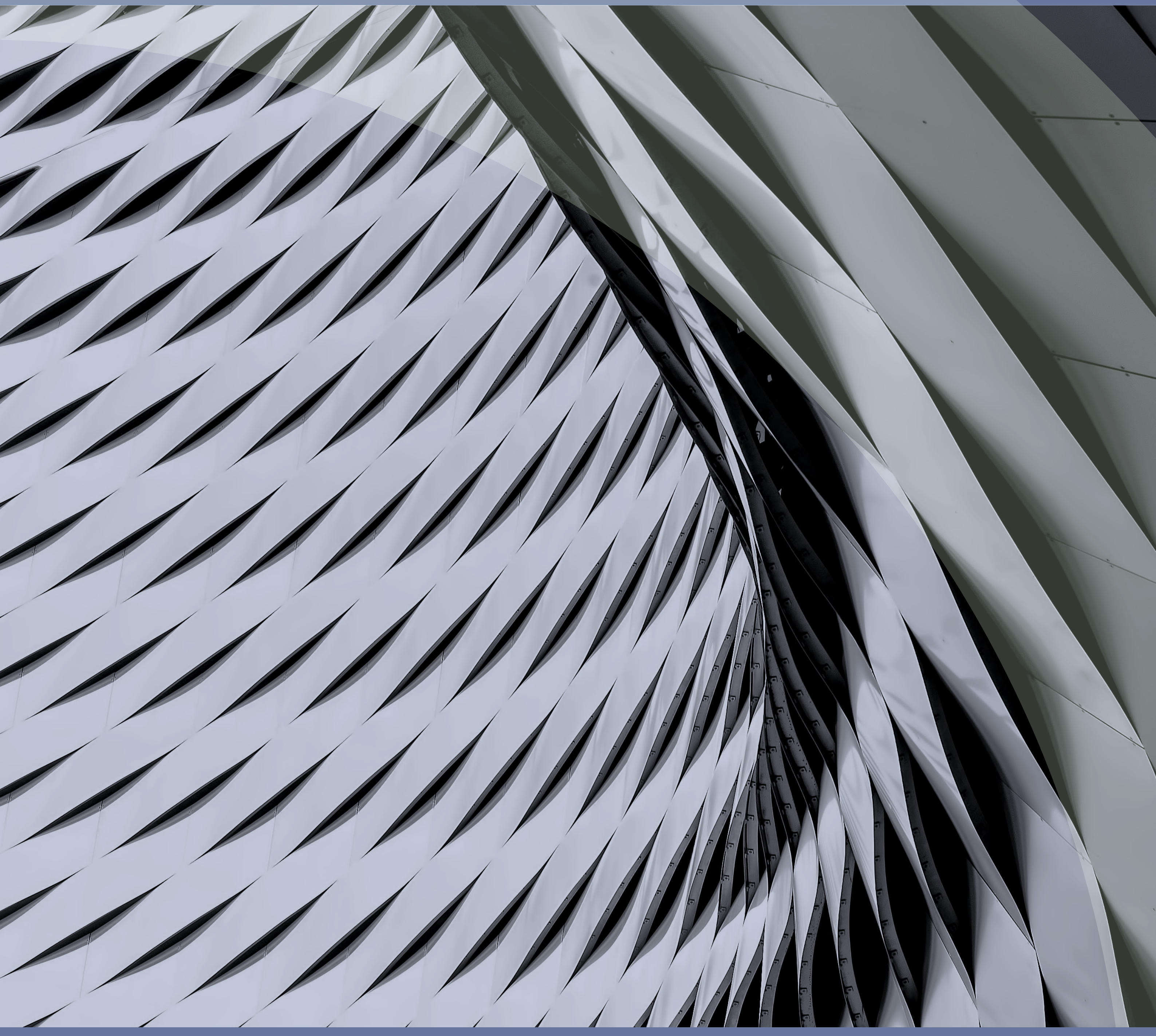
# BUSINESS EXIT PLANNING GUIDE

## A How-To Guide From The Legal Director



# Introduction

**If you are planning to sell your business, there are many things that you can do in preparation that will maximise its value and make it attractive to investors.**

**And, even if you are not currently planning to sell, preparing your business for market readiness will help you develop best practice procedures for the organisation and create a company structure that fosters growth and success.**

The experience is unique for every business. Nevertheless, there are some considerations to make and processes to follow that are relevant for every organisation. This guide will lead you through the steps towards sale and detail some of the requisite preparations that should be part of your business exit/ go to market strategy.

### Market Readiness Assessment

Investors look for a combination of growth and profitability. More broadly, they also assess the characteristics and structure of a business to determine how well organised it is.

### Management Information

You will need to demonstrate your attractiveness and effectiveness in these areas and preparing your Management Information (MI) is a good place to start.

This is the information that you provide to investors, and it largely falls into two categories: trading information (past and future) and assets (including physical, logical, people, Intellectual Property).

