

T H E B U S I N E S S ADVISOR

Useful Information for the Business Owner

W I N T E R 0 8

**The Management Team:
One Key Component of
the Due Diligence Process**

**Improving
Sales Agent
Performance**

**Holding Companies –
Important Piece in Tax
Planning Puzzle**

**Corporate Knowledge
Part IV: Trade-marks**

**Capitalize on CDA...
Tax Free**

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Contributors: Banda Marketing Group Inc., Assante Financial Management Ltd., Hergott Duval Stack LLP, MacPherson Leslie & Tyerman LLP and Golden Opportunities Fund Inc.

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CONTRIBUTING AUTHORS:

Assante Financial Management Ltd.

Darrell Nordstrom, Jim Nellis, Dale Berg and Jos Herman of Assante Financial Management Ltd., specialize in helping established business owners in Saskatchewan manage the financial complexities of personal and business life. The company's unique approach is to combine its experience and education to help its clients make wise financial decisions.

Their clients are some of the region's highest net worth business owners. As advisors, they develop a comprehensive plan for managing their clients' finances to help ensure long-term prosperity and growth.

Banda Marketing Group Inc.

Banda Marketing Group Inc. assists owner-operated businesses in making strategic marketing decisions. The company has built considerable expertise in dealing with issues faced by owner-operated firms that are changing how they market their business. Often times these companies are launching new products, entering new markets or attracting new customer segments.

Since 1997, the company has developed business and marketing plans, feasibility assessments, marketing research projects, marketing campaigns and implemented promotional campaigns for businesses in a variety of industries across Western Canada.

Golden Opportunities Fund Inc.

Golden Opportunities Fund Inc. is Saskatchewan's first and largest provincial Labour-sponsored Investment Fund and has become the most successful labour fund in the three Prairie Provinces in terms of capital raised and invested. Golden Opportunities is one of the top performing funds of its kind in Canada and was chosen as the 2004 Canadian Labour Sponsored Investment Fund of the Year. Investors in the Fund receive 35% in tax credits on their investment up to \$5,000 per taxation year.

Golden Opportunities Fund Inc. is widely held among approximately 15,000 Saskatchewan shareholders, with more than \$110 million in asset value. Since its launch in 1999, Golden Opportunities Fund Inc. has invested \$105 million into 67 different Saskatchewan companies in key industry sectors integral to Saskatchewan's economic growth such as oil and gas, biotechnology, and renewable energy. The Fund's investments impact Saskatchewan workers, families and communities with more than 2,500 Saskatchewan jobs provided by investee companies.

Hergott Duval Stack LLP

Hergott Duval Stack LLP specializes in dealing with a wide variety of complex accounting, auditing and tax issues facing both small business owners and large multi-nationals. The firm provides clients with a variety of professional services ranging from business valuations, to litigation support, to management consulting.

As one of the largest independent accounting firms in Western Canada, and the largest group of tax professionals in Saskatchewan, it leads the way in innovative tax plans and strategies.

MacPherson Leslie & Tyerman LLP

MacPherson Leslie & Tyerman LLP is a leading western Canadian business law firm with over 90 lawyers practicing from offices in Regina, Calgary, Edmonton and Saskatoon. MLT's core practice areas of corporate & commercial law, litigation, labour & employment law, and tax planning & tax dispute resolution address the fundamental legal issues faced by business on a daily basis.

MLT also maintains significant specialty practice groups in insolvency & restructuring, mining, and natural resource law, First Nations law, privacy law, pension law, information technology, health law and intellectual property law.

THE INVESTMENT BANKING REPORT:

The Management Team: One Key Component of the Due Diligence Process

Extensive due diligence of an investment opportunity is required prior to making an investment decision. Proper due diligence by a venture capital investor will include several very important components such as an in-depth analysis of the industry sector, past performance, financials, market, competition, competitive advantage, investment risk and exit strategy to identify a few of the many areas.

In this article, our second in a series of several articles exploring the various due diligence components of an investment transaction, we discuss one of the main components – the human element of the management team.

First impressions: Investors usually begin the process of due diligence and assess their potential interest in an opportunity early after meeting the management team and learning of their business strategy. Other aspects of a deal can be negotiated and worked out, but the management team forms the core of the opportunity and ultimately dictates its potential for success.

