



Exit Planning

Our initial legal checklist

This guide serves as an initial checklist for business owners considering an exit event which may involve a sale of their shares in the company, a sale by the company of its business and assets or taking on investment as a first step ahead of an eventual exit.

[Free initial consultation](#)

Considering an exit?

This guide is designed to help business owners understand the key legal aspects of their company and anticipate the types of questions that a buyer or investor is likely to ask as part of the legal due diligence process.

While the questions listed below are not exhaustive, they cover the core areas that typically attract the most scrutiny from buyers and investors and highlight the key documents business owners should collate and have readily available. For more information about ways to prepare for an exit, you can [read our website](#).

We would be delighted to offer a free consultation to review your responses to the checklist, or to discuss the legal due diligence process and exit strategies in more detail.

Where any question raised in legal due diligence asks for details of events, always assume that copies of all relevant documents will need to be provided and equally, where a question asks if certain documents are in existence, always assume that these should be provided. Documents should be collated now and checked to ensure that duly signed and dated copies are available ready to be shared with a buyer or investor at the appropriate time. We can provide access to a best in class on-line data room service for the easy management of document storage.

1 The Sellers

1.1 Do you have a Shareholders' Agreement in place?

1.2 Provide details and copies of all documents relating to any historical transfers of shares in the company and any agreements giving anyone an option to acquire shares in the company going forwards (i.e. an enterprise management incentive share scheme, etc).

- 1.3 Do all shareholders hold signed and dated share certificates?

2 Structure of the company

- 2.1 Does the company have up-to-date statutory registers? These will need to include a record of all shareholders of the company showing the number and class of shares they own.

[Read more about statutory registers](#)

- 2.2 Has the Company ever bought back any of its own shares or otherwise altered its share capital? If so, does the company hold copies of all the documents relating to the same?

[Read more on how share buybacks impact company sales](#)

3 Compliance

- 3.1 Is the company up-to-date with all required filings at Companies House?

- 3.2 Are there any industry-specific licences/consents/approvals required for the operation of the business? If so, can you provide details and documents relating to these?

3.3 Has the company ever been investigated or audited by a regulator in respect of any authorisations set out in question 3.2?

4 Financial matters

4.1 Provide details of all banking facilities in place. E.g. name of the relevant bank(s) and type of accounts along with details of the relevant signing authorities in place for their operation.

4.2 Has the company borrowed or loaned any money (including any director, shareholder or intra-group loan arrangements)?

4.3 Has the company used any of its assets as security for any loan arrangements currently in place?

4.4 Has the company received any loans or grants from a public body?

4.5 Has the company provided any guarantees for the benefit of any of its directors?

4.6 Have any shareholders or directors provided any personal guarantees for the benefit of the company?

5 Key customers and suppliers

In relation to any contract that's relevant to the questions below, alongside an understanding of its commercial terms, any buyer will want to understand if it contains any "change of control" provisions (on a share sale) or restrictions on assignment (on a business/assets sale) which in either case, would mean that the consent of the relevant third party would be required in order for the contract to be maintained or transferred to the buyer as part of the exit process.

Equally, identifying any potentially onerous legal terms in contracts (such as indemnities and restrictive covenants aka "non-competes") is important and business owners should make themselves aware of any now.

Generally speaking, buyers will not accept a response that "there's no contract in place" in respect of any key customer or supplier arrangement and in the immediate absence of any formal written agreement, business owners should work through the process of locating any written contracts that have been misplaced or lost or if nothing has ever been signed, they should identify the applicable set of standard terms and conditions that apply to the arrangement which in some cases, may just be referred to in a purchase order or on the relevant third party's website.

5.1 Who are the company's key customers and suppliers?

Typically, this concept will be set by reference to the company's annual turnover/spend and commonly the request is that details of the top 5, 10 or even 20 of each are provided.

5.2 Does the company use standard terms and conditions of service, sale or purchase?

- 5.3 Outside of any standard customer or supplier arrangements, is the company party to any other contracts of particular note?

These could include any franchise agreements, sales discount arrangements, lease or hire purchase arrangements covering any key assets of the business, agency or distribution agreements, credit sale agreements and/or factoring or invoice discounting agreements.

- 5.4 Are there any vehicles used in the business and if so, are these owned or leased by the company?

6 Disputes

- 6.1 Is the company dealing with any current (or threatened) legal proceedings or disputes?

If it is, then business owners should be prepared to provide a written narrative about the circumstances that caused the dispute, the potential value of the relevant claim and the status of the process with the relevant third party. All relevant material correspondence should be collated and provided to the buyer.

7 Property

- 7.1 If the company owns a freehold property, or leases/licences a property, do you have copies of all documents relating to the ownership/occupation of the property?

[Read more on property considerations in a company sale](#)

7.2 Do you have copies of all compliance documents relating to the property, such as: the energy performance certificate (EPC), any planning permissions, asbestos surveys/reports, fire risk assessments and gas safety certificates?

