers has solvency issues or is outside the UK where recovery will be difficult;
- The sellers include trustees who have no knowledge of the business and are unwilling to put the assets of the trust at risk for warranty claims;
- Some of the sellers are unwilling to give full warranty cover because of a lack of knowledge or unwillingness to take on risk.

Traditional model

In a typical seller-side W&I policy, the sellers give warranty protection of a greater sum than their individual receipts, with the excess over the consideration received by them being covered by insurance.

Although this appears attractive, there are several issues that mean both sellers and the buyer will have difficulties with this proposal.

- The extent of management fraud or material non-disclosure is a key exception for the buyer (and sellers), who are relying upon management being able to call upon a valid insurance policy to satisfy a warranty claim.
- Issues that have come to light through the due diligence or disclosure process will be excluded from the insurance policy, which means that some form of price adjustment will be necessary.
- All forward-looking warranties are excluded, e.g. collection of debtors – and sometimes the definition of "forward-looking" can be interpreted widely by underwriters.

Buyer-side policies

Some of the problems with seller warranty and indemnity insurance policies can be overcome by the buyer taking out its own policy. In this scenario the sellers give warranties in the SPA capped at their consideration and the buyer takes out an insurance policy as a top slice above the extent of the seller's warranty cover.

As it is the buyer that is the proposer, there is no risk for the buyer in management fraud or material non-disclosure undermining the insurance policy. However, the buyer's knowledge is now relevant to the insurance policy and the buyer will need to be sure that the results of its due diligence, whether legal, financial or commercial, are properly disclosed to the insurer.

W&I insurance may well prove critical to sellers in getting a difficult deal to completion and the extra costs bearable if the W&I insurance ensures a deal can be done.

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Everything must go

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Caroline Armitage, partner at Thomas Eggar, reviews recent deals.

During the first quarter of the year, the FTSE 100 has seen some of its strongest activity since the slump of 2001. This is largely due to a buoyant acquisition market.

However, it's not just the City enjoying this upturn. With most deals between £1-100 million, firms in the Southeast are also seeing record numbers of transactions. This reflects the strong corporate finance market across the region.

With increasing numbers of buyers and vendors taking advantage of low interest rates and a beneficial tax regime, we at Thomas Eggar have been extremely active advising vendors throughout the process of selling their businesses.

The largest deal we have been involved in so far this year was the £80.2 million public offer for Wyndeham Press Group plc by Daybreak Acquisitions Ltd, an Icelandic quoted company, which completed in early May. This deal is a good demonstration of how larger deals are often handled (at least in part) outside London and emphasises how the Southeast's corporate finance capability too is taken increasingly seriously.

The Wyndeham deal demanded a high level of expertise, something that regional firms such as Thomas Eggar are now much better placed to handle with an influx of city lawyers looking for quality work and a more balanced lifestyle.

As a further example of how capabilities outside the City have increased, the corporate finance department at Thomas Eggar also advised Milan Mandaric on his disposal of a 50% interest in Portsmouth FC to Alexandre Gavdemak. In an age when the profile of anything Premiership could not be greater, we are seeing regional firms such as ours working on high-profile deals that in the past might have solely been the domain of London firms.

Other recent business sales in which Thomas Eggar have advised included Traffic Management Products' £6.5 million disposal to Dewhurst plc, kitchen manufacturer T&A Carter's sale to a Portuguese company for £2.5 million and Ark Group's £14 million sale to Wilmington Group plc. These sales are further evidence of a quality regional outfit's burgeoning ability to handle sales that involve either cross-border considerations and/or listed companies.

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Page turner

(www.mandamag.com/feature.asp?ret_link=%2Ffeature%2Easp%3FArticleID%3D10601&type=notLogged&ArticleID=10605)

Ian Gibbon details the sale and purchase agreement.

A careful first read of the sale and purchase agreement by an owner-manager hoping to sell a business for the first time may be a sobering and frightening process.

It is likely that they will never have been party to such a complex or detailed legal document. Additionally, the pitfalls of ensuring the accuracy of the document can wipe out all the financial benefits that may have accrued by the entrepreneur.

Perhaps the first hint about the enormity of the completion process is the sheer size of the SPA, which currently runs to some 125 pages compared with 85 to 90 about five years ago.

