KAULKIN GINSBERG

EXECUTIVE BRIEF

# 10 Major Steps in The Process of Selling a Business

## About Kaulkin Ginsberg

Since 1991, Kaulkin Ginsberg has provided value-add strategic advisory services tailored specifically to outsourced business services (OBS) companies. Our client-centric approach covers almost every stage of a company's lifecycle and enables us to maintain longstanding and intimate relationships as trusted and reliable strategic advisors.

Service offerings include:

**M&A Services**
We have completed over 130 transactions representing north of $3 billion in aggregate deal value. We are deeply experienced in advising owners and acquirers of mid-market firms in buying and/or selling a business.

**Strategic Consulting**
Kaulkin Ginsberg is the leader in providing strategic consulting services to the ARM industry where our services are valued and utilized from the board room to the court room.

**Valuation Services**
For nearly a quarter century Kaulkin Ginsberg has been the leading authority on the valuation of privately owned companies within OBS.

**Litigation Support and Expert Witness Services**
Kaulkin Ginsberg litigation support professionals have a track record of success; our findings have never been invalidated in any court or formal proceeding.

**Market Intelligence & Analysis**
We believe that executives should be armed with the most relevant and timely information enabling them to make informed decisions. To that end, we provide a number of free resources to assist you.

**Executive Search Services**
We utilize our top-notch recruiting team to help identify and hire the talent you need; delivering focused executive search services that are well integrated with your business strategy.

Doug Wilwerding, President, Omnium Wordwide, Inc. "*Everyone at Kaulkin Ginsberg has fully lived up to the role of trusted advisor with the true best interest of your client front-and-center at all times.*"

Read more about Kaulkin Ginsberg at www.kaulkin.com

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# 10 Major Steps in The Process of Selling a Business

*From Kaulkin Ginsberg's Strategic Advisory Team*

The sale of a business is perhaps the single-most significant event in an owner's business life. In light of the fact that most owners have never sold a business, apprehension is understandable. If you are contemplating or preparing for the sale of your company, we believe it's critical to understand the typical components of a deal so that you will be prepared to embark upon this journey. And it is a journey. Each transaction is different and comes with its own distinct circumstances. To illustrate this process, we've created an example case based on one of our firm's recent transactions. To preserve confidentiality, we'll call the selling company "Company, Inc."

**1. Prepare the Information Memorandum**

Sometimes called "the book" or "the memorandum," this piece describes the selling company so buyer candidates can gain an initial understanding of the opportunity. It can be less than 10 pages or more than 75 pages, or you and your advisor may choose to limit it to just an executive summary, with additional information to be provided at a later date to serious buyers only. For Company, Inc., we prepared a traditional book that included key details about its history, clients, markets, services, management and staff, systems, and financial performance. Most of the clients were omitted to protect confidentiality, with only a few listed by name because, by knowing their identity they could further a buyer's interest. It's important to note that if the selling company possesses significant client concentration (that means over 25% of revenues for OBS companies), then client name(s) should be disclosed. An important part of describing the financial performance of a company is illustrating what the true cash flow of the business would be under new ownership. This is necessary given the perks enjoyed by many owners of mid-market businesses and the one-time or unusual costs that arise and need to be explained. Knowing which obvious and not-so-obvious items buyers look for is essential to this process. In the case of Company, Inc., our client had favorable growth trends in terms of revenue and profit, which we wove throughout the memorandum.

For further info, see www.kaulkin.com/go/insight/articles

**2. Determine Which Buyers to Approach and How to Approach Them**

While preparing your information, you'll also need to determine who you will approach from the vast universe of potential buyers. Depending on the size of your company, you might approach large industry buyers, high net-worth individuals, financial buyers, or perhaps buyers from related industries. Engaging a M&A advisor that specializes in your industry can give you an advantage, as it helps you select the right buyer candidates. For instance, a merger and acquisition specialist will already know many potential buyers for your business, which means they won't need to broadly market it for sale. This can substantially alleviate possible confidentiality issues. A knowledgeable advisor will also help determine which industry buyers to include in the sale process. They may also conduct additional buyer research, which should be done in any case.