7.3 Do you have copies of all utility and tax invoices for the property?

7.4 Do you have copies of all other documents relating to the company's use of the property, including (but not limited to) tax, insurance policies, licences/permits, contracts (e.g. cleaning and maintenance), inspection reports and surveys?

8 Intellectual property rights (IPR)

8.1 Does the company own any registered and/or unregistered IPR?

IPR will include the following: Patents, copyright, trade marks, trade/business names and rights in computer software. [Read more on identifying IPR in your business.](#)

8.2 Was any such IPR developed for the company by an employee, contractor or third party?

8.3 Does the company licence any of its IPR to third parties or use any IPR owned by a third party?

9 Systems

9.1 Provide details of key software licences and other IT contracts in place.

This will require business owners to provide copies of all agreements under which the company has the right to use any software that is used, but not owned by the company.

Please note: buyers will be relaxed about “off the shelf” software (e.g. Microsoft and Sage accounting software etc) so this question will be focused on bespoke software created for and/or used by the company.

9.2 Provide details of any cyber security measures in place and instances of any cyber security breaches / disaster recovery plans.

9.3 Provide a list of all domain names owned/used by the Company and do you have the account details available to access their management via the web hosting provider?

9.4 Do you have copies of contracts for any suppliers or service providers involved in the hosting, operation or support of any of the company’s sales channels, including website hosting and if relevant, any online shop functionality, credit card or online payment facilities?

10 Insurance

10.1 Provide copies of all the company’s insurance policies (including any standard T&Cs).

10.2 Have there been (or could there be) any claims made under an insurance policy?

11 Employees

11.1 Provide an anonymised employee list with key details e.g. job titles, salaries, benefits, years of service etc. to include any individuals who have accepted a job offer that hasn't yet started.

11.2 Does the company engage with any consultants?

11.3 Have there been any recent resignations and dismissals?

If so, you should be prepared to explain the circumstances behind these.

11.4 Do you hold copies of employees' standard employment terms? Are there any employees who are on materially different terms?

11.5 Do you have copies of the staff handbook including any policies?

11.6 Have you obtained necessary evidence of each employee's right to work in the UK?
i.e. do you hold a copy of their passport and if relevant, their visa paperwork?

11.7 Has there been any redundancy or unfair dismissal claims in the last 3 years?

11.8 Have there been any transactions involving the company which triggered the Transfer of Undertakings (Protection of Employment) Regulations (TUPE)?

For example, if the company took on new staff as a result of purchasing another business.

11.9 Have there been any employee grievances, disciplinary actions or settlements?

11.10 Are there any employee loans, company car usage or other benefits offered to employees?

12 Pensions

12.1 Provide evidence of the company's employer auto-enrolment compliance including any correspondence with the Pensions Regulator.

12.2 Do you have copies of pension scheme trust deeds, rules, financial records, trustee annual reports and any opt-out letters?

12.3 Is the company up to date with paying its employer's contributions?

12.4 Has the company ever received any enforcement/penalty notices by the Pensions Regulator and are there any claims or complaints that have been made or are pending or threatened in relation to the company's pension scheme(s)?

13 Bribery and corruption

13.1 Does the company have in place an anti-corruption policy?

14 Health and safety

14.1 Does the company have in place a health and safety policy?

If a company has five or more employees, a health and safety policy is required by law. Even if it has fewer than five employees, it is still best practice to have one in place.

14.2 Has anyone complained that the company has breached any health and safety laws?

15 Data protection

15.1 Is the company registered with the Information Commissioner's Office (ICO)?

15.2 Can you describe how the company deals with personal data?
In particular how does it hold, transfer and processes such data?

15.3 Does the company have a data protection policy in place?

15.4 Has the company ever been found to be in breach of data protection legislation?

15.5 Does the company undertake any direct marketing activities?

16 National security and investment ACT 2021

16.1 Does the company conduct any activities carried on in the UK that are specified in the National Security and Investment Act 2021?

[*Read more about the Act*](#)

Corporate

Our Corporate team advises businesses and individuals on a broad spectrum of legal issues surrounding corporate matters and acts on behalf of UK and international clients on M&A transactions.

From start-up to exit, our lawyers help businesses navigate the challenges of development and growth funding while we also work with investors in managing and building their company portfolios.

Our proven track record enables us to match the right commercial approach to any given situation or transaction and guide our clients through the legal process to a successful conclusion.

Our lawyers are experienced deal managers with high levels of commercial acumen and a genuine enthusiasm for business. We manage legal risk and maximise opportunities as a genuine and trusted business partner for our clients.

The team's expertise includes:

- MBOs, restructuring and reorganisations
- Corporate compliance
- Fundraising
- LLPs and partnerships
- Mergers and acquisitions
- Shareholder relations & corporate joint ventures

“Boyes Turner offer the best service and responsiveness out of any legal team I have dealt with this year. They swiftly move all matters forward regardless of time pressures.”

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