Selling a technology business

Five key legal and commercial considerations

Preparing early can make a significant difference to both deal value and deal certainty. Buyers will look beyond financial performance, focusing on intellectual property ownership, customer relationships, data protection, cyber security and the strength of the management team. Addressing potential issues before a sale process starts can help avoid delays and maintain momentum.

1. Get your house in order

Before approaching buyers, ensure your corporate records, shareholder arrangements and key contracts are complete and up to date. Gaps in documentation are a common cause of delays and can result in additional costs or requests for further protections. Buyers will expect information to be readily available and increasingly expect businesses to be transaction-ready.

Watch out for: undocumented share transfers, missing approvals and incomplete or inaccurate corporate records.

2. Review your intellectual property

For many technology businesses, intellectual property is the core asset being acquired. Buyers will want clear evidence that software, source code, trade marks and other proprietary assets are owned by the company. Issues often arise where historic consultants or developers have not formally assigned their rights.

Watch out for: missing IP assignments and unclear rights to use third-party or open-source software.

3. Understand your contractual risk

Buyers will closely examine customer and supplier contracts, particularly where revenue is concentrated among a small number of customers. They will also look for change-of-control provisions, termination rights and the security of recurring revenue streams.

Watch out for: reliance on a small number of customers or contracts requiring third-party consent on a sale.

4. Review data protection and cyber security

Data protection and cyber security are increasingly prominent areas of due diligence. Buyers will want comfort that appropriate policies, procedures and governance arrangements are in place, and may bring in specialist advisers to assess cyber risk.

Watch out for: historic incidents, weak policies or gaps in employee training.

5. Think beyond the headline price

The highest offer is not always the best deal. Technology transactions frequently include earn-outs, deferred consideration and rollover equity arrangements, all of which can affect the value ultimately realised by sellers.

Watch out for: focusing on valuation without fully understanding payment mechanics or future obligations.

How Russell-Cooke can help

We advise shareholders, business owners and management teams on the sale of technology businesses, from early-stage preparation through to completion.

Working closely with colleagues across the firm, we provide joined-up advice on corporate, commercial contracts, intellectual property, employment, data protection, regulatory and other issues arising on the transaction.

Seller checklist

Before launching a sale process, consider whether you have:

- reviewed Companies House filings and statutory registers
- checked shareholder records, share transfers and ownership history
- reviewed constitutional documents and governance arrangements
- confirmed ownership of software, source code and proprietary technology
- verified that consultants and contractors have assigned intellectual property rights to the company
- reviewed trade marks, domain names and other registered intellectual property
- assessed the business's use of third-party and open-source software
- identified key customer contracts and any customer concentration risks
- reviewed supplier agreements and critical third-party relationships
- checked contracts for change-of-control, consent or termination provisions
- reviewed data protection compliance, policies and procedures
- assessed cyber security measures and incident response arrangements considered employee retention risks and management team succession planning
- organised key documents and information for buyer due diligence
- considered whether an earn-out, deferred consideration or rollover equity structure may be appropriate
- evaluated offers based on overall deal terms and not solely headline valuation

This guide is provided for general information only and does not constitute legal advice.

Need support?

Contact us or visit our website to find out how we can help you:
+44 (0)20 3826 7539 | russell-cooke.co.uk