

EXIT STRATEGIES FROM FAMILY BUSINESS: HOW TO GET YOUR MONEY BACK

CONFERENCE

ISSUES OF
INHERITANCE &
FAMILY LAW

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TEAM

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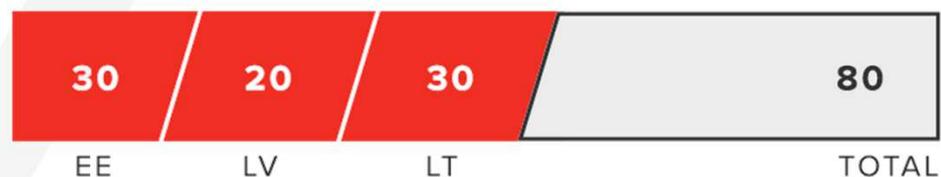
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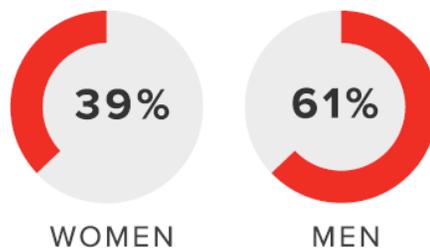
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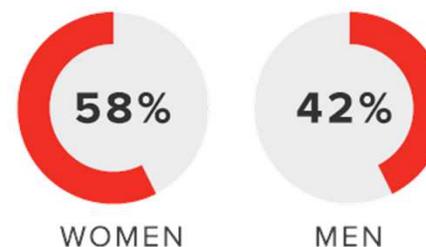
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ABOUT

GREAT COMMITMENT, LEGAL CERTAINTY & EFFICIENCY

Full insight to client's needs and high-level services in Lithuania, Latvia & Estonia



LEGAL SERVICES TO POLISH, GERMAN & AUSTRIAN COMPANIES

- Lawyers at Polish and German Desks provide a full range of legal services to Polish, German and Austrian companies in starting or doing business in the Baltic countries as well as implementing projects or concluding contracts with Baltic partners.
- We offer specialist assistance in Polish and German languages, understanding the cultural differences between the countries and practical solutions in highly professional and efficient manner.



RECOGNITION

THE FIRM IS HIGHLY RANKED BY THE MAIN INTERNATIONAL LEGAL DIRECTORIES

'True professionals who have the ability to translate complex legal issues into easily understandable terms.'

The Legal 500, 2018

'Ability to foresee problems.'

Chambers Europe, 2019

'Excellent approach, good communication skills and innovative ideas.'

Chambers Europe, 2019

'High level for expertise. Good value for money.'

IFLR1000, 2018

'Easy to work with team. Competent and close-to-client lawyers.'

IFLR1000, 2018

'Always one move ahead.'

Legal 500, 2016



PRACTICE AREAS

STRATEGIC THINKING.

INDUSTRY KNOWLEDGE. PROFESSIONAL APPROACH

FOCUSED ON ADVISING DOMESTIC AND INTERNATIONAL CLIENTS ON ALL ASPECTS OF BUSINESS LAW:

- Banking & Finance and Capital Markets
- Competition
- Compliance
- Corporate and Commercial
- Dispute Resolution
- Employment
- Energy
- Intellectual Property
- M&A
- Public Procurement
- Real Estate & Construction
- Restructuring & Insolvency
- Shipping & Transport
- Sports
- Tax
- White Collar Crime



