

# SUCCESSION IMPLEMENTATION

## MODULE 5: GROWTH AND SUCCESSION GUIDE

### INTRODUCTION

Who will buy my practice is a question that is increasingly being asked. With the average age of public practitioners now well over 50, an increasing number are contemplating how they will succession manage their practice. For many the focus is on the capital value of the practice and how they can extract this capital value to assist in their retirement planning. Succession though, isn't always about retirement. There are a whole range of events that can be a catalyst to the sale of a practice.

Currently, there are approximately 9,000 public practice firms in Australia, and of these 83% are represented by sole practitioners and two partner firms. You have a large number of small practices delivering similar services to a similar client base. These firms are typical of small business in Australia. CPA Australia public practice statistics identify that approximately 42% of members may have a succession event for their practice within the next five years.

Where does this place public practitioners looking to plan and implement their succession?

The main options are the sale of a fee parcel, an outright sale, a merger, sale to existing partners, internal succession, the introduction of new partners or the orderly wind up of the practice.

Each of these options, with the exception of the last one, will seek to generate a return of working capital and also a return on your investment in plant and goodwill. The critical factors will be timing, pricing and planning. Your approach to the sale of your firm will vary depending on which sale option you are planning to pursue.

The difference between taking a structured approach to this and a last-minute rush to find a buyer can be many thousands of dollars. Planning the sale of your practice is about maximising the value of your asset and also managing an orderly transfer of your professional obligations in respect of your clients and your team.

Given the expectation of an increasing number of firms and fee parcels coming on to the market, without question we will see buyers gravitate toward value. A clear message is that we should all be planning for the ultimate sale of our firm – irrespective of whether we expect to be in practice for two or 22 years.

Every firm should be developed with view to the ongoing succession and ultimate sale of the business. The great thing about doing this is that you build a strong and profitable business from day one. And when the time comes for you to move on, then you have an asset that is attractive in the market and one for which there should be strong demand.

This guide has been designed to provide you with some of the practical tools that will assist you to plan and position your practice so that it is attractive in the marketplace and to manage your succession. It is particularly focused on small and medium size practices, although the fundamentals hold true for all.

# SUCCESSION IMPLEMENTATION

## SUCCESSION PLAN CHECKLIST

The following table provides a step by step implementation process.

| Succession step                               | Objective  | Outcome  |
|---|--|--|
| <b>Initial review</b>                         | Discuss succession requirements and approaches   | To agree an approach going forward   |
| <b>Review succession options</b>              | Consider the options available and their relative merits   | To have canvassed the options and agreed the most suitable option to pursue  |
| <b>Undertake a practice diagnostic</b>        | Achieve a greater understanding of the practice including: <ul style="list-style-type: none"> <li>- financial indicators</li> <li>- non-financial factors</li> <li>- risk issues</li> <li>- opportunities</li> <li>- areas for value enhancement</li> </ul>  | Completed practice diagnostic report, including documentation of recommendations for areas that need to be addressed or focused on for improvement. This is the 'getting the practice ready for succession roadmap |
| <b>Valuation</b>                              | Establish a valuation on the practice at its current position and relative to the market   | To establish a valuation and to provide a 'stake in the ground' to test against your perception or expectation of business worth   |
| <b>Succession timetable</b>                   | Prepare a succession timetable   | To agree a timetable both for the timeframe to final outcome and the timing for the various steps  |
| <b>Develop succession plan</b>                | Document a succession plan matching the steps required under the succession objective, detailing work to be undertaken, allocation of responsibility, outcomes required, and time for completion   | To agree a detailed succession plan program  |
| <b>Undertake practice improvement program</b> | Put in place a program and address areas where practice value could be enhanced. This will include a focus on: <ul style="list-style-type: none"> <li>- profitability improvement</li> <li>- growth development</li> <li>- systems development</li> <li>- risk management processes</li> <li>- organisation structure and documentation</li> </ul> | Areas raised in the practice diagnostic will be addressed where possible and business value will be enhanced in preparation for a sale / transition  |

