



Notes For Clients Selling A Private Limited Company

These notes are for general information only. They should not be relied upon in the absence of advice about a particular situation and no liability is accepted in the absence of our receiving formal instructions and providing formal advice.

PREPARATION

1. It is very important that you seek full advice from your Accountant and Solicitor 18 months or so before you sell your business. There will be opportunities to reduce your potential Capital Gains Tax or other tax liabilities. They will be able to advise you on retirement relief and on the possibilities of transferring some of the shares to other members of the family or some of the assets out of the Company or one of various possible schemes which would be calculated to benefit you without impeding a sale.
2. If you are proposing to purchase another business then this would also be relevant to the calculation of Capital Gains Tax.
3. You will need to discuss how the various components of the Company's assets should be valued e.g. land, goodwill, stock in trade. (To some extent of course this depends upon what a Buyer is willing to agree.)
4. The timing of the sale can be critical.
5. It is sometimes helpful to spread a sale over two years e.g. by selling some shares before the 4th April with an Option for the Purchaser to buy the rest of the shares after the 5th April.
6. The Company Memorandum and Articles should be checked in case there are restrictions upon who can own shares. Changing these takes time.

GENERAL

7. The rights of persons owning very small numbers of shares in the Company should be considered.
8. The Buyer may not want all the Company's assets, for example old stock or one of the premises. These must be therefore taken out of the Company before the Company is transferred.
9. It is important to remember that both the Shareholders in the Company and the Directors and Secretary of the Company have to be involved in the transactions.
10. Although in the sale of land it is usually the Seller's Solicitor who drafts the Contract, in the sale of a limited company or large business the Buyer's Solicitor

often drafts the Contract.

HEADS OF AGREEMENT

11. Often an outline agreement, called “Heads of Agreement”, is signed by the Buyer and Seller, frequently negotiated through the Seller’s Agent. The Buyer and Seller will sometimes have dealt with this largely in person. In other cases they will already have taken considerable advice from their Accountants and Solicitors before reaching this stage. This may not be intended to be legally binding.

MATTERS TO BE REFERRED TO IN CONTRACT

12. The sale of a Company automatically includes all that company’s assets e.g. land, without further documents being required. However a Buyer will still want first to satisfy itself that all is in order with each of those assets, or at least those of the assets which have any significant value. In effect therefore the sale of a Company involves several transfers.
 - (a) transfer of the Shares in the Company by the Shareholders
 - (b) the conveyance of any Land by the Company
 - (c) the assignment of any Leases (perhaps requiring the authority of the landlord) by the Company
 - (d) the transfer of rights and obligations under Contracts with Suppliers or Customers by the Company and perhaps those suppliers or customers
 - (e) rights to Intellectual Property e.g. trading name, trademark, designs, patents, whether registered or not.
 - (f) You should consult your pensions advisor well in advance so as to maximise your retirement income. If you have no current advisor then we can introduce you to one.

DUE DILIGENCE ENQUIRIES

13. The relationship between the Buyers and the Sellers and the nature of the business being transferred will affect how much information is given to the proposed buyer and how much freedom is given to that Buyer’s Accountants in looking through the Seller’s books before exchange of Contracts.
14. Before allowing the Buyer’s accountants or staff to come into your premises and look at your books you may want them to sign a Confidentiality Agreement. This has limited value and if you do not trust your Buyer you are better not doing business with him.
15. The Buyer will want to check out the assets and liabilities of the Company as much as he can. He does not wish to discover after he has completed the purchase that, e.g. the Lease only has a year left to run; that the staff have not been paid for three months; that the VAT records are incorrect and that huge penalties are likely to be imposed; that the building is about to collapse. Some of these can be dealt with fairly simply e.g. by means of a Survey. In other cases they could be dealt with simply but the Seller may not want to divulge all his confidential information until

he is very confident that the purchaser will actually proceed. The Buyer will raise what enquiries he sees fit and assess whether he has sufficient information to enable him to proceed. In some cases he will accept the information given strictly on the basis that he has the right to further investigate once he has purchased the property and that he should be able to come back to the Seller for compensation if something turns out to be wrong.

INFORMATION LIKELY TO BE REQUIRED BY A BUYER

- 16 All usual documents regarding any freehold or leasehold Land e.g. Deeds, Planning and Building Regulation documents, Guarantees.
- 17 All usual documents regarding Equipment e.g. receipts, Service Agreements, Guarantees.
- 18 Full details of all Staff and probably details of any staff recently dismissed and confirmation that there are no claims expected from any staff/former staff for any matter or full details of any such claim suspected.
- 19 Details of Terms of Employment. If the Buyer thinks any of your members of staff are Key Employees it may require them to sign restrictive covenants so as to reduce the chance of their taking customers or knowledge of the Company's business to a competitor.
- 20 Details of any significant Customers and the terms of trading with them and any indications as to how long they are likely to remain customers.
- 21 Details of any important Suppliers and the terms of trading and any prospect of those changing.
- 22 Full details of any Registrations, Licences, Certificates, etc which may be required to enable you to run your business.
- 23 They may require Directors and or Shareholders to covenant not to compete with the business for a particular number of years.
- 24 There will be need to be an agreement as to how the Stock in trade is to be valued.
- 25 Apportionments. You cannot know in advance exactly how much is owed to the Company or by the Company on the completion day. There will therefore need to be a provision that if either of those figures exceeds or is below a stated sum by more than so many per cent that compensation be paid by the Seller or to the Seller as appropriate.
- 26 Details of any Pension Scheme and or Share Option Schemes.
- 27 Company books. These must be up to date and in order and the Company Seal must be available. In small family companies they have sometimes been neglected. Check that all Directors, Secretaries, Shares, Debentures, etc are properly recorded in the books and with the Registrar of Companies.
- 28 Your Banking arrangements. Although they are not directly affected by the Transfer and ownership of the Company because it is the Company which has made these

arrangements, in many cases there are ancillary agreements between the Bank and Directors or Shareholders. The Seller therefore needs to ensure that the Bank will be happy with the proposed sale. The Buyer may want to take over the existing arrangements in which case the Buyer will need to negotiate with that Bank. In other cases the Buyer will want to make quite different financial arrangements.

29 As market conditions change there may be questions which a Buyer wants to research which would not have been taken into account when you bought assets or formed the Company yourself. One example is Environmental Searches in respect of any land. This is because of the recently created penalties for causing pollution.

30 Details of any Contracts between the Company and its Directors.

31 Information on any actual or expected Litigation or Prosecution involving the Company.

INDEMNITIES AND WARRANTIES

31. Arising out of the possibility of the Purchaser being unable to wholly satisfy himself of the value of your business before he has completed, or even for a considerable period after that, and because he is taking some risks, the Buyer is likely to want warranties and indemnities.

32. These may be required from Directors and/or from Shareholders. The Directors and/or Shareholders will be promising that the information is accurate and also in some cases will have to go further and promise refunds should e.g. it turn out that stock has been over valued, or indemnities should it turn out e.g. that the Company is in arrears with its tax.

33. To help bolster up these warranties and indemnities the buyer may want to Retain some of the Purchase Price, probably to be held on deposit with one of the firms of Solicitors involved, for a certain period in case any of it needs to be used to cover any expenses which have arisen out of breach of any warranty or indemnity.