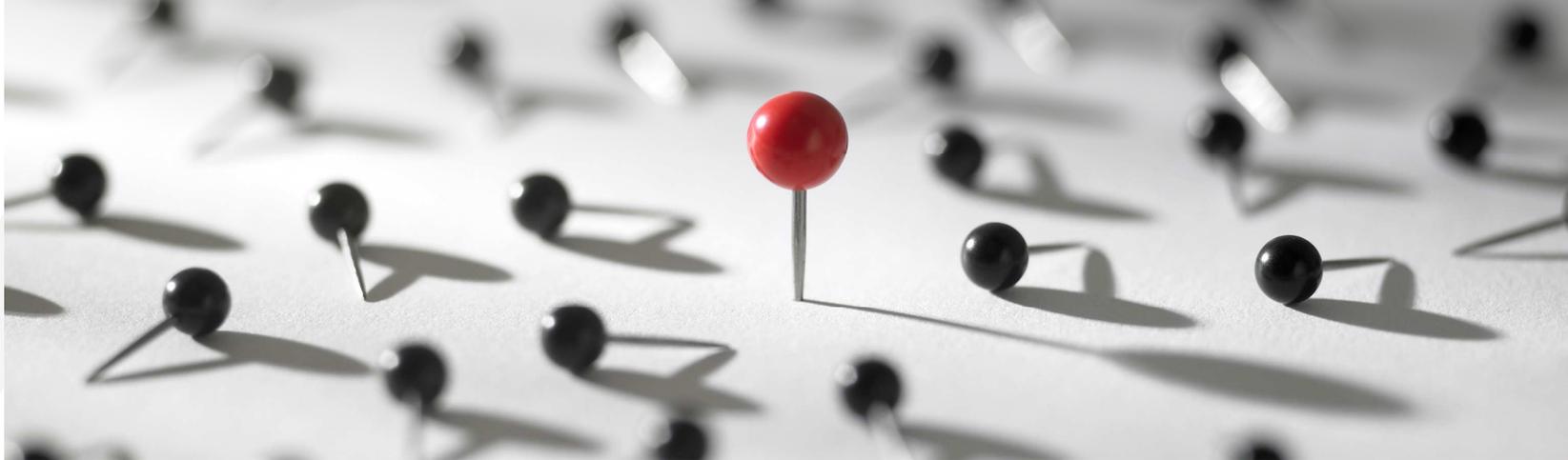
EXIT STRATEGIES FROM FAMILY BUSINESS: HOW TO GET YOUR MONEY BACK



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CONTENTS

- MAIN STRATEGIES FOR EXITING BUSINESS
- SALE PROCESS
- PREPARATION FOR THE DEAL
- ASSET DEAL AND SHARE DEAL
- SHAREHOLDERS' AGREEMENT
- RETRIEVAL OF CAPITAL
- GIFT THE BUSINESS



EXIT STRATEGIES



EXIT STRATEGIES

- (1) **SELL THE BUSINESS** (to employees, management, family, competitors etc.)
 - **Sell to a friendly buyer.**
 - Sell to Management and/or Employees. (**MBO, MBI**).
 - Mergers & Acquisitions (**M&A**). Merging with a similar company, or be bought by a larger company (a competitor or an investment fund). (**LBO**)
 - **IPO (Initial Public Offering)**. Float on the stock exchange.

- (2) **RETRIEVAL OF CAPITAL**. Exit by taking your money without selling the business.
 - **Liquidation** (*exit vulgaris*). A method often forgotten in literature.
 - **Create a lifestyle company**. Rather than reinvesting money in growing your business, you take out a comfortable chunk, and simply live on the income.

- (3) **GIFT THE BUSINESS**. Exit by gifting the equity to family members, charity, etc.

(1) SELL THE BUSINESS TO A FRIENDLY BUYER (1/4)

If you've become emotionally attached to what you've built, there is an option to passing ownership to another true believer who will preserve your legacy. Interested parties might include **children or other family members, customers.**

Selling Your Business. [Video @YouTube](#)



(1) SELL THE BUSINESS

MANAGERS / EMPLOYEES (2/4)

MBO (MANAGEMENT BUY-OUT). Sale to the current Top or Mid-Level Management who know your business.

MBO suitable for mid-size businesses when daily management and responsibility is transferred to professional managers and the shareholders "retire".

MBO's are also favored exit strategies for large corporations who wish to pursue the *sale of divisions* that are not part of their *core* business.

MBO requires a lot of financing, which usually is a **combination of equity and debt** from banks, other financiers (e.g. PE or VC funds) or even from the seller itself. Later the debt is transferred to the company and is repaid from its activities.

MBI (MANAGEMENT BUY-IN). When an **outside manager** or management team purchases an ownership stake in the company and replaces the existing management team.

