



The Deal Room Podcast

Episode 240 – Business Sale or Share Sale: Which Best fits your position?

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Transcript

Joanna:

Hi, it's Joanna Oakey here. And welcome back to The Deal Room Podcast, a podcast proudly brought to you by our commercial legal practice Aspect Legal. Now, today we have a bit of a solo show because a number of people have been asking questions that they want me to answer, I'd love some feedback from you our listener, do you find the solo shows useful or not useful? I guess you have to listen to me first before you can make an assessment of that. So how about I keep speaking, but then at the end? I'd really appreciate it if you would use the show notes. And send us a note and tell us to do you like the solo recordings. Or are they boring, your socks off, because I don't want to blow your socks off, obviously? So today, we're talking all about in the solo recording, whether a business sale or a share sale is a better approach. This is something that comes up again and again and again, for anyone who listens to the content that I produce, will know that I am very pro Share Sale. I see many instances where very good businesses, so for a large amount of money, and buyers come in and their accountants or their advisors are scared of share sales and warn the clients against it. So the important thing to bear in mind, I think share sales have a place share sales are a fabulous vehicle for the transition of the business where you have a larger business.

So a business of more than 3 million is quite often the type of business that can be a good sort of business to be in a share sale environment. And you have a lot of value that could be at risk of loss if you needed to be in a business sales situation because of the difference between a business sale and a share sale, which I actually step out very clearly with diagrams, which I can't do here on the screen. as I'm recording a podcast. So in the diagrams in my book, buy grow exit, I'll put a link to buy grow exit in the show notes. And you can get yourself a copy if you're interested in seeing the mechanical difference between a business owner share sale, but basically, in a business sale, you're taking all of the individual assets out of an entity and moving them into another entity that's a business out the movement of assets. It's an asset sale the movement of assets from one entity to another entity from the selling entity to the buying entity.

Joanna:

In a share sale environment, you're leaving the entity that runs the business and moving. And the shareholding structure is where all of the changes occur. So what this means in practicality is for a business sale, you need to work out how you're going to ensure that all of the assets like for example, the employees, the clients and the suppliers are all transferred out to a new entity. For very small businesses, this can be very simple for large businesses, it can get a lot more complex. But on the flip side, in a share sale environment, you're you effectively leave the business untouched except for a few things. And I talk about the caveats to that in the book. But generally speaking, you're leaving the business untouched. And the benefit of that is that you're not having to disrupt clients by getting them to pay someone new and be invoiced by a new entity changing the name perhaps or at least changing the bank account to which they're paying. You don't have to move the employees across. And you don't have to create new supplier relationships and new supplier credit accounts. So all of those things for small businesses aren't necessarily particularly hard for larger businesses, the more customers you get, the larger the customers are, the more suppliers the more employees, the more difficult it can be to achieve that business sale environment. Now, that's not to say in large transactions, there aren't business sales, certainly they there are but the larger the transaction, the more a share sale becomes perhaps more attractive to both buyer and seller. But there is a caveat to all of this. And that is the risk level is greater than share sales rather than business sales.

Joanna:

So what that means in practice, is that there can be a lot more legal wrangling in share sales rather than business sales. And this is why I say you have to be very careful if you're looking at a share sale environment for any business sale or acquisition for less than \$3 million. Because there is a significant amount of legal wrangling that often has to happen in a share sale environment rather than a business sale environment. And you just have to make sure that the difficulty is worth the extra expense. And of course, the extra time in legal negotiations forwards and backwards, I'll give you a bit of an example. So we recently have dealt with two different business share sale environments, right? So both are around about the same area, there's a roundabout, say \$2 million for both. One of these transactions was a business out and one was a share sale, I can tell you the business sale was a simple process, legal fees were minimized, and we're able to use standard state-based contracts. And the deal was done in around about four weeks in the contracting process.

Joanna:

Contrast this with a share sale environment, the share sale, in this particular example of the share sale environment, we're on the other side. So the other party was drafting the document, the document started out at 40 to 50 pages and the complexity of it versus our business sale environment. We're all when negotiating that particular deal with special conditions that sat on the end that were around about 10 pages. So you can imagine 10 pages versus 40 pages. And I think it ended up far more than that. It was months of legal wrangling. The difference between the two didn't just share sales versus business sales. But that's certainly played a large role in it because the size of the documents that we're dealing with, we're massively different. And the level of risk in the two transactions was also massively different. So the end answer is share sale or business out which should you go for?

Joanna:

Well, the answer is, it depends. It really depends on the industry you're in the size of the business, that you have to sell the risks that are in the organization, how long the organization has run for, because that can be another level of risk, how organized the selling party is, and the buying party, and the timeline involved. And also some of these elements that I talked about before in relation to understanding the extent to which there might be any difficulty in transferring business assets between the entities and transferring the value in client contracts, employees, and supplier contracts. So I hope that gave you a bit of a quick run down on share sales versus business sales. As I have said, you will find a lot more information in my book buying grow exit, I give you a real snapshot into the positives and negatives on both buy-side and sell-side of business sales and share sales or asset sales. So asset sales are effective when we cherry-pick assets out of the business rather than taking the business as a whole. So there are lots of considerations on the buy side or sell side I step it all out in the book. But I just wanted to give you a bit of an overview here on The Deal Room Podcast.

Joanna:

Hope that was useful for you. And please let us know here at Aspect Legal what you want to hear more about and whether or not you find these solo recordings useful or drop-dead boring, Hopefully not too boring. Thank you for being with us today on The Deal Room Podcast. That's it signing out. We bring this podcast to you, of course, from our commercial legal practice, Aspect Legal. And if you're after any assistance in working out whether a share sale or a business sale is the best option for your acquisition or your exit. Then just head over to our website and we can organise a time for a free initial discussion with our Legal Eagles at Aspect Legal. Well, that's it for today. I hope you're having a stellar day. Thanks again for listening in. Talk to you next time. Bye