



Getting your business ready for sale

Would you pay top dollar for a car that's dirty and damaged, doesn't have registration papers, a service history or a motor that runs smoothly? No doubt not but on the flip side, it's likely you'd pay close to the asking price for a car if the owner went to the trouble of preparing it for sale by cleaning and polishing it, having it fully serviced and repaired and was able to provide evidence of ownership and a full service history of the vehicle.

It's no different when selling a business. Why would a prospective purchaser pay top dollar for a business if there is a lack of evidence of asset ownership and maintenance, lack of detailed financial information, poorly kept stock and employee records and non-existent customer details? Before putting your business on the market, you need to consider what a potential purchaser would find deficient about your business by undertaking a full audit addressing the following matters:

Are your Corporate and Business Records Complete?

Having poorly maintained or incomplete company and business records will not only deter prospective purchasers but also their advisors such as the accountant and lawyer they've engaged to assist them in the purchase process. It also won't sit well with their banker or financier and will likely jeopardize their ability to finance the acquisition. It's essential that you work hand in hand with your own accountant to ensure that the following are up to date and readily available for inspection:

1. Past Tax Returns in respect to the company, partnership, trust or individual that operates the business
2. Current Profit and Loss and Balance Sheet statements
3. Current Depreciation Schedule for the business Fixtures, Plant and Equipment
4. Bank Statements
5. Customer lists and details of their purchase history
6. List of Suppliers to the business and copies of their terms of trade and supply agreements
7. Inventory of current business Stock
8. Debtors ledgers
9. Copies of your business Terms and Conditions; and
10. If the business is operated by a company, up to date Members Register, Director information and Constitution as well as copies of Resolutions and evidence of lodgment of Annual Returns.



Do you have a current Lease of your Business Premises?

If you don't own your business premises, the first thing to do is to make sure you actually have a lease in place. If you've been in the same premises for a long time you may find that your last lease expired years ago. It's also a common oversight to fail to properly exercise lease renewal rights and you may find that the option you had to renew the lease for a further term has lapsed and you're actually in a month to month holding over situation with the tenancy of your premises.

Generally, the time to negotiate a new lease is before the landlord becomes aware that you're thinking about selling the business, as they may not offer as favourable terms to a prospective purchaser as that would to a long standing and reliable tenant.

Ideally, any new lease should provide both longevity and flexibility by having an appropriate initial term commensurate with the "value" the premises add to the business and multiple further option terms. Most importantly, if the premises are not retail premises such as a shop, you should try and negotiate with the landlord to exclude any provision in the lease that requires you have an ongoing liability to the landlord when the lease is transferred to a new business owner.

Do you have Employment Contracts for all Current Employees?

For many businesses their employees will often constitute significantly to the underlying the value of the business especially long term and experienced "key employees" who have an intimate knowledge of the operations of the business and relationships with its suppliers and customers. It's understandable therefore that purchasers won't consider taking on a business without staff that know how to run it, particularly if the purchaser has no or limited past experience in the type of business being sold.

If you have existing employment contracts with your employees have them reviewed by your lawyer to make sure they comply with all current employment laws and regulations but bear in mind that generally you can't change the employee's terms of employment while the contracts are current. If you don't have any employment contracts or your existing employment contracts have expired or are outdated, it's time to instruct your lawyer to have new contracts put in place. When doing this consideration should be given to including post-employment restraint and non-compete provisions where appropriate, especially for your key employees, so as to give prospective purchasers of your business more comfort.

Do you own the Business Intellectual Property?

You can't expect a purchaser to pay your asking price for your business if you don't own the registered rights to the business Intellectual Property such as its trading name, logo, patents and designs (if any).

Registering your trading name with ASIC is a must, given the value that a business name has in terms of name or brand recognition, especially where you've spent substantial money in promoting and advertising your business under this name over the years. Registering your business logo as a Trade Mark with IP Australia also ensures that you have undisputed ownership rights to it and certainty of ownership equals value to a potential purchaser. This equally applies to having Patents and Designs registered in respect to any inventions or products you've developed that are integral to the success of your business.



What comprises your Plant and Equipment?

You should ensure that a current detailed list of all Plant and Equipment necessary to operate the business exists in readily accessible form and that it includes details of quantity held, brand and model details and where applicable registration particulars and remaining warranty information.

Consideration should also be given to having items of major plant, equipment and vehicles serviced and where necessary repaired so that any prospective purchaser can be presented with confirmation that they are in good working order.

Who holds a Security Interest over your Business?

If you've borrowed money from a bank or other financial institution for business purposes or have signed agreements with suppliers as regards the provision of goods and services to your business, it's likely that you've also granted them the right to register an interest against your business on the Personal Property Securities Register (PPSR) which is a national online register operated by the Australian Financial Security Authority. It may be the case that you are not aware that the interest has been registered on the PPSR and very often this only comes to light towards the end of business sale transactions when a purchaser requests that these interests be removed which can cause delays in the transaction finalising.

If you are unsure whether or not PPSR registrations exist, it's best to contact your lawyer and ask them to undertake a PPSR search on your behalf to find out what registrations exist so as to enable you to take early steps to arrange for the release of them, particularly those that may apply to suppliers that you no longer have a relationship with.

If you're considering selling your Business and want to know more about the sale process or otherwise would like assistance with any business matter, please call [John Bateman](tel:0247315899) or [Michael Battersby](tel:0247315899) on 02 4731 5899 or email commercial@batemanbattersby.com.au.