

SELLING A PRIVATE COMPANY PART III

The sale process

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THE PROCESS OF SELLING A PRIVATE company can be divided into five stages: the search for buyers, preliminary due diligence, deal structuring, negotiations and closing. The key to maximizing shareholder value is for business owners and their advisors to build momentum throughout the sale process.

THE SEARCH FOR BUYERS

Shareholder value is maximized where a company is able to attract a sufficient number of qualified buyers to set the stage for the auction process. While direct competitors and industry participants may be logical buyers, also consider companies in other industry verticals that would benefit from having access to their company's customer base, technology and other intangible assets. In addition, don't dismiss the growing presence of financial buyers who have an abundance of capital available.

PRELIMINARY DUE DILIGENCE

Preliminary due diligence refers to the process of providing information about the company to prospective buyers. This includes the confidential information memorandum, meetings with prospective buyers and access to a "data room" containing more detailed information about the company. It is essential to control the information dissemination

process to protect against premature disclosure of sensitive information and also to help in escalating the auction process.

DEAL STRUCTURING


Deal structuring involves determining whether the assets or the shares of the company are sold and when, how and under what conditions the purchase price is paid. The terms of the deal are at least as important as the stated purchase price. In other words, the highest price offered may not represent the best deal. Income tax considerations form a large part of deal structuring. Also recognize that any portion of the purchase price that is not received in the form of cash at closing is at risk and be satisfied that the potential rewards are sufficient to offset the risks involved. Key to maximizing shareholder value is ensuring that the terms of the deal are structured within acceptable risk-reward parameters and on a tax-efficient basis.

NEGOTIATIONS

The key to successful negotiations lies in having credibility (ensuring that you can support the stated facts), maintaining flexibility (considering the pros and cons of alternative deal structures) and creating good alternatives in terms of the number and quality of possible buyers. The apex of negotiations lies in the letter of intent that

is negotiated between the buyer and the seller. While letters of intent are non-binding, they do establish the parameters for the closing of the deal. Negotiate a comprehensive letter of intent that addresses all important aspects of the deal.

CLOSING

Closing begins with detailed due diligence, where buyers carefully examine all aspects of the company's finances, operations, customer lists and the like. Concurrently is the drafting of the purchase and sale agreement, which is the legally binding sale document. The closing of the deal normally takes place at a lawyer's office around 30 days following the signed purchase and sale agreement. Throughout the closing period, it is important to remain focused on running their company. Any material erosion in the company's financial or operating performance during the closing period can prove detrimental, as it may cause the buyer to renegotiate the price or terms of sale. 

Howard E. Johnson and Rakesh Jain are with Veracap Corporate Finance Limited (www.veracap.com), which specialize in business valuation, acquisitions, divestitures and shareholder value advisory services