Avoid These Common Pitfalls When Preparing to Exit Your Business

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Ideally, preparing for a business exit begins three to five years in advance, leaving ample time for careful planning and the alignment of strategies to successfully support the exit. But that time can fly by, and during the final 12-18 months before a sale, there are almost always pitfalls that can delay or even halt the process. Below are nine trouble spots to look out for leading up to a sale. If you can address them proactively, you can reap the rewards of a smooth business exit.

1. Insurance. Meet with your insurance broker well in advance of a sale to have your insurance policies reviewed. A lot of the negotiations in M&A deals center around who eats the loss if something bad that happened before closing comes to light after the deal is completed. With good insurance (general liability, directors and officers, product liability), depending on the policy, even if the buyer makes a claim against you, your pre-sale insurance may cover it.

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2. Intellectual Property (IP). Make sure that the ownership of any IP is fully locked in before a sale. Review paperwork to ensure that the ownership is airtight. If any third parties are involved (such as in licensing deals), review the licenses and extend them as needed to avoid stalled negotiations before closing. It is also crucial to confirm that you properly own the rights to all of your branding and labeling and that your trademarks are in check and up to date.

3. Consents. Look at your most important agreements (such as with a manufacturer) to make sure that the other party's consent is not needed to keep the relationship in place if you sell the company. If those agreements are up for renewal before the intended deal timeline, you may be able to make tweaks as part of the negotiation process that make them easier to transfer when it is time. You should also ensure that you don't have any restrictive contracts—in other words, a contract that requires you to only use that party, or makes it hard for a buyer to change your business after the closing.

4. Sales Tax. If you're not using an e-commerce service that automates sales tax collection, meet with your accountant to identify any instances where you may have accidentally failed to collect/report sales tax. This isn't as big of an issue now that platforms like Shopify have automated sales tax collection, but a few years ago it was a huge thorn in the side of direct-to-consumer company exits.

5. Employees. All of your employee paperwork should be accounted for prior to a sale. All employees should have signed offer letters, arbitration agreements, and confidentiality agreements/assignments of the IP they create. If your workforce includes independent contractors, review their employment to see if they should be instead classified as employees.

6. Equity and Governing Documents. All of your equity and governance documents should be reviewed and buttoned up in advance of a sale to avoid snags. If you have granted employee equity, make sure that all the grant agreements are correctly executed and that the distribution thresholds are properly supported with valuations. The same applies to governing documents—make sure that all appropriate parties have signed business agreements, such as for an LLC.

7. Privacy Policy/Terms of Use. California changed its privacy policy rules effective January 1, 2023. If your company's privacy policy was last updated before that date, it should be reviewed and amended as needed. Pay attention to your terms of use to make sure it suits your specific needs and is not overly generic.

8. Financials. As a business owner, a great accountant is a key part of a successful exit. The ability to provide accrual-based financial statements for the years leading up to a sale is greatly appreciated by the buyer and makes the sale process much easier.

9. Licenses and Permits. Lastly, all applicable business licenses and permits should be up to date as you approach a sale. This includes your state business license as well as any regulatory permits. You don't want to overlook these and inadvertently hold up your successful exit.

Eric Perlmutter-Gumbiner, partner at Greenberg Glusker LLP, represents clients in general corporate and transactional matters related to emerging companies, venture capital, and mergers and acquisitions in the creator economy, technology, sports and entertainment, food and beverage, and consumer products industries.