Selling Your Business – The Sale Process

If you are not planning to transfer your business to family members or working with your employees to structure a sale to them, one of your options for business succession may be to sell your business to a third party.

This article will explore some of the steps involved in the sale process should you engage a professional intermediary (investment banker or business broker) to sell your business to third party.

A professional intermediary will act as an agent, assisting you in the sale of your business. There are several advantages to employing an intermediary, namely:

- allows the seller to maintain confidentiality
- provides access to industry-specific contacts
- saves time by dealing only with qualified buyers

Step 1 – Engaging the Intermediary

During the initial meeting, the business intermediary will explain the services they can provide to help you sell your business as well as provide details regarding their compensation model.

Once you have decided to engage a business intermediary, you will normally be asked to enter into a formal agreement whereby the intermediary will be engaged to represent you in the sale process.

Provisions of an “Engagement Agreement” can vary but typical terms of the engagement will include the following:

- a definition of the scope of the engagement;
- a list of general responsibilities;
- a confidentiality and non-disclosure clause;
- a termination of representation paragraph; and
- details of the compensation model (upfront fee, percentage of completion basis or when the transaction is completed).

Step 2 – Establishing a Value for the Business

A business valuation will be done either by the intermediary as part of their consulting work, by an independent third party business valuator or by your own accountant.

It is important to determine the estimated fair value of the business to understand what amount of proceeds can be expected from the sale. This information is critical to the development of suitable financial and retirement plans.

Some business owners may be prepared to accept the best offer on the market and choose to bypass the valuation. This decision could affect their ability to negotiate with potential buyers and possibly result in less than optimal value being received for their business.

Step 3 – Preparing the Corporate Memorandum

You will be asked to furnish information about your company so that the professional intermediary can complete a Confidential Information Memorandum (CIM).

This document will include the following corporate highlights: marketing plan; operations plan; financial data; and potentially a growth plan.

The Confidential Information Memorandum will also include corporate financial statements for the past 3-5 years (income statements and balance sheets) as well as pro forma projections for the next 3 – 5 years. The document can vary in length from 20-100 pages depending on a variety of factors.

This step can take anywhere from six weeks to three months and can run concurrently with Step 2. However, your decision to move forward may change depending on the results of the business valuation.

Step 4 – Creating the Marketing Plan

After completing the full Confidential Information Memorandum, the next part of the process will involve distilling the documents into a one or two page Confidential Acquisition Profile which will be used to solicit interest from potential buyers. It will disclose key details needed for a buyer to decide if they are interested in further investigating the investment opportunity (i.e. sales, earnings, industry, size, years in business, etc.) but without giving away the exact identity of the seller.

Potential buyers usually fall into two categories: strategic buyers or financial buyers.

Your intermediary will review the list of potential strategic buyers with you which can include: suppliers, customers, competitors and near competitors. These may be private or public companies. They are categorized as “strategic” buyers because they are able to derive the most value from your company due to synergies with their existing companies. It is important that you be aware of and approve this list of buyers before they are contacted.

There will generally be less sensitivity or importance in having the business owner approve the list of “financial” buyers. “Financial” buyers can include private investment groups that operate a portfolio of companies; or high net worth individuals who have sufficient access to capital to complete the transaction. It is the intermediary’s job to make sure these potential buyers are properly qualified and have sufficient financial resources to complete the transaction.

Step 5 – Executing the Marketing Plan

The intermediary will contact strategic and financial buyers by way of the Confidential Acquisition Profile. Potential buyers will return executed confidentiality agreements if they would like additional information not contained in the Confidential Acquisition Profile.

The intermediary can facilitate a meeting or conference call between the prospective purchaser and owner to determine potential fit and to answer general questions that the buyer may have. It is the intermediary’s role to determine the “ballpark” value that the buyer would attach to the company.

Following the preliminary meeting, the intermediary and the owner will decide whether to give the potential buyer the full CIM document and perhaps even request a written letter of interest reaffirming the buyer’s interest and outlining the value they would place on the company.

The intermediary will continue to contact and solicit other buyers on the list to move forward good prospects with a goal of obtaining the best possible offer and fit for the business.

Step 6 – Negotiating the Transaction

Once a perspective buyer has been identified the buyer and seller will usually engage in negotiations regarding the terms contained in the letter of intent and the purchase and sale agreement. The intermediary will lead the negotiations however lawyers and accountants will also be engaged since the parties will need to agree to financial and legal terms.

An offer to purchase is generally dependant on the results of a due diligence process which can take anywhere from 30 to 90 days to complete. A due diligence analysis includes a review of the following:

- Financial documents – interim and prior year financial statements, tax returns, appraisals;
- Legal documents – minute books, contracts, pending litigation;
- Management team – assessing the capabilities of key employees; and
- Marketing and Operation plans – sales history and projections, industry analysis, operating processes and assessment of property plant and equipment.

Step 7 – Closing the Transaction

The final step is the closing transaction which involves the legal transfer of ownership of the company to the buyer.

In addition to the final purchase and sale agreement, all other pertinent agreements will be signed. These could include security agreements, shareholder agreements and employment agreements.

This is meant to be a very general overview of a process that is very detailed and complex. The whole process from beginning to end can take anywhere from 6 months to 3 years depending on the market conditions and the price the business owner is seeking. For many business owners, their business is their most significant asset and they should exercise care and patience in going through a proper process to sell their business. Using an intermediary to sell your business may not be necessary in all third party sales but it should definitely be considered.

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