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Insights

PREPARING FOR A CORPORATE REAL ESTATE SALE: TOP 10 TIPS

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SUMMARY

As our colleague John Bennett has recently commented in his insight, hopeful undercurrents remain about the potential of increased activity in the real estate investment market for 2024. When the penny does drop, a highly significant (and often underappreciated) factor in ensuring an efficient and successful deal for all parties comes down to preparation for sale by the vendor. To quote the commonly used but nevertheless significant phrase: “by failing to prepare, you are preparing to fail”.

To address this topic, we have outlined the following top 10 helpful tips to consider when preparing your corporate real estate sale.

DATA SITES

- **The issue**: Transaction-specific data sites set up with little to no structure or labelling.
- **The solution:** Vendors should liaise with their lawyers and/or data site administrators to ensure that the relevant documentation is clearly structured, named and numbered before the data site is shared with any potential bidders. Due diligence questionnaires can then include data site references, ensuring a clearer and easier process to navigate for the buyer’s advisory team.

TAX DUE DILIGENCE

- **The issue**: Even if tax due diligence is back-ended on transactions, tax advisors are often not engaged early enough by vendors to prepare responses to buy-side queries.
- **The solution:** Sell-side tax advisors should be engaged and preparing initial diligence exercises before heads are signed. Tax in such transactions usually follows similar patterns, so obvious information a reasonable buyer would ask for should be ready to go as soon as the data site is opened. Lawyers should also avoid becoming a “post-box” and establish direct lines of

communication between each parties' tax (and financial) advisors at the outset of negotiations to improve efficiency.

FINANCE DUE DILIGENCE

- **The issue**: Financial due diligence queries are not pre-empted.
- **The solution:** The main financial due diligence documents will be the provision of annual and management accounts for at least three years prior to the transaction. Whilst supply of this information on a data site is the priority, vendors and their financial advisors should also focus on reviewing such accounts and pre-empting queries from the buyer on any obvious areas of significance or abnormal information.

THIRD PARTIES

- **The issue**: Banks, managers or other third parties are slow to respond and/or heavily negotiate transaction documents.
- **The solution:** We have often experienced issues with third parties in transactions, especially with managers regarding termination and banks on release documents. Lawyers can ease the process by circulating drafts of the relevant ancillary documents promptly, but principals should also be engaging with any relevant third parties to ensure everyone is on the same page regarding the deal and post-completion arrangements. Particular concerns may relate to indemnities and release of liability, in addition to any TUPE issues.

HEADS OF TERMS

- **The issue**: Heads of terms are sometimes presented to the vendor's lawyers after they have been agreed and signed with the buyer.
- **The solution:** Vendors should strongly consider liaising with their lawyers when drafting heads of terms. Time and costs can be saved providing lawyers with oversight on the heads of terms to ensure they operate correctly and align with the intended position in the transactional documents.

DOCUMENT IDENTIFICATION

- **The issue**: Upload of documents which relate to the whole group rather than the target entity or key information such as corporate approvals, constitutional documents, and management agreements are not provided.
- **The solution:** Vendors should focus on locating and identifying documentation that is relevant to the target corporate entity rather than bulk-uploading packs of potentially irrelevant

documentation. Lawyers can assist on this process by sending initial vendor due diligence questionnaires to guide the vendor team on what documentation a reasonable buyer would want to see.

SCOPE OF DISCLOSURE

- **The issue**: Disclosure of key matters occur at the middle to back end of a transaction.
- **The solution:** Vendors would be wise to discuss potential disclosure issues (e.g. pending litigation, employment etc.) in relation to the target company with their deal team at the outset. Identifying key areas of concern, discussing with your advisors/lawyers and implementing a strategy on how to present them will save time later down the transaction journey, as well as avoiding any price chips. We have even seen specific disclosure points noted and/or carved out in the heads of terms which has also proven to be effective.

ONBOARDING

- **The issue**: KYC requirements and onboarding of transaction advisors not finalised until after heads of terms signed.
- **The solution:** It may be an obvious point, but work on KYC and collating documents required to satisfy onboarding requirements (which can take more time than expected) for advisors and/or administrators should be prioritised as soon as there is concrete intention to sell. The benefits will be noticeable as, once the onboarding is finalised, the whole deal team will be able to immediately start working on the transaction. It is also worth flagging this point to the buy-side, especially if, for example, they plan on retaining the existing administrators.

STRUCTURING

- **The issue**: Changes to a vendor’s group structure and/or establishment of new entities to facilitate a transaction made late in a deal.
- **The solution:** Vendors should communicate early with potential buyers and their lawyers on any corporate requirements for sale. Numerous tax considerations and timing implications could be in play for group restructurings, so having this dialogue early in negotiations in order to confirm structuring requirements will provide a clearer timetable for the parties to work to.

FOREIGN ENTITIES

- **The issue**: Delays can result from offshore administrators and counsel being instructed late in the transaction.

- **The solution:** Once the target company is confirmed, vendor teams should immediately start communicating with their administrators and instruct local counsel to prepare for sale. If there is no preference on offshore counsel, our BCLP team has lists of recommended firms that can be instructed in order to ensure that no lag occurs on the start of the due diligence and drafting workstreams.

These issues are rarely isolated in nature and, when combined, can become major obstacles which can delay corporate real estate deals for weeks or even months. The corporate real estate and funds team at BCLP has wide-ranging expertise in such matters and would be happy to discuss if you are looking for advice on preparation or corporate real estate deals generally.

RELATED PRACTICE AREAS

- Corporate Real Estate and Funds
- Real Estate

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