

Preparing your business for sale

If you are thinking of selling your business or company, it is worth reviewing the following pre-sale checklist of matters – to ensure as far as possible that they will not cause problems or a delay in the sale process and also to give you an opportunity to deal with them on your terms (rather than a potential buyer's).

- **Company Secretarial:** If your business is run through a company, ensure that any relevant company has correct company registers which are written up to date and that all necessary filings have been made. We often see problems arise from the buy back of shares by companies not being dealt with or documented properly and recommend that this is something that should be identified and corrected early. A review of your Articles of Association (to ensure they are up to date) and any Shareholders' Agreement (to check for relevant issues) is also worthwhile.
- **Key Contracts:** An audit should be undertaken of all key contracts to ensure that they have been signed – and also to identify any possible change of control or assignment provisions (i.e. where the consent of a third party may be required). A review of standard terms of business is worthwhile too.
- **Employment:** It should be ensured that all staff are engaged on appropriate and up to date contracts of employment (and that all necessary policies are in place). For senior employees, ensure that they are signed up to binding restrictive covenants.
- **Regulatory/Compliance:** An audit should be carried out to ensure that you are complying with all relevant regulatory matters. For example: registration with the Information Commissioner for Data Protection purposes; Anti-Bribery and Health & Safety Policies and Risk Assessments; appropriate terms of use and privacy policies for websites; disaster recovery plan.
- **Intellectual Property:** To the extent that any contractors, consultants or employees have been involved in the creation of Intellectual Property Rights used in the business, you need to be sure that they have contractually agreed that all rights they create will vest in your company. This includes matters such as trade marks, design rights and websites. It is also worth confirming that domain names are registered in the correct name.
- **Property:** Prepare a list of all property occupied by relevant companies together with terms of occupation, review and expiry dates of leases. If any property is unregistered, consider making a voluntary application for first registration.

- **Lifestyle business:** Are all assets owned by the company being sold? In a lifestyle business, it is not unusual for some assets to be owned by the company but used by the owners (and vice versa). It would be good practice to unravel this before the potential buyer investigates the company.

If you have any queries about the above, please contact Paul Warman or Richard Guthrie on 01603 610911 (or by email to pwarman@leathesprior.co.uk; rguthrie@leathesprior.co.uk).