

20 QUESTIONS TO GAUGE ‘BUSINESS READINESS’

■ AN INITIAL LEGAL CONSIDERATIONS CHECKLIST

The questions in this preliminary checklist are intended to stimulate business owners' thinking about how others might view their companies. That thinking very much includes consideration of the predictability of continued financial success of their companies under new ownership—whether that new ownership be a third party, family, or current employee(s).

The subjects and types of inquiries described here form a major part of the legal aspects of building and positioning successful businesses. As a result, they are generally covered, in some form and level of detail, in the “due diligence” investigation that occurs before a sale of ownership or assets of a business. This checklist is not intended to constitute legal advice or to independently create any form of attorney-client relationship.

1. If something happened tomorrow to a key owner, is your company prepared to deal with (a) the transfer of ownership and control, and (b) the void created in business operations? Similarly, would you be covered with regard to non-owner key employees?
2. What are the primary drivers of your company's success?
 - A. Proprietary technology embedded in products or services that the competition can't match
 - B. Lean, quality production or service delivery processes (backed up, where necessary, by investments in equipment and technology)
 - C. Staying ahead of the competition by intelligent collection and use of transactional, customer, and/or market data
 - D. Marketing and sales models, including your distribution and sales networks
 - E. Successful web presence or online sales mechanism
 - F. Unmatched customer support delivering positive customer experiences
 - G. Owners and key employees who outwork the competition
 - H. Historically well-established brand
 - I. Superior strategic vision and understanding of the market
 - J. Better capitalized than others
 - K. Other(s) (list)
3. For each primary driver of your company's success:
 - A. How well protected are the key components of that driver from being copied or used by others, including ex-employees?

- B. How well documented are the process-specific components of that driver?
 - C. Are the key components of that driver scalable (or what would it take to make them scalable)?
 - D. How durable are the relationships that shape the key components of the driver, including employee, customer, and vendor relationships?
 - E. Are you regularly measuring the success of that driver other than by general company revenue or profit (e.g., warranty claims, customer feedback, business segment analysis, etc.)?
 - F. How vulnerable is the driver to changes in the industry or economy?
4. Would you be able to succinctly explain to an outsider how your company is investing to build on its strengths?
 5. Would you be able to succinctly explain to an outsider what your company is doing to reduce its risk of any significant, unanticipated losses or liabilities?
 6. On average, what percentage of your company's annual expenditures are invested in (a) payroll, (b) capital expenditures, (c) new technology, (d) research and development, (e) subcontractors, vendors or other non-employee services, and (f) facilities?
 7. What percentage of your company's total sales do its top five customers represent?
 8. Do you have annual financial statements prepared by outside accountants? If so, at what level (audited, reviewed, or compiled)?
 9. Does your company have certifications, preferred provider status, or other third-party approvals that play a significant role in advancing your success (e.g., Women-Owned Business certification, ISO certification, etc.)?
 10. What benefit and/or incentive programs does your company have in place for employee recruiting and retention?
 11. How often does your Board actually meet? Are your company's minute books, bylaws, operating agreements, regulatory filings, and buy/sell agreements up-to-date and customized to your needs?
 12. What lawsuits, regulatory audits or investigations, employee claims, union or NLRB grievances, workers' compensation claims, accident reports, and warranty claims has your company experienced over each of the past three years? How were they resolved?
 13. What software or other licenses, equipment leases, and real estate leases are important to the operation of your company's business?
 14. What is the status of your company's current relationship with its primary bank (i.e., type and amount of loans, covenants, available credit) or with any other sources of debt financing?
 15. Are you confident that your company is current on all required income, sales, use, VAT, and other tax filings and payments?
 16. How much, if any, of your company's sales or other business activities are conducted outside of the United States?
 17. Does your company generate, handle, or use any hazardous waste in its operations?
 18. What types and amounts of insurance coverage does your company maintain?
 19. What trademarks, copyrights, and patents has your company registered or secured? Does your company rely heavily on trade names, brands, logos, or similar intellectual property that are central to the success of your business but that are not registered?
 20. What parts of operating your company's business (a) bring you the most joy, and (b) cause you the most angst?