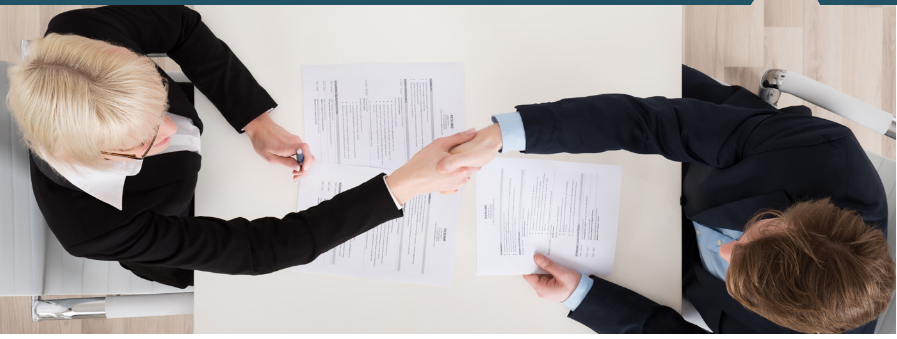
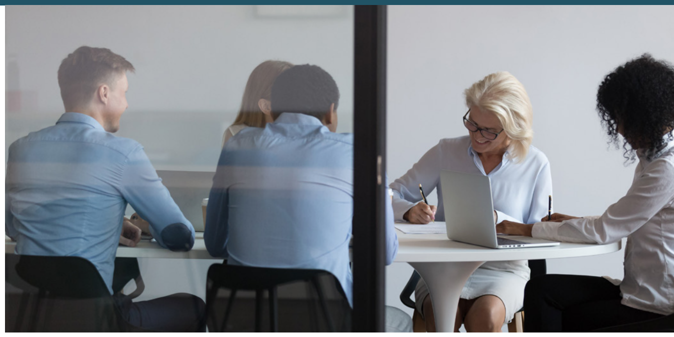
Lawson-West Solicitors

Selling Your Business





Selling your business is a major decision in your life. You've built up your company over several years and nurtured it, overcoming problems, expansion, sales, recruitment and grown the business into what it is today. The decision to exit your business needs to be planned well in advance and you need to decide if you wish to retain some control, or not.

In the same way that there are several ways to establish a business, there are several ways to sell one.

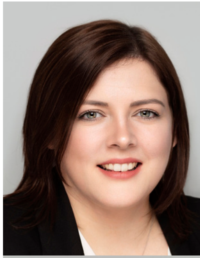
- Will it be an asset sale, a share sale, a part-sale like an MBO or MBI, or a complete business restructure?
- Do you already have a buyer or family member willing to buy you out?
- Do you want to retain an element of control?
- Do you need help finding a suitable purchaser that you can trust with the future of your business?
- Have you approached a broker?
- Have you had the business valued? When will the valuation to be at its highest?

These are practical questions you will need to consider on the journey to selling your business. At Lawson-West we will hold your hand and take time to meet with you to discuss your personal objectives and those for the business and we will advise you accordingly. Our wide range of skills, disciplines and experience mean that we know what problems are likely to arise and how to solve them.

We will guide you along the path to sale and produce the legal documentation needed to sell your business and help you to steer the business sale, overcoming any obstacles along the way, like a buyer pulling-out, or the tactics of price negotiations. We make it our priority to understand your business so that we can help with problem solving, risk management, maximising value, future proofing and protecting your interests.

Selling your business is a daunting prospect, but our lawyers have the expertise to help guide you through the whole process.

Contact us



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Due Diligence

Any buyer will want to carry out a due diligence check. This means that they will enquire about every aspect of the business including legal, tax implications, existing employees, existing debts, property and the future of the industry your business is in. See more information below.

Confidentiality Agreements

If the information you are set to disclose is sensitive, consider asking the buyer to enter into a confidentiality agreement. This is something that we would always seek to negotiate at the outset on your behalf as it could prove difficult to do so once the process has begun.

