

## Checklist: selling a business

This checklist sets out the legal issues to consider when selling a business. You should always take legal advice at the start of any sale.

### Structuring the sale

You can either sell the shares of a business or its underlying assets:

- **Share sale.** You sell the whole company with all its assets and liabilities.
- **Asset sale.** You can choose which assets to sell. However, you cannot transfer liabilities (for example, debts) without the consent of the person you owe the liability to.

### Single buyer or auction sale

You can either negotiate with a single buyer or conduct a formal auction with a number of potential buyers. The main advantages of an auction sale are:

- You can create price competition between bidders.
- You control the process and draft the sale documentation.

### Preparing for a sale

- **Contracts.** You must review any contracts entered into by the business being sold. A contract may prohibit the sale of a specific asset or may even terminate on a sale of the business. Try to document any verbal or rolled over agreements before the sale process starts.
- **Regulatory approval.** Take legal advice about any regulatory approvals that may be required and the timing implications. For example, you may need the approval of:
  - industry regulators;
  - competition authorities; or
  - Pensions Regulator.
- **Other third party approvals.** You may need the consent of other third parties (such as customers, suppliers or lenders). On an asset sale, trading obligations (for example, an obligation to pay a supplier) will not normally transfer to the buyer without the consent of the trading partner.
- **Tax.** Take specialist tax advice on the tax implications of a sale, in particular the taxation of any gains made. You should also consider the potential tax implications for the buyer of different structures.
- **Key staff.** Consider whether:
  - the buyer is likely to want to tie in key staff or management on special terms; and
  - there are any key staff you wish to retain.
- **Intellectual property rights.** Carefully review any intellectual property rights used in the business being sold (such as a brand or patent). Check that your business:
  - owns the rights;
  - has adequately protected the rights; and
  - may transfer the rights.
- **Employees.** Carefully consider how and when you will tell your employees about the sale and how to deal with any adverse reaction. You may be required to inform and consult employees about the sale.
- **Disputes.** Check whether the business is involved in any major disputes and, if so, whether these can be settled before the sale.