

Business exit – Exploring your options

Your guide to ensuring
business continuity and
success after you step away



Attwaters
Solicitors



Introduction

Welcome. Whether you are looking to take a step back from your business, are hoping to retire, or you simply want to understand how you can best prepare now for an eventual exit, this is the guide for you.

After years of hard work, you might be looking to transition to a less active role whilst still retaining an interest in the business. You might want to relinquish control altogether through an open

market sale and use the proceeds to fund your retirement. You might have a successor in mind and are wondering how best to prepare them for their future role and responsibilities. Or you might be looking to ensure business continuity in the event of your unexpected death or loss of capacity.

In this guide, the expert Corporate & Commercial lawyers at Attwaters Solicitors will provide their insights on:

The business exit options available to you

The key steps to ensuring a successful business sale

The role of estate planning in maintaining business value and continuity

The value of an experienced legal team when planning your business exit strategy.



Your business exit options

– finding the right path for your business

As a business owner, deciding how and when to exit your business is one of the most significant decisions you will face. Whether you're considering retirement, moving on to new ventures, or simply looking to realise the value of your business, understanding your exit options is crucial.

1

Succession planning: Passing the reins on to the next generation

Succession planning is a popular choice for family-owned businesses where the aim is to pass ownership and control to the next generation. This option allows the business to remain in the family, preserving its legacy and ensuring continuity.

Pros: Succession planning can be beneficial as it offers a smoother transition, often with less risk of disruption as the successors are typically familiar with the business. It also allows for long-term planning, as the current owner can gradually transfer responsibilities to the next generation whilst they are still in situ, enabling them to mentor their successor and oversee the transition.

Cons: Family dynamics can complicate succession planning, so it's essential to ensure that the next generation is both willing and able to take over. Careful tax planning is also required to mitigate Inheritance and Capital Gains Taxes.

2

Open market sale: Selling to an external buyer

An open market sale involves selling your business to an external buyer, which might be a competitor, a company looking to expand their business offering, a private equity or venture capital firm, or an individual buyer.

Pros: An open market sale can often yield the highest financial return, especially if your business is in a growing or lucrative market. It also provides a clean break, allowing the owner to step away from the business entirely.

Cons: Finding the right buyer can be tricky and appointing the right specialist to assist you in this process is key to maximising your return. The sale process will also involve significant due diligence on the buyer's behalf, so you must prepare for every aspect of your business to be scrutinised. Preparation for an open market sale can often take months or even years.

3

Management buy-out (MBO) or management buy-in (MBI)

Management buyouts and buy-ins involve selling the business to the existing management team (MBO) or an external management team (MBI).

Pros: Both options provide leadership continuity, which can be reassuring for employees, customers and suppliers. The existing management team already understands the business, reducing the learning curve and ensuring a smoother transition.

Cons: Financing a buy-in or buy-out can be challenging, especially for small or medium-sized businesses. The management team may need to secure external funding, which can complicate the process. The vendor is also commonly expected to accept terms that will see the sale consideration being paid out as deferred consideration over a period of time following completion, often based on an earn-out linked to ongoing business performance.

4

Employee Benefit Trusts (EBTs) and Employee Ownership Trusts (EOTs)

Employee Benefit Trusts (EBTs) hold shares in the business for the benefit of employees, whilst Employee Ownership Trusts (EOTs) enable the transfer of ownership to employees, typically leading to a fully employee-owned business.

Pros: Both EBTs and EOTs can help secure the future of the business by aligning employee interests with its success, potentially leading to increased motivation and productivity. They can also offer significant tax advantages, such as relief from Capital Gains Tax.

Cons: Establishing and maintaining these kinds of trusts can be complex. Setting up either one involves creating a trust deed, in addition to a raft of further transaction documents, as well as requiring legal oversight to ensure compliance.

Preparing your business for a successful sale

Selling a business is a significant milestone that requires careful planning and strategic preparation. Whether you're a sole trader or the owner of a larger company, preparing your business for sale is crucial to maximising its value and attracting the right buyer.

Here are some of the key steps to preparing for a successful sale:

1. Organise your financial records

The first step is to get your financials in order. Potential buyers will closely examine your financial history, so it's vital to present clean, transparent and accurate financial records.

- **Update and clean your books:** Ensure your balance sheets, profit and loss statements, cash flow statements and tax returns are accurate and up to date. Any discrepancies should be resolved long before listing your business for sale.
- **Separate personal and business expenses:** This clarity will help potential buyers accurately assess your business's financial health.
- **Conduct an independent audit:** This can enhance credibility and reassure buyers that your financials are reliable and in good shape.

