



briefing

Corporate and Retail - October 2009

Retailers - work out your exit strategy!

Over the last few months a number of our retail clients have contacted us to discuss potential exit strategies.

Many retailers will have been planning to sell their business during the last 18 months, but given the current economic climate, those plans now need to be re-considered and a new timeframe planned.

Our Corporate team has sold numerous businesses - small, medium and large - and has built up considerable expertise on the major issues that need to be considered, and the mistakes that need to be avoided!

We thought it might be useful to share that expertise, which we set out below:

Preliminary considerations

- Do you intend to conduct an orderly “auction” of the business to test the market or is there a settled, identified buyer involved?
- Is the sale to take the form of a sale of shares in a company or a sale of business and assets?
- Has appropriate tax planning been carried out to ensure the most is made of available reliefs such as (for the moment at least!) entrepreneur’s relief and annual allowances?
- Are you intending to dispose of all or part of your business or investment? If part only, will some preliminary restructuring be required in order to “ring fence” that part and to minimise the tax consequences?
- Are you willing (and to what extent) to continue to have some involvement post-completion? Is it likely that this will be necessary in terms of business

continuity and/or to protect some deferred or contingent part of the purchase price?

Pre-sale preparation

- Ensure “bugs” are remedied – legal impediments to asset ownership, contracts not signed, vague employee/consultant arrangements, insecure premises arrangements, regulatory requirements, etc.
- Ensure financial management, records and information systems are accurate and adequate.
- Remove or acquire “personal” assets used in the business (dividend or purchase?).
- Hive out parts of business which are not to be sold and carry out any tax related restructuring.
- Ensure minority shareholder or option issues are dealt with and that arrangements relating to the recipients of the purchase price (whether for tax planning - e.g. splitting of ownership with spouse - or to reflect “gentleman’s agreements”) are implemented and formalised.

Property aspects

- Property investigation is going to be a vital part of the due diligence process carried out by your buyer’s lawyers.
- They will analyse each lease/title carefully. Make sure you hold the originals of all your leases (or at least know where they are!) and check that all Stamp Duty Land Tax has been paid and, if applicable, the lease has been registered at the Land Registry
- Make sure that you have full service charge records – you should have copies of the last 3 years’ service charge accounts, a budget for the current year, copies of the latest demands received from your landlord and an up-to-date buildings insurance schedule . If you do not have this information – approach your landlords for the information now – rather than suffer delays later in the process.

- Are there any outstanding rent reviews? If so, try to get these settled as soon as possible. An outstanding review will give a buyer the chance to chip away at the price.
- Have you carried out any unauthorised works to your unit? If so, consider making an application to your landlord for retrospective consent to alter.

Appointing advisers

- Ensure legal and financial advisers have a strong track record in business and/or property investment transactions – this is your end game, get it right!
- Don't be put off by lack of proximity or small variations in fee estimates – expertise and experience is more important.
- Agree terms of engagement clearly, including fee estimates and scope of works covered within the estimate.
- Ensure they clearly understand your end-point requirements and any "lines in the sand".

Agreeing terms

- Be clear as to your bottom line – be prepared to walk away if necessary
- When negotiating the structure and manner and timing of payment of the agreed price, consider the level of certainty of receipt and tax considerations. If agreeing an element of deferred or contingent purchase price, consider personal guarantees from the owners of the purchaser business or some other form of security. Try to ensure tax is not payable in advance of receipt of the relevant part of the purchase price. If agreeing an "earn-out" or contingent payment, try to keep the criteria for payment as straightforward and objectively assessable as possible (a criterion based around revenue earned is easier to assess, for example, than one based around profits).
- Address the issue of your continuing involvement (or otherwise) to avoid this becoming a sticking point later.

Order of events

Broadly, the order of events where there is a single identified buyer, should be as follows:

- Buyer enters into confidentiality agreement (and possibly requires a period of exclusivity);
- Preliminary disclosure of information to buyer;
- Heads of agreement signed (not legally binding);

- Detailed due diligence review by buyer – legal, financial and commercial;
- Sale and Purchase Agreement negotiated and entered into;
- Other relevant documents completed alongside sale and purchase agreement;
- Completion.

The order will be different if an auction process is to be conducted. We can provide further details if you require.

Key messages for a successful sale process

- Ensure the business or asset is as "clean" as possible.
- Choose advisers carefully – you will end up richer.
- Listen to their advice – they have seen it all before.
- Stay in control of the process.
- Know your bottom line – be prepared to walk away.

More information

To discuss your individual requirements, please contact a member of the team:



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