



Tughans

Selling your business

A guide to the key issues

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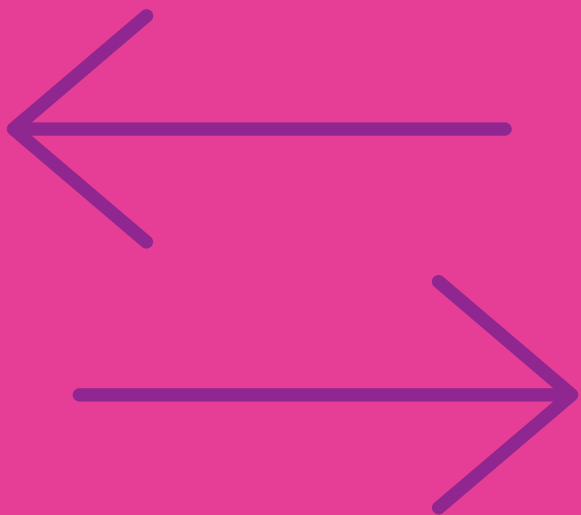
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Selling your business



Selling your business – especially when still engaged in its day to day running – can be a stressful time. The sums of money involved may be significant, the process has a language all of its own and there will be a whole host of legal documents to work through.

Finding the time to manage the sale process, alongside your existing commitments, will be absolutely critical - which is why we have put together this guide to give you a feel for what is involved and how we (along with your other advisers) can help smooth the transaction.

We think our guide covers the key issues but, if you can't find the information you need, we are only a phone call away.

Initial considerations

The decision to sell your business will ultimately be driven by commercial factors.

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You may, for example, be looking for an investor to help move the business forward or you might be seeking an exit altogether.

Whatever the rationale for the sale, there are a number of points you will need to consider:

- *how to value your business*
(and how to agree this with the buyer)
- *how to structure the deal*
i.e. whether you sell the shares in your company or just the business assets
- *how to take the deal to market and identify a buyer*

We appreciate you will require input from your financial and tax advisers on these preliminary questions but, in our experience, it is just as important to engage with your legal team at the same time. Only if we understand the commercial deal and economic drivers can we be sure that they will be properly reflected in the transaction documents.

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TIP

Capturing the commercial terms upfront in a 'Heads of Agreement' can be a useful way of avoiding road-blocks later on in the transaction – and should streamline the negotiation of the legal documents, saving you time and money.

Sale Structure



So, what are you selling?

Share sale or asset sale

A sale may be structured as a share sale- selling the shares in the company that owns the business- or you can sell the assets of your business.

There will be reasons for structuring the sale either way. Selling the shares means you will have no residual assets in respect of the business and there may be tax benefits. Selling the assets (e.g. property, customer contracts and the business goodwill) could be more suitable if you are only selling part of your business or the buyer wants to exclude certain business assets or liabilities. Tughans, alongside your tax adviser, can help you structure the sale in a way that suits you and the buyer.

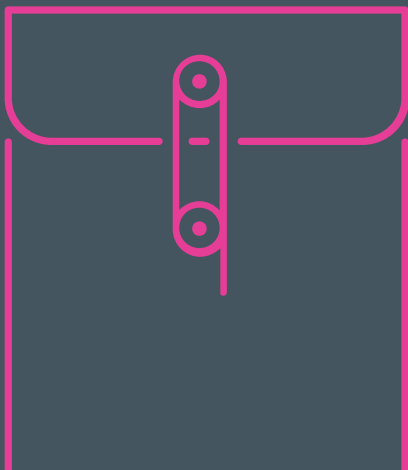
Preparing the business for sale

A buyer will want to find out as much as possible about your business before committing to purchase it. This is known as the “due diligence exercise”. As well as understanding the financial performance of the business, they will want to understand the business relationships in place, e.g. contracts of employment with your staff, customer and supplier contracts (or at least your key customers and suppliers) and confirmation that any relevant intellectual property is owned or validly licensed by the target company.

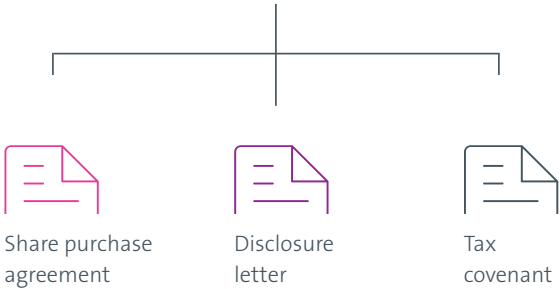
We can work with you to help prepare your business for sale and identify any gaps so that they are closed off ahead of the buyer’s due diligence exercise.

OVERVIEW

The transaction documents



We have assumed, for the purposes of this guide, that your transaction will be structured as a share sale rather than a sale of the business / assets. In a share sale, the principal transaction documents would be as follows:



Other ancillary documents:

- confidentiality agreement
- board minutes / approvals
- resignation letters / compromise agreements
- stock transfer forms

Asset Sale

An asset sale is generally speaking not as document-heavy and we would be happy to discuss the relevant transaction documentation with you if helpful.