MBI can occur due to a company **a)** appearing undervalued, **b)** in trouble or **c)** having a poor management team.

(1) SELL THE BUSINESS

M & A (3/4)

M&A. Means merging with a similar company, or being bought by a larger (or smaller) company. 100 % or partial acquisitions are performed by investment funds (PE – private equity, VC – venture capital), or other businesses.

M&A's usually are aimed at having a synergy effect, where resources are combined and costs are saved. Thus achieving faster growth than organic growth.

LBO (LEVERAGED BUY-OUT). Acquisition of another company by using a significant amount of borrowed money. The assets of the company being acquired are often used as collateral for the loans, along with the assets of the acquiring company. The debts are usually repaid from the cash flows or growth of the Target.

(1) SELL THE BUSINESS

IPO (4/4)

IPO – INITIAL PUBLIC OFFERING AT THE STOCK EXCHANGE.

Requires: a) good preparatory work, b) good market situation (suitable timing), c) sufficient turnover, d) good documentation of internal business structure and processes, e) good brand recognition.

The process is expensive. In recent years usually done as dual listing in the local stock exchange + Warsaw Stock Exchange or London Stock Exchange.

There were also several successful IPO listings at the Nasdaq First North. Your business will be evaluated (*usually in a negative light*) by a lot of financial and other analysts.

THE PROCESS OF BUSINESS SALE



PREPARATION FOR THE TRANSACTION

RISK ASSESSMENT (1/4)

- Every transaction equilibrates the risks between the parties of the transaction. Sale of a business is not an exception. A seller / buyer has to assess how much risk he is able and willing to take by a particular transaction.
- The below matters determine how much risk is undertaken by the seller / buyer:

- selection of the structure of the transaction;
- establishment of the price of the transaction;
- terms of the agreement.

PREPARATION FOR THE TRANSACTION

STRUCTURING OF THE TRANSACTION (2/4)

There are **TWO MAIN METHODS** to structure a transaction of business sale:

- sale / acquisition of all or part of shares of company (**share deal**);
- sale / acquisition of the assets owned by the company (**asset deal**);

Many factors **DETERMINE**, which structure should be chosen:

- structure of the company's shareholders,
- purpose of sale/purchase and risk undertaken by the seller / buyer;
- history of the company being sold and the type of activities it performed;
- employees of the company;
- assets owned by the company;
- taxes:
 - approach of the assets taxing and "delayed taxes";
 - taxing of the seller/buyer;
- legal aspects:
 - the right of the clients/tenants/financiers to terminate agreements in cases of change of the owner/control;
 - consents by land owners;
 - pre-emption rights (joint owners, tenants and etc.);
 - administrative procedures (receipt of permissions etc.).

PREPARATION FOR THE TRANSACTION

DUE DILIGENCE (3/4)

Preparing for the sale, the seller should perform **VENDOR DUE DILIGENCE (VDD)** of the business being sold. The Buyer – **BUYER'S DUE DILIGENCE (DD)**.

Due diligence is intended to comprehensively assess the business being sold/bought.

Types of due diligence inspection:

- legal;
- financial;
- tax;
- technical;
- environmental, etc.

It shall be deemed, that solution of respective problems identified during the DD, may require certain amount of time, or the results of the DD may even determine the structure of the transaction, therefore the DD should be performed as early as possible.

PREPARATION FOR THE TRANSACTION

NEGOTIATIONS (4/4)

The seller has to choose how he will search for business buyers:

- whether he will negotiate with each of the buyers separately;
or
- he will announce a tender contest.

Significant amount of information about the company may have to inevitably be revealed, when announcing a tender.

IN ADDITION

The fact of intended sale **will become known for the market**. However, this enables to attract greater amount of potential buyers and to sell the business under better terms.

For buyers of course the tender process is much less beneficial.