You will need to determine your approach to the buyers you select. Will you approach just one buyer? This is known as a "negotiated transaction." Will you approach a limited pool of buyers? This process is referred to as a "limited auction." Or will you approach a wider group to ensure maximum exposure? That is a "broad auction." Each of these approaches has pros and cons and each can be very effective under the right circumstances.

On occasion, you might receive a completely unsolicited offer from someone who wants to buy your business. We

would be remiss if we didn't mention that in order to maximize your value potential, it is important to maintain a competitive process up until the point in which you are prepared to take your company off the market. While deals can and do get done on a regular basis between a single seller and buyer, sellers will never know if they have maximized their value and preferences in a transaction unless they are in a position to negotiate multiple offers and choose the best one.

For Company, Inc., we approached a moderate sized group (limited auction) of very qualified buyers to create competition. Because of our experience in the industry, we knew who would be interested and why, how they typically structure deals (i.e. cash and other components), how quickly they can close deals and the resources available to them.

For further info, see www.kaulkin.com/go/insight/articles

**3. Approach buyers**

Once the information is prepared and buyers are identified – a process that can take up to a month – the exciting part begins: contacting each potential buyer. Before you begin however, be sure that you are approaching the decision-makers. This requires a bit of homework up front, but it is essential that you reach the person who has authority to conduct a transaction. This will avoid delays in the process and will protect confidentiality. The actual approach can be done via telephone, e-mail, mail, or fax. Typically, the name of the business for sale is not disclosed at this point, just a brief description of the opportunity – a description interesting enough to gain their attention, but not so detailed as to divulge the identity of the seller. For Company, Inc., we approached prospective buyers primarily via e-mail and asked them to reply or call us if interested. As advisor and representative, we had initial dialog with all the buyer candidates on behalf of our client.

**4. Protect Confidentiality – Execute a Confidentiality Agreement**

An extremely important aspect to any deal is keeping it under wraps until the appropriate time. If the word gets out prematurely it can be detrimental to the sale of your business so you need to maintain control of when clients, staff, and/or competitors learn about the impending sale. Interested parties who respond to the initial approach should be immediately asked to execute a confidentiality agreement. This document is intended to give the seller assurance that the buyer will not disclose that a sale is being contemplated, nor divulge its confidential information to anyone outside of its acquisition team for a specific period of time, usually one to three years. If information is disclosed the seller has legal recourse.

Once the confidentiality agreement is executed, both parties and their advisors are usually comfortable enough to speak freely about the details of the opportunity. If the buyer appears to be qualified in terms of both their interest and their financial ability, the information memorandum is sent to them for review.

**5. Conduct Q&A With Buyers**

Buyers rarely submit a qualified or bona fide offer for a company based solely on the information memorandum. They often have additional questions about the company. During this period of Q&A, it's essential for the seller to stay focused on their business and only divert their attention when necessary. Buyers will go about gaining further information in different ways. They might:

- Submit questions and base their initial offer on the answers,
- Request a conference call with the shareholder and/or management, and
- Request a meeting or a site visit at the office(s).

During this stage, the goal is to determine which buyers will distinguish themselves by expressing a high level of interest and ultimately submit a qualified offer. The use of deadlines throughout the process is typical in order to keep the process moving. These include target dates for executing confidentiality agreements, deadlines to receive buyer questions, dates to receive initial offers, etc.

In the case of Company, Inc., we received multiple lists of questions from interested buyers, some of which were answered via e-mail and others that were answered in conference calls with the shareholder(s). All buyers received answers to all questions, including those asked by others, to ensure everyone was basing their offer on the same information. In this particular case, our client was willing to schedule conference calls with select prospective buyers in the hope that it would speed up the process by not only providing answers to their questions but also allowing them to ask follow on questions.

**6. Receive Offers / Letters of Intent**

After receiving answers to their questions, interested buyers are asked to submit an offer to acquire the company, indicating the price and terms that the buyer is willing to pay, any contingencies to a closing, and their funding capabilities. To accomplish this, some submit a letter of intent (LOI), which often is a legal document. Others might submit a less formal offer either verbally or in writing that simply indicates the price and terms but omits any "legalese." In either case, the offer is non-binding and is subject to the seller's confirmatory due diligence.

