

# Selling your BUSINESS

## Five steps to getting your business 'sale ready'

When selling your business there are a number of "pre-sale" steps you can undertake to ensure the sale process goes as smoothly as possible. The following tips are based on issues our team see arising every day in business sales.

### 1: ENSURE MATERIAL CUSTOMER AND SUPPLIER CONTRACTS ARE IN TOP SHAPE

The buyer of your business will most likely want to take over any key contracts that are integral to the success of the business. Supplier and customer relationships can be one the most important and valuable assets of a business. Make sure that all your material contracts are:

1. in writing;
2. on current standard business terms and comply with current laws, such as the relatively recent changes to the unfair contract term laws; and
3. contain terms favourable to you and any potential buyer, such as fixed terms, automatic renewals (if permitted by law), the ability to increase prices over time and the ability to assign the contract to a third party.

### 2: PROTECT YOUR INTELLECTUAL PROPERTY

The intellectual property of your business, such as its name and logo, is likely to be a major component of your businesses goodwill and value. Although your business name may be registered on the business name register, this actually gives you no right to exclusively use the name. A potential buyer may value your business less on the basis that there is a risk that someone else may start trading under the name and dilute your brand value. We recommend that you trade mark both your name and logo if possible. It is a relatively inexpensive way to protect your goodwill and instantly increase the value of your business. Trade mark registration can take at least six months so it is best to get in touch with us sooner rather than later to get the process started.

### 3: EMPLOYMENT CONTRACTS AND ENTITLEMENTS

When selling your business, the purchaser will often take over the employees of the business. They are usually required to offer the employees employment on the same terms and conditions as you offer it. As such, it is important to ensure that your employment contracts are up to date and comply with current laws, so that they are attractive to a potential buyer to take over.

### 4: PREPARE YOUR LANDLORD!

If you lease premises that will be assigned across to the buyer, you should review the lease to ensure you are aware of the assignment process and how much notice you need to give the landlord. Settlements are often extended due to the landlord's delay in approving a buyer or preparing the paperwork. These delays can be avoided if you know what timeframes apply. Your lease will also stipulate conditions that you need to meet in order for the landlord to approve the assignment, such as a requirement to rectify all existing breaches. Practically you should also ensure that you are on good terms at all times with your landlord, as ultimately they will have some discretion as to whether they approve your buyer.

### 5: SECURITY

The Personal Property Securities Register (PPSR), is a register maintained in Australia that records third party interests in assets. If the sale of your business includes assets then we recommend you search the PPSR to identify whether those assets you are selling have a security interest registered against them. A search of the PPSR may uncover an old equipment financier who has not removed their registration. In certain cases it can take a while to track down the secured party and get them to remove their registration, so by finding out this information and starting the removal process now you will be on the front foot and can avoid potential delays.

#### KEY TAKEAWAY MESSAGE

The above five steps are only a few of the steps we recommend you take when selling your business. If you would like further information on the above steps or would like assistance putting together a non-disclosure agreement and terms sheet, get in touch with us today.