|  |  |   |
|--|--|---|
| <b>Balance sheet review</b>  | Undertake a review of the balance sheet with view to putting in place any adjustments, restructuring or alignment of assets and liabilities necessary in preparation for a transition of the business  | To have no impediments in the balance sheet or business structure that would inhibit or adversely impact a transition   |
| <b>Taxation review</b>   | Consider the taxation position of the practice and the taxation impact of a sale and with consideration for the eligibility to the CGT Small Business Concessions  | To seek to maximise the tax position for the client and to consider the structuring that would create greater taxation efficiency   |
| <b>Financial reporting structure</b>                               | Ensure that the practice has financial and operational reporting adequate to present the business history and trends over a 3-5 year timeframe   | The ready availability of financial and business information to present to potential buyers of the practice, to assist them in understanding the performance                |
| <b>Pre-sale internal due diligence</b>                             | In the period 12 months prior to sale/transition complete an internal due diligence on the practice to ensure that there will be no surprises during the sale process  | To identify any risk position within the practice that may influence / inhibit the sale process   |
| <b>Establish sale / transition terms</b>                           | Agree the sale issues including: <ul style="list-style-type: none"> <li>- sale structure e.g. sale of assets, sale of shares, sale of equity interest</li> <li>- sale price</li> <li>- financing requirements</li> <li>- warranties and indemnities available</li> <li>- restraint conditions</li> <li>- vendor support period</li> <li>- control issues / shareholder agreements in transition or equity interest sales</li> <li>- other vendor requirements</li> </ul> | To have established prior to the marketing of the business the requirements of the vendors and consideration of any issues that are likely to arise in contract negotiation |
| <b>Valuation test</b>  | Review current valuation against sale price expectation  | To agree the reasonableness of the expected sale price  |
| <b>Establish marketing plan for the business sale / transition</b> | Agree the marketing approach and timetable for the business sale / transition. This would include the appointment of an intermediary or broker where necessary   | To have clear alignment with expectations on marketing plan, cost and expected timetable  |
| <b>Preparation of information memorandum</b>                       | Prepare a current information memorandum on the practice that is available to potential purchasers and facilitates a cascade of information throughout the sale / transition period  | The ready availability of an information package on the practice to respond to initial enquiry  |

|   |   |   |
|---|---|---|
| <b>Agreement on other external advisers</b> | Have in place any external advisers necessary to the sale transition process, with appointments and terms agreed                      | All advisors required for the sale / transition process instructed and ready to act as required |
| <b>Put the business into the market</b>     | Commence the active marketing program of the business where necessary   | To establish the interested parties in the business for negotiation purposes                    |
| <b>Enquiry management and filter</b>        | Manage enquiries down to a smaller group wanting to move to negotiation stage   | To create a short list of serious candidates for purchase of the business                       |
| <b>Contract and due diligence</b>           | Manage contract negotiations to a heads-of-agreement and to complete the due diligence where required                                 | To bring the final purchaser/s to a point of sale / transition completion                       |
| <b>Settlement</b>                           | To assist in final settlement of the sale / transition  | To achieve completion   |
| <b>Manage post settlement issues</b>        | To identify and review any financial, business or taxation issues that need to be addressed as a consequence of the sale / transition | To finalise all issues relevant to the business and consequences of the sale / transition       |

## ISSUES TO CONSIDER IN GOING TO MARKET

### Timing

There is no such thing as the ideal time to go to market. There are, however, three fundamental rules that apply.

#### *Rule 1*

If you can avoid it, don't lock yourself into a fixed date to exit your practice. Normally it can be quite difficult to engineer your succession to an exact date. It is better to work with a time window. This window may stretch across a year or two and you should be prepared to proceed with your succession if the right opportunity presents itself. This means keep some flexibility in your thinking and planning. It also means being succession ready at any time during this window period. This is another reason why the planning process is so important.

Locking in to fixed dates may put undue pressure on you or may cause you to accept an offer that is less than what otherwise could be had. One of the big dangers in locking into a fixed date is that as this date approaches you have already psychologically 'left' the practice. This can mean that your focus drops off and practice performance suffers. At the time of a succession event, this is when you want your practice at peak performance. You want to put the best possible appearance to the market. Potential buyers or partners will sense a lack of focus. It can derail an opportunity or impact pricing.

#### *Rule 2*

The best time to initiate your succession event is when an offer presents itself. Sometimes the bird in the hand needs to be taken. If you are in succession mode and someone comes to you with an offer, don't discount it simply because the timing isn't ideal. Don't take it simply because it is the first offer to come along, but don't reject it simply because it is unexpected. If the offer is a reasonable one, then it should be seriously considered.

In any succession event there is an element of chance. And part of that chance is being in the market at the right time. You won't always be able to choose your timing, but you will always have the choice as to how you respond to unexpected offers.

### *Rule 3*

Historically, more practices sell or merge in the first half of the year than the second half.

The majority of practices in Australia are business services firms. They are dominated by accounting and tax compliance work. Once July 1 rolls around each year, the focus is on production and the first six months is very compliance dominated. Succession events can occur at any time, however, sales and mergers tend to occur more in the January to June period, than later in the year.

### **Contracts and agreements**

It is always advisable to have draft contracts or agreements prepared in advance of going to the market. Once you are in the market and receiving enquiries you don't want the process delayed while you are waiting for agreements to be drafted. You also improve your negotiating position by establishing the starting position, rather than everyone starting with a blank sheet of paper.

Depending on the nature of your succession event you may require:

- sale agreement
- merger agreement
- partnership deed or
- shareholders agreement.

In having a draft agreement prepared you can include your preferred terms and you can have warranties and indemnities drafted which are reasonable but not onerous. This allows you to present them to the interested parties, once you have agreed a position in principle, and negotiations have reached the appropriate stage.

Once you have identified when you are going to the market, you should identify the main terms and conditions of the proposed succession event and then meet with a solicitor who is experienced in drafting commercial agreements. It is always advisable to use someone who is experienced in this area. Like accountants, solicitors specialise in different areas of practice. The fact that a solicitor is great at conveyancing or estate work does not automatically mean they are experienced in commercial agreements.