PROCESS OF THE SALE TRANSACTION

- 1) LETTER OF INTENT (LOI), HEAD OF TERMS (HOT)
- 2) DUE DILIGENCE (DD)
- 3) NEGOTIATIONS
- 4) SPA (SALE PURCHASE AGREEMENT)
- 5) OCCURRENCE OF CONDITIONS PRECEDENT (CP)
- 6) CLOSING
- 7) POST CLOSING OBLIGATIONS

ASSET DEAL TRANSACTION

An **asset deal** is – a complex of: a) one or several sale – purchase transactions of specific assets (tangible or intangible), which are accompanied by b) one or several transactions on transferring of rights and obligations.



Transactions on transfer of rights and obligations should ensure that the buyer has acquired sufficient cash flow /sales and/or rights, necessary to appropriately continue profitable exploitation of the assets acquired.

SHARE PURCHASE AGREEMENT SPA



SPA - THE PECULIARTIES

Transaction of a share sale – purchase, when a portfolio of shares granting certain control over the company, is being sold, is usually not concluded and performed at the same moment.

It has few **stages**:

- **signing** of the SPA;
- conditions precedent (**CP'S**);
- **closing**/consummation of the transaction;
- **post closing relations**/obligations between the parties.

Such structure of the transaction is determined by the fact that in order to transfer a business, various actions should be performed e.g. :

- **permissions** from state institutions should be received (e.g., permission for concentration);
- **transfer of a part of assets** possessed by the company should be finished;
- **permissions of creditors**, tenants etc should be received.

Also, such structure of the transaction determines the provisions of the share sale – purchase agreement.

SPA - THE CONTENT

(1/2)

- **DEFINITIONS** – every concept used in the SPA are defined;
- **SUBJECT MATTER OF ACQUISITION** – the parties exactly determine, what is being sold – purchased;
- **PRICE** – the parties establish the exact price and order of payment thereof;
- **TRANSFER OF OWNERSHIP** – the parties establish from which moment ownership of shares is transferred to the buyer;
- **CLOSING** – where and when the closing shall be held;
- **CONDITIONS PRECEDENT** – what obligations parties have to fulfill in order to close the transaction;
- **PROCEDURE OF CLOSING** – the parties agree on actions to be executed during the procedure of closing;
- **POST CLOSING OBLIGATIONS** – it is established, what obligations the parties have to execute additionally after the closing of the transaction;

SPA - THE CONTENT

(2/2)

- **REPRESENTATIONS AND WARRANTIES** – the parties reveal material information for each other and confirm about existence or absence of certain conditions;
- **ACTIONS IN CASE CLOSING DOES NOT TAKE PLACE** – parties establish consequences what if the closing does not take place;
- **LIABILITY OF THE PARTIES** - consequences of breach of obligations are established;
- **LIMITS OF SELLER'S LIABILITY** – limits of liability of the seller are established;
- **SPECIAL OBLIGATIONS** – joint and several liability, confidentiality, etc.;
- **OTHER USUAL PROVISIONS OF AGREEMENTS** – applicable law, dispute resolution, etc.

SPA - REPRESENTATIONS & WARRANTIES

THE SPA USUALLY CONTAINS THE FOLLOWING GROUPS OF R&W.

That refer to:

- Shares on sale – all the shares belong to the seller, etc.;
- Status and state of the company – the company is legally incorporated;
- Activity of the company – it has all the necessary permissions;
- Assets of the company – the assets are of a normal condition, etc.;
- Financial statements of the company – are complete and provided on time, represent the true situation in the company;
- Taxes – no tax debts exist;
- Obligations – there are no loans undertaken except for the listed ones;
- Intellectual property – no rights of third persons are violated, etc.;
- Labor relations – all safety at work requirements are complied with;
- Related parties – no loans are issued to shareholders, no agreements unfavorable for the company have been concluded, etc.;
- Litigation – no legal disputes exist;
- No adverse change – until closing of the transaction, results of the activity will not deteriorate, etc.

