



Thinking of selling your business – Think again.

September 5, 2018

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You've worked hard, built up your business, and now you are thinking of selling your business and moving on. Before you do it pays to consider whether or not you and your business are in a position to sell.

There are a number of steps you should consider before thinking of selling your business and in this article, we are covering a few of the main ones.

1. Talk to your accountant or business advisor

There are a number of factors that you should discuss with your accountant or business advisor:

- Is this it the right time to sell? Have you considered capital gains tax implications, transition to retirement issues, structuring and your general tax affairs? Signing the contract to sell your business is significant and could cost you thousands of dollars in unnecessary tax. Talk to your accountant first before jumping in to signing that great deal which is presented to you. It may not be all that great in the end if you have not considered these issues first.
- Are there any personal loans to the business which need to be considered or dealt with?
- What is your business worth? It is worth getting your accountant to go through the exercise of a book valuation to give you a starting point. You may have structured your business affairs to take advantage of tax minimisation strategies but these don't necessarily translate into value when you have a look at what the business is actually worth. You may find you need some time to structure things differently so that you can get the most value out of your business when you ultimately sell.



One of the things an incoming buyer is likely to require is to look over the books and accounts of the business to confirm the performance of the business (and its value). Ask yourself:

- Do you know where all of the documents for the business are?
- Do you hold formal agreements for your contracts with suppliers or customers or are you relying on a handshake? If you do have contracts, are they assignable and will the buyer of the business be entitled to take over those contracts when you transfer the business to them?
- Is your lease up to date? Have you considered the conditions and timing of any assignment of the lease – this may be significant when you consider what ultimate terms you may agree to in the business sale agreement.
- What are the assets of the business? Who needs to be a party to the business sale agreement in order to transfer the assets of the business to your buyer? Many people fail to realise that they have structured their business in such a way that some of the assets may be held personally or in an entity which is different to that which owns the business. Accordingly, understanding what you are selling and who is able to sell it is important.

3. Consider Employees and employee entitlements

If you have been running your business for some time, you may have some long term employees. Those employees may have significant employee entitlements which may need to be dealt with at the point of sale. There are different issues to consider whether the employees are staying with the business or being made redundant. Significantly, long service leave, annual leave and sick leave entitlements for each employee need to be known and understood so that you can properly consider the cost of selling your business (you may find yourself making employees redundant and having to pay out these entitlements and possibly redundancy pay if the employee is not transferring with the business). Equally, even if the employee is transferring with the business, there will be some adjustment of these figures at the time of sale. This is one of the most overlooked aspects of a business sale but should one of the more important aspects of the business when you are considering whether to sell your business.

4. Who owns what

Do you own all the aspects of your business or are you relying on licences or other agreements to operate your business with certain assets? You can't sell what you don't own (you can try but we wouldn't recommend it). Do an asset audit, find out if there are assets which need to be dealt with differently, for example:

- If you operate under your company name, but you are not selling the shares in your company but the business only, will you need to arrange to change the name of your company so that the buyer of your business can register and use your name as a company or business name?
- Do you operate under someone else's name (perhaps your business is a franchised business) in which case, you will need to consider the terms of your franchise agreement as part of your business sale strategy? In some cases, your franchise agreement may require you to offer the business for sale to the franchisor first.
- Are any of your assets affected by business finance? Have you considered whether you will be in a position to pay out any finance on those assets at settlement of your business sale.

5. Clean up your backyard

If your business operates out of leased premises, have you considered the following?

- What the landlord's requirements may be to transfer the lease?
- Does the lease contain a first right of refusal for the landlord to purchase the business?
- Have you even got a lease? Your lease term may have expired and you may be occupying your premises under a "holding over" arrangement. While your landlord may be happy to keep renting to you (he or she knows you after all) they may have other plans for the property which you may be unaware. Understanding whether your landlord will grant you a new lease or will grant the new owner of the business is very important.
- Is everything documented with respect to the occupation of your premises? Sometimes the landlord "lets you park your car in the laneway" but such a right is not documented anywhere. That right may be important to an incoming buyer of the business, and if you can you should consider whether these unwritten agreements with your landlord should be documented.

If the location of your business is important to its value, then tidying up the lease is an important thing to do before selling your business. It can also take the most time so consider doing it early as part of your preparations for sale. You can always include such requirements in the business sale agreement, but only if you know about them, so turning your mind to them sooner rather than later will be to your advantage.

Conclusion

Selling your business can be an exciting experience, but if you aren't in the best position to sell then you may find yourself having more stress and worry than you need, and unexpected items could cost you time and money as well as your buyer. The above list is not exhaustive, and as each business is different, the issues that will affect your business sale may be particular to you (and may not be on this list).

At JHK Legal our team has years of experience in undertaking business sales and we can help you figure out the answers to the above questions in respect of your proposed business sale. If you are thinking of selling your business then you should give us a call first, we would be happy to make the sale of your business as stress free as possible.