PREPARING FOR DUE DILIGENCE

Shareholders thinking of selling their companies will be familiar with the term "due diligence" but few perhaps realise how extensive and tortuous the process often becomes.

Once the initial terms are agreed, your buyer will wish to review the commercial aspects of your business, such as contracts, staff and key customers, so as to ensure the claims you have made about the business are accurate – this is the due diligence process. Once you have agreed the price and other heads of terms with the buyer, the investigation process commences, often in parallel with the legal process. Whilst your company lawyers are necessarily involved in both processes, time and money can be saved if you are able to anticipate the questions which will be asked during due diligence – the process is likely to cover:

- historic and forecast financial performance
- accounts
- asset valuation
- legal and tax compliance
- legal action against the company
- major customer contracts
- intellectual property protection and licensing
- employment issues

Your buyer and their advisers are likely to spend some time at your premises reviewing original documentation but the process will need to be controlled by you to guard against possible theft of commercially sensitive information and it being used as an excuse to renegotiate the deal.

As the due diligence process nears its conclusion, you and your advisers should finalise the sale agreement. This will contain exact details of the sale. There is likely to have been a measure of compromise on both sides to achieve a final sale document, but where you compromise you should ensure, against professional advice, that there are no surprises about future liabilities through the working of sellers' warranties and indemnities.

For assistance and support during the sale process it is essential that specialist legal and tax advice is obtained.

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