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WHAT ISSUES SHOULD YOU CONSIDER WHEN PREPARING YOUR COMPANY FOR EXIT?

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In the words of a famous entrepreneur, "*Genius is 1% inspiration, and 99% perspiration*," Thomas Edison, founder of General Electric.

As an entrepreneur, you have invested your hard work into your company over the years and have seen it develop into maturity. While each company has its own reasons for selling, there comes a time to reap the fruits of your labor and smoothly transition from the business.

As you prepare your company for sale, you should consider the following issues.

1. Why are you doing the deal?

Is the sale of your company driven by retirement, a strategic partnership with a buyer, an opportune timing due to the peaking of your company's valuation, or distress? For distressed sales, you should note that the current trend is for buyers to perform extra due diligence to determine if the assets have good title and whether there are any liens against them. Knowing your motivations behind the sale of your company will help you focus on key issues during the negotiations such as: (i) retained control or voting rights over the future operations of your company after the sale; (ii) the metrics used to measure the future performance of the company; or (iii) the resources and management that the buyer will provide to your company after the sale.

2. What is Driving Buyer's Interest in Your Company?

If you know what is the buyer's core value or interest in your company, you can determine what kind of deal this is and whether it is a financial acquisition, technology acquisition, or market acquisition. Understanding what kind of deal it is will help you concentrate your time and resources on which areas to prepare your company to be as attractive to the Buyer during the due diligence and negotiation phases. Being aware of the Buyer's motives will also help you establish realistic purchase price while protecting against the unnecessary disclosure of sensitive information to the buyer, should the deal not

consummate in a final purchase.

Financial acquisition: If the buyer is interested in your key customers to increase its revenues or key suppliers to decrease its costs, then the deal is a financial acquisition. In a financial acquisition, your company's value will be primarily driven by your customer contracts and any other economies of scale your company has created. To preserve your operational efficiencies as a competitive advantage, make sure the following contracts with the following constituents are still effective and the sale of your company will not invalidate these key relationships that the buyer will be relying upon.

Key customers: When buyers can no longer increase its business revenues through internal organic growth within its existing organization, it looks outside to increase revenues by acquiring key customers of other businesses. If this is the case with your buyer, you should determine whether your key customer contracts are still in effect and valid, and particularly whether they can be transferred to buyer under an assignment or change of control.

Key suppliers: Buyers may also be interested in your key suppliers to reduce its supplier risk, eliminate price gouging, and enhance its purchasing power through greater economies of scale. A greater size business with a supplier will enable better negotiations for buyer over bulk purchases. Not only should you ensure that your supplier relationships are in good standing, but that your key supplier contracts are still in effect and valid, and particularly whether they can be transferred to buyer under an assignment or change of control.

Financial Documents: In a financial acquisition, it is crucial to get your financial documents in order since buyers will want to know how much revenue you generate with each key customer and how much you spend with each key supplier. You should verify that your financial documents are current, audited, and GAAP compliant (or compliant with the accounting method required by buyer).

Technology acquisition: If buyer is interested in your proprietary technology or intellectual property ("IP"), then the deal is a strategic acquisition. In a strategic acquisition, your company's value will be primarily driven by your IP portfolio.

Technology: Understanding how your technology fits into the marketplace and why it strategically makes sense to the buyer will help you focus on the negotiation points that drive the value behind the deal. Identify whether your technology is a "blocking technology" which prevents the buyer from entering into a particular market or enhancing its existing products. Another point to consider is whether your technology is a "platform technology" which lays the foundation to enable the buyer to build new products on your technology. If the overall objective of the buyer is a technology acquisition, its motive will be to ultimately expand its product line and reduce the time it takes to get product to market.

Intellectual Property: You should inventory all your trade secrets, copyrighted material, patents, and trademarks or service marks and determine which ones are driving buyer's interest. You should also ensure that all your maintenance and renewal fees for your patents and trademarks are current. Additionally, you should also obtain all IP ownership transfers, assignments and conveyances from all employees (past and present) and/or contractors that have worked on developing or improving your technology.

Market acquisition: If buyer is interested in segueing into a *new* market or *increasing* market share through either purchasing your key customer contracts or distribution channel, this is a market acquisition.

Customer contracts: For purchase of key customer contracts, the points raised above under financial acquisition also applies even though buyer's motive is different under a market acquisition. With increased market share, buyer may potentially have greater market power to set prices.

Distribution channel: A quick and easy entry into a new marketplace, i.e. geographic region, would be to purchase a seller's existing distribution channel, which may include distributors, value added resellers, or manufacturer's representatives. You should determine whether your contracts with parties in your distribution channel are still in effect and valid, and particularly whether they can be transferred to buyer. You should also verify whether your key licenses or government permits (e.g. filings with secretaries of state for authority to do business in each state, state sales tax registrations, licenses to perform certain services like an electrician's license) to conduct business in these markets are valid and in effect.

3. Is it a Stock or Asset Sale?

Is buyer purchasing only your assets (i.e. inventory, equipment, certain IP, building) or the entire company through a stock purchase? If it is an asset sale, you should verify that there are no liens placed against your assets. If it is a stock sale, does your company have any significant liabilities (i.e. pending lawsuits, outstanding debt), and whether such liabilities will be assumed by buyer? This will help you assess a true value of your assets or company and thus a fair sales price.

4. What is the Current Lay of the Land for Acquisitions?

As part of your decision-making process to sell your company, be aware that in today's economic climate, valuations of company for sale tend to be low. As such, this is a prime opportunity for buyers who are cash-rich.

While these are just some preliminary considerations, understanding the various incentives behind the deal will allow you to create more bargaining chips at the

negotiation table to ultimately maximize the value of your company at closing.

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