

## The Private Small Business Sales Process

The sale of a private small business generally proceeds according to the following process. Not every step is necessarily present in every transaction. In particular, for a direct transaction between the seller and buyer that doesn't involving an intermediary like a business broker, steps 1 & 3, the Teaser and the CIM, are not needed.

*As a side note, we at East Forty are primarily direct buyers. This saves on intermediary fees and removes a cumbersome communication layer imposed by the inclusion of an intermediary. You, as the seller, will still be represented and protected by your own professional advisors, usually an attorney and an accountant.*

### 1. Teaser

The Teaser is usually used by business brokers, investment bankers and other intermediaries to generate interest in the business. It is very short, describes the nature of the business, lists only a few basic financial statistics about the business, but does NOT identify the business. It's intended for public dissemination.

### 2. Non-Disclosure Agreement (NDA)

An NDA is usually signed between the seller and the potential buyer which describes what information is considered confidential and therefore not for public dissemination. This is typically executed before any sensitive information is disclosed.

### 3. Confidential Information Memorandum (CIM)

The CIM is another item generally prepared and used by intermediaries. It includes a description of the business, it's markets, suppliers, customers (usually anonymized), a company outlook, and a financial summary of the businesses income statement, balance sheet, and PP&E for the past several years.

The purpose of the CIM is to give potential buyers a basis for forming a reasonable picture of the business and to determine their interest in pursuing further discussions.

Even if a formal CIM is not prepared, it can be a useful exercise for a seller to prepare an informal version as it will help them to tell the story of their business and focus on it's strengths and weaknesses.

### 4. First Management Phone Call or Meeting

Generally the potential buyer and seller will schedule a phone call or an in-person meeting where they can get to begin to get to know each other. During the meeting the buyer will generally get a "boots on the ground" feel for the business and have a chance to ask the seller a few questions about information important to them that wasn't adequately covered in the CIM.

The buyer often requests financial statements and/or tax returns for evaluation prior to this meeting and it is not unusual for the seller to provide them if requested. A few quick post meeting follow-up questions and information requests are to be expected at this stage.

### 5. Indication of Interest (IOI)

The IOI is prepared by the potential buyer and delivered to the seller. It is non-binding on both parties and it's acceptance by the seller serves as the start of negotiations and Preliminary Due Diligence.

The IOI typically includes a price range, estimated proposed closing date, a proposal as to the capital structure the buyer is considering using, including approximate amounts of equity, bank debt, seller carry, earnout proposals, etc. and other items as the buyer may feel appropriate to the situation.

Critically, the IOI does NOT prevent the seller from continuing to speak with other potential buyers.

The acceptance of the IOI by the seller indicates their willingness to allow the buyer to start Preliminary Due Diligence.

## **6. Preliminary Due Diligence**

The buyer will begin the due diligence process with the cooperation of the seller. The seller will grant full access to their books, records, and other materials as well as arranging discrete meetings with key suppliers, customers, and employees of the business.

Negotiations will continue during this phase as new information is discovered. With the aim of firming up the terms of the sale. Once the buyer is satisfied as to the particulars of the business, a Letter of Intent will be prepared by the buyer and presented to the seller.

## **7. Letter of Intent (LOI)**

The Letter of Intent sets out the specific offer for the business and terms of the proposed deal.

Upon acceptance of the LOI, the seller will agree to take the business off the market and cease any further communications with other potential buyers. This begins the exclusivity period and continues up until the sale transaction is completed.

It is common for some back and forth to occur during the LOI stage as the buyer and seller work out the final details of the sale.

Upon acceptance of the LOI by both parties, the buyer will finalize the capital structure of the deal and make final arrangements with lenders and other sources of deal funds. At this time the buyer will also proceed with Confirmatory Due Diligence.

## **8. Confirmatory Due Diligence**

At this stage, the buyer will bring in professional advisors in law, accounting, environmental, and other relevant areas to confirm the information obtained during preliminary due diligence. In the event variances are found, the terms set forth in the LOI may need to be renegotiated.

## **9. Purchase Agreement**

Upon successful completion of Confirmatory Due Diligence, the buyer and their attorney will create a Purchase Agreement for the seller to review. The Purchase Agreement is the primary legal document that serves to transfer the business from the seller to the buyer.

The Purchase Agreement will describe the assets and liabilities that are transferred in the sale, any agreed to training periods, representations and warranties of the seller, escrow instructions, the capital structure and financing terms, and all other aspects of the sale.

After final review by the seller and their counsel, both parties will sign and the deal will proceed to closing.

## **10. Closing**

Closing is handled by an attorney who directs the process. During closing the parties will formally transfer ownership of the business, exchange payment, etc. as agreed to in the Purchase Agreement.

## **11. Post-Closing**

Any hold-backs, working capital adjustments, etc. held in escrow as described in the Purchase Agreement will be distributed as indicated; the seller will provide training and consultation services; the buyer will pay the seller according to the terms of any seller carry note or earnout provisions; and so forth as the parties have agreed to.