MORE DETAIL

The transaction documents



Share purchase agreement

The share purchase agreement (or “SPA”) will be the key document dealing with the sale of your business. It will cover a number of related areas but, in short, it simply represents an agreement to sell your shares in the company (the “target”) at an agreed price.

A large part of the SPA will provide the buyer with contractual comfort as regards the target. For instance, the buyer will expect to benefit from a number of warranties in respect of the target company and its business. These are designed to ensure the target business is in “good shape” and to flush out any material issues. If a warranty turns out to be untrue (e.g. the target is subject to litigation when the seller has warranted that there is no litigation outstanding), the buyer will have a claim for breach of contract.



Disclosure letter

The purpose of the disclosure letter is twofold:

- 1) the disclosure letter provides an opportunity to the buyer to capture information about the business which may not have been covered by the due diligence exercise; and
- 2) the disclosure letter also works in association with the warranties, in that it represents the seller's opportunity to respond to and, in effect, "switch off" any potential liability under the warranties. The seller does this by highlighting to the buyer if, and how, a warranty is untrue or inaccurate and supplying supporting evidence / documentation. For this reason, the disclosure letter is a crucial document for the seller – the buyer will not be able to bring a claim under the warranties if the relevant facts have been properly disclosed.



Tax covenant

On a share sale, the buyer will be acquiring the target company "lock, stock and barrel". In doing so, the buyer will acquire not only the target business but also the target company and its entire trading / tax history. The tax covenant seeks to draw a line in the sand (typically at completion), such that the seller is responsible for all pre-completion tax and the buyer is responsible only for post-completion tax.

MORE DETAIL

Ancillary documents

Confidentiality agreement

As part of the sale process, you will be expected to share information about your business with potential buyers. To help maintain confidentiality, you will want to ensure an appropriate confidentiality agreement is in place before any information is disclosed.

Board minutes / approvals

Before you complete a sale, it will be important to ensure the transaction has been properly approved – not only by your board but also by the buyer's board.

Resignation letter / compromise agreement

If you are exiting the business, you will be required to resign from any employment and/or office you currently hold. As part of that process, you will be asked to waive any claims you may have against the target company, its employees and officers which is generally done by way of a compromise agreement.

Process, timings and other practical matters

Our relationship with you

At Tughans, our aim is to deliver the best possible deal for you. While we want to make sure the sale process runs smoothly, delivering the right deal can only be achieved when we work together with our clients.

Negotiation

Tughans works with our clients to understand their needs in order to deliver the best deal for them. For example, the buyer may want to include a restrictive covenant in the SPA, i.e. a provision preventing you from opening another business in Northern Ireland (or further afield) for a period of 3 years post-transaction. When a commercial point like this arises, we will need instructions from you to ensure you are not unduly restricted after the sale. Once we understand the relevant parameters, we can take the point forward.

Due Diligence

It will fall (at least primarily) to the seller to provide responses to the buyer's due diligence queries, i.e. a list of queries raised by the buyer and its advisers in respect of the target and its business. Depending on the scale of the transaction, it may be necessary to prepare a data room of information relating to the target business. Identifying all relevant responses / documentation is likely to require significant resource on the seller's part and our goal is to make this as seamless a process as possible.

Disclosure

In addition, the disclosure exercise will (to a large extent) be driven by you – for the simple reason that you are most familiar with the target business and, therefore, best placed to comment on the warranties. We will of course review the warranties with you and, working together, help to prepare appropriate disclosures.

Be realistic

Unfortunately - and there is no easy way of avoiding this - the legal documents can place a significant strain on the seller's day to day workload. In our experience, however, time spent on the transaction documents is well-invested: not only can it manage your exposure (e.g. through disclosure) but it should also help ensure the transaction documents track your commercial agreement with the buyer.



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It will be important to identify certain individuals within your business with responsibility for taking the transaction forward. Driving a transaction to completion can be a heavy burden and, to make sure we do so successfully without compromising your existing business, it will be important to ensure your internal team is appropriately resourced.



Your team

Selling a business will give rise to a number of legal (and non-legal) considerations.

On the legal side, depending on the nature of the transaction, you may need input on some or all of the following areas:

- corporate
- employment
- property
- finance
- commercial contracts
- intellectual property

A member of our corporate team is likely to lead on the transaction and provide you with a single point of contact, but the strength of our offering lies in the ability to provide a full service solution for all of your legal needs.

In addition, we would expect you will want the transaction to complement your existing financial and tax planning. At Tughans, we look forward to working alongside your other advisers to make sure the transaction documents fully reflect their input and comments.

Contact

If you have any questions or would like more information about selling your business, please get in touch with one of the partners in our corporate team.



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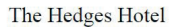
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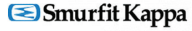
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The company we keep





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benefit your business, please do not hesitate

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