



Considering a sale or an IPO? Be prepared...

Preparing your business for sale could make a considerable financial difference to the ultimate sale price. Thorough preparation is also key to the success of a stock market flotation (IPO).

Whether you are considering selling or floating your business, it will be vital to get your house in order well in advance of the exit. This will ensure that the business is as attractive as possible to potential buyers and/or investors and will make the exit process as smooth as possible, avoiding any nasty surprises along the way.

In addition to ensuring your accounts are in good order, key legal issues to be considered before any sale or IPO process is initiated include:

- 1 Pre-sale/IPO reorganisation** – ensure that the business owns or has the right to use all relevant assets. Are any arrangements needed in relation to the ongoing provision of services and the use of property?
- 2 Contracts** – do any of the material contracts of the business contain change of control provisions which would be triggered by the sale/IPO? Are all key contracts documented clearly? Is it necessary to formalise any informal arrangements that are material to the business? Are there any key contracts which will come up for renewal during the exit process? If so, should any renewal be accelerated?
- 3 Intellectual property** – are all intellectual property rights owned or used by the business properly protected/registered/licensed?
- 4 Management and employees** – do directors and key employees have written contracts setting out the terms and conditions of their employment? Do they include appropriate non-compete provisions? These contracts will need to be in a form suitable for a publicly quoted company in the case of an IPO - a company with the appropriate management and other systems in place is likely to be more attractive to investors. Is there a share scheme? You may consider establishing an employee share scheme to incentivise employees to stay on. Having a strong management team in place following the exit will be key for a purchaser/investor.
- 5 Shareholder rights** – if the business is incorporated, are there any outstanding pre-emption rights over any of the company's shares? Is there a shareholders' agreement in place governing the terms of any exit?
- 6 Disputes** – any ongoing legal disputes (for example, with customers, suppliers or employees) need to be resolved before the exit process begins.
- 7 Property** – ensure any property contracts are properly and clearly documented.
- 8 Tax & Estate Planning** – are shareholdings held correctly to take advantage of capital gains tax entrepreneurs' relief? This can reduce the rate of tax on sale to 10% and save up to £1.8 million of tax per individual. Also, have shareholders considered what they will do with the proceeds of sale and their inheritance tax and estate planning?

In our experience, the sooner you start planning, the smoother the exit process will be. If you are considering a sale or IPO, we would be very happy to have an initial meeting with you to discuss these issues at no charge, so please do get in touch with us (details below).



Rupert Weston
Partner

+44(0)117 939 2228
rupert.weston@burges-salmon.com



Dominic Davis
Partner

+44(0)117 902 7196
dominic.davis@burges-salmon.com



Jim Aveline
Senior Associate

+44(0)117 939 2283
jim.aveline@burges-salmon.com

© Burges Salmon LLP 2011. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX
Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400

Chancery Exchange, 10 Furnival Street, London EC4A 1AB
Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.



**BURGES
SALMON**