

SELLING YOUR BUSINESS

How to Prepare for Due Diligence When Selling Your Business

BY DR CRAIG WEST, SEPTEMBER 17, 2024



Due diligence is a critical step in the [business sale](#) process that involves a potential buyer completing a thorough investigation of the company's financial, legal, and operational aspects. The [due diligence process](#) helps potential buyers assess the value, potential and risks of the business.

This due diligence checklist serves as a tool to organise and streamline the due diligence process, ensuring that necessary documentation is provided to facilitate orderly communication and documentation requirements.

Remember, this may be the most financially consequential sale of your life, so it's worth taking the time to understand the due diligence process, and what is being evaluated, to prepare and navigate towards a sale or business acquisition. It's imperative to have the correct information available to avoid slowing down or even derailing the transaction – or worse, running afoul of the ACCC.

[Preparing for the Due Diligence Process](#)

Let's start with getting your financial statements and other relevant information ready in advance to facilitate the due diligence process. This means your last few quarterly earnings or BAS filings, profit & loss statements, and any documentation of owned assets or those with outstanding debts (such as plant or machinery on a loan or lease agreement).

Compiling contracts in place with customers or suppliers will also be important to determine the value and liquidity of the business. To protect against privacy breaches, it may be worth establishing a confidentiality agreement to protect sensitive information.

You'll need to investigate all areas of your business pragmatically before your buyer does to identify potential risks during the process and take steps to address them. Being proactive early on will ensure you're ahead of the game discovers.

Many business owners will assemble a diligence team, including lawyers, accountants, and other professionals, to assist with the process.

[Key Areas of Due Diligence](#)

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Financial Due Diligence

Review financial statements, including income statements, balance sheets, and cash flow statements.

Analyse financial performance, including revenue growth, profitability, and cash flow.

Identify potential financial risks, such as debt, liabilities, and contingent liabilities.

Legal Due Diligence

Review legal documents, including contracts, agreements, and licenses.

Identify potential legal risks, such as litigation, regulatory issues, and intellectual property disputes.

Assess compliance with laws and regulations, including employment, environmental, and health and safety laws.

Operational Due Diligence

Review operational processes, including supply chain management, logistics, and customer service.

Analyse operational performance, including efficiency, productivity, and quality control.

Identify potential operational risks, such as supply chain disruptions, equipment failures, and employee turnover.

Navigating the Due Diligence Process

Responding promptly and thoroughly to buyer enquiries is essential for building trust and maintaining engagement. Providing clear and concise answers to their questions not only helps them make informed decisions but also demonstrates the professionalism they can expect from the business they wish to acquire.

Be proactive in anticipating potential issues or concerns that may arise during the process. Having solutions or information ready to address these will streamline communication and foster confidence in your service. This approach ensures buyers feel supported and valued throughout their journey.

Managing Sensitive Information

Your business may not have a century-old cola recipe in the vault, or one for the secret 11 herbs & spices, but your intellectual property may have significant commercial potential — especially to a competitor. To protect any trade secrets, it's vital to manage sensitive information carefully through the due diligence process.

Before opening up your business and sharing details with external parties, consider if you may require a non-disclosure agreement (NDA) to prevent unauthorised disclosure. It's also important to time the release of sensitive information carefully, especially when dealing with competitors who may be potential buyers.

Consider creating a secure virtual data room (VDR) where sensitive information can be shared with authorised parties during the due diligence process. A VDR allows sellers to control who accesses confidential data, track document views, and limit the ability to download or share files.

Access to design documents, prototypes, and plans should be limited to key personnel directly involved in the due diligence process. By implementing these safeguards you can protect your competitive advantage and prevent leaks that could jeopardise your business.

Seek Professional Help with Due Diligence

As a seller or a buyer, it's likely worth every penny to get professional advice from lawyers, accountants, and other experts to navigate the due diligence process. You may also consider hiring a business broker or M&A advisor to assist with the sale process. Especially if this is your first **business exit**, leveraging experience in the negotiation arena from someone who's been there before can help relieve stress through the process, and reduce the chance of misgivings after the deal is done.

Professional advice can be invaluable to address issues and concerns, negotiate terms and conditions, and protect sensitive information. Having a team on your side also lessens the burden on you to provide additional information or clarification when it's needed.

Your team can help negotiate the terms and conditions of the sale contract to address issues or concerns, and ensure a legal due diligence process.

Conclusion

Due diligence is a critical step in the business sale process that requires careful preparation and navigation. By understanding the due diligence process, preparing for it, and seeking professional help, sellers can ensure a successful sale and maximise the **value of the business** when choosing to exit.

After the sale is completed, there are often transitional arrangements to consider, such as whether the seller will remain involved for a period to assist with training or to help ensure a smooth handover. These transition agreements can be negotiated as part of the deal and are especially valuable for businesses with unique operational systems.

Sellers should also be mindful of potential tax implications from the sale and seek expert advice on managing them efficiently. Additionally, sellers may have ongoing legal obligations, such as non-compete clauses or the settlement of any outstanding liabilities. Proper planning and professional guidance can ensure that the post-sale phase proceeds smoothly and without unexpected issues.