



SHEPHERD+ WEDDERBURN



starttoscale

supercharging your start-up

Selling - Preparing for the exit





Although founders might aim to be in it for the long term and world domination, investors will usually require their investee companies to be working towards an exit, as generally that is how they realise the value of their investment. The most common route is a sale process in which the company either merges with, or is sold to, another company. Starting a sale process can be the biggest commercial decision a founder makes. Timing is critical: all sellers ultimately want maximum value, with minimum exposure to unnecessary risk.

Preparing your business for sale requires careful consideration of a broad range of factors, many of which are complex and critical, to ensure the company's value (tangible – the assets you can kick; and goodwill – the value of the company's brand or standing within its respective sector) is attractive to potential buyers. Remember, it is never too early to prepare. In this article in our Start to Scale Essentials series, we set out some of the key items to consider when readying your business for a sales process.

How to retain your key people

In many sectors, including technology and life sciences, people are key. Often, buyers will seek reassurance that key personnel will remain with the business following the sale to ensure a smooth transition and continuity of service provision. Retaining key people with important knowledge may also affect the purchase price. It is therefore important to consider which key personnel will be staying in the business after the change of ownership and what value they may add.

Are your terms of employment fit for purpose

Terms of employment (particularly in relation to key personnel) should be reviewed to take account of legal compliance; notice provisions; confidentiality; intellectual property ownership; and restrictive covenants. Reviewing this ahead of time, ensures that any issues can be identified, and rectified, before you are into the sales process itself and issues start to impact on value.

How you are incentivising employees / retaining employees

Change can be unsettling and lead to uncertainty for your current workforce. Consider what measures can be taken to incentivise employees at this crucial stage. It may be worth considering the introduction of either a:

- Share option scheme: giving employees a right of ownership in the company in order to incentivise them to continue to deliver value. The basics of share option schemes were discussed earlier in the Start to Scale Essentials series.
- Bonus scheme: this encourages employees to meet performance targets during what, for those aware that a sale process may be undertaken, will be a period of uncertainty.

What are your pension arrangements

To avoid any issues arising during the sale process, ensure you have the necessary pension arrangements in place for your employees to meet your auto-enrolment obligations (which is your requirement to enrol your eligible employees in a suitable pension scheme and pay a minimum level of contributions for them). It is also worth considering what pension schemes are offered and how to ensure employees' pensions are protected and / or transferred following the sale. For instance, you may need to put in place documentation at the point of sale to ensure responsibility for the pension scheme transfers to the buyer and that contributions can continue to be paid to it.

How to maximise the value of your intellectual property rights

Existing intellectual property rights should be identified, as well as who owns these rights, the extent to which those rights are protected and whether greater protection is required. A company owning all or most of the intellectual property in the business is invariably more attractive to a buyer, and having formal, written agreements on the licenses granted is an important step in the buyer's due diligence, identifying what assets, or indeed liabilities, they are agreeing to take on. This is a topic we covered in detail earlier in our Start to Scale Essentials series.

Your use of personal data

Personal data contained in customer databases and marketing lists, can be an extremely valuable asset, but can also be considered 'high risk' if it has not been collected and used in accordance with data protection laws. A buyer will wish to see evidence that personal data has been collected in a transparent way and that individuals are informed of how their personal data is being used in a clear and concise privacy notice. You should also ensure that you have made any appropriate notifications to the Information Commissioner and that your internal data protection policies and retention records are accurate and up to date.

Key customer and supplier contracts

A company with revenues locked in by way of robust, long-term contracts should (in theory) be more attractive to a potential buyer. You should ensure all trading relationships are formalised and documented for a potential buyer to assess and scrutinise and, if applicable, review standard terms and conditions for volume sales/orders. This is particularly important where identified revenue streams account for a significant percentage of the company's overall business. Some of the key contract terms a buyer is likely to focus on in a sales process include duration, termination, intellectual property ownership, liability/caps and any restrictions on trade.

Your real estate

A buyer will conduct due diligence on title deeds for all properties owned by the company and the lease documentation for rented properties, so it is important these documents are in order and to ensure the company has sufficient property rights to cope with its current operations. Identifying any gaps ahead of time, allows for solutions to be put in place (often in the form of property insurance policies).

Your records

Proper and professional maintenance of company records gives a buyer confidence. Having properly maintained documentation of important records, such as accounts, payroll and the company's statutory books – documenting all legal and statutory matters – should provide a paper trail, clearly documenting the company's ownership, assets and liabilities.

Shepherd and Wedderburn's corporate team combines industry knowledge and extensive experience with technical expertise, and is on hand to assist businesses at all stages of their growth journey. The team's Start to Scale initiative, comprising written guides, video content and in-person events, addresses some of the specific challenges affecting start-ups and scale-ups throughout their lifecycle to give entrepreneurs the insight they need to scale.

Visit shepwedd.com/start-to-scale for more information, or contact John Morrison, Partner in Shepherd and Wedderburn's corporate team, at john.morrison@shepwedd.com.



SHEPHERD+ WEDDERBURN

Edinburgh Glasgow London Aberdeen Dublin

shepwedd.com