The key reasons for the increase in size are two fold. Issues such as environmental concerns, employee legislation and contracts, intellectual property ownership and global trading practices all impact on matters that need to be clarified in the SPA. Secondly, the world becomes ever more litigious, and lawyers acting for both parties are keen to protect their clients from known and potential claims.

From the vendor's point the key paragraphs will be the warranty section. This will be more extensive in a share sale where shareholders are effectively confirming that all financial, commercial and taxation matters in the history of the company have been transacted in a correct and legal manner. In the case of an asset sale the extent of the warranties are not usually so far reaching and therefore offer greater protection to the vendor.

All corporate financiers will advise shareholders to run their company in a manner that they can sell it tomorrow. Where there are issues or problems, the company will be advised to eradicate these and sort them out. The importance of this grooming process will be seen when the SPA arrives and the parties are invited to put their signature to it. Put simply, it may be considered to be how well a vendor wishes to sleep and enjoy his retirement post completion.

Ian Gibbon is a partner at charted accountancy firm Alliotts.

Getting away with it

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Purchasers of businesses sometimes try to reduce (or "chip") the price they have agreed to pay. Simon Havers, a Director at Baird Capital Partners Europe, considers what can be done to address the issue.

When Baird Capital Partners Europe commissioned a survey of UK corporate finance intermediaries about their views on price chipping, respondents saw private equity firms and trade buyers as equally guilty of the practice. They also felt it was an inevitable part of the bidding process and an ongoing issue.

Respondents said that buyers chip prices because once a deal has progressed to a certain point it becomes difficult to back away. Knowing this, some buyers outbid their competitors to get through to the last round with the firm intention of chipping the price later in the process. Most thought buyers were to blame but many believed that sellers were also responsible for inviting offers on the basis of inaccurate or (often inadvertently, but sometimes deliberately) incomplete information which did not stand up to due diligence.

Sellers and intermediaries can reduce the likelihood of price chipping by avoiding buyers with a reputation for the practice and ensuring that information disclosed is complete and accurate. Sellers should take references on short-listed bidders from people who have sold businesses to those buyers. They should gather carefully the information to be presented to buyers, and not deliberately hide issues.

Keeping as many parties as possible in the running for as long as possible may work well for sellers in large deals, where it is economic for buyers to devote many man-hours to a deal even where the probability of winning is low. But for smaller deals, keeping too many parties in the running will reduce each bidder's perceived chances of winning exclusivity, which in turn will reduce their willingness to devote resources to the bid process. Thus, this tactic may lead to lots of bidders who aren't doing enough work to understand the business; as a result, their bids are not robust enough to be relied upon.

Sellers need to choose a realistic number of buyers and give them proper access to the company and management before requiring final bids. This is likely to increase the price that buyers are willing to bid and the level of certainty that can be attached to that price.

Baird Capital Partners Europe avoids price chipping because we believe that:

- this is the professional and ethical way to behave;
- we cannot afford to have our executives (and expensive advisers) working on deals which do not then complete; and
- every man-hour a private equity executive spends trying to chip prices would be better spent trying to add value to his portfolio companies.

Price chipping does not have to be inevitable in a deal as long as the intermediaries and sellers give buyers full information and ample access to the business and its management, whilst avoiding the persistent offenders who believe price chipping is their right.

For more information, visit www.bcpe.co.uk

Mind your step

(www.mandamag.com/feature.asp?ret_link=%2Ffeature%2Easp%3FArticleID%3D10601&type=notLogged&ArticleID=10606)

Adrian Cutler outlines some issues to address before selling your business.

The sale of a business or company requires preparation. Many aspects of a sale must be considered by a seller before taking the target to market.

Time spent on initial preparation saves time, effort and money in the long run and helps avoid last minute hiccups in the sale process.

Perhaps you're a few years away from retirement and fed up with trying to keep ahead of the game. How should you start the ball rolling? Although each transaction is unique, there are several recurring issues which you would do well to consider early in the process:

Employees: If only part of your business is being sold or the company being sold operates as part of a group, which employees will be retained and which will pass with the sale? Are any employees used across the group? Check that the correct legal entity employs these individuals. When will employees be told about the sale?

Premises: Are the business' premises freehold or leasehold? If leasehold, landlord's consent may need to be obtained, and you and the purchaser need to consider rental costs and repair obligations. Have any of the principals given personal guarantees to the landlord? The purchaser needs to step into your shoes and releases from existing securities must be obtained before the sale completes.