2. Build a strong management team

A business that appears overly reliant on its owner can be a red flag for buyers. Ensuring you have a strong management team in place is crucial when preparing your business for sale.

- **Empower your management team:** Start offloading some of your responsibilities to trusted members of staff in order to decrease your business's dependence on you.
- **Document roles and responsibilities:** Clearly outline the roles and responsibilities of each team member to help potential buyers understand how the business functions and facilitate a smooth transition.
- **Implement employee retention strategies:** Retaining key employees is often vital to a successful business sale. Buyers will place significant value on the continuity and consistency that key staff members will bring to the business.

3. Ensure comprehensive documentation

Thorough documentation is essential for substantiating your business's value and streamlining the due diligence process.

- **Document operational procedures:** Prepare detailed documentation outlining all the business's key processes and procedures, including customer onboarding, inventory management, sales and lead management, employee training, supply chain management and more.
- **Formalise contracts and agreements:** Ensure that all contracts, including those with suppliers, customers and employees, are up-to-date and documented in writing.
- **Maintain legal compliance:** Verify that your business complies with all relevant laws and regulations, such as health and safety standards and data protection laws. You will need to address any compliance issues before putting your business on the market.
- **Ensure formal documents are in place for your business premises:** Where your business is reliant upon a particular premises, you should ensure that there is a valid lease in place, offering sufficient security of tenure to allow any buyer to recoup on their investment.

4. Optimise business operations

Streamlined operations make a business more appealing to potential buyers. Assess your business operations and identify areas for improvement.

- **Reduce operational costs:** Look for ways to cut unnecessary expenses without sacrificing quality. A lean, efficient business with minimal waste is attractive to buyers
- **Enhance profit margins:** Evaluate your profit margins and consider strategies to improve them, for example renegotiating supplier contracts, adjusting pricing or finding more cost-effective delivery methods.
- **Diversify revenue streams:** Explore untapped revenue streams or growth opportunities. A business with multiple income sources is generally more attractive to potential buyers.

5. Develop a strategic exit plan

A well-planned exit strategy is key to a smooth transition and can help you achieve a better sale price.

- **Determine your post sale role:** Decide whether you want to stay involved in the business post-sale. Some buyers may prefer a transition period, where you remain on hand as a consultant to facilitate a smooth handover.
- **Engage in tax planning:** Consult with a taxation specialist to understand the tax implications of selling your business. Proper tax planning can help minimise liabilities and maximise your sales proceeds.
- **Communicate with stakeholders:** Plan how and when to inform employees, customers and suppliers about the sale. Transparent communication is crucial for maintaining trust and ensuring a seamless transition.

6. Seek professional assistance

Selling a business is complex, so it isn't surprising that obtaining early professional guidance, advice and support can significantly improve the process and outcome, including:

- **Getting your house in order:** Working with you and your accounting, tax and financial advisers to ensure that your business is sale ready.
- **Contract negotiations:** A Corporate & Commercial lawyer will be able to help you negotiate the terms of the sale, ensuring that your interests are protected and that the terms are as favourable as possible, before enshrining these in a Heads of Terms document.
- **Managing legal documentation:** From assisting you in answering legal due diligence enquiries, to reviewing, advising and negotiating the transaction documents on your behalf, your lawyer can handle all the necessary legal documentation and project management required to ensure that the sale process is smooth and legally sound.
- **Overseeing the closing process:** Your legal team will oversee the closing process, ensuring that all legal requirements are met and that the transaction is completed efficiently.





Securing your business legacy: The role of wills, LPAs and trusts in passing on a business

As a business owner, planning for the future extends beyond your retirement or exit strategy. Ensuring that your business is passed on smoothly and efficiently in the event of your death or incapacity is crucial to maintaining its value and continuity. This requires careful consideration of your Wills, Lasting Powers of Attorney (LPAs) and the use of trusts. In addition, you should have tailored Articles of Association and a bespoke Shareholders' Agreement in place (where there is more than one shareholder involved in the business), or a relevant Partnership Agreement or LLP Agreement in place, depending on how your business operates.

1. Wills

Business owners should ensure that their Will contains instructions for the ongoing running of their business in the case of their unexpected death or incapacity. For example, it is wise for business owners to appoint separate executors and trustees in their Will to manage their business affairs, rather than appointing the same individual to handle both your personal estate and business interests.

Why separate appointments?

The skills and knowledge required to manage the ongoing operation of a business differ significantly from those needed to administer a personal estate.

Legal considerations

Specific provisions should be included in your Will to grant the appointed executors or trustees the necessary powers to carry on the day-to-day running of the business. These might include the ability to:

- Make management decisions
- Enter into contracts
- Handle financial matters on your business's behalf.

Reviewing your Will

Life and business circumstances are rarely static. Once a business has been sold, and the former owner no longer holds business assets but instead has cash or other investments in their estate, it is essential to update your Will to reflect this new reality. This is because a Will made while you were a business owner may contain provisions that are no longer relevant or advantageous after the sale of your business. For example,

tax planning strategies that applied to your business assets may not be suitable for your new financial situation.

2. Lasting Powers of Attorney

While Wills address the distribution of your business after your death, Lasting Powers of Attorney (LPAs) are vital for ensuring the ongoing smooth operation of your business whilst you are still alive. They ensure your wishes will still be carried out if you become mentally incapacitated.

As we discussed in the above section, the people you appoint to manage your personal affairs won't necessarily have the knowledge or skills to manage your business. It is therefore advisable to make a separate LPA specifically for your business, and appoint individuals who are well versed in its operations.

In addition to appointing the right individuals, your business LPA may need to include specific provisions relevant to the operation of your business. This could include instructions on how decisions should be made, authority to manage bank accounts and the power to make financial and contractual decisions on behalf of the business.

3. Flexible trusts

The future is unpredictable, and the circumstances surrounding your business and its value may change significantly between the time you make your Will and your death. This is where a flexible trust within your Will can be particularly beneficial.

- **Adapting to changing circumstances:** A flexible trust is similar to a discretionary trust, with one key difference: it allows the distribution of your business interests to be determined based on the situation at the time of your death, rather than when the Will was made. This flexibility ensures that the trust can take into account the latest available tax reliefs, such as Business Property Relief (BPR) for Inheritance Tax (IHT) purposes.
- **Impact of tax reliefs:** The availability or non-availability of tax reliefs can significantly influence who should inherit your business interests. For example, if BPR is available, passing the business to specific beneficiaries might be more tax efficient. Conversely, if reliefs are no longer available, a different approach might be required to minimise the tax burden on your estate.
- **Political uncertainty:** In an environment of political uncertainty, where tax laws and reliefs may change, having a flexible trust is even more critical. It ensures that your business interests are handled in the most advantageous manner for your beneficiaries, regardless of the prevailing legal or tax landscape at the time of your death.

4. Corporate documents

Depending upon how you operate your business, and whether or not you are in business with other people (related to you or not), you will need to ensure that you have the appropriate corporate documentation in place not only to govern your relationship and the management of the business generally, but also to set out what will happen in the event of a business owner's death. It is imperative that these corporate documents are reviewed or prepared periodically, in tandem with any estate planning (including the preparation of Wills and LPAs) that you undertake.



The role of an expert legal team in planning your exit strategy

The right exit strategy for you and your business will depend on a wide range of factors, from the ongoing role you want to play in the business (if any) to the tax implications of your chosen strategy. Whatever path you choose, having an expert legal team on hand is vital to maximising business value and ensuring a smooth transition.

At Attwaters Solicitors, our Corporate & Commercial legal team have spent decades advising business owners on all aspects of business exit and legacy planning, including:

- Identifying and advising on the correct exit strategy for your business and personal goals
- Working as a team of professional advisers to determine your business's current value
- Advising on succession planning
- Advising on Employee Ownership Trusts and Employee Benefit Trusts
- Assisting with management buy-ins and buyouts
- Ensuring you have the right documentation in place to protect your business in the event of your death or incapacity
- Preparing your business for sale, including readying the business for the due diligence process, negotiating contract terms and ensuring legal compliance
- Drafting and reviewing business documentation, including incorporation documents, financial statements, policies and procedures, contracts with employees, suppliers and customers, etc.
- Drafting and reviewing all sale contracts and agreements to ensure fair and favourable terms
- Advising on maximising business value ahead of a sale
- Overseeing the transfer of ownership post-exit.

For expert legal support with your business exit, please call us on 0330 221 8855 or email enquiries@attwaters.co.uk – we look forward to hearing from you.



Where we are

■ Hertford ■ Ware ■ Loughton ■ Harlow (by appointment only) ■ London (by appointment only)

0330 221 8855 | enquiries@attwaters.co.uk
www.attwaters.co.uk

Attwaters Solicitors LLP (trading as "Attwaters" and "Attwaters Solicitors") is a limited liability partnership, registered in England and Wales, with registered number OC451709 whose registered office is at 72 – 74 Fore Street, Hertford, SG14 1BY. Authorised and regulated by the Solicitors Regulation Authority. SRA ID 8007943. A list of members' names is available for inspection at the above office.