What to expect from the Business Sales Process

The most common feedback we receive from our clients after a deal is that they wholly underestimated the complexity and workload of a transaction.

Typically, the perception of a deal is that we identify a buyer, elicit offers, negotiate the best price, and hand matters over to the lawyer to finish things up. "Tip of the iceberg" is not an adequate metaphor.

The sales process is time consuming, complex, resource intensive and at times extremely stressful over a period of, up to, 9 months. For the majority of our clients, it's a genuine life-changing milestone, but one that can hinge on a number, a customer, or even a perception.

In our previous chapters we have discussed valuation and preparation, and once your business is ready, this is what you can really expect from the sales process:

A game of two halves

A competitive process falls into two clearly denominated sections: marketing and execution.

The former is about attracting the right buyer and the right terms (not just price) for the business. By introducing competition, we find that the final offer price is typically 10% or more higher than initial bids (which always makes us wonder why companies sell "off-market"). At the end of the marketing process, you are left with a single buyer and in reality, this is the last time you will be able to negotiate the price upwards!

The execution phase is about consistency and trust and encompasses the due diligence and legal processes. The buyer and seller really get to know each other here and for the deal to complete, the buyer has to honour the terms agreed and the seller has to evidence that everything they have said about their business is true.

The Process

The Knight process involves a number of components from preparation through to completion:

Stage 1: Vendor Assist

Our business is based on success, we make our money from fees that only become payable on completion. This aligns our objective with our clients, the most important of which is to "only start a deal if you are confident it will complete".

Vendor Assist is a dry-run due diligence on the business, it flushes out any potential deal issues away from the heat of a transaction process and enables our clients to mitigate them before the process starts. Some deals do abort, and when this happens this is most likely to occur at the due diligence stage – which may be four months down the line – and can be related to financial performance or other issues with customers, staff, and tax being high on the list.

Vendor Assist is not a compulsory part of the transaction, but it does reduce the risk of unexpected issues and so increases the certainty of a transaction completing. And, as our clients who have undertaken Vendor Assist will testify, Vendor Assist makes the transaction process less stressful.

The output is a report for directors and shareholders with a list of issues to be resolved. We often recycle this report into an initial due diligence report for use later in the process to extend competition.

Stage 2: Preparation

Preparing for the transaction involves creating an information memorandum ("IM"), a list of potential purchasers and pulling together information for the later stages.

The IM is a document that contains all the relevant information a buyer would need in order to make an informed written offer for a business, but nothing that could be a potential risk to the business (e.g., knowhow, customer names etc). It is intended as a sales document and aims to create a positive perception of the business. Included within the IM is a process letter that sets out the precise terms upon which you are inviting offers for your business and a deadline for offer submission.

Stage 3: Marketing

We look to agree a defined agreed list of parties to approach. It is important to assess the investment criteria for each party and understand if there is a fit with customers, product, and geography to ensure you can maintain a tight, confidential process. There are plenty of well-funded purchasers in the channel at present and demand for the best acquisitions is high, so we currently expect to see a good level of interest which translates into offers. Prior to seeing the IM, the buyer should sign an NDA to help guarantee confidentiality.

During this period buyers will ask questions, and we will look to respond appropriately. They are aware they are in a competitive process and in order to progress they understand that they need to come up with a compelling proposition. Naturally, this includes price, but offer structure and other factors come into play. If we go to market to fifteen buyers, we generally look to elicit 5 good offers for the next stage.

Stage 4: Heads of Terms

Up until now, it is likely you not have met any of these parties. We are now typically 10 weeks into the process, and you will now know whether you have an offer (or offers) that achieve your aspirations.

We now look to introduce the potential buyers to the seller. This is a chance for both parties to engage personally and you will find that the Buyers will sell themselves as the best fit for the business. This in-person meeting is important to establish trust and a relationship for the months ahead. Other than the written offer, there are soft factors that come into play here in terms of choosing the right party, including cultural fit.

Naturally, in the background we are looking to negotiate the deal, removing conditionality and uncertainty, and ensuring buyers are guided towards a price that matches or exceeds our clients' expectations. If available, we can deploy the vendor assist report to increase buyer confidence in the business.

The result is a more detailed "Heads of Terms" which sets out the details of the transaction and is used as a set of instructions by the legal advisers for drafting the main sale and purchase agreement.

At this point, the seller should have chosen or be ready to choose their preferred party. As the buyer is likely to spend a significant amount of money in the next stage on legals and due diligence, they will request exclusivity for a period of time, to give them confidence that the seller truly intends to complete the deal with them.

Stage 5: Execution to Completion

Executing the deal on the agreed terms is by far the most intensive part of the deal. The work involved is usually underestimated by our clients, and as a result it is the area that we receive most positive feedback on our work.

In general, it starts with due diligence on all aspects of the business including financial, tax, legal, operational, commercial, and technical aspects. On any deal a seller will receive an information request on each aspect of the due diligence comprising hundreds of questions and involving several advisers, each with several people on the team. We manage this aspect on behalf of our clients. We know what is reasonable to ask and where to push back and organise information in a data room to ensure it is communicated effectively and can be used throughout the process.

Alongside this, the legal process involves drafting the main agreement alongside any number of ancillary documents. Having an experienced commercial M&A lawyer is critical, they will know the right battles to fight to ensure that the timeline is met.

During this process, it may be necessary to introduce other members of your team to help fulfil the information requests, and because they may be critical to the business after the deal. This is a sensitive issue and buyers tend to be sympathetic to this.

Over a period of up to four months this work is completed. During this time, we get to know our clients very well indeed and as a result there is nothing more satisfying than a successful completion - hopefully followed soon after by a celebratory meal!

Completion is not the end of the story

Over the next few months following the completion of the sale of your business there will be the agreement of completion accounts, to calculate the amount of excess cash in the business. This is a material factor in the overall deal, and we look to negotiate the principles as part of the deal. Often this will amount a number in excess of 10% of the deal value. Following this, if there is any deferred consideration or an earn-out, we will support our clients in ensuring they receive their payment as and when it is due.

The tip of the iceberg

To conclude, I hope this has given an insight into the mechanics of a business sale. Importantly, we also wanted to put some more detail on the role of an adviser. A business sale may well be the single largest contributor to wealth that you have experienced to date. If you can, speak to your peers that have achieved an exit, as it is certainly worth comparing the experiences of those that has an adviser on board to those that did not. As advisors, what you think we do is just the tip of the iceberg!

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About Knight Corporate Finance

Knight Corporate Finance was founded by Adam Zoldan and Paul Billingham in December 2008 with the specific aim of advising businesses and entrepreneurs in the technology and telecoms sector. During this time it has completed more than 130 transactions from its offices in London and Warrington.

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