Expertise: Many of the skills involved in building a successful business translate from one opportunity to another. Investment partners will look for management teams that have demonstrated the ability to build and grow a successful business in the past and can apply their model to the current opportunity. Often management will exhibit unique expertise such as specific education or extensive experience in a particular area, to help establish the competitive advantage for the venture. Highlighting your success is important to convincing investment partners that you have the credentials for a successful management team.

Vision: To be a world class company you have to think big. Unlike more traditional sources of financing that hinge on set yields, venture capital investment partners focus on future growth potential. These partners are looking for a company to be led by someone with a vision of where the company is going as well as current and emerging market trends, and with the ability to realize its full potential – which will ultimately maximize the investor's return.

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Commitment: The management team's commitment is generally demonstrated by its personal financial contribution to the venture. Profit sharing and ownership incentives can help to ensure that management's motivation is aligned with that of other investors.

Plan A and Plan B: A good team knows where they are going and how to get there. It goes without saying that a solid plan is a must; however, perhaps equally important is Plan B. Unforeseen events are inevitable as a business grows and investment partners are looking for management's ability to capitalize on these events and respond to the challenges of growth by seeing them as opportunities rather than obstacles.

Well rounded: The emphasis on "team" is critical as a leader is only as strong as the team he or she works with. Investment partners are looking for a good management team that is talented and diverse with effective structure, clear roles, good communication, decision making, and consensus building capabilities. A well rounded team will include professionals in the areas of production, finance, marketing, and operations so all of the important aspects of your business get the attention they deserve. Since a weak management team is a downfall of many businesses, investment partners will often require that any deficiencies in the team be rectified prior to the exchange of funds.

Venture capital partners invest in people. They are looking for a strong management team with the capability of executing the strategic plan and managing growth, as well as leadership with unique ideas and exceptional skill sets that will help to realize the full potential of the investment opportunity. If you are considering the pursuit of an investment partner it is important to recognize the importance of this human element and maximize your presentation of management's skills to show that your team is well-balanced to capitalize on the investment opportunity.



 Golden Opportunities Fund Inc.

Ulrich Felbermayr is a Senior Investment Manager with Golden Opportunities Fund Inc.



Improving Sales Agent Performance

Most manufacturers view Sales Agents as a necessary evil. Few manufacturers feel the Sales Agents earn their pay or focus on increasing volume.

Sales Agents are people. In any organization, performance is a result of having the right people on board and forming a working relationship that produces good work. The following are practical leverage points to build a strong Sales Agent network.

Sales Agencies are Businesses Too

Just like any company, high performing Sales Agencies make money when products can be sold efficiently or when they sell something completely unique. Put yourself in their shoes. What is your company like to work with?

Is your product easy to move? Sure, you're paying the rep to sell the product and you expect some work for that commission. But you must also realize they'll put their time behind the product in their portfolio with the highest ROI. To the salesperson, ROI is influenced by factors such as margin, volume and how easy the product is to sell.

Does your company offer a high level of sales support and customer service? The Sales Agent may be responsible to solve customer problems, but rarely can the Agent do this on his/her own. Make sure they get information and support from you so they can do their job. The manufacturer and Agent relationship often solidifies into a partnership after working through a complex customer problem.

Start With The Right People

Manufacturers generally do a poor job of finding the best Agents. They are more focused on finding any Agent in the region than the right Agent. Before you begin negotiating a rep contract, make sure you're talking to the right potential partner.

To locate Sales Agents for our manufacturing clients, we often interview high-performing retailers. Who do they like working with and why? Who would they trust when they need product support? When you know who is respected in the region, you will have a greater degree of confidence in negotiating a potential Sales Agency contract. Does the Agent's perception of product support match your company's expectations? Are your Agent's expectations of the manufacturer's sales support realistic? Many times these questions point to corporate culture issues. Remember, a partnership is like a marriage. Make sure you're selecting the right person.

To the salesperson, ROI is influenced by factors such as margin, volume and how easy the product is to sell.

Support A Quick Transaction

Twenty years ago reps would visit customers on the road from Monday to Thursday and send quotes by mail on Friday. Customers expected up to a seven-day turn-around on a quote. Times have obviously changed with technology.