Warranties

Warranties are given by the owner of the assets or shares being sold and are legally enforceable promises made by you, the seller, to confirm that the information provided to the buyer about the business is true. You therefore have an ongoing liability to the buyer of the business even after the business purchase is completed. If the buyer suffers loss because of a warranty that turns out to be untrue or inaccurate then they can claim the damages from you. There are several ways you can limit your liability.

If dealing with a share sale the drafting of the share sale and purchase agreement will include warranties which will offer the buyer some comfort in the event that the business is not as it has been represented by the seller. You will clearly not want to provide warranties that are unlimited in scope to avoid any future problems.

It is therefore very important that warranties should go no further than they need to and should be worded clearly and precisely so that there is little or no room for argument. Unless stated in the contract there is no limit to your financial liability, so it is therefore important to include financial limits in the contract. You will not be liable for a breach of warranty if you have properly and in the correct legal format told the buyer about the breach beforehand. Disclosures can be general (e.g. anything held in public records) or specific.

How Will You Sell Your Business?

Once you have decided to sell your business, there are two ways you can go about it. You can sell it privately yourself or use an agency or broker. Agencies can help to boost exposure by advertising under their corporate branding and presenting your business to active buyers on their existing client database. Alternatively, you can manage the entire process yourself which some individuals prefer, but this can limit your exposure.

Should I sell Assets or Shares?

If you are a sole trader or a partnership then of course your choice is narrowed to one – an asset sale. However, if you run your business through a limited company or, increasingly, a limited liability partnership, then your first sale decision is the choice about whether to sell the assets of the company or your shares in the company. There are advantages and disadvantages to both options:

Share Sale Agreement - Advantages	Share Sale Agreement - Disadvantages
The buyer will step into your shoes as shareholder/director but the employees, contracts, properties etc will remain in the company's ownership. There is therefore no need for the assets of the company to be transferred and this means a share sale can often be completed without any third party involvement making it far more discreet.	A share purchase generally involves your buyer in far greater risk than an asset purchase and therefore the contract and transaction are more involved and more warranties (including warranties relating to the payment of tax) will be requested.
The company will no longer be yours at the end of the transaction and so your buyer will inherit any problems (such as outstanding debts) that exist at the date of sale.	You, not your company, are the seller and so any warranties or guarantees you give are given by you personally.

Asset Sale Agreement - Advantages	Asset Sale Agreement - Disadvantages
An asset purchase generally involves your buyer in fewer risks and therefore the contract and transaction are more straightforward and less involved.	The buyer is a completely separate legal entity so you will have to ensure that all the different parts of the business are legally transferred including any properties, employees or contracts. This makes it harder to keep the deal quiet!
The seller is your company and so, unless there is an express arrangement to the contrary, any warranties or guarantees you give are given by your company, not you personally.	The company will still be yours at the end of the transaction and you will need to deal with this properly (e.g. by closing the company down) which could involve you in further work such as chasing unpaid debts owed.

There are advantages and disadvantages to both sale options. Whichever one you decide to go for will depend on the issues that are important to you, such as keeping the deal discreet, time and tax implications.

Due Diligence

You may be considering selling your business. Perhaps you've earned enough to sail around Monte Carlo for the rest of your life, maybe you're bored and want to move on, handover the business to an eager family member, or maybe you're simply ready to retire. Whatever the reason for the sale, the buyer will want to carry out a due diligence check.

Your buyer will want to learn every aspect of the business including legal and tax implications, employee structures, existing debts, property, assets and liabilities, customer and supplier information, risks, and the future of the industry your business is in. The structure and liabilities of the business will be contained in a Due Diligence Report for the sale purchasers to review, along with their accountants and lawyers. This report should be true and accurate and may influence the price paid for your shares eg. if their is a business risk or debt hanging over the business, this could reduce it's value.

If you are not a company then your buyer will be purchasing the assets, but if your business is owned by a company then you will choose to sell either shares or the assets of the company.
If you sell all your shares you are effectively ending the relationship between you and the company.

An asset purchase will have to clearly identify what is and what is not part of the purchase. An asset purchase agreement will tend to include matters relating to employees, stock and equipment. Again warranties will be expected of the seller. If you are able to provide comprehensive replies to the enquiries raised by your buyer then this will give your buyer confidence in you, in the business and in their purchase - thereby leading to a smoother sale.