An experienced solicitor should be able to take you through the typical clauses that would be expected in a sale, merger or shareholders' agreement and explain their effect.

It is not uncommon that professionals get tied down in the detail. You may find that you can agree broad terms fairly easily but it is when you get into the finer detail that differences can appear. Working through this finer detail in draft agreements will better prepare you for what may be coming and allow you time to think about your position on different issues.

Partnership or shareholder agreements will cover the broad relationship between the parties to the agreement. Much of what is included could be regarded as good common sense. Where these agreements are being put in place you should consider how the position will be managed in the event of a dispute or the exit of a partner. Disputes and exit provisions are normally the most contentious issues when they occur. At the time the parties may be in conflict or very much focused on self-interest. This can lead to an escalation of the dispute and a lot of time, energy and money caught up in legal fees and managing the differences. The best time to agree on dispute resolution procedures or exit provisions is when there is no event underway. Having clear provisions within your

agreement may involve a bit of thinking and discussion, but it save an enormous amount of time and energy in years to come.

It is a fact of life that everyone entering a partnership or buying shares in an entity will one day leave. Exit provisions should consider circumstances, leading to a partner leaving the firm, including:

- death
- illness or permanent disability
- retirement
- resignation.

Your exit terms don't have to be the same in each situation. You should consider including in your agreement the notice periods required, valuation methodologies to be employed, and any time period for pay out of partner interests.

Where a sale is involved make sure that your agreement is clear on the assets being transferred, how work in progress and debtors are being dealt with. You should also consider the position on the collection of debtors, as it is quite likely that continuing clients may pay their fees into the 'new firm'. This will then involve you collecting these funds from the purchasers. This is not uncommon, but terms and requirements should be included in your sale agreement.

### **Warranties and indemnities**

This is an area to consider well in advance. Virtually all sale contracts and most other agreements will include warranties and indemnities. Typically, these have the greatest impact on the vendor. You need to be absolutely certain on what you are warranting and the level of indemnities being provided. This is also another reason why it may be beneficial to have your agreements drafted in advance of going to the market. This way you take the lead in drafting warranties and indemnities that you are prepared to accept.

Your solicitor should be able to advise you on both warranties that are typical in sale contracts and examples of more onerous warranties that you should avoid. The purchasers or their advisers may seek to have extensive warranties included in the contract, to build in as much protection as is possible for the purchaser. It would be normal that the warranties sought on a sale of equity would be more extensive than the warranties on a sale of business assets. This is because a sale of equity transfers to the purchaser any contingent liabilities that may be resident in the corporate entity. Irrespective of this it is arguable that any major liability on the practice will impact the value of practice goodwill.

Whilst it is quite normal to provide a level of warranties and indemnities, the general rule should be:

- seek to limit the warranties being provided
- don't warrant anything that you cannot control
- where a warrant is given, try to limit the value of the indemnity being provided
- place a time limit on your warranty and indemnity.

Often it is the wording of the warranty that makes all of the difference. As an example, a warranty that says 'that you are not aware of any contingent liabilities on the practice that have not been disclosed' may be reasonable whereas a warranty that says 'there are no contingent liabilities on the practice' could be quite unreasonable because you cannot reasonably warrant what you don't know.

This is where a good commercial solicitor is invaluable. In your contract or agreement, the warranties often come well into the agreement and may not be considered as a big issue but it these warranties that can cause a lot of

problems after the succession event. If a matter ends up in dispute, then it is the warranties that the solicitors will be looking at closely.

Prior to going to the market, you should have considered the warranty and indemnity issue, know what you are prepared to accept and what you won't, and have discussed this with your legal advisers so that you understand the implications of any undertaking you are prepared to make.

### **Non-compete expectations**

If you are selling a practice, parcel of fees or undertaking a merger it would be common to have non-compete clauses included in your contract or agreement. Typically, these non-compete provisions will cover a period of time and a radius from the location of the practice where the vendor party agrees not to compete with the practice on a direct or indirect basis. Normally they would also include a provision that the vendor will not approach or seek business from an existing client of the firm, for a specified time period. This is designed to protect the value of the goodwill of the firm.

Non-compete clauses drafted in an agreement may be on a cascading basis. By this we mean they will start by providing a non-compete time period and distance for a longer period of time e.g. three years and then progressively provide in the alternate a reduced time period, often reducing by increments of six months. This type of clause is designed to allow for the interpretation of the courts. Under Trade Practices a court will generally not uphold a restriction on a person undertaking their trade or profession which is considered unreasonable. At the same time where that person has received a payment for their goodwill, a court will recognise and protect a purchaser and the terms of their agreement. Currently it would be normal for non-compete agreements for periods of one to up to two years to be enforceable.

In asking for or agreeing to a non-compete clause it is again important to be fully aware of what you are committing to.

### **Financing considerations**

Ideally, vendors and purchasers will not be linked to each other under financing arrangements. These simply add another level of complexity to any succession event and extend the commercial relationship between the parties for the period of any financing arrangement. Having said this, it is also not uncommon for a vendor to provide some level of finance support. Examples of this include:

- deferred settlement arrangements where part of the consideration is paid at future time periods (particularly across the first year after sales) or on reaching certain milestone events e.g. fee levels
- internal finance provided by a partnership, whereby an incoming partner's equity is partially funded out of their future profit share
- external finance supported by the equity of the firm to provide an incoming partner's equity contribution with repayment of the loan notionally being provided out of the partner's profit share.

