Selling Your Business – Fundamentals of Transaction Negotiations

Agreeing to a multi-million dollar business sale would be more or less impossible without the expertise of a business lawyer. Even with the assistance of the most experienced of business attorneys, the process is likely to take months, due to the multitude of processes that need to be completed. Here is a brief summary of a few of the key processes that you will need to complete.

Non-Disclosure Agreement

Before any discussions start with a potential buyer, a non-disclosure agreement should be signed. This ensures that all of your vital business statistics will be held in confidence, usually for a period of five years or more. This agreement should also state that all confidential information must be returned where discussions break down.

Due Diligence

A price for the company can potentially be agreed without attorneys getting involved, but the buyer will undoubtedly need professional help to complete a lengthy due diligence process of the seller's company.

The buyer may do several rounds of due diligence, both before and after agreeing on the principal terms. Usually the buyer will want to do a thorough review of the company's books and records, as well as its contracts with vendors and customers. A business attorney can help the seller ensure that their books are in good shape from a legal point of view, so that when the buyer sees seller's records, there are no unpleasant surprises.

Succession Planning

The buyer will usually want the seller to retain some sort of presence in the business in order to create a smooth transition. Often, this will be an advisory role for the first year or so.

Such a role will be set out as part of the sale agreement. It will usually take the form of an employment contract or consulting arrangement. Many sellers make the mistake of waiting towards the end of the sales process before agreeing on these terms, which can be a potential stalling point in business transactions. Seller should raise this at the beginning of negotiations, and if material include the terms in the term sheet.

Such negotiations will usually include an agreement not to compete, which states the seller can't set up a business that directly competes with the buyer for a set number of years. A business attorney can look through these arrangements and ensure that the deal is arranged in the best interest of both parties.

An Escrow Agreement

It is common for a portion of the sale price to be held in an escrow account for a period of 6 to 18 months. This arrangement is agreed to ensure that the seller complies with all arrangements stated in the sale contract. The buyer will feel more comfortable with this situation, as the escrow can provide a quick source of cash in the event of some of the seller's representations proving false. The terms of the escrow, including the amount, length of escrow period and how the payout will work, are all subject to negotiation and should be reviewed carefully.

You should be mentally prepared for the process of selling a business to have many ups and downs. There is rarely such thing as a super-smooth transaction. For this reason, it is important to work with advisors experienced in selling businesses, who can guide you through what is often a complex transaction.