SHAREHOLDERS AGREEMENT

CONTENT(1)

- **DEFINITIONS** – concepts used in the shareholders agreement are defined;
- **SUBJECT MATTER OF THE AGREEMENT** – the parties indicate what is pursued by the agreement;
- **MANAGEMENT OF THE COMPANY** – it is agreed, how the members of the managing bodies of the company shall be appointed, how decisions in the company shall be taken, etc.;



SHAREHOLDERS AGREEMENT

CONTENT(2)

- **APPROPRIATION OF PROFIT** – the parties agree on the procedure of appropriation (including proportions) of the company's profits;
- **REDEMPTION (BUY OUT) OF SHARES** – it is established, in which cases a shareholder is entitled to demand, that his shares would be bought out by other shareholders; as well as the procedure of redemption;
- **TRANSFER OF SHARES** – conditions and procedure for transfer of shares is established, it is established who has pre-emption rights to acquire shares being transferred (Drag Along, Tag Along, Texas Shootout, Dutch Auction);
- **NON COMPETE OBLIGATION** – the parties undertake not to engage in certain activities for a certain amount of time after the end of the agreement.
- **DISPUTE RESOLUTION** – procedure for settlement of shareholder disputes;
- **CONFIDENTIALITY** – what information shall be considered confidential;
- **REPRESENTATIONS AND WARRANTIES** – the parties reveal material information to each other and confirm existence or absence of certain conditions;
- **TRANSFER OF RIGHTS UNDER THE SHAREHOLDER AGREEMENT** – the parties indicate the procedure of rights transfer or a prohibition of such transfers;
- **OTHER ORDINARY PROVISIONS** – applicable law, dispute resolution, etc.

RETRIEVAL OF CAPITAL

LIQUIDATION

One often-overlooked exit strategy is simply to call it quits, close the business doors, and call it a day. This is the close up shop and sell all the assets exit strategy.

For small businesses, especially those that are dependent on the performance of a single individual, liquidation is sometimes the only option as there's really nothing else to sell.



RETRIEVAL OF CAPITAL

CREATE A LIFESTYLE COMPANY

Rather than reinvesting money in growing your business, in lifestyle companies, you take out a “comfortable chunk”, and simply live on the income. If your business functions in a stable market and generates stable cash flow (cash cow) it may be a very good option.

If you had a financial investor in your company (e.g. an investment fund) you may want to buy it out, **appoint a good old trusted employee as the CEO** (maybe **grant him some % of equity** shares) and **live off the dividend** and other business income by retaining control.

You can also issue special class privileged shares guaranteeing a bigger share of profit for you.

You can also “reasonably” transfer your everyday expenses to the company, e.g. real estate rent costs, transport costs, travel costs etc.

The aim here is to minimize dependency on others and have the option to take out money.

GIFT THE BUSINESS

Exit by gifting the shares to family members, charity fund etc.

It may be:

i) a 100 % gift (gifting of all shares now) or

ii) partial transfer (by retaining partial control in the company, by retaining a part in the charity/fund until the end of your life or for a period of years etc.).

This option also allows you to set up other structures of control of the company (via supervisory board of the charity fund, Board of the Fund, Articles of Association of the Fund, ownership structure of the Fund etc.).



CONCLUSIONS

EXIT IS POSSIBLE VIA

(1) **SALE OF BUSINESS.** In full or in part (to employees/management, family, competitors etc.)

- **Sell to a friendly Buyer.** Sell to someone who will continue your work (children, other family members, clients etc.).
- Sell to Management and/or employees. (**MBO, MBI**).
- Mergers&Acquisitions (**M&A**). Merge with a similar company or sell to a bigger player (a competitor or an investment fund). (**LBO**)
- **IPO.** Float the share of the company in the Stock Exchange.

(2) **RETRIEVE CAPITAL.** Exit without selling the business.

- **Liquidation** (*exit vulgaris*). Often overlooked in literature.
- **Create a lifestyle company.** Instead of reinvesting the money and grow the business, create a reasonable size profitable business you can live off. Appoint a CEO you trust, grant him some shares – enjoy life.

(3) **GIFT THE BUSINESS.** Exit by gifting your shares to family members, charity fund etc. It can be a 100 % gift (all shares now) or partial gift (by retaining part of control, a share in the fund for a period of years or until the end of your life).

THANK YOU



CONTACTS



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AREAS OF EXPERTISE

Banking & Finance, Corporate, Capital Markets,
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Energy, Public Procurement, Shipping &
Transportation, German Desk, Polish Desk,
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