Good due diligence replies can also be used as a reason to reduce the number of warranties you are asked to give. At this point, Lawson-West would then look to add a letter of disclosure to accompany the warranties to 'iron out' and clarify any specific matters affecting the given warranties raised in your replies to enquiries.

The key is therefore in the preparation and this is where Lawson-West can help as we know what buyers are likely to ask and can therefore help you to be in a position to answer the questions.

> To give an example, you will have to transfer any premises. However, if the premises are leasehold and the landlord's consent is required for the transfer, this could be timely and costly and may well be worth considering at the outset. If time constraints prevent the consent being obtained you could consider allowing the buyer to enter the premises on a licence. However you will probably have to offer some form of guarantee to cooperate with the buyer to obtain this consent and doing so may by itself be a breach of your lease. Therefore approaching your landlord early on can minimise delays and risk.

Business Sale Agreements

Whether you're selling your business - in which case you'll need an asset sale agreement, or selling shares in your company - in which case it will be a share purchase agreement (SPA), the basic format of the agreement is broadly identical although the detail varies considerably.

The structure of either an asset sale agreement or SPA be along the following lines:-

Definitions

Details of the deal – the purchase price, whether stock is included or additional, how the purchase price is paid and, for asset sale agreements, how the purchase price is broken down between the different parts of the business (goodwill, fixtures and fittings, contracts etc).

Conditions Precedent

This includes anything that has to be done before the contract is finalised:

- The warranties and any limitations to those warranties
- The operative clauses dealing with other parts of the business, e.g.
- Transferring over contracts held by the business
- Transferring over the employees
- Dividing / apportioning pre-payments, deposits and book debts between the seller and the buyer.

What is For Sale?

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Letter of Disclosure

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Preparation is Key

The key is therefore in the preparation and this is where Lawson-West can help as we know what buyers are likely to ask and can therefore help you to be in a position to answer the questions in a proactive way.

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The Next Steps

Start early to think about selling your business, this is normally about five years before you intend to. Plan ahead to maximise the value and minimise the debts of the business before the business sale valuation is done.

Speak to your advisers about your intentions, so that they can help you to plan for and navigate the different stages and requirements of your business disposal or exit.

One of the hardest things to do is to run your business at the same time as selling it. When you reach the contract stage, you will need to ensure that someone else is managing the day-to-day operations of your business, so that you can concentrate on the sale negotiations and documentation. Identify early on the people who will do this and ensure that your key people have been trained-up and identified in the Due Diligence Report for succession planning purposes or a streamlined handover to the new buyers or MBO team.

Financial Considerations - Terminology

Deferred Consideration

This is used to describe any funds that you don't receive on the day of sale. There may be many reasons why you don't get the money sometimes because you have agreed (as part of contract) that a particular sum will only be payable upon a particular event happening, or it could simply be that your buyer does not have the whole asking price to pay.

Conditional Consideration

This is used to describe the scenario in which you agree with your buyer that a certain sum will be payable upon a particular event occurring.

Earn-Out Clause

This refers to a situation where part of the purchase price is linked to the future performance of the business. it is normally linked to profits but could also be linked to other financial measures such as turnover or net assets and may also increase the price beyond the immediate asking price.

Of course there are downsides to this, the major one being that you don't get a clean break from the business but will continue to be significantly involved. It is therefore very important to define what rights and obligations you have so there is no argument later.

Why Choose Lawson-West?

We will help you to plan ahead and realise your business sale in the most effective way. We can advise you on the documentation required for a successful sale and be on hand to guide you through each stage of the sale process from beginning to end, working alongside you as a trusted adviser on each requirement, document and next step. Selling your business is far easier to do when you have someone by your side who is experienced and can advise you on the best course of action and how to overcome the obstacles as they arise. At Lawson-West, our approach is to help guide you through to a successful outcome and be on hand to answer your questions.

Contact Us

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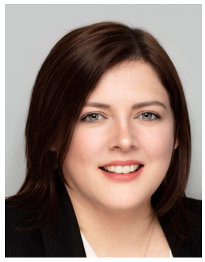

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