It is essential that the terms of all financing arrangements are fully documented and agreed between the parties. Never enter into financing arrangements where the transaction could be left open to interpretation. Ideally, financing arrangements should be short term facilities which can be completed within three years. Where funding is coming from partnership profits be sure that the firm will generate sufficient profit to meet the funding arrangement in addition to normal capital and working capital requirements.

Where you are selling a practice and have agreed to provide some level of vendor finance there should be clear terms in respect of any default by the purchaser. To the extent possible these terms should be punitive, so as to encourage the purchaser to meet their financing obligations. In any sale of practice situation you would normally

expect a purchaser to pay a minimum of 50% of the agreed sale proceeds at the time of settlement of the contract. The greater the amount of the proceeds that can be agreed to be paid up front the better. Deferred settlements should only be offered as a last resort in the negotiation process. The reality is that the sale is not made until the money is in the bank. Where any form of deferred settlement is provided you should consider holding a bill of sale over the practice or other acceptable form of security.

Be aware of the tax treatment of any form of deferred consideration. Typically, the CGT event occurs at the time of contract and your tax obligations will trigger then, irrespective of any financing arrangements you have entered into.

## MARKETING OPTIONS

When you are ready to go to the market there are a range of marketing options to select from. There is no one right answer here. It will depend on the circumstances and the succession option that you are engaging. Transactions within a firm would normally be dealt with by the partners, without the involvement of an external party. On some occasions an external facilitator may be involved. Transactions outside of the practice e.g. sale of a practice, are more likely to involve an external party.

In deciding how you will proceed it is always a good idea to identify what your expectations are. This may help to resolve in your own thinking whether or not you need an external party involved.

Typically, your expectations may include:

- identifying a ready market or candidates
- managing initial enquiries to bring out the serious prospects
- maintaining your anonymity during the early stages of the process
- having an intermediate to manage negotiations
- saving you the time and energy necessary to manage your succession.

All of these expectations are reasonable, however, they will not apply in all cases. Once you have identified what you are after, you will be better placed to decide on the best means of going to the market. Your options include:

1. utilising a broker
2. acting for yourself
3. using an intermediary

### Utilising a broker

You could consider using a traditional business broker. There are a number of these. Normally, unless they specialise in broking accounting firms, they will not have the level of market understanding or ready access to a market of potential buyers. There are a small number of companies who specialise in the broking of professional practices and they typically are state-based. You can often identify these by their advertising in the professional journal.

Specialist brokers will normally understand the profession, its expectations and the current state of the market. In addition, if they are active and successful in their work they should have an existing pool of interested prospects, and they may have acted in comparable transactions over the past year. It's always a good idea to discuss with a broker what transactions they have completed in the past year, and where possible obtain some recent references from vendors they have acted for.

Fees with a broker are negotiable, however, fees in the range of 5-10% of the sale proceeds are not uncommon. Don't be afraid to negotiate the terms. You may want to have a level of performance payment included i.e. a

certain commission level where they achieve an agreed price but reducing to a lower level where price is negotiated below your agreed listing price.

You need to decide whether they can provide what you are after, the level of confidence you have in their ability to represent your interests, the extent of the market they have access to, and whether their cost represents good value to you. If you are considering using a broker, then take the time to understand their process of taking your practice to the market. They should have a process, and the absence of one may signal a more 'hit and miss' approach. There should be a clear process in identifying what information the market will require, how the information will be packaged, the marketing stages they will employ and how enquiries and negotiations will be managed.

In engaging a broker, you should have a clear understanding on the following areas:

- whether their agency is exclusive or not
- the term of their agency
- the basis under which you can terminate the agreement
- broking fees payable
- other costs that you may be liable for e.g. advertising
- the level of disclosure they are able to make
- whether or not you require confidentiality agreements completed prior to disclosure
- what happens in the event that a sale is made after the conclusion of an agency agreement or to a party that has not been introduced to you.

Prior to the appointment of a broker it is a good idea to have all of these areas agreed in writing.

Normally where a broker is engaged this would most commonly occur for a sale of practice, sale of fee parcel or merger.

### **Acting for yourself**

This alternative will work for some people and some succession events lend themselves to it. Increasingly in sales, mergers and partnership changes the parties are known to each other. Depending on the extent of your professional network you may be able to identify a ready pool of candidates or interested parties. If this is the case the two primary considerations are your comfort zone in acting for yourself and also whether you have the time to devote to pursuing the prospects and then working through the negotiation stages.

