

PACKAGING A COMPANY FOR SALE: HOW TO REALIZE TOP DOLLAR

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Packaging your company for sale requires a clear strategy and a detailed plan. As the seller, your first steps include prioritizing goals, setting up a timeline, devising an exit strategy and assembling a professional team. Next, the valuation and sale of the business must be done at the right moment, so that the price tag will be reasonable to a buyer, ensure a timely sale and meet your expectations.

By prioritizing needs and desires, you can generate a list to use when making decisions about the sale. For instance, all-cash deals can enable a clean break from the company, while financing part of the sale price can provide the leverage to raise the asking price. Keep in mind that rarely does a sale meet every objective. The list of priorities will help you decide which objectives to forgo.

Planning for the sale is vital to successfully achieving most of your goals. Ideally, the right time to sell is when the business is doing well. It usually takes at least a year to completely “clean up” the business to get it ready for a sale, and up to another year to find a buyer and complete the transaction. When you package your company, every aspect of the business should sparkle. In many instances, this will require going above and beyond what you have done in the past. If you want to realize top dollar, you cannot afford to neglect the clean-up process.

Allowing sufficient time for the sale puts you in a position of power, with less pressure to enter into a bad deal simply for the sake of getting out quickly. Also, it gives you time to renegotiate key contracts with vendors, as well as with clients or customers. Whether your business is in the service or manufacturing sector, the buyer will want or need to have important contracts locked in before taking over. Buyers want the predictability associated with contracts that have been negotiated prior to a sale. Therefore, you may have to provide the buyer with some level of comfort regarding future revenues if you want to receive a premium for your company’s longstanding reputation for providing excellent products or services and obtaining favorable prices or rates. Therefore, key contracts should be assignable to the buyer.

ASSEMBLING A TEAM

Choosing a team of professionals for the deal is another crucial stage that requires thoughtful planning and early action. To sell a company successfully, you need the assistance of an accountant, lawyer, business broker, business appraiser/valuation expert and tax expert. Each professional will play an essential role in packaging the company.

Your accountant and attorney will assist you in considering, selecting and optimizing your objectives in structuring the sale – e.g., stock versus asset sale, all cash or partial earn-out, and/or post-sale consulting or employment. They may also be aware of potential buyers and will be able to refer you to other key professionals. A good accountant is a business advisor who will guide you in the clean-up process discussed above and who can also recommend which parts

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of your business need to be improved and how to achieve the improvements.

When you are contemplating a sale, retaining counsel at an early stage is crucial. Your attorney will help protect your confidential information and trade secrets, as well as client, customer and contract information, by preparing a confidentiality agreement to be signed by any prospective buyer. Counsel will also advise what information should or should not be shared at various stages of the process. Together with your accountant and other business advisors, your attorney will negotiate the terms and structure of the sale, and then prepare a term sheet and/or letter of intent for negotiation by the parties. He or she will assist in the due diligence process, and after you and the buyer have agreed to terms, prepare definitive agreements for the sale.

Your attorney will also assess whether you could be exposed to liability as a result of the sale. He or she will determine what disclosures must be addressed up front to avoid problems at the eleventh hour, after the parties have invested significant time and money, and to avoid possible future claims. In addition, your attorney will help you reduce exposure to liability after the transaction is complete.

VALUING THE BUSINESS

The business appraiser on your team will ensure that the price is just right, because if the “porridge” is too hot or too cold, a potential buyer may look elsewhere. The appraiser will first look to revenues, profits, cash flow, future earnings, and the ability of the company to function after your company’s principals have left.

You should take proactive measures to improve the financials of your business and obtain a higher valuation. Buyers will generally turn to the income statements and assess earnings before interest, taxes, depreciation and amortization

(EBITDA), hoping to find steady, predictable and high income streams. Often buyers will calculate an offer using simple multiples, such as EBITDA, or sometimes multiples of gross revenue. The valuation report will serve as a check on the buyer’s offer, ensuring that it meets your asking price, or is reasonably close to it. It will also provide the buyer with proof that your asking price is reasonable.

Projections of future earnings, based on financial statements from the last two to five years, will be critical. These projections will give you an opportunity to bolster the case for the future success of the company by citing new products you have developed or have in the pipeline, new processes and methods you have implemented, and new lines of business or contracts that should produce significant growth. For example, the projections may highlight your successes in expanding and diversifying your customer base, providing incentives to sales and operations staff, improving customer service, lowering turnover, fostering company loyalty and teamwork, and reducing operating costs. Finally, demonstrating diversification of revenue will increase your chances of getting a favorable valuation and terms that meet your needs.

Although successful business practices make your company more attractive in theory, they will not have their greatest value unless an experienced manager or team of employees is in place to keep them going after the company’s principals sell and leave the company. Unless the buyer wishes to actively manage the company, ultimately replacing the manager and employees or incorporating the business into an already existing company, the buyer will want reassurance that your management team and key employees will remain with the company after the sale. Providing job descriptions, organization charts and procedural operations guides will help give the buyer confidence in a successful transition, succession and continuation of the business. Also, providing

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incentives such as retention bonuses, phantom stock and/or value appreciation plans, will improve the likelihood that employees will remain with the company and therefore increase the company's value to the buyer. To recap, successfully packaging your company for sale requires that you:

- plan carefully and prioritize your goals
- assemble a team of professionals at an early stage
- marshal all the facts and documents justifying your asking price in the valuation report
- provide for a smooth transition

As the Managing Partner of Tarter Krinsky & Drogin LLP, Alan M. Tarter leads the firm's development as a full-service law firm delivering practical, cost-effective representation to middlemarket companies. His diverse portfolio of clients includes financial institutions, title insurers, real estate owners and developers, accounting and other professional service firms, insurance brokerage companies, staffing and executive recruiting firms and wholesale distributors. Mr. Tarter can be reached at atarter@tarterkrinsky.com.

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