In many industries, timely and accurate quote information is more important than product quality. Consider what your organization can do to support a fast turnaround. Some manufacturers invest heavily in custom software enabling their Agents to spec out product. The customer receives a quote and detailed specifications in minutes. Customers don't have time for best guesses and sales reps don't have time to make those mistakes.

Hold Sales Agents Accountable

Whatever the industry, the worst employees are always the ones that hate to be held accountable for their actions. They are lazy and often do not pay for themselves. This includes Sales Agents that avoid completing call sheets or providing detailed sales data on their customers.

From our experience, the best Sales Agents have no problem answering for their actions. All high-performers do not want to be micromanaged, but they also have nothing to hide. The more sophisticated salesperson knows that manufacturers can be easier to work with when they have good data on how their product is sold. This data can help the manufacturer improve factors such as logistics, pricing, product development and sales support materials.

A common mistake is to simply ignore an Agency's performance. Manufacturers do not have time to evaluate and analyze results, and simply assume that agents are performing effectively. Lack of feedback and follow-up with Agents will move your product's priority to the bottom of the pile.

Make sure to understand the nuances in your industry when establishing and developing your Sales Agent network. Remember, business is about relationships and investing a little time in your people most often pays for itself many times over.



BANDA
marketing group



Brent Banda, MBA, is the President of Banda Marketing Group Inc.

THE ACCOUNTING REPORT:

Holding Companies – Important Piece in Tax Planning Puzzle

Most business owners are well aware of the tax savings that can be gained from having business profits taxed inside a corporation rather than at the personal level. The 2008 corporate tax rate on business income earned inside a corporation and eligible for the small business deduction is 15.5% (Federal and Sask. Combined). This rate is only one-third of the 44% top bracket tax rate paid at the personal level. As after-tax business profits are earned and accumulated inside a corporation, shareholders need to consider both the tax and non-tax benefits that can be gained from using holding companies in their corporate structures.

Shareholders need to consider both the tax and non-tax benefits that can be gained from using holding companies in their corporate structures.

Typically a “holding company” is placed between the operating company (“Opco”) and the individual shareholder. One of the foremost principles of Canadian taxation is that dividends are allowed to flow on a tax-free basis from one corporation to another. Accordingly, after-tax profits accumulated in the Opco can generally be distributed to the holding company as tax-free dividends. Funds transferred to the holding company in this manner are better protected from the claims of the Opco’s creditors, as unfortunately, a lifetime of accumulated profits can vanish in one single claim. Use of a holding company to reduce

this type of exposure is especially attractive to companies where the risk of lawsuits or litigation is significant.

The retention of business profits that are not reinvested back into the business generally results in the Opco accumulating significant amounts of investments. These investments are likely to be considered as not being actively used in the company’s business. An accumulation of such investments to the point where they represent greater than 10% of the value of the Opco’s assets will cause the company to lose its status as a “small business corporation” (“SBC”). Only shares in a SBC are eligible to receive the \$750,000 capital gains exemption in the event of their sale. A dividend payment to the holding company allows the investments to be removed on a tax-free basis and thereby allowing the Opco to maintain its SBC status. However the dividends may be subject to tax if they are paid as part of the same series of transactions as the sale of the Opco shares to an arm’s length purchaser. The consistent and periodic payment of dividends between companies may avoid this problem.

A holding company can also be used to hold the real estate assets of a business. Besides protecting the equity in the real estate from the risks of unforeseen litigation, the isolation of the real estate in the holding company provides more flexibility in determining whether the future sale of a business will be a share sale or an asset sale in situations where it is possible the business assets (other than the real estate) may be sold. The removal of the real estate also reduces the price of the Opco thereby making the sale of the shares more feasible.

In corporate structures that have two or more shareholders, a holding company also adds more flexibility as to the timing of dividend distributions to individuals. Any shareholder not wanting to be taxed personally on a dividend paid by an Opco can simply leave the dividend in their holding company.

Separate holding companies for each shareholder also allow the shareholder’s family members to participate in the holding company rather than directly in the Opco. Arm’s-length business partners are often reluctant to have their partner’s family members participate in the Opco. As well investment and business decisions can be made in each holding company both privately and independently from the interests of the other Opco shareholders.

