



# AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

## Preparing for an Acquisition – Are You Ready?

BY JULIE K. O'NEILL • OCTOBER 23, 2017

This past August, Sapporo bought Anchor Brewing. Anheuser-Busch InBev has bought Wicked Weed, Four Peaks, and many more breweries. If and when your turn comes, will you be ready? Here are a few things craft breweries can do to be prepared for an acquisition.

- **Launder your Ledger.** Get your capitalization table and equity ledger in shape. You need to have a clear picture of who owns what in your company, and you need to be able to easily provide that information to a potential buyer. Whether your entity is an LLC or a corporation, make sure you have detailed, understandable, and up-to-date records on equity ownership.
- **Be Wary of Warrants.** If your brewery has ever borrowed money from a bank, it may have issued warrants to the bank. Some warrants are deemed automatically exercised upon an acquisition; some require advance notice of an acquisition. Make sure you know the terms of every warrant and similar instrument your company may have issued.
- **Mind your Minutes.** Keep your company records organized and current. Are all your board consents signed and dated? Are the exhibits attached? Do you have records authorizing each and every equity grant, option grant and profit interest grant the company has made? If your brewery is a corporation, has each stockholder signed the stockholders' agreement or similar contract? If your brewery is a limited liability company, has each member signed the operating agreement? Having to chase people for signed documents in the midst of negotiating a sale of the business is not a good use of your time.
- **Watch your Works.** Make sure every employee and service provider who might ever create intellectual property for your brewery signs an appropriate assignment of inventions when they start work. This is especially important if you have consultants creating content or other works for you. Intellectual property includes, among many other things, custom designed software programs and content posted on websites and in promotional materials.
- **Safeguard your Secrets.** Protect yourself with a good non-disclosure agreement. NDAs are not all the same. Some forms are geared especially toward potential acquirers. Make sure you know what form to have potential buyers sign.

**Hire some Hot Shots.** Get your experts lined up. You will need a great lawyer, tax advisors, and maybe an investment

banker. Ask around to make sure you hire the right professionals to help you get to the end line.