

Business Sales – Information Memorandums

When selling a business one of the most important documents that must be prepared to facilitate a sale is an Information Memorandum.

The documents are usually prepared in consultation with your advisors and covers a range of issues that provide the first step in the sale process.

Listed below is a generic list of the items that will need to be addressed.

HISTORY

Give a brief outline of the history of the business and its origins.

For example, when it started, any acquisitions, takeovers, dissolutions etc that have occurred during the time the business has been operating.

Include memorable achievements such as industry awards etc.

Many people will also include the mission and/or vision statement of the business.

OWNERSHIP

Outline the ownership structure of the business. For example, is it a corporate entity, partnership, sole trader etc.

Identify the corporate entities including directors' and shareholders. In the case of a partnership details of the partners.

It is important where it is a professional services or technical business to include details of qualifications etc of key owners and directors. Even a short bio of the directors, partners etc. can be beneficial.

LOCATION

Provide details of the premises and locations the business operates from including franchisees, licensees etc.

Provide details of the lease terms, rent and what do you get? Such as car parking, storage, outgoings included etc. What is the rent, outgoings payable and the GST.

If there is any improvements or interesting points about the place you occupy that should be mentioned.

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OPERATIONS

Give a detailed account of the business operations and provide examples of how distribution chains etc work.

Detail any key issues that could compromise operational proficiency and perhaps any opportunities.

INDUSTRY AND MARKET

Provide details regarding the industry and links to any supporting information such as industry bodies, market research etc.

Clearly identify the market that the business operates in.

It is also important to identify any key opportunities and risks.

PRODUCTS AND SERVICES

Outline the products and/or services the business manufactures or supplies.

Either include or provide links to websites etc. where both consumer and technical information can be obtained.

CUSTOMER BASE

Who are your customers? Are they local, national and international?

Are they mum and dad consumers or significant multinational companies?

How do they interact in a transaction? Is it face to face, web based etc.

Is it a manufacturing, wholesale or retail business?

ASSETS – PLANT AND EQUIPMENT

Provide a list of the assets of the business. Sometimes it is necessary only to provide key assets and more generic information regarding larger groups of assets.

What is included, not included, on lease, to be paid out, on consignment or hired.

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Are the assets specialised and required to be purchased through specialist dealers or do they have to be custom built? What is the life span of the assets?

STOCK

Decide whether or not you are selling your business on a walk-in, walk-out basis or whether a stocktake will be required.

If a stocktake is to be performed, you should estimate the value of the stock.

EMPLOYEE/STAFF DATA

Talk about the staff, the staffing structure, pay rates, remuneration and the owner's involvement is also a very important aspect as buyers will want to work out how they may fit into the business.

It is essential to show comfort about what the owner does and that this role can be replicated or managed whilst the new owner is in transition and learning the business.

If you can show long serving, reliable staffing and a good culture this will go a very long way to helping you sell the business

INTELLECTUAL PROPERTY

Prepare a list of all intellectual property including patents, trademarks etc.

Prepare a list of phone numbers, website address and social media pages etc.

It is also wise to provide details of all ASIC information including Australian Company Numbers (ACN) and Australian Business Names (ABN).

LICENCES/PERMITS

A list of licences necessary to operate the business should be listed here (i.e. food licence, liquor licence, council licences).

You should contact each licence/permit provider to ensure each licence/permit is actually transferrable.

SERVICE CONTRACTS/LEASED EQUIPMENT

You should prepare a list of any service contracts associated with the Business (i.e. security monitoring).

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ENCUMBERANCES

You should prepare a list of all encumbrances effecting the business that will be required to be released at settlement (i.e. a loan over a vehicle that is being sold with the business).

FINANCIAL PERFORMANCE

For the purpose of an Information Memorandum a summary of performance in a suitable financial report from your accountant will suffice.

Most buyers will want to see detailed historical data once they go into a full due diligence.

WHY BUY THE BUSINESS

This is where you get to provide the sales pitch as to why the business is a good investment, its future potential etc.

ASKING PRICE AND TERMS

This is where you outline the price and what terms you will agree to.

For example, are you going to allow a finance clause or are you willing to provide vendor finance.

This part should be discussed in detail with your advisors such as accountants and lawyers.

OTHER MATTERS

To demonstrate good faith and openness, a disclaimer could be footnoted telling prospective buyers to undertake the necessary research and due diligence (although any serious buyer is certain to do so anyway).

The Information Memorandum should impress and attract potential buyers, heighten their interest in the sale, make it competitive and, as a consequence, boost the valuation and sale price of the business.

It must be entirely truthful; but it must also be compelling and present a strong case for the health and potential of the business in question. Given its confidential nature, it should only be given to pre-qualified potential buyers upon signing a non-disclosure agreement (NDA).

The Information Memorandum should be exceptional in order to generate much interest from potential buyers without releasing important company information at this stage. It is a balancing act that must be gotten right.

At FC Lawyers we have prepared Information Memorandums for a range of businesses in a variety of industry sectors both large and small.

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