

Buying or selling a business is less daunting with the right legal advice

Paul Salvatore on getting the best deal

Local and cross-border transactions are part of the business landscape in Ottawa and there is no sign that mergers and acquisitions (M & A) activity is slowing," states Paul Salvatore, Head of Low Murchison Radnoff's Business Law Group.

Entering the world of M & A is daunting. Many of the fundamentals are the same regardless of the complexity of the deal.

If you're a business owner perhaps you've decided to retire or move on to other opportunities and the stars are aligned to sell to your employees, a strategic partner or even a competitor.

Salvatore says business owners wishing to sell need to have their proverbial house in order.

"Make sure everything is well-kept so when somebody comes in there are no issues that a buyer would be concerned about later on."

Whichever side of the process you're on, Salvatore says one of the first details to address is whether a sale of shares or assets is on the table. Tax considerations are key when structuring the deal, he adds, noting that in a share sale, sellers may benefit from capital gains exemptions.

Skeletons in the closet

If you are a buyer, a share sale means purchasing the whole company as-is and there can be "skeletons in the closet" that you didn't know you were buying, Salvatore notes. On an asset purchase, you know specifically what you are buying and can exclude unwanted assets and liabilities.

For a seller, a well-kept business means ensuring company records are up-to-date. This includes properly documented and signed key contracts. Also, the minute book should be current; this includes properly-documented dividend declarations, share issuances and up-to-date information on company directors and officers.



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Sensitive material

A buyer should review sensitive material such as customer contracts and employment agreements. Salvatore says a confidentiality agreement is a must in these cases.

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Buyers also want assurances that sellers aren't hatching plans for a competing

business after the sale. Salvatore says solid legal representation can address these concerns.

"There are what we call non-compete and non-solicit agreements. With those in place, the seller can't solicit their customers or compete with the buyer for a period of time."

Once the deal itself begins to come into focus, the parties collaborate on a Letter of Intent.

"The Letter of Intent sets out the fundamental terms of the deal. That means determining the purchase price, payment terms, structure and other key business terms."

When it comes to closing the deal, Salvatore says, "Cash is king."

"As a seller, you should try and strike a deal that gets you paid in full on closing. Sometimes that's not possible. In that case, the seller has to be very concerned that

adequate security arrangements are in place if the buyer defaults."

With the fundamentals in place, Salvatore says, the parties enter into "the heart" of the deal: representations and warranties. These can run many pages and require careful scrutiny.

Salvatore warns that if anything disclosed by the seller proves to be inaccurate, the buyer can seek compensation through the indemnification provisions in the sale agreement.

With more than 30 years of experience behind him and having handled many transactions on the buy or sell side ranging from a hundred thousand dollars to eighty million dollars, Salvatore is an ideal guide in your effort to get the most out of a business sale or purchase.

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