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TOP 5 TIPS FOR MAXIMIZING THE VALUE OF YOUR TECHNOLOGY COMPANY

"Before looking for investors or buyers, technology companies should make sure that they are ready for the rigorous process that lays ahead."

By Jillian Swartz
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After bootstrapping their technology companies for several years, many entrepreneurs decide to take on an arm's length investor or sell their company outright so that they can pursue a new venture. Here are my top 5 tips to help entrepreneurs successfully secure that investor or buyer and maximize the valuation for their companies.

1. Resolve Potential Issues in Advance

If you are considering taking on an arm's length investor or selling your company, you should ensure that your company's books and records are in good shape. This means eliminating or minimizing issues that may cause concern for potential investors and buyers. You should work with your legal, accounting and tax advisers to identify potential issues of concern and address those issues before potential investors or buyers start their due diligence concerning your company. If you do not address such issues early in the process, that may reduce the pool of potential investors or buyers, reduce the enthusiasm of the investors or buyers that are in the pool, delay the completion of the investment or purchase and prevent you from obtaining the highest valuation for your company.

2. Get Organized

Being organized will save you time, save you money and make it easier for you to get a deal done. You will need to collect copies of your company's material agreements before the due diligence process starts. Potential investors and buyers will ask to see the company's agreements with key suppliers, customers and employees, real and personal property leases, intellectual property licences and any other agreements that may have a material impact on your company's business. Copies of those agreements need to be readily available, ideally in electronic form, when the process starts. If any material agreements raise any significant business or legal issues, you should consider the most efficient and effective method of resolving or disclosing those issues early in the process. If you do not resolve or disclose material issues, a potential investor or buyer may be caught by surprise. In this context, you do not want surprises. Surprises cause delay and uncertainty, diminish trust and credibility and generally make it harder for you to complete any deal you are pursuing.

3. Protect Your Intellectual Property

For most technology companies, their intellectual property is their most valuable asset. You need to be sure that your company's intellectual property is properly protected. Failure to do so can significantly reduce the value of your company and kill a potential investment or sale. Many technology companies use independent contractors to develop the intellectual property that they use for their businesses. However, if you use independent contractors to develop intellectual property for your company, there may be an issue as to who actually owns the intellectual property. Unless there is a specific written agreement in place that assigns all of the rights in the intellectual property to your company, the independent contractor could claim that he or she owns the intellectual property and should receive some additional compensation or part of the purchase price if the company is being sold. Therefore, you should ensure that all of your employees and contractors have entered into agreements that explicitly state that your company owns all of the rights to the intellectual property they create and your company is entitled to exploit the intellectual property in any way that it chooses. If these agreements weren't signed when the employee or the contractor was initially engaged, make sure that they are signed prior to seeking investment from an arm's length third party or commencing a sale process – and be sure that you provide adequate compensation so that the agreements are enforceable. In addition, if the company's intellectual property rights can be protected by registration, serious thought should be given to making the appropriate applications. Potential investors and buyers will be willing to pay a premium for a company that has been vigilant in protecting its intellectual property.

4. Know What's Market

If you and your advisors determine that an auction is the best way to proceed, your lawyer will likely prepare a first draft of the purchase agreement for the buyers to mark-up and submit with their bid. While you will want that first draft to be seller-friendly, you should avoid the temptation to make the draft too one-sided. That could cause the auction process to be longer and more expensive than it needs to be. You should also avoid imposing an overly aggressive schedule as that may deter buyers from participating in the auction, particularly strategic buyers who may have longer internal approval processes. When negotiating the terms of the purchase agreement, focus on what is reasonable in light of your company's performance and prospects and its inherent risks with an eye to "what's market" in all of the circumstances.

5. Hire Deal Experts

A focused and experienced deal team, including highly skilled M&A lawyers, financial advisors and tax experts, will help you secure the best deal possible for your company. M&A lawyers will bring real value to the team by helping you navigate the process, identify risks and suggest ways to reduce those risks, advise on "what's market", and negotiate the most favourable transaction terms. Through their research, networks and proprietary databases, financial advisors (including investment bankers) may be able to connect you with potential investors and buyers that may be unknown to you; they will also assist you by telling your company's story in the best possible light and advising you on valuation and industry trends. Tax experts will be able to advise you on tax-efficient structures to help you to receive the maximum after-tax proceeds possible.

Conclusion

Before looking for investors or buyers, technology companies should make sure that they are ready for the rigorous process that lays ahead. With proper preparation, including protecting the company's valuable intellectual property, being aware of current market practices and trends, and hiring experienced transaction advisors, you can maximize the value of your company and obtain the best possible terms.

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