Mergers & Aquisitions,
Financing, Business Advisory Services


The Process of Selling Your Business

Selling a business can be one of the most stressful events the business owner will ever encounter. The business sale process is complicated and most of the time, this will be the entrepreneur's first experience.

The process can be stressful because there are many unknowns: What is my business worth? Who should I contact? How should I contact them? How much information should I provide? How do I keep it confidential? How will my employees and customers react? By understanding and properly planning for the sale, the business owner can greatly reduce uncertainty and improve the chances of success.

The business sale process can be divided into four main phases: planning, marketing & negotiations, due diligence and closing. From start to finish, the business owner can anticipate that the whole process will typically take from 4 - 8 months.

Planning

Being proactive about the future of the business is key. Frequently, however, the decision to sell is reactive. A common scenario is one where the business owner is contacted by a potential buyer expressing interest. Since "only a fool wouldn't listen", the entrepreneur begins discussions and ends up engaged in negotiations, unprepared, with a single buyer, on the buyer's terms. If the process gets to the offer stage, the business owner has no other offers for comparison.

The first consideration in the planning stage is: Why am I selling? Are there alternatives such as a management buyout, selling a minority stake or succession? What will I do afterwards? The business owner needs to consider these issues carefully in order to be fully committed to the process. Once fully committed, the business owner can take a proactive approach and is prepared for the bumpy road that lies ahead.

In the planning phase, the seller should assemble a team that includes legal, tax, accounting and corporate finance advisors that have a track record of successfully completing transactions.

Retaining a financial advisor specialized in mergers & acquisitions offers a number of advantages to the vendor and can enhance the probability of achieving the best possible deal. It sends a strong signal to potential buyers that the vendor is serious and well informed about the process and puts the vendor in a position of strength for negotiations.

The principal function of the financial advisor is to manage the sale process so that the seller can continue to focus on running the business. One of the greatest dangers of selling your business is getting distracted from the day-to-day operations and having the business suffer as a consequence.

By effectively marketing the opportunity, the financial advisor will enhance the probability of securing several interested parties and achieving the best possible deal. Finally, the corporate finance advisor acts as intermediary in negotiations and can play the role of "bad cop" if necessary, allowing the vendor and purchaser to conserve a healthy relationship.

In the planning phase, the financial advisor will prepare a business valuation so that the vendor can have a fair expectation of the likely achievable value of the company. (For more information on valuations, please see Cafa's previous newsletter entitled "What is Your Business Worth?")

The final element in the planning stage is "cleaning house". Any loose ends, such as unsigned agreements, litigation, etc. should be tidied up to the greatest extent possible. Up to date and clean financial records will provide the buyer with a greater sense of security that there will be no surprises or unresolved issues that will have to be addressed after the acquisition. Having a clean house throughout the organization will enhance the ultimate value of the business.

Marketing & Negotiations

In the marketing phase, the financial advisor will prepare a Confidential Information Memorandum which provides a summary of the key information potential buyers require to assess the opportunity. In addition to financial highlights, the Memorandum will provide a description of the business, products, markets, manufacturing or service capabilities, details of fixed assets, as well as information on senior management and the labour force. The Memorandum also highlights the key investment considerations that make this an attractive opportunity.

The exercise of preparing the Memorandum allows the advisory team to become familiar with the business and identify any issues that may have to be addressed later on. Based on the Memorandum, the financial advisor will prepare a brief "teaser" which is used in the initial solicitation of interest.

In conjunction with the business owner, the financial advisor will prepare a short-list of potential buyers. Often the selling price can be maximized by selling to strategic buyers for whom the company offers complementary products or services, new distribution channels or geographic expansion.

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The Process of Selling Your Business (cont'd)

In addition to strategic fit, potential buyers should be qualified in terms of financial resources. The financial advisor will research the list of candidates to identify those which also have a track record of successful acquisitions and are in a "growth through acquisition" mode where the probability of closing a transaction and maximizing value are higher.

Marketing the opportunity is a highly sensitive process. The advisor will contact a select few on the short-list who have been identified as serious buyers. Potential buyers must sign a confidentiality agreement and limited information (the "teaser") is provided at the outset to determine interest.

Depending on the level of interest, the prospective buyer is provided with the full Information Memorandum and an off-site meeting can be held between the prospective purchaser and the vendor. This meeting is used for the purchaser to gain a better appreciation of the business through direct discussion with the owner and also allows the vendor to assess the buyer.

A subsequent site visit can be scheduled, hosted by the vendor, with questions and discussions withheld until the group is back behind closed doors to maintain confidentiality. The advisor will assist in the coordination of such visits and communication in the event that there are two or more interested buyers.

At this point, the serious buyer is expected to prepare a basic Letter of Intent. The Letter of Intent outlines the basic terms and conditions on which the buyer is prepared to acquire the business, including price, amount of cash at closing and any balance of sale, anticipated timetable for Closing, as well as other conditions to Closing which normally include due diligence and signature of a binding Purchase and Sale Agreement.

The Letter of Intent is usually a non-binding commitment on both sides with the exception that the potential purchaser has exclusivity for a certain period to conduct due diligence and conclude the transaction. Once signed, all discussions with other interested parties must be suspended.

Given the fact that the Letter of Intent typically precludes the vendor from engaging in further discussions with any other potential buyer during the exclusivity period, in the case where there is more than one offer, the financial advisor shall negotiate with the various parties to obtain what is deemed to be the best overall offer. Once signed, the other interested parties must be kept on hold pending the outcome of the due diligence process.

Due Diligence

The purpose of due diligence is to allow the buyer to confirm the information that has been provided by the vendor and upon which the buyer's offer has been made.

The due diligence process includes not only an assessment of all of the assets and liabilities of the company, but also to confirm assumptions about the company's future prospects. The process includes a review of accounting and tax records, as well as an assessment of fixed assets and any potential environmental liabilities, in addition to any legal liabilities.

The due diligence team will question everything about the business operation, including assumptions regarding future sales, ability to maintain profitability, etc. It is very important for the vendor to not take such questioning personally and to remember that it is the due diligence team's job to uncover any potential surprises. The team must be satisfied with the overall earnings capability and financial condition of the company.

Closing

In parallel to due diligence, the vendor should ask to see a first draft of the Purchase & Sale Agreement early on in the process to ensure that the buyer is being reasonable and avoid any surprises. Successful negotiation of all the terms and conditions in the Purchase & Sale Agreement may take several weeks, including careful consideration of the representations and warranties that the owner will make. At this point, it is important that the vendor and financial advisor remain involved in the process to ensure that the spirit of the deal originally negotiated is maintained and reflected fairly in the legal documentation.

Maintaining momentum throughout all four stages of the sale process is key. The very nature of the process necessitates a number of delays, whether it is assembling information for due diligence, arranging the next meeting date between multiple parties or waiting for the next revised draft of the Purchase & Sale Agreement. The vendor will go through a roller coaster of emotional highs and lows throughout the process. When things start to drag, the process is negatively affected and the level of cooperation starts to wane.

One of the financial advisor's key roles is to try to insulate the vendor from the ups and downs and maintain positive momentum by keeping the process on track, ensuring everyone meets committed deadlines and driving towards successful conclusion.

Conclusion

Selling a business can be an emotionally draining experience. By effectively managing the sale process, the business owner can reduce the emotional ups and downs and be ensured at having done everything to maximize the value of the business.

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