If you are acting for yourself then it is likely that you will be making direct approaches to other professionals that you already know. In doing this there are some good guidelines to follow:

- be clear about what you are seeking to achieve. Better to be straight up than hoping someone will pick up your drift
- understand the information that interested prospects will be after
- be prepared – once you initiate discussions have follow on information available that you will be able to provide
- have some level of understanding where the market is up to
- be reasonable in your expectations. Don't ask for things that are way outside of the market and which are not supportable
- be commercial. You are looking to achieve a result. Both parties will need to be satisfied with the deal. It can't be a win / lose situation

- establish clear timeframes. Better off to close out a discussion than to have it continue aimlessly. Once parties agree they want to proceed with discussions it can be helpful to set some timeframes for decision points – 60 days is not unreasonable.

Where succession arrangements are internal to the firm it may be a good idea to appoint one or two people to manage the process. Dealing with the detail of these in broader partnership meetings will often lose focus or get bogged down in detail that can derail the process. Better to have a small group leading the process.

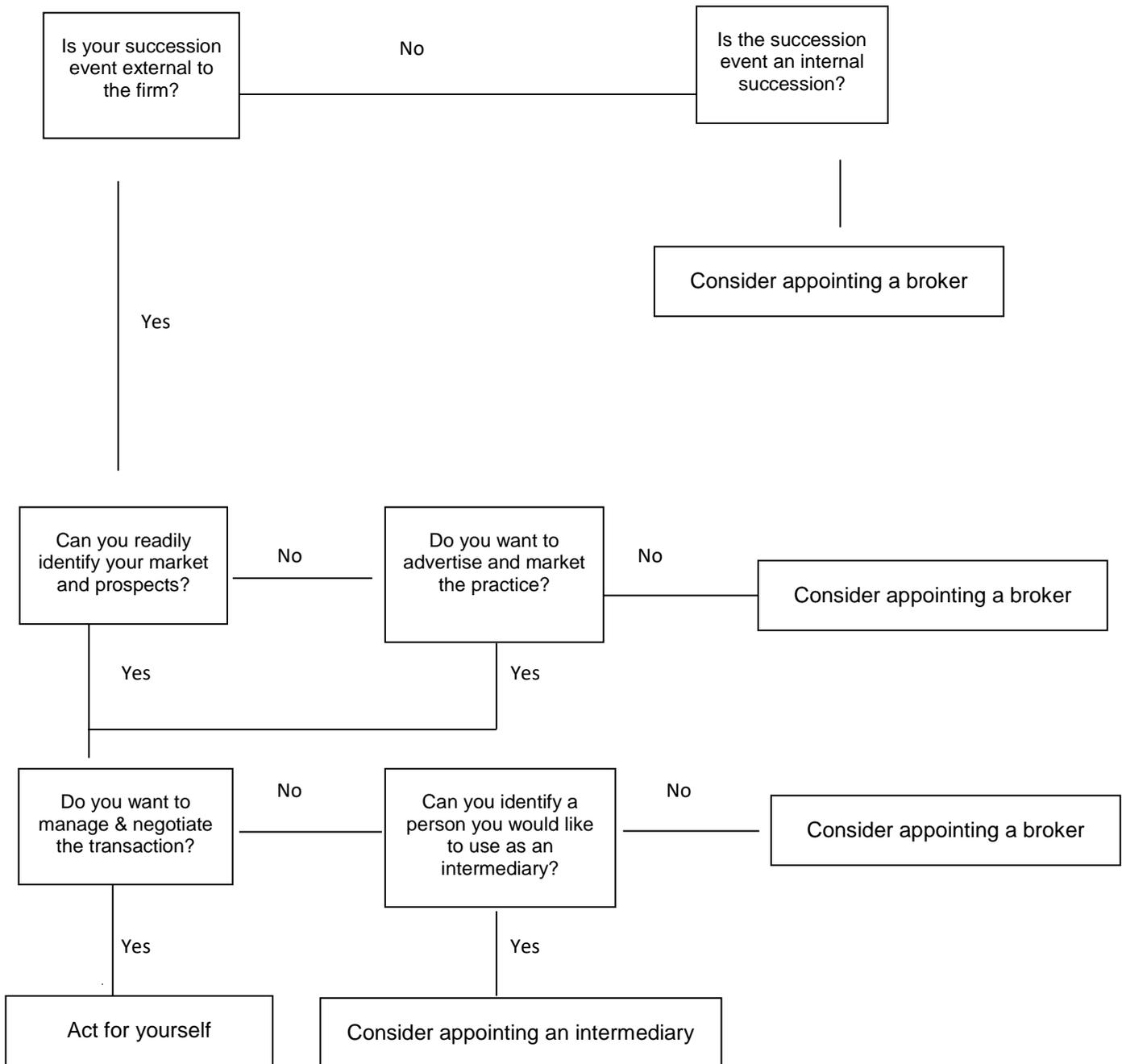
### **Using an intermediary**

This option would more likely be used where you are comfortable identifying your likely market and prospects but where you feel you would like to have someone else negotiate the actual deal. For some people this is a time issue, for others it is a view that they are too close to the transaction and unlikely to manage it effectively.

In using an intermediary, you are looking for someone who you trust, who is likely to be respected and engender trust by the other party, who is aware of the market you are in and is a good commercial negotiator. Sounds like a tall order but these people do exist. They aren't necessarily doing this type of work full-time, but are skilled in representing people and negotiating deals. They may be another practitioner or other professional.

