

# The Seaworthy Seller: Preparing for the M&A Voyage.

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To expand upon a quote from JFK, a rising tide lifts all boats, but not all boats are seaworthy. Similarly, while the longstanding favorable M&A market of the last several years has benefited many owners of midmarket businesses, many other owners who have not prepared for the M&A process have found themselves unable to sail off into the proverbial sunset.

Business owners who focus on the following four most important tasks in advance of the sale are much more likely to be satisfied with the outcome:

1. **Prepare** to execute (get the deal done).
2. **Prepare** to demonstrate the sustainability of future increasing cash flows.
3. **Prepare** to demonstrate mitigation of risk to the buyer.
4. **Prepare** to maximize net proceeds from the sale.

Here's why these four steps are so important:

- *Most buyers evaluate a business based on the risks associated with the ability to generate sustainable and increasing cash flows.* In order to convince a buyer to pay more, the successful seller will have evaluated the ongoing risks to the business in the same manner as the buyer and will have proactively reduced those risks. The successful seller will have also established that the company has the infrastructure and programs in place to sustain future increasing cash flows.
- *Sellers must know their business well enough to survive the due diligence gauntlet.* To evaluate the risks to, and confirm the likelihood of, future sustainable and increasing cash flows associated with the business, many buyers engage accountants, lawyers, internal diligence and integration teams, insurance experts, environmental consultants, and others, to perform "due diligence" on all aspects of the business. To the extent 1) a seller has not performed diligence on his or her own business, 2) is not prepared to answer questions and provide in-

formation and documents satisfactorily and on a timely basis, or 3) does not understand his or her business better than the buyer does, the more risk there is of the deal not closing at the purchase price originally negotiated or not closing at all.

- *Time is the seller's enemy.* Once a letter of intent is signed, it is not uncommon for the purchase price to go down and very rare for it to go up. A seller needs to be prepared to execute the transaction quickly. If there are delays because a seller cannot execute on a timely basis – say due to disagreements or issues among the multiple owners of the business, incomplete corporate organizational documents, pending employee issues or litigation, unidentified approvals from third parties to sell the business or a host of other reasons – the risk of an unsuccessful sale outcome dramatically increases.
- *It's the net purchase price proceeds, not the gross purchase price proceeds, which matter the most.* The lesson that many of us learned when receiving our very first paycheck also applies to

the sale of a business: It's not just how much you make; it's also about how much you get to keep. Take for example the organizational form and tax status of your business. If the business is organized as a corporation and taxed as a "c corporation," a deal structured as an asset sale may be problematic, and a stock deal may not be palatable to the buyer.

***"...we have helped many business owners navigate the most important transaction they will ever enter into; that being, the sale of their businesses."***

There are multiple legal and business questions to consider in order to successfully accomplish the four tasks listed above.

As lawyers at a full-service business law firm with more than 400 attorneys and a very active M&A practice, we have helped many business owners navigate the most important transaction they will ever enter into; that being, the sale of their businesses. Bon Voyage!

*For a more expansive discussion of transitioning your business, please see the Business Transition Checklist co-authored by Jim Scheinkman at [www.swlaw.com/Business-Transition-Checklist](http://www.swlaw.com/Business-Transition-Checklist).*

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