Although cost and complexity are somewhat increased in a holding company structure, both the tax and non-tax benefits will usually justify the use of this very important tax planning tool.



Hergott Duval Stack
CHARTERED ACCOUNTANTS

Craig Hermann, BComm, CA, is a taxation specialist with Hergott Duval Stack LLP.

Corporate Knowledge Part IV: Trade-marks

A trade-mark, according to the *Trade-marks Act* (Canada) (the “Act”), “is a mark that is used by a person for the purpose of distinguishing or so as to distinguish wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others.”

A mark can be a word, a combination of words, a slogan, a design (logo), letters, numbers, symbols or any combination of these items – so long as they are used to distinguish your goods and services from the goods and services of others.

There are two types of trade-marks in Canada – those that are registered under the Act (registered trade-marks) and those that arise simply through use (common law or unregistered trade-marks). A common law trade-mark must also be a mark that is used by its owner to distinguish goods and/or services from the goods and/or services of others.

A registered trade-mark provides its owner with the exclusive right to the use of the trade-mark throughout Canada for a period of 15 years following its registration. The registration may be renewed indefinitely for successive periods of 15 years each. The registered trade-mark owner’s monopoly protection covers only the goods and services that are listed in the trade-mark registration (which may be amended to add other goods and/or services). An unregistered trade-mark can only be protected in the communities in which it is used and where a reputation has been established.

Like all other forms of intellectual property, it is the responsibility of the trade-mark owner to monitor and enforce their rights.

Rights in unregistered trade-marks are enforced by the common law tort of passing off (and the passing off provisions of the Act). In order to enforce those rights, the owner is required to prove its ownership of the mark, the owner’s goodwill in the mark, that the mark is properly used and is distinctive of the owner’s goods and/or services. A registered trade-mark entitles its owner to bring trade-mark infringement

It is the responsibility of the trade-mark owner to monitor and enforce their rights.

proceedings pursuant to Sections 19, 20 and 22 of the Act. The registration of a trade-mark creates a presumption that the mark is valid (properly used and distinctive) and is owned by the registered proprietor. The owner of a registered trade-mark is only required to prove the registration and that the infringer used the trade-mark in association with similar goods and/or services.

Once the owner of an unregistered trade-mark licenses another to use its trade-mark, that trade-mark may cease to distinguish the owner’s goods and services from the goods and services of its licensee. If a registered trade-mark owner controls the character or quality of the goods or services provided by a licensee, use of the trade-mark by the licensee is deemed to be use of the trade-mark by the registered owner.

Although registration provides significant benefits, not all trade-marks are capable of being registered. Subsection 12(1) of the Act

provides that a trade-mark is registerable if it is not: (i) a word that is primarily merely the name or surname of an individual who is living or has died within the preceding thirty years; (ii) clearly descriptive or deceptively misdescriptive in the English or French language of the character or quality of the wares or services; (iii) the name in any language of any of the wares or services; (iv) confusing with a registered trade-mark; (v) a mark the adoption of which is prohibited by sections 9, 10 or 10.1; and (vi) a protected geographical indication, where the trade-mark is to be registered in association with a wine or spirit not originating in a territory indicated by the geographical indication.

If your business uses a name, symbol or image in the marketing or sale of your goods and/or services, odds are that the reputation of your goods and services have been linked in the minds of your customers to that name, symbol or image. Have you investigated whether a trade-mark registration could help to prevent your goodwill from being diluted or diverted by others?



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Chris Woodland is a partner in the law firm of MacPherson Leslie & Tyerman LLP. He practices extensively in intellectual property, technology and business law.



THE FINANCIAL REPORT:

Capitalize on CDA... Tax Free

As business owners, there is always the struggle to figure out how to extract funds from your corporation using a tax efficient approach. The traditional methods are salary, bonus, dividends, and the like. So, how can business owners capitalize on something called a Capital Dividend Account (CDA) to meet this tax efficient objective?

The CDA permits an immediate or future tax-free distribution of capital dividends to the shareholders.

The Capital Dividend Account (CDA) is intended to allow tax-free amounts received by a private corporation to be distributed - tax-free - to shareholders of the corporation. It is a notional tax account that tracks various tax-free amounts that accumulate in a private corporation. Credits to the CDA permit an immediate or future tax-free distribution of capital dividends to the shareholders.

