

WOSO-GaMI

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GUIDE TO

SELLING YOUR COMPANY AND GETTING THE MOST YOU CAN FOR IT

This follows on from the

GUIDE TO EXIT STRATEGY & PLANNING

Having prepared your company for sale, now you want to do it. This is usually a major emotional commitment, and many entrepreneurs find it hard to let go.

Research clearly shows that many owner managers fail to achieve full or fair value for their business during the exit process. The key reasons for this failure are:

- Unrealistic value expectations and timescales
- Poor preparation within the business prior to the sale
- Unwillingness to use professional advisors
- Inadequate resources allied to the exit process

The EXIT STRATEGY guide will have discussed preparing the business for sale to achieve the maximum value and the need to use professional advisors in the process.

DEAL TEAM

The sale process is immensely time consuming, often frustrating, an emotional roller coaster and fraught with difficulty. The need for solid, experienced professional advisors is paramount. You will need to appoint a Deal Team to include a:

- Specialist Corporate lawyer
- Tax Accountant
- Mergers & Acquisition / Commercial Deal / Corporate Finance advisor (the names vary but usually mean the same thing)

The fees relating to these advisors will normally be paid from the proceeds on completion and cannot be charged to the company.

GETTING THE HIGHEST PRICE FROM A TRADE SALE

To obtain the highest price from a Trade sale you need at least the following:

- To have prepared yourself for sale – see **GUIDE TO EXIT STRATEGY & PLANNING AND GETTING THE MOST FOR YOUR COMPANY WHEN YOU DECIDE TO SELL**
- A well-researched target list of potential acquirers and a positioning statement for each buyer which clearly sets out why buying your business makes great commercial sense to them
- A Mergers & Acquisition advisor who is fundamentally both an accountant, an experienced businessman and a salesman, who is focused on finding and exploiting the “halo” effect and who is capable of making the right pitch needed to sell your company
- Following that, more than one buyer prepared to make an acceptable bid

THE TRADE SALE PROCESS

Unless an unsolicited offer has been received, the sale process is unlikely to last less than 5 months, and could well last a year. This is mostly performed by the Mergers & Acquisition advisor.

The steps are:

- Preparation of Documentation, comprising detailed Financial Forecasts, an Overview and an Information Memorandum (IM) – this usually takes an elapsed month
- Research and preparation of a Target List of potential acquirers – produce a good starting list within an elapsed month but this is on-going throughout the project. It is normal to research 200 companies and Have an A list of 50 and a B list of 25.
- Approaches to the “A” list targets begin and keep going over a period of approx. 2 months
- Targets expressing an interest receive an Overview Typically, if the list has been properly researched, 25 potential acquirers could request the Overview.
- After discussion, if the fit seems good, then under non-disclosure, the targets will receive the Information Memorandum. Again, if the list has been properly researched, 10 to 15 potential acquirers could request the IM.
- After further discussion with the Mergers & Acquisition Advisor, if the interest is strong and the fit is good and some “halo” effect can be quantified, it will be the right time to meet the Vendor. Typically, 7 or 8 potential acquirers could request a meeting.
- There will usually be two or more meetings during which the potential acquirer will make further discovery and decide on the price and terms he will offer.
- Finally, bids will be solicited and while some will be seen as opportunistic, if the company is well positioned, well prepared, the research is good, and the information has been well presented in both written form and in all meetings, then 2 or 3 reasonable offers could result.
- This then leads into a negotiation on price and terms, leading up to the signing of Heads of Agreement.
- At this stage a period of exclusivity is given to the successful bidder for the purposes of due diligence and contract negotiation

The timeline is shown below:

Month/Activity	1	2	3	4	5	6	7	8	9
Preparation									
Research									
Approaches									
Meetings and discovery									
Negotiation									
Due Diligence									
Contract									

INFORMATION MEMORANDUM (IM)

The IM is a document that you and your advisors produce which will set out (for interested parties) all the salient financial, operational, legal entity information and other legal issues that a potential bidder will need, in order to make an Indicative Offer for your company, subject to Due Diligence and Contract. This IM will need to include the previous 2-year's historical financial performance, the current year forecast and 2 year's projections for profit, cash and balance sheet. The IM is provided under a "Non Disclosure" agreement to interested parties, thus protecting its confidentiality.

NEGOTIATE DEAL STRUCTURE

When you come to negotiate the deal structure remember the following principles:

- competitive negotiations — retain a competitive bidding environment. Your business will always be worth more when two or more parties are actively involved in the bidding process.
- cash is King — maximise the cash on completion as part of the deal structure. Earn-outs or deferred considerations are always a risk.
- short time scales — keep any period of "preferred bidder" exclusivity to no more than 2 to 3 months.

HEADS of TERMS

This confirms the deal structure and is normally prepared by the purchaser. This document is non-binding, but nevertheless should be reviewed by your lawyer.

DUE DILIGENCE

The purchaser and their financial backers will undertake a process of verifying the financial, operational and legal information you have provided in the IM.

This process is called Due Diligence and will require you to provide hard copies of a wide range of documents related to your company and its activities.

The Due Diligence process will either be covered by the "Non Disclosure" agreement previously signed by the bidder prior to receiving the IM, or by the more detailed Confidentiality clauses included in the Heads of Terms.

The purchaser will normally require 1 or 2 copies of these data files, with you retaining 2 copies, one of which will be used by your lawyers to create the "Disclosure Letter". Due Diligence will normally take 2 to 4 weeks and needs to be completed 2 weeks prior to completion.

SALE & PURCHASE AGREEMENT (SPA)

The SPA is normally prepared in draft form by the purchaser's lawyers. This is the legal document, or series of documents, which cover all aspects relating to the sale and purchase of your company. The SPA will set out the basis under which the assets of your company are being purchased and by whom.

The warranties section will cover those warranties that you are prepared to provide to the purchaser, normally 2 years for non-tax warranties and 7 years for tax warranties, against which you will disclose any known breaches in the Disclosure Letter.

The SPA will also include any management handover, (which is normal in this kind of transaction) and possible restrictive covenants preventing you from competing against your company post completion.

COMPLETION

This is the formal signing of the SPA and other legal documents and the point at which the purchaser will transfer the funds agreed on completion to your lawyer's bank account. This is also the time when you will be required to pay the fees of your professional advisors.

There may be further payments relating to the consideration post completion depending on the nature of any earn-out or deferred consideration.

DO'S

- Prepare business for sale
- Appoint specialist advisors
- Ensure accounting and legal entity records are accurate and current
- Be conservative with financial forecasts
- Protect IPR
- Remember cash is king
- Maintain a competitive bidding position

DON'T

- Have an unrealistic view on value and time scales
- Hide skeletons or bad news
- Incur/invest in non productive costs/assets before sale process starts
- Oversell your business

Agree to large earn outs or deferred consideration