For Company, Inc., we received a total of six offers, which is impressive in any deal, particularly this one, given the limited group that we approached. Increased competition among buyers always ensures that the seller will receive maximum value. Three of the offers we received were in LOI format and the others were verbal.

**7. Conduct Management Meetings**

If multiple offers are received the seller should conduct in-person meetings to evaluate potential buyers and determine the best candidate. This gives the seller the opportunity to fully explain the company's performance, growth potential, profitability and vision which can help increase the company value to the buyer. These management meetings also allow owners, who may stay on with the business in some capacity, to assess the culture fit with the new organization.

Of course, the buyer is also making an evaluation of the company during these meetings. It is customary during this phase for the seller to provide updated financial statements or other information necessary for the buyers to fine-tune their offers.

After these meetings buyers may submit a "best and final" offer and may be invited to visit the office in order to do this. The seller may negotiate with multiple buyers, but ultimately, the seller will select one buyer with which to move ahead and close the transaction.

**8. Engage in Due Diligence**

Once an LOI is executed with one buyer, the process of confirmatory due diligence begins. In this process, the buyer scrutinizes all the aspects of the company with the goal of confirming what has already been presented. They will want to review client and vendor contracts, licensing, systems, staff, benefits, visit the office(s)...Everything! Imagine the class bully holding a kid upside down by his ankles to shake out everything in his pockets-- now you get the idea! They will also want to meet with company accountants to review financial statements. They may require a financial audit. A buyer could assemble a small army of accountants, lawyers and operational due

diligence to turn over every stone. This phase is critical in the sale of a business, and being well prepared ahead of time can help smooth the process considerably. Be sure to refer to the articles highlighted at the end of this section for helpful tips on how to prepare.

The signing of the LOI is also when the clock starts ticking. In other words, the LOI will stipulate that the deal must close within a specified timeframe during which due diligence typically occurs on an exclusive basis. If the deal doesn't close within that timeframe the LOI expires and unless both parties agree to an extension everyone can go back to their business of either talking to other buyers or searching for other sellers.

We recommend that sellers do a fair bit of due diligence of their own, prior to signing the LOI if possible, to ensure they know the buyer and understand its intentions after the sale. This is particularly important if the seller will remain with the company post-sale for any period of time.

Company, Inc. had multiple offices so site visits were carefully coordinated. While those visits were taking place the buyer's financial team worked with the company's accountant to review the financial performance and to understand all the details. All of these items needed to occur, including approval of the due diligence findings, within the timeframe specified in the LOI.

**9. Negotiate Definitive Purchase Agreement and Other Agreements**
While due diligence occurs, the transaction attorneys for both buyer and seller will draft and negotiate a definitive purchase agreement. The word "definitive" is used because it is the governing document of the proposed transaction If an item is not stipulated in that agreement it's simply not part of the deal. In addition, other agreements often included in a sale and negotiated at this time include employment agreements and non-competition / non-solicitation agreements.

**10. Close the Deal**
Closing occurs after:

- Due diligence is completed and approved,
- Financing is secured, and
- All agreements are executed.

With an organized approach and a well-facilitated process the definitive purchase agreement is signed and the deal is closed. If cash (at closing) is part of the deal structure it is typically wired to the seller's bank account at that time. As a final part of any deal everyone shakes hands and moves on to the next phase in their lives.
This whole process often lasts four to six months, sometimes shorter, sometimes longer, depending on either side's focus on the transaction. With experienced advice to help you navigate the bumps in the road, you can significantly improve your chances for a successful deal and one that will bring you many years of lifestyle happiness and financial freedom. Knowing that, it's not really scary at all, is it?

**A Final Word**

This executive brief is designed to give you an idea of what to expect when selling a business and is not intended to be a substitute for legal or advisory consulting services. Selling a business is a critical decision that should not be based solely upon just one source of information. We strongly recommend that you consult with a trusted advisor prior to engaging in the sale or purchase of a business.

For more information, or for a confidential discussion of your business goals, please feel free to contact any senior member of our strategic advisory team:

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