An Eye to a Company's Future – Sale, Acquisition and Succession Planning

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As a business ages and grows, its owners face the ultimate decision: Do we sell the business? Do we acquire a synergistic company? Or do we establish a succession plan to insure the company's longevity and also provide for their financial security? This decision involves planning.

Sale

Achieving success in the sale, acquisition, and succession planning of a business involves the same elements that make the business successful in the first instance – proper planning and implementation. There are many choices, including selling to insiders, to employees through an employee stock ownership plan, to other owners, to a competitor or a third party. The best planning starts long before the company goes to market and involves "putting its house in order."

A team of professionals should be involved from the start to assist in this process. The team should include an accountant, an attorney, a marketing professional and, perhaps, a valuation professional. Typically, the company will choose either the accountant or the attorney to lead the team. That choice is a personal one to the owner. These professionals may or may not be the same professionals who provide day-to-day advice in those areas, since the sale process requires another knowledge base and experience in navigating that process successfully.

First, the company needs to work with its financial advisors to maximize its ability to present its financial picture in the best possible light. This is a time to address cleaning up items on the company's books that could cause doubt or even a claim or credit by an interested suitor. For the sale of a business, this planning should begin several financial reporting cycles, if not years, prior to marketing the company for sale. The accountant will also provide tax advice to the company as to transaction structure and for the owners.

Similarly, the company needs to work with its legal advisors to prepare for orderly due diligence of all its legal issues, such as all contracts, licenses, permits, employment issues, any environmental issues, and litigation. Due diligence will involve a thorough review of all documentation of the company and will likely involve significant employee time. If planned properly, the company can shore up its legal documentation, such as company manuals and policies, employment agreements, restrictive and non-circumvention covenants. The attorney will also provide legal advice on the structure of the proposed transaction, negotiate and draft the sale/acquisition documents, and provide legal counsel during the transaction process.

The inclusion of a valuation professional can assist the selling company to validate the asking price and the acquiring entity to validate that price. This type of support can be forceful for negotiations, both to help a selling company form its negotiating posture, but also to respond to contrary assertions on value.

Acquisition

Similar considerations apply when the company decides to target a strategic acquisition, rather than to sell. The same team of professionals should be engaged to maximize success in that process. Remember that the target company has also thought through and engaged in the above planning process prior to sale. Therefore, careful review of its history is crucial. Due diligence is essential and should involve company professionals and key personnel to validate the assumptions supporting the acquisition.

Succession Planning

For any closely held company that has decided on continuity, decisions on succession planning should be made. This requires an initial plan and regular review and reconsideration. Many companies have the option of perpetuating a business by transitioning leadership and ownership to family members and/or other insiders. Similar to sale or acquisition, owners need to address family, tax, and estate planning issues. Depending on the plan, different legal documentation applies, such as a standard Buy-Sell Agreement, a Cross-Purchase Agreement with Life Insurance, or a written succession plan to address continued management and control. Greater detail is beyond the scope of this article. However, it is most important to note that this is an interactive process that requires re-evaluation over time, rather than an event that occurs at a specific time and remains in place without change.

All businesses need to chart their future course, and planning is the key element. Be prepared so that you can recognize the time to sell, the time to make a target acquisition, or to plan for the next generation to assume leadership and ownership.