

Exit through the gift shop

key points

- No matter what size of business, certain factors will push up the value you receive on sale
- A potential buyer will want to review every aspect of the business before completion and a seller will be asked to supply critical information
- The price at which the business will be sold is not usually finalised until the due diligence exercise is complete

The upcoming changes in legislation for IFAs following the FSA's retail distribution review means more owners of IFA businesses are looking at their exit strategies

Off the highway: leaving the sector will require one last effort from your part



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An IFA looking to sell his business is likely to want to receive the maximum value possible for the firm, whether this involves a sale to an existing member of the team or to a third party.

In this article, we explore ways of improving deal value when you sell, from preparing the business at the outset to completion of the sale agreement. No matter what size of business, certain factors will push up the value you receive on sale.

Preparing the business for sale: There is plenty of background work to be done before you put your business up for sale. In order to maximise the key selling features it is important to prepare the business well in advance of sale. Typical areas where improvements can add value include:

- Reviewing existing client relationships and consider updating any terms of business.
- Ensuring the client database is up-to-date.
- Retaining key employees with appropriate employee incentives.
- Disposing of equipment surplus to the needs of the business.
- Reducing business risk.

Marketing the business: Although marketing is important you need to be careful not to damage the business in the process by letting confidential information, such as client lists, slip into the wrong hands. You need to protect your business with a confidentiality agreement (also known as a non-disclosure agreement) between you and potential buyers before any confidential or sensitive information is released. Any buyer will take you more seriously if you have a well considered non-disclosure agreement. There can be issues under FSMA depending upon who you are talking to for which there are criminal sanctions if you do not comply.

Disclosure of information: A potential buyer will want to review every aspect of the business before completion and a seller will be asked to supply critical information. To the extent that information is not available or there are conditions or stipulations then these should be set out in a disclosure letter. The more issues a seller discloses the less likely there will be a claim on the warranties down the line.

As part of the disclosure process, a seller should do the following:

- Disclose relevant information subject to confidentiality restrictions.

- Maintain up-to-date files of all records, books of account, financial and management accounts, licences to trade, insurance policies, client and customer lists and contracts.
- Keep a copy of all information disclosed to a buyer throughout the sale process.

Structuring the sale: The sale of a business can be structured in many different ways. This is often an area the buyer will seek to negotiate and a seller requires good representation to ensure it maximises the proceeds it will receive. The structure of the sale will often depend on the corporate structure of the IFA business for example whether it is a limited company, partnership or sole trader.

The tax implications on various structures for sale need to be considered as well as which assets and liabilities will transfer and whether there are any ongoing obligations for the seller in respect of the retained assets and liabilities. If there are significant ongoing liabilities for the seller after sale then the seller may want to consider run off insurance cover.

Heads of terms of agreement: The heads of agreement should be entered into at an early stage in negotiations with a buyer. They will set out the framework of what you are selling and how you are going to sell. The heads of agreement will contain the key terms and conditions attaching to the sale of the business. Ideally the heads of agreement should be agreed before embarking on the sale documentation and detailed due diligence as if terms cannot be agreed you may wish to withdraw from the process sooner rather than later. Time taken at the heads of agreement stage can save professional fees later down the line.

Key provisions that are often included in heads of terms with a potential buyer are responsibility for costs if the transaction aborts and an exclusivity period during which the seller may be prohibited from entering into negotiations with any other potential buyer. It is often helpful to establish a time frame for completing the sale and including this within the heads of agreement.

Consents and regulatory issues: The seller must consider whether there are any consents required prior to the sale. As well as the FSA regulatory consents that may be required, there may be an agreement between the owners of the business setting out provisions to be

followed for a sale. In addition, if the seller has borrowings then it is recommended that the bank is consulted at an early stage.

Terms of sale: The price at which the business will be sold is not usually finalised until the due diligence exercise is complete. The sale agreement is the main commercial contract governing what is being sold and what the terms and conditions are. The drafting is important and the seller needs to understand and agree to all of the small print.

In relation to the price of the sale the following aspects should be considered:

- Will the consideration be paid in cash, shares or debt?
- Is the price payable on completion of the acquisition or by future instalments?
- If the price is deferred, consider security for, and interest on, future payments?
- Is the price dependent on a valuation of the business at completion or future profits or turnover of the business?
- If the price is dependent on future trading, consider the extent of continued influence on the business and management.

The seller is likely to be required to give warranties as to the state of affairs of the seller and the business and also indemnities in relation to known liabilities of the business, unless these matters are taken into account in calculating the price. The seller may reduce risk and limit liability for breach of warranty and indemnity by making full disclosure in the disclosure letter, limiting the time period within which claims may be made, putting a cap on the monetary values of any claims and providing for an opportunity to remedy any breaches.

Ongoing responsibilities and restrictions: Most buyers will want to ensure a smooth transition and will therefore want to bind the seller into the sale process. It is common for the buyer to require the seller to give covenants promising not to set up competing businesses. Another common feature is structuring the consideration so that it is linked to the performance of the business over a number of years (called an earn-out). It is important to strike the right balance so that the seller is not bound by any unreasonable restrictions.

This article provides a non-exhaustive summary of the aspects for a seller of an IFA business to consider and emphasises the more important topics and chief concerns of selling a business.

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