The keys to using an intermediary is to provide them with clear instructions, agree with them what they are authorised to commit to and the frequency of being updated on their progress. Normally the cost of an intermediary would be less than the cost of a broker.

## Flowchart to selecting your marketing approach



The above flowchart may assist you in your decision process. In references to internal and external succession we regard external succession events to include sale of practice, sale of a parcel of fees and mergers as external succession events.

## Information memorandum

Where your succession option is a sale of practice or merger, you may want to prepare an Information Memorandum on the practice.

The objective of the Information Memorandum is to provide a concise and accurate statement regarding the market, financial and operational status of the practice and to allow for a cascading of information to potential buyers.

This document must be regarded as the key document in the entire information supply process. The Information Memorandum needs to fairly represent the practice and to seek to favourably position it in the eyes of interested parties receiving it. The purpose of the Information Memorandum is to provide a high-level overview of the practice. Having read this document a potential buyer should have a reasonable understanding of the practice. The information within the document needs to be logically ordered and succinct in its message. Descriptions of business issues should be brief, factual and to the point. A positive aspect on all relevant issues should be the objective.

In any sale situation a tension will always exist on the amount of information that should be released to an interested party. The tension moves between the desire to provide a potential buyer with the information necessary to proceed, against an equal desire to avoid disclosing commercially sensitive information on the practice to a party who may not be genuine. By providing a high-level view of the business through the Information Memorandum, you create an opportunity to 'weed out' the casual enquiries. Detailed financial information should never be included in an Information Memorandum. High level financial data should be adequate in the initial enquiry stage.

The document needs to represent a factual summary of the following sections:

- executive summary – provides an outline of the core practice operations, recent successes and exhibits the key financial performance indicators, if possible for three consecutive years
- a concise list of assets for sale
- an indicative sale price, with consideration allocated between plant and equipment, office furniture and equipment, and goodwill (business name and reputation, customer lists etc., practice background and philosophy with identification of future plans)
- revenue analysis, with revenue by larger clients (typically in bands of 5 or 10)
- employees and organisation chart with key roles identified
- description of the premises and appropriate financial detail (lease terms, rent etc.)
- a high level financial overview with trends over a three to five-year period including gross revenue, key expenses and net profit before partner / principal remuneration.

The layout should be logically organised, easy to read and glean key information.

## Information memorandum elements

### 1. Executive Summary

The executive summary should effectively and concisely summarise on one page the following details:

- a general description of the practice, its location and the service areas which generate the revenue
- a statement concerning the market in which the practice operates and its perceived position in that market
- a description of the core or predominant client base and mention of the majority source of revenue

- a table depicting the key performance indicators for the previous three years, with any footnote regarding performance anomalies.

## 2. *List of assets for sale*

A brief list stating the entire 'business assets' available as part of the business purchase.

## 3. *Indicative sale price with an apportionment of the price against the various asset classes*

## 4. *Background*

A description of the practice activities starting from the establishment date of the current owner. Where the practice was under prior ownership it may be worthwhile to provide some additional history.

This text should cover important milestones in the history, along with key decisions which have influenced the performance and existing reputation of the practice.

Comments regarding major clients (without client disclosure), significant marketing and commercial events and performance highlights of note should be included.

## 5. *Practice Philosophy*

The theme in this section should seek to explain the logic behind some of the major commercial decisions that have been made over the ownership period and the outcomes, desirable or otherwise of those decisions.

An interested party reading this document should be able to understand why the practice presents as it does and to consider how the practice could be changed or improved with a new set objectives and targets.

The business philosophy or drivers generally shape the performance to suit the direction and performance desired.

## 6. *Clients*

This section provides an opportunity to quantify the impact of either the top group of clients on practice revenue and profitability, or it should explain target client profile.

You would normally identify the top five to ten clients or in some level of banding. At this stage you would not disclose client names but rather identify them by number or possibly industry identifier. Where the practice derives revenue from multiple service streams it may also be advisable to segment the revenue streams across services.

## 7. *Employees*

It is of critical importance that the existing organisational structure is well documented. Employees should be identified by positions and roles, so that a potential buyer can understand the role of various people within the practice and key staff they would want to retain. Job descriptions and individual packages should be detailed along with years of service and appropriate experience. No names or other personnel detail would be provided at this stage.

## 8. *Details of Operating Premises*

A detailed description of the premises should be provided.

The information on premises needs to be up-to-date and include:

- general location
- current annual cost of rent

- lease renewal dates
- penalty withdrawal clauses
- physical area of office

### 9. Detailed asset list

A comprehensive list of all assets to be included in the offer should be prepared. The Information Memorandum would normally provide details of major items of plant and equipment. Where there is a large number of smaller value plant items it may be preferable to describe these under a broad category heading rather than itemise each asset. Fully itemised schedules will be required when the sale moves to the due diligence phase, and they should be available at the time of completion of the Information Memorandum. Avoid attaching individual values to asset items. This can lead to debate and negotiation on an asset by asset basis. Normally you would attach a global value to the various asset classes for sale. You should identify where any assets are subject to encumbrances. If it is intended to transfer the asset with the encumbrance, then this should be identified in the Information Memorandum. Alternatively, if the intention is to clear the charge over the asset then this should be noted in your working papers, both for due diligence purposes and also as a matter to be cared for prior to or at settlement.