Accounting: Is the company being sold dealt with separately from an accounting perspective or consolidated with any other retained group companies? Purchasers will spend a great deal of time scrutinising the financial performance of the target and ensuring your financial records are accurate and up-to-date is critical.

Due diligence: Any purchaser will expect to undertake full commercial financial and legal due diligence on the target. Time spent before taking the target to market looking at key employee contracts, material customer and supplier contracts will save a great deal of time in the due diligence process and present a more attractive proposition.

Purchasers: Once the seller has considered the above, it is necessary to think about what advisers to retain. There are advisers who will run the marketing (and perhaps tendering) process for the seller, produce information packs for prospective purchasers and organise the due diligence process by prospective purchasers. The seller, with or without such advisers, needs to decide what information it is prepared to disclose, to whom and at what stage. Prospective purchasers should be required to enter into confidentiality agreements before any information is released to them.

Legal aspects: A seller is well advised to involve its lawyers at an early stage of the procedure. The perception that involving the lawyers two weeks before an anticipated sale date keeps costs down is unfortunately false. If involved earlier in the process, lawyers can provide timely advice on regulatory and other issues, protect their clients and ensure that issues not in the client's best interests are not produced as a fait accompli at the stage where lawyers become involved.

After the deal is signed, memories fade (conveniently sometimes) and all that remains to document a deal is the signed agreement. If the lawyer understands the issues negotiated and accepted by all parties, the more likely it is that this legal agreement accurately reflects the parties' intentions.

Adrian Cutler is a partner at law firm Cobbetts

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Mark O'Halloran examines the impact of strong branding on a business' value.

If you want a good selling price for your business, you need to ensure it has a strong brand value. I'm not just talking about registering trademarks and domain names, though that often has a role. I'm talking about the following question: who do the customers/suppliers do business with? If the answer is "the owner", the goodwill in the business is less than if the answer is "the team" or simply "the company".

Owner-managers in particular need to plan ahead. As well as developing a clear and distinct identity for the business, they need to ensure the quality of service/product they deliver is associated not simply with their personal leadership but with the company and the whole team behind it. Training up and bringing forward your sales, technical and management staff shows the outside world that even if you're not around, the business you've created or developed will still be going strong.

What's more, for many small and medium-sized businesses, a management buy-out is usually the owner's best exit option. So developing the brand value of the business also involves good succession planning. And good succession planning means better motivated staff as they get more recognition and responsibility which means better performance in the meantime. Win-win-win, you could say.

Mark O'Halloran is head of the corporate team at Stevensdrake Solicitors.

Who can help?

(www.mandamag.com/feature.asp?ret_link=%2Ffeature%2Easp%3FArticleID%3D10601&type=notLogged&ArticleID=10611)

Jonathan Grant looks at managing exit planning for SMEs and the importance of advisers working in concert.

We have seen a marked change in the Southern M&A market during the past year. Profitable businesses with a strong strategic position have received direct and often attractive approaches from trade players. Depending on the sector, PE multiples are becoming very attractive.

We always try to persuade clients in this position to take on a professional corporate finance adviser to support them through this process, in addition to ourselves as the legal team. This is critical to clients achieving the best price, avoiding misunderstandings in the early negotiation process and managing their affairs to ensure a deal can be delivered on time.

Given the overall level of CF advisory fees (success fee and the likely interim fees for data room and info memorandum), clients are often resistant, taking a line of "well, I know the price I want and I have a buyer, so why incur the extra cost?" The implication being that we as their lawyers can support them through the process.

We can and do satisfy the advisory need; the fact that we act for more corporate acquirers than exiting owners puts us in a strong position to do so. However, our strong preference is to encourage the use of a professional CF advisory team. This will help to keep the client and his team on track, both during negotiations and financial due diligence, and working the negotiation process, so as not to antagonise or hit pressure points for the buyer. Experienced buyers will have an established course of dealing; experienced businessmen can find themselves in a negotiating position, or under time pressure, they did not expect.

At times like this we are reminded of the complementary work of lawyers and CF advisory firms and will continue to encourage their use for clients planning and delivering an exit. How many times does the original offer turn out to be a stalking horse for a more reliable or profitable exit?

Jonathan Grant is head of the corporate finance team at asb-law.