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Selling a Company?

Thinking of selling your company? Whilst this article concentrates on the sale of shares in private limited companies by an individual seller, many of the issues will be pertinent to multiple sellers and to other ways of selling businesses, such as asset or business sales.

What is a share sale?

Simply put; in a share sale a purchaser buys shares in the target company. The purchaser may buy all of the company's shares so that he owns the company outright or he may buy at least 50% of the shares in the company to obtain effective control of it.

The crucial thing about a share sale is that all of the assets, liabilities and obligations of the company will remain with the company when it is sold to the purchaser, regardless of whether the purchaser is aware of them. This position contrasts with an asset or business sale, when each of the assets and liabilities must be specifically dealt with separately.

Initial Considerations

So, for whatever reason you have decided to sell your company. Perhaps you have already had an offer from a prospective buyer, or maybe it is just an idea at this stage.

Some initial questions you should be asking yourself are:

- What are your personal objectives and your objectives for the company?
- Do you wish to retain any financial or management involvement in the company?
- Might the sale affect others such as other shareholders, directors or employees?
- Will you require the agreement of others to sell the company?

Advice

Once you have considered these questions it is time to start thinking about getting some professional advisers on board. It is important to obtain input early on to ensure the sale is structured effectively, especially for accounting, tax and of course legal purposes.

Do not be afraid to consult advisers before you have found a potential purchaser. Putting a plan together with your advisers at an early stage, or at least seeking some initial advice, is likely to make the process run more smoothly and may help you negotiate a better deal.

Many sellers do not seek advice until heads of terms have been agreed. Whilst this may not cause a problem, and whilst heads of terms are generally not legally enforceable, in some cases once advice is sought it may become apparent that something agreed in the heads of terms is unworkable, impractical or simply not in that party's interests. It can be costly to live with an unfavourable term or to have to try and back track on a term that should not have been agreed in the first place.

In short, whilst you may understandably want to delay obtaining advice for as long as possible to minimise the costs of the transaction, you may find that a relatively small initial outlay could reap substantial award or avoid potential pitfalls.

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