### Information memorandum checklist

| Client:  | Date: | Response: |
|--|-------|-----------|
| Obtain financial information for three consecutive years, profit & loss statement and balance sheets |       |           |
| Obtain client fee reports – three years  |       |           |
| Obtain detailed asset register and depreciation schedule   |       |           |
| Establish goodwill component for practice  |       |           |
| Provide outline of company background and philosophy to client for their input to content            |       |           |
| Obtain personnel list and organisational chart   |       |           |
| Obtain property details for business operation   |       |           |

## TIMELINE AND MILESTONE EVENTS

The following table provides a guideline to a succession timetable with key milestone events identified. This timetable allows a preferred three-year succession timetable. Where you have a lesser period of time you will need to modify the events and time allowed. In general, this will have the greatest impact on the time you have available to undertake practice improvement. This timetable has been designed for a sale of practice. For other succession options modify the critical events.

| Months prior to succession | Succession steps   | Completed | Comments |
|----------------------------|--|-----------|----------|
| 36+                        | - Review your succession options                                     |           |          |
|                            | - Decide on succession option  |           |          |
| 35                         | - Undertake a practice diagnostic                                    |           |          |
|                            | - Valuation  |           |          |
| 33                         | - Establish succession timetable                                     |           |          |
|                            | - Document your succession plan                                      |           |          |
| 32 – 12                    | - Undertake practice improvement program                             |           |          |
|                            | - Balance sheet review   |           |          |
|                            | - Taxation review and assess CGT consequences                        |           |          |
| 12 – 10                    | - Develop information reports on client base and revenue by services |           |          |
|                            | - Pre-sale internal due diligence                                    |           |          |
|                            | - Establish sale / transition terms                                  |           |          |
| 9 – 7                      | - Valuation test   |           |          |
|                            | - Establish marketing approach for the business sale / transition    |           |          |
|                            | - Preparation of information memorandum                              |           |          |
| 6 - 3                      | - Agreement on other external advisers                               |           |          |
|                            | - Put the business onto the market                                   |           |          |
|                            | - Enquiry management and filter                                      |           |          |
| 2                          | - Contract and due diligence   |           |          |
| 1                          | - Settlement   |           |          |
| +1                         | - Manage post settlement issues                                      |           |          |

# EXIT CONSIDERATIONS

## COMPLIANCE ISSUES

When you sell or exit a practice there may be a number of compliance issues that will need to be cared for. Normally these can be divided into statutory, contractual and housekeeping requirements. The following is a list of some of the areas that should be at least considered. Given the variety of succession options and individual circumstances, not every issue will apply in each case. The following checklist provides a simple review process to assist in managing the wind down of your practice affairs.

| Issue   | Completed | Comments |
|---|-----------|----------|
| <b>STATUTORY</b>  |           |          |
| Do you need to deregister for GST?  |           |          |
| If you are deregistering are there any adjustment events that need to be reported?  |           |          |
| Issue PAYG employment statements to former employees  |           |          |
| Deregister for PAYG withholding tax   |           |          |
| Complete SGC superannuation contributions for all staff   |           |          |
| Cancel workers compensation policy and lodge final return   |           |          |
| Cancel payroll tax registration   |           |          |
| If there has been any reconstitution of the partnership you may need to apply for a new ABN – normally the ATO will deal administratively with small percentage changes. In this case you will need to contact them to change the ABN details |           |          |
| Other   |           |          |
| <b>CONTRACTUAL</b>  |           |          |
| Complete all relevant directors resignations and ceasing to act under registered business names   |           |          |
| Where there has been a change in the composition of the partnership, attend to changes necessary for persons owning a registered business name  |           |          |
| Withdraw and remove all relevant guarantees under lease provisions, bank facilities or other areas associated with the business   |           |          |

|  |  |  |
|--|--|--|
| Pay out any leases or finance contracts required under assets being transferred to new owners  |  |  |
| Transfer leases or hire agreements on any equipment being transferred  |  |  |
| Deal with staff terminations or payment of benefit entitlements where appropriate  |  |  |
| Complete handover and transition support as agreed   |  |  |
| Other  |  |  |
| <b>HOUSEKEEPING</b>  |  |  |
| Put in place professional indemnity (PI) insurance run off cover where appropriate   |  |  |
| Advise PI insurer of additional or resignation of partners   |  |  |
| Cancel business and property insurances after settlement has been completed  |  |  |
| Obtain a copy of all relevant partnership and shareholder agreements   |  |  |
| Cancel all accounts with creditors or issue advice to them that you are no longer continuing in the business and, where the firm name continues, that they should establish accounts with the new owners |  |  |
| If you are not continuing in practice consider whether or not you should cancel your public practice certificate   |  |  |
| Advise your professional body of the change in ownership of the practice, or the introduction or resignation of partners   |  |  |
| Transfer responsibility for all utility connections  |  |  |
| Issue all final accounts to clients for work completed up to the time of the sale  |  |  |
| Other  |  |  |

## STAFF TRANSITION

Where any change takes place in a firm you need to consider the impact on the rest of the team. Depending on the type of succession event the impact will range from minor to major. The better this is managed the smoother the transition will be.