These credits to the account include:

- 1) Non-taxable portion of the gains from the disposition of goodwill, customer lists, etc. that are considered to be eligible capital property.
- 2) The amount of life insurance death benefit that exceeds the adjusted cost basis of the policy.
- 3) Capital dividends from other corporations.
- 4) Certain distributions made by a trust and received by the corporation in respect of non-taxable capital gains realized by the trust and capital dividends received by the trust.

And one of the most common being...

- 5) The cumulative excess of the non-taxable portion of capital gains (over the non-deductible portion of capital losses) - since

1971 or when it last became a private corporation.

Less...

- 6) Capital dividends paid by the corporation.

Let's see this through an example

Let's assume since 2005, the corporation had the following:

- Realized a capital gain of \$200,000 (non-taxable portion of \$100,000)
- A capital loss of \$150,000
- Received life insurance proceeds -net of the Adjusted Cost Base (ACB)- of \$500,000

Based on the calculation, the corporation has the opportunity to pay a capital dividend of \$525,000 as seen below:

ADD: 50% of capital gain of \$100,000

LESS: 50% of capital loss of \$75,000

ADD: Life Insurance proceeds (net of ACB) of \$500,000

TOTAL: \$525,000

Elect to make a tax-free capital dividend

If the corporation has the opportunity to pay a capital dividend (given that they have a positive balance in the account), the corporation would elect with CRA to do so. This election requires the following:

- 1) To be filed on or before the earlier of the dividend being paid or is payable.
- 2) Certified director's resolution authorizing the election.
- 3) Schedule showing the calculation of the CDA immediately before the election.

Keeping on top of the balance

The timing of the payment of a capital dividend is at the discretion of the corporation. It does not have to wait until the end of a fiscal year, nor does it have to pay amounts out as soon as they are credited to the CDA.

There are some words of caution:

Since the account is "negatively" impacted by capital losses, if you allow the capital dividend account to build up without paying capital dividends, the account is automatically reduced by future capital losses. The solution is to pay out the capital dividends up to the amount available in the account, the funds are safely out of the company and subsequent capital losses do not impact future capital dividends. Ordinarily, it is preferable to pay out the capital dividend account balance on a timely basis so as to avoid possible future reductions of the balance available.

Where the CDA is used in conjunction with a buy-sell agreement, care should be taken with respect to the timing of the payment. Furthermore, the buy-sell agreement should even include the wording that a capital dividend should be made using the election required by CRA.

Although this strategy appears to be quite straight forward, private companies should rely on professional advice to ensure the accurate calculation of the balance. The account is well worth exploring and calculating as there is a true benefit to the shareholder on a tax-free basis.

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Darrell Nordstrom, CLU, Ch.F.C., CFP, RFP, **Jim Nellis**, B.Comm, **Dale Berg**, CLU, Ch.F.C., CFP and **Jos Herman**, CA, are Financial Planning Advisors with Assante Financial Management Ltd.

THE BUSINESS ADVISOR



Assante Financial Management Ltd.

#301 500 Spadina Crescent East, Saskatoon, SK S7K 4H9
Ph: (306) 665-3244 Fax: (306) 665-6691 www.ourprocess.com



Banda Marketing Group Inc.

#202 1630 Quebec Avenue, Saskatoon, SK S7K 1V7
Ph: (306) 343-6100 Fax: (306) 652-1340 www.bandagroup.com



Golden Opportunities Fund Inc.

#1300 410 22nd Street East, Saskatoon, SK S7K 5T6
Ph: (306) 652-5557 Fax: (306) 652-8186 www.goldenopportunities.ca



Hergott Duval Stack LLP

#1200 410 22nd Street East, Saskatoon, SK S7K 5T6
Ph: (306) 934-8000 Fax: (306) 653-5859 www.hdsp.ca



MACPHERSON LESLIE
& TYERMAN LLP
LAWYERS

Regina • Calgary • Edmonton • Saskatoon

MacPherson Leslie & Tyerman LLP

#1500 410 22nd Street East, Saskatoon, SK S7K 5T6
Ph: (306) 975-7100 Fax: (306) 975-7145 www.mlt.com