### Data Room

In order to store and manage the documents that form part of your MI, you need to establish a data room. Data rooms facilitate safe disclosure of this documentation and will be added to throughout the sales process.

There are a variety of options available to you, of varying levels of sophistication. You may, for example, want to have different access settings for different users. It is worth spending time establishing what would be most suitable for your needs before deciding on one.

### Financial Information

Investors will want to see:

- Clean accounts
- A history of achieving budget
- A good business plan
- Your statutory books
- Tax filings

**Recommended:**
**It is worth getting an interim CFO if you haven't one already to deal with the initial financial due diligence. It can be very time consuming and distracts management from continuing to grow the business, which is far from ideal when you're trying to sell.**

**Recommended: Get an expert in. A TLD lawyer has done this many times before and will ensure you structure your business and its relationships correctly. When you bring your business to market, you will be ready for sale, giving investors confidence in your operation and increasing the value of your business.**

## Contracts

It is essential that you review all contracts before bringing your business to market. Here are some key questions that you need to resolve at this stage:

- What do your terms and conditions (T&Cs) with suppliers and customers say? Are key contracts about to expire? Do any of them have 'change of control' clauses that invalidate the contract after a change of business owner?
- Does the sale of the business include sale of Intellectual Property (IP)? Is your IP documentation signed?
- Is there more than one owner? What does your shareholders agreement say that could impact the sale?
- Is there a share scheme? A pension scheme? Have they been set up correctly and how are they impacted by a sale?
- Are all your employee/ contractor contracts signed?
- Do you own property? Have other assets? Are these included in the sale?

## Other Market Engagement Activity

Alongside this operational housekeeping, it is worth thinking about other ways to attract investors. A couple of things that you may want to consider:

- How ethical is your business? It's worth evaluating your business against Environmental, Social and Governance (ESG) criteria, as many investors will.
- How do you use tech in your company? Businesses that use technology cleverly to improve the client experience and to support employees are often looked on favourably by potential investors.

## Preparation is Key

The more you do upfront, the smoother the sale process will be and investment at this stage pays dividends. It will be more expensive and potentially reputationally damaging to be looking for, or trying to amend, important documentation once the sale process is underway.

## Bringing your Business to Market

When you are fully prepared and ready to sell, you need to decide where you are going to market your business and through what route. You could opt for a private equity style investment, or you may want to consider a trade sale. Whatever you choose, you will need to create:

- Your ideal buyer profile – this will help you to identify prospective buyers, tailor your marketing strategy and ensure you are visible in the appropriate places.
- A teaser – this is a shop window document sent to a long list of prospective targets with basic information to pique and assess interest. It can even be anonymous.
- An Information Memorandum (IM) – this is more detailed than the teaser. It becomes a vehicle for discussion, and it is important what you include. If you are unsure, get help.
- An NDA – these are essential but, if drafted badly, can derail negotiations. We recommend that your NDA should be non-negotiable but not overly aggressive. Please get in touch if you need help. One of our TLD lawyers can draft a sensible and balanced NDA that will be fit for purpose.

## Caution: You need to be careful what you share as there are complicated rules around financial promotion. TLD can guide you on this and make sure you're compliant with Marketing Investment legislation.

### Interested Parties & Heads of Terms

Once your MI has gone out, and you have people showing interest, there are several ways the sale can progress, and it is worth remembering that most deals do not complete. Though that is perfectly normal, it does mean that you should exercise caution before agreeing to exclusivity.

Heads of terms are exchanged between interested parties. This is a document which sets out the terms of a commercial transaction between parties agreed in principle. It is important to be vigilant at this stage and advisory to seek legal help. It can be very difficult to negotiate away from terms once signed documents are in circulation, even though parties are not legally compelled to conclude the deal on the terms included in this document.

Things to look out for in your heads of term:

- Abortive fees, making you responsible for the other party's costs should you withdraw from the deal.
- Terms of exclusivity.
- Provisions that lock you into the business after sale, prevent you working for a competitor or setting up a competing business.

If you are successful at this stage, you move on to detailed offers and eventually to exchange of contracts. Our lawyers have lots of experience negotiating and drafting successful contracts, so please do get in touch if you require our help.

### Conclusion

Business exit planning is an involved, complex process. Preparation is key and is imperative in attracting investors and securing the best price.

Selling your business, however, can also be emotional and stressful. You will likely have invested many years and a lot of effort, and it is not always easy 'to give up control' or walk away – parties will often remain in the business post investment. This matters and it is worth getting the best advice possible throughout the process. TLD lawyers work within your business and are invested in your success. They know what you are hoping to achieve and what your concerns are and will be your ally and legal representative throughout the entire process. Preparing you legally from a commercial perspective, they will use their expertise and experience to negotiate the best outcome for you.

**If you are planning to sell your business or would just like to ensure you have the procedures, documentation and company structure in place to be market ready, contact us on 020 3053 8613 or info@thelegaldirector.co.uk.**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