For sales or mergers, you need to consider two keys areas – employee entitlements and business continuity.

## Employee entitlements

The first area you need to address is whether or not staff are being offered continuing employment with the new practice. Where a position is not being offered you need to consider entitlements to redundancy payments. In some cases where there is uncertainty in relation to their position this can amount to a constructive redundancy and expose you to redundancy payments. It is important that this is considered in advance of final agreements being completed, as there may be financial considerations that should be allowed for.

Where continuing employment is being offered, your staff should receive a letter of offer from the new firm providing them with the full terms and conditions of their employment. A signed acceptance of the offer should be received from the staff and maintained on their employment file. Where continuing employment is not being offered or where the terms and conditions being offered are different from the existing terms of employment, it may be advisable to seek legal advice on your responsibilities under industrial relations legislation.

Staff who will be leaving the firm will have their benefits paid out. With continuing staff, you need to agree how their benefit entitlements will be managed. It is not uncommon for benefit entitlements to be transferred from an existing employer to the new employer. These will need to be calculated and agreement on the amounts allowed. Financial adjustments on transfer of employee entitlements would normally be an adjustment item on the contract settlement. Where benefits are being transferred it may be advisable to provide your staff with a statement of their benefit entitlements being transferred.

## Business continuity

Where staff are continuing with the firm it is important to keep them well informed on the changes and the forward plans for the firm. Change always brings uncertainty. The higher the level of transparency about what is happening, what changes will occur and how they will be affected, the smoother the transition is likely to be.

The early stages of the succession plan may be confidential, for a number of reasons. This will vary from firm to firm and depending on the succession event. Once the forward position is clear it will be important to let your team know what is happening and then keep them well informed during the transition. Respect the fact that this change affects them and they will want to know what is happening. This step needs to be carefully managed and sufficient time allowed.

In some cases, your staff will hold strong relationships with the clients. In these cases, the more settled the staff, the more likely it is that this will flow through to the clients. Where there is a sale agreement with earn out or claw back clauses, this can mean real dollars.

Changes that don't involve the sale or merger of the practice, such as internal succession, retirement of a partner, or introduction of a new partner, you still need to consider the impact on your staff. Each of these events involves some change in the fabric and hierarchy of the firm. People relationships are often sensitive areas that are easily overlooked. The more transparent you are in managing this and the more you keep your team informed the smoother the process will be.

## CLIENT ADVICE

Clients should be advised of changes within the firm. This would normally be cared for by one or more of the following mediums:

- letter to clients
- client function – normally to farewell or introduce a partner
- newsletter

- website announcement
- personal visit.

Depending on the nature of the change you may approach different clients in different ways. Large clients of the firm, or those directly affected by the change should have personal contact. Again, the nature of the change will influence the approach to be taken. Changes such as the admission of a new partner, will have less impact on clients than changes such as the sale of the practice or the retirement of a long-term partner.

Like your staff, clients will want to be informed and know how any changes may affect them. This also provides a great PR opportunity and the chance to update your clients on services being offered and new ways in which the firm can assist them.

## FURTHER RESOURCES

- [Unplanned succession \(PDF\)](#)
- [Succession options \(PDF\)](#)
- [Valuation and pricing \(PDF\)](#)
- [Succession planning](#)
- [Roadmap to practice growth and succession \(PDF\)](#)
- [Growing your business](#)

### About the author

Greg Hayes, Director, Hayes Knight (NSW) Pty Ltd, has broad experience and knowledge in the area of public practice succession. With over 20 years experience as a public practitioner, Greg's focus is on business consulting and taxation. He specializes in strategic planning techniques and is well known in the areas of practice management and business development, having been an active commentator in this area for over 15 years.

### Disclaimer

CPA Australia and the author have used reasonable care and skill in compiling the content of this material. However, CPA Australia makes no warranty as to the accuracy or completeness of any information in these materials. The above material is only general in nature and not intended to be specific to the reader's circumstances. You should not act solely on the basis of the information contained in these materials as parts may be generalised and may apply differently to different people and circumstances. Further, as laws change frequently, all practitioners, readers, viewers and users are advised to undertake their own research or to seek professional advice to keep abreast of any reforms and developments in the law. To the extent permitted by applicable law, CPA Australia, its employees, agents and consultants exclude all liability for any loss or damage claims and expenses including but not limited to legal costs, indirect special or consequential loss or damage (including but not limited to, negligence) arising out of the information in the materials. Where any law prohibits the exclusion of such liability, CPA Australia limits its liability to the resupply of the information.

Copyright © CPA Australia Ltd ("CPA Australia") (ABN 64 008 392 452) 2017. All rights reserved. Without limiting the rights under copyright reserved above, no part of these notes may be reproduced or utilised in any form or by any means, electronic or mechanical, including photocopying, recording, or by information storage or retrieval system, without prior written permission from CPA Australia.

December 2017