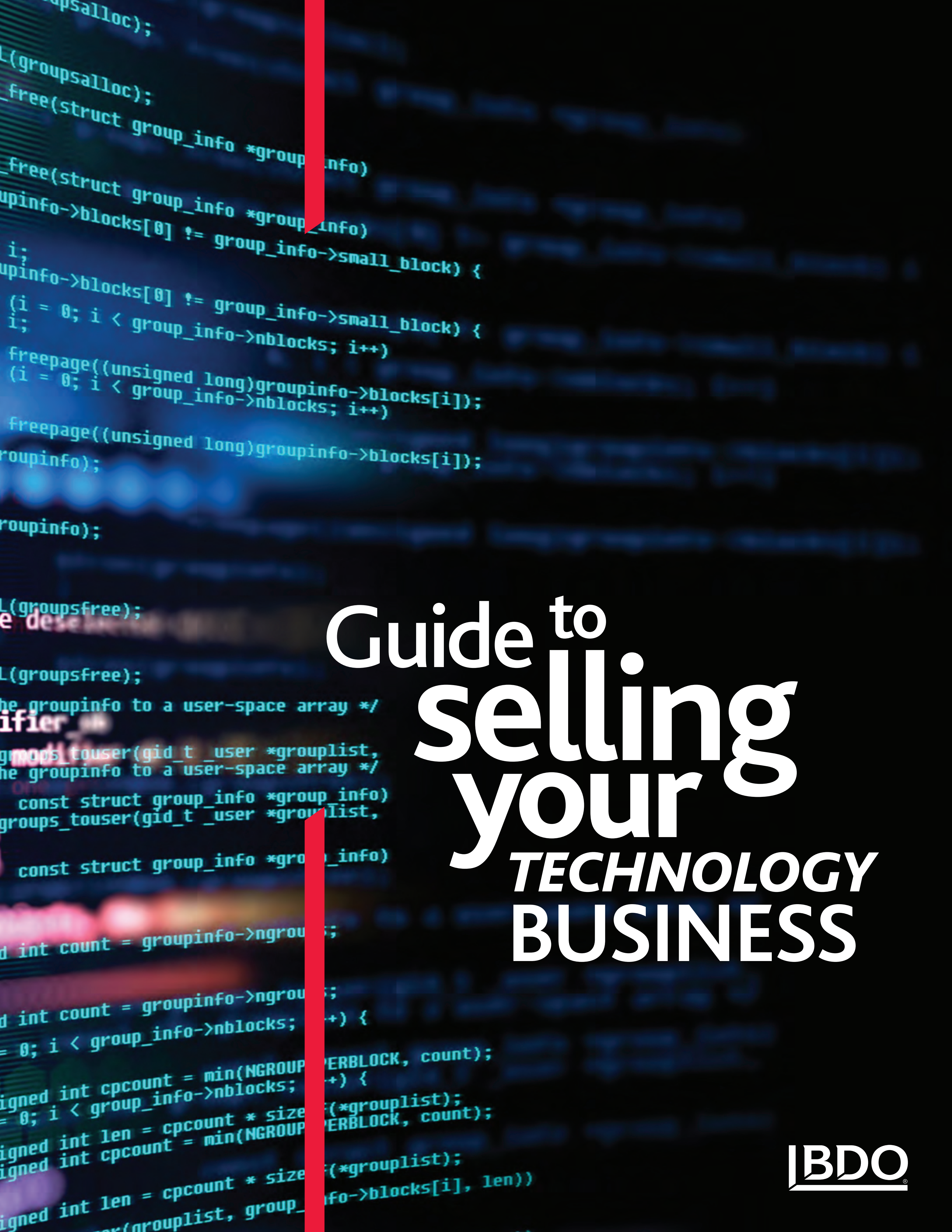

Guide to selling your TECHNOLOGY BUSINESS

BDO

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Guide to selling your technology business

INTRODUCTION

You may have been thinking about selling your business only recently or that was your goal all along. Technology companies are in demand by both your competitors and some of the largest players in the sector.

Globally, mid-market tech M&A deal volumes have risen rapidly as "an abundance of dry powder and competition for investment targets has pushed deal totals and valuations even higher," the report notes.

However, it's never too early to prepare for a sale. Planning ahead (at least two years in advance) will make the process much easier. It also helps to have a team of seasoned professionals by your side to help along the way.

PREPARING YOUR BUSINESS FOR SALE

If you're considering the sale of your business in the near future, you may be able to enhance its value by preparing it for sale now.

KEY POINTS:

- **Planning ahead can reduce your tax bill**
- **Improving the attractiveness of your business may result in a higher sale price**

The objective isn't just cosmetic enhancement but both structural and operational change depending on the situation and the value it can create.

Some of the changes required can involve considerable effort and discipline and may not be capable of being completed in the short term.

There are different tax implications depending on whether it's a sale of shares or assets.

Since technology companies are highly mobile and can do business anywhere, they can create value around the world if they have operations in different countries. This means intellectual property may exist in different entities. It's a lot easier to package your IP in one entity for a sale. You want to be proactive and look at the entire tax profile of the company across the globe. That means looking at where you have tax risk, where you may have sales tax issues, and doing an assessment.

Not all private companies require such preparation. The relationship between effort and reward should be your guide. An advisor will include general comments, but these aren't a substitute for discussing your own situation more fully with them if you decide to proceed with selling your business. An advisor can help you complete a review of your current business to help you identify quick wins that, if implemented, may significantly enhance the attractiveness of your business to potential purchasers.

However, a buyer's due diligence will almost certainly discover any quick fixes that are unsustainable—particularly those relating to revenue and profit margins. There isn't an advantage in presenting a great-looking company