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BUYING OR SELLING A BUSINESS IN BRITISH COLUMBIA? MAKE YOUR MOVE.

By: Doug Cottier

The Canadian Federation of Independent Business suggested in late 2018 that “[d]uring the next decade, 72% of business owners are expected to exit their business,”^[1] meaning that there will be an abundance of upcoming opportunities for entrepreneurs to engage in the purchase or sale of a company. The business lawyers at Richards Buell Sutton LLP have authored the third edition of the firm’s “Make Your Move” publication, created to provide guidance to companies or individuals who are interested in buying or selling a business throughout the province of British Columbia. This guide contains chapters that focus on key aspects of a business transaction, and issues that may arise along the way.

Make Your Move sets out matters for parties to turn their minds to when the prospect of a purchase or sale first arises. The seller should consider tabling a non-disclosure agreement to ensure that the discussions and materials relating to the potential transaction are treated confidentially by the potential purchaser. Before the binding purchase agreement is prepared, negotiating a letter of intent allows the parties to contemplate, discuss, and settle key terms towards the beginning of the process. The letter of intent then serves as a blueprint to inform the subsequent drafting of definitive documents, and helps to reduce time and expense during the negotiation phase of the purchase agreement.

Conducting due diligence on the target company’s business, financial, and legal records is an essential aspect of a business transaction to apprise the purchaser of (actual or potential) risks and liabilities associated with the transaction. Make Your Move outlines important factors to be aware of when carrying out due diligence.

Make Your Move includes a number of chapters dedicated to different types of terms and provisions that are common in purchase agreements, such as representations and warranties, purchase price adjustments, pre-closing conditions, disclosure schedules, indemnities, and holdback or escrow arrangements. These terms will of course vary from one transaction to another, but prospective parties should be familiar with the general function of each type of provision and consider whether any industry-specific terms should be integrated into the agreement.

Many business transactions feature aspects that extend into other areas of law, prominent examples being



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intellectual property and employment law. Make Your Move provides an overview of matters to consider in these areas in the context of the purchase or sale of a company. The guide also includes tips on how to capitalize on the important advice of non-legal advisors, such as accountants and M&A brokers.

Once the purchase agreement has been negotiated, finalized, and signed, parties must satisfy pre-closing conditions (which may include obtaining consents from third-parties), close the transaction to effect the purchase and sale, and perform post-closing obligations. Make Your Move provides a roadmap of all of these steps to assist with navigating a business transaction.

Make Your Move is straightforward and user-friendly, not an exhaustive discussion of the subject matter. The publication should not be viewed as a substitute for proper legal advice, but rather as an informative and helpful tool to better understand merger and acquisition transactions in British Columbia.

The mergers and acquisitions team at Richards Buell Sutton LLP acts for both buyers and sellers in all regions of British Columbia, providing practical legal advice and solutions in diverse industries from offices in both Vancouver and Surrey. If you are interested in obtaining a copy of the third edition of Make Your Move, please contact author of this article, Doug Cottier, or any of the lawyers at the firm with whom you regularly communicate.

^[1] *Getting the Transition Right: Survey results on small business success planning*, Canadian Federation of Independent Business, November, 2018, 3.
<https://www.cfib-fcei.ca/en/research-economic-analysis/getting-transition-right>

