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Your business – what next?

A guide to maximising exit value

LAST MINUTE (OR NO) PREPARATION CAN RESULT IN A PRIVATE BUSINESS OWNER LEAVING POTENTIAL VALUE "ON THE TABLE."

A CLEAR OBJECTIVE, PROFESSIONAL ADVICE AND A CAREFULLY PLANNED STRATEGY WILL ENSURE YOU ACHIEVE THE BEST OUTCOME.

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DECIDE WHAT AND WHEN

To maximise options and value, it is best to have your exit objectives in place and be actively planning 2–3 years prior to your planned exit.

- Private sale?
- Family handover or division?
- Public listing?

THE REAL WORK

From 2+ years to 6 months prior to your exit you need to critically assess your business to identify and address key issues which could reduce the value of the business from a buyer's perspective. These may be:

- Financial
- Commercial
- Legal

ACHIEVING THE BEST DEAL

In the final 3–6 months it is important to work closely with your professional advisors. Vital to your success will be:

- Professional valuation
- Confidentiality agreement
- Information memorandum
- Due diligence preparation
- Sale agreement which minimises your retained risks

COMPLETION

Your adoption of a well-planned exit strategy using expert advice has secured the best price and has protected you from post exit risks. You can now relax and plan for the future!

FAILING TO PLAN IS PLANNING TO FAIL

You may have spent a lifetime building your business, but you can't continue forever.

The KPMG and Family Business Australia Family Business Survey 2013 found that only one third of family businesses were prepared for an exit. This is hardly surprising, as most business owners are busy managing the everyday demands of running a successful business and struggle to find time to think about or plan for their exit.

Unfortunately, it is common for illness or other unexpected events to act as the catalyst for an exit. If this happens, you may become a forced seller and realise much less than your business is worth.

Alternatively, you may well receive a generous, unexpected and unsolicited purchase offer. These offers happen more often than might be expected, but they may well be subject to a strict timing requirement. If your business is poorly prepared, you may miss out on the opportunity, or lose significant value.

THE SOONER YOU START PLANNING, THE MORE OPTIONS YOU WILL HAVE

Every business owner needs an exit strategy in place.

Most simply, this could be:

- Private sale
- Family handover or division
- Public listing

Each of these options include a wide range of possible variations, in many cases depending on the type of buyer.

It is a good idea to have more than one exit option; for example – if a family handover is your first preference, you may prepare for a private sale in the event that it is not possible for the next generation to take over the business.

Planning a successful exit takes time, and to get the best outcome, you need to commence planning at least 2–3 years before your planned exit.

Value enhancement

An ideal way to commence the planning process is to critically assess your business to identify key issues which will affect the value of your business from the perspective of a potential buyer.

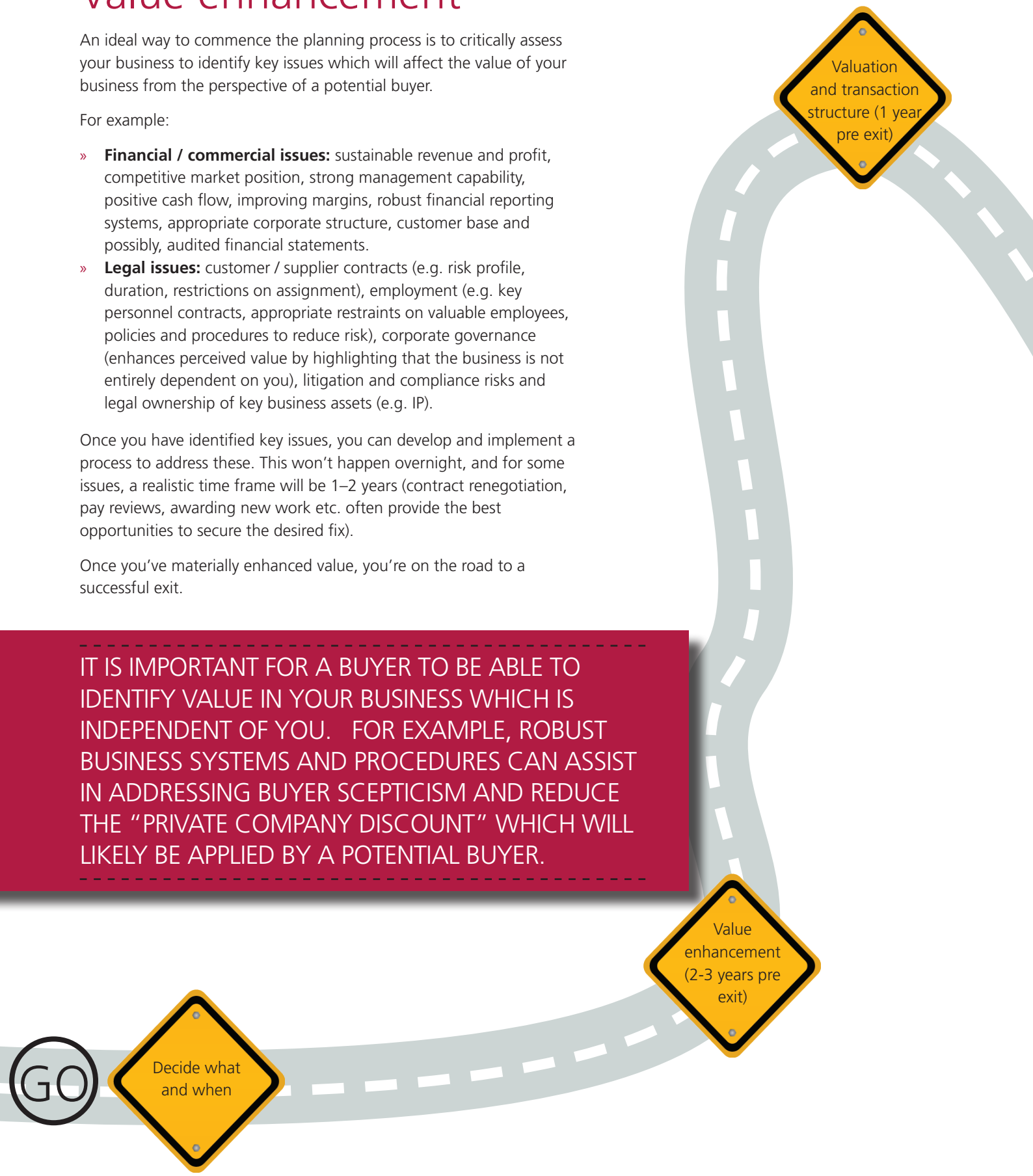
For example:

- **Financial / commercial issues:** sustainable revenue and profit, competitive market position, strong management capability, positive cash flow, improving margins, robust financial reporting systems, appropriate corporate structure, customer base and possibly, audited financial statements.
- **Legal issues:** customer / supplier contracts (e.g. risk profile, duration, restrictions on assignment), employment (e.g. key personnel contracts, appropriate restraints on valuable employees, policies and procedures to reduce risk), corporate governance (enhances perceived value by highlighting that the business is not entirely dependent on you), litigation and compliance risks and legal ownership of key business assets (e.g. IP).

Once you have identified key issues, you can develop and implement a process to address these. This won't happen overnight, and for some issues, a realistic time frame will be 1–2 years (contract renegotiation, pay reviews, awarding new work etc. often provide the best opportunities to secure the desired fix).

Once you've materially enhanced value, you're on the road to a successful exit.

IT IS IMPORTANT FOR A BUYER TO BE ABLE TO IDENTIFY VALUE IN YOUR BUSINESS WHICH IS INDEPENDENT OF YOU. FOR EXAMPLE, ROBUST BUSINESS SYSTEMS AND PROCEDURES CAN ASSIST IN ADDRESSING BUYER SCEPTICISM AND REDUCE THE "PRIVATE COMPANY DISCOUNT" WHICH WILL LIKELY BE APPLIED BY A POTENTIAL BUYER.



Making the best deal happen

If your exit strategy includes a sale, you should initially consider:

- Valuation
- Transaction Structure

VALUATION

It is worthwhile obtaining a professional valuation of your business to ensure you have realistic expectations. You can use this information to assess offers from potential buyers.

It may also provide insights into the value drivers for your business that can be used to increase its value.

TRANSACTION STRUCTURE

A key step is to develop a transaction structure (e.g. share sale or asset sale). It may be necessary to restructure ahead of a sale to maximise value and / or minimise risk. Issues to consider include:

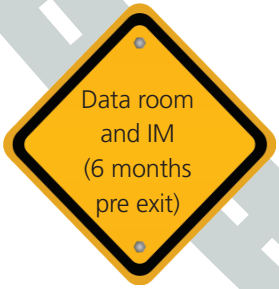
- Taxation
- Liability
- Risk minimisation
- Saleability
- Attractiveness to potential buyers

It is also important to consider whether you want a "clean exit" on completion of the transaction or whether you will remain involved in the business post-completion.

An example could be a "sell-down" (i.e. where the buyer acquires only part of the business, perhaps with options for further acquisitions in the future) or an "earn-out" (i.e. where you sell the whole of your business but part of the purchase price is linked to performance of the business over an agreed period following completion).

The extent of the warranties and indemnities you give to the buyer also represents "retained risk" for you after the exit.

Once you know what your business is worth and have decided on a transaction structure, you are ready to start the sale process.



DATA ROOM AND INFORMATION MEMORANDUM

The first step is to assemble content for a data room, which will include:

- Financial records
- Corporate governance documents
- Key contracts
- Information regarding employees
- Information regarding assets and liabilities

If you haven't already, you should seriously consider engaging a corporate advisor who can identify potential buyers and manage the sale process.

It may be wise to undertake some "vendor due diligence" to confirm agreed value enhancement steps have been completed and identify any new "gaps" or issues which may reduce value.

You should then, in consultation with your corporate advisor, prepare an information memorandum ("IM") providing potential buyers with an overview of your business.

SHORTLIST AND APPROACH

To maximise value, the ideal sale process will resemble an auction. This process enhances competitive tension and will likely achieve the best price and the least "retained risk".

It is important however, to carefully consider with your corporate advisor whether a different, more "targeted" sale process is appropriate (or even necessary) in light of your particular industry and / or general market dynamics.

Once a strategy is agreed, you need to shortlist and approach potential buyers with a brief document detailing the purchase opportunity on a "no names" basis.

To protect your valuable business information, it is imperative that potential buyers sign an appropriate confidentiality agreement prior to receiving any confidential information.

It is common to withhold ("black box") sensitive information for release further along the sale process (e.g. immediately prior to the sale agreement being signed).

Even if a confidentiality agreement is signed, it is important to be careful and strategic about providing information to potential buyers (particularly where a potential buyer is a competitor, customer or supplier of the business).

INDICATIVE OFFER

On reviewing the IM, potential buyers can prepare an indicative offer. When you receive these indicative offers, you will be able to select 1–3 preferred buyers (if there is an auction process).

It may be appropriate to prepare a "heads of agreement", if a single preferred buyer emerges or if you opt for a more "targeted" approach.

DUE DILIGENCE

The next stage is to finalise and release the data room (either physical or online) so that preferred buyers can commence due diligence and confirm their indicative offers.

Generally, due diligence will include buyer "Q&As" based on the materials within the data room and a management presentation by the business owner (and possibly senior managers).

Throughout due diligence, potential buyers will seek to identify risks and gaps in your business which can be used to justify a lower purchase offer. This can be countered by ensuring information in the data room is complete and comprehensive, and by being prepared to respond swiftly to questions.

Overall, good preparation is critical.

FINAL BINDING OFFER (AUCTION PROCESS)

It's crunch time. Potential buyers will submit their final binding offers based on the draft sale agreement provided in the data room.

Hopefully, you will receive an offer you are happy with that reflects the time and hard work you put in to maximising the value of your business.

SALE AGREEMENT AND ANCILLARY DOCUMENTS

At this point, you and the buyer (working closely with your respective advisors) will negotiate and sign the sale agreement and ancillary documents (e.g. non-competition deeds, employment agreements, any necessary separation documents).

The final release of any "black box" confidential information is likely to occur immediately prior to the sale agreement being signed.

CONDITIONS PRECEDENT

On signing the sale agreement, both you and the buyer must attend to satisfying all conditions precedent under the sale agreement (e.g. third party consents, regulatory and shareholder approvals, security releases).

COMPLETION

The final step! The sale completes (payment and transfer of shares / assets) and you and the buyer attend to post-completion matters in accordance with the sale agreement.

ALTHOUGH STRATEGIC PRE-SALE PLANNING CAN REDUCE YOUR RISK, A METICULOUSLY DRAFTED AND NEGOTIATED SALE AGREEMENT IS CRUCIAL FOR MINIMISING EXPOSURE TO POST-SALE RISKS.

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