Selling Your Business: Preparing for the Impact on Your Constituents

Selling your business is one of the most important personal and financial decisions you will make in your lifetime and will likely have a significant impact on your family, shareholders, employees, customers and suppliers. Accordingly, it is important to work with your advisors to understand the impact that the transaction will have on these constituents and to develop a communication plan that answers the following questions:

- When and to whom will you communicate the transaction?
- How will you communicate the transaction (in-person meeting, written communication, etc.)?
- Who will need to approve the transaction?
- Who might disagree with your decision to sell the business?

Developing and implementing a well-designed communication plan early on can help to avoid potential conflicts down the road.

GET YOUR FAMILY INVOLVED EARLY

Good communication starts well before the sale of your business, especially when it comes to your family. Regardless of whether or not you are considering selling your business, it is a good practice to periodically review your long-term vision for the business with your family and ensure that vision reflects the family values that are important to you. If you do decide to pursue a sale of your business, discuss your decision with your family as early in the process as appropriate and allow family members an opportunity to voice their concerns in order to diffuse any issues and address any potential objections sooner rather than later.

While some business owners may want to keep these family meetings casual, others may find it helpful to to create a more formal "family council" — particularly if the business is large or represents the family's primary source of wealth. A family council can be a useful forum for soliciting feedback and ideas from family members, conveying information and updates and educating younger family members, including those who may one day work in the business.

If you do have family members working in the business, be sure to think through how the decision to sell will impact them specifically, including whether their job responsibilities, compensation and career trajectory may change significantly under new ownership.

Additionally, if the sale of your business will unlock significant liquidity for you and your family, it is imperative that you work with your advisors prior to the sale in order to educate and prepare family members for how their lifestyle may change as a result of this new financial reality.

CREATE A CORPORATE GOVERNANCE PLAN

Prior to undertaking a transaction process to sell your business, it is important to ensure that your business has an established corporate governance framework in place that clearly defines the roles and responsibilities of management, the board of directors and shareholders in running the company. Work with your internal counsel and advisors to review your company's organizational documents (for example, corporate bylaws), shareholder agreements, board resolutions and corporate policies to confirm that these documents collectively tell a clear, cohesive story about how your business should operate.

The corporate governance plan you ultimately design should be communicated appropriately throughout your business and should answer the following questions:

- What information about the company should be shared with shareholders? How frequently, and in what format?
- What information should management share with the board of directors in order to allow them to adequately oversee the company?

- What corporate decisions require shareholder and/or board approval?
- Should certain corporate decisions that do not require shareholder or board approval be nonetheless reported to them for informational purposes?

A well-designed, well-communicated corporate governance plan helps to establish a written record of how the decision to sell the business came to be in the event that this decision is challenged by shareholders or other constituents.

DEVELOP AN EMPLOYEE STRATEGY

Employees are one of the most important factors in a business sale transaction, and it is critical that you properly incentivize key employees to stay with the company during and after the sale process — or have a well-crafted succession plan in the event that they leave.

As you consider selling your business, identify employees who you believe will be critical to the transaction process (for example, helping to present the business to potential buyers or to manage the diligence process) or to running the business after it is sold. Once you have identified these employees, work with your advisors to develop an employee strategy that answers the following questions:

- How and when will these employees be informed of the transaction?
- What message will you convey to these employees if they learn of the pending transaction from someone else and have concerns?
- Which of these employees will be part of the core deal team during the transaction process?
- If any of these employees have an employment agreement in place, how will their agreement be impacted by the transition?
- Is there a succession plan in place in the event any of these employees resign?

The departure of key employees can slow down a sale transaction or even derail the process altogether if the departing employee is a key factor in the buyer's decision to purchase your company.

Work with your advisors to analyze your employees' existing employment agreements and discuss your options for retaining key employees, including retention bonus arrangements (where employees receive additional compensation if they remain with the company for a specific period of time after the company is sold) or by renewing their existing employment agreement on more attractive terms.

INFORM YOUR CUSTOMERS AND SUPPLIERS

It is important to consider and address the impact that selling your business may have on your customers and suppliers — and determine whether or not the agreements you have in place with them require you to provide them with prior notice or obtain their approval of the transaction. Work with your legal counsel to carefully analyze your existing customer and supplier contracts in order to understand your legal obligations regarding the sale of your business. Doing so will help avoid the possibility of any last-minute holdups that could delay the transaction.

Consider developing a communication plan for informing customers and suppliers of the transaction and assuring them that their business relationship will not be negatively impacted by the change in ownership. Having a communication plan in place is helpful in the event that news of the pending sale leaks or potential buyers ask to speak with certain customers and suppliers as part of the transaction process.

PROACTIVE COMMUNICATION IS CRITICAL

Anticipating and proactively addressing the potential impact of selling your business on family, shareholders, management, customers and suppliers will go a long way toward preserving the value of your business, increasing the likelihood of a successful transaction and diffusing any potential disagreements along the way. Work with your advisors to develop a comprehensive plan that identifies key constituents who may be impacted by the transaction, specifies when and how each constituent should be informed of the transaction, and outlines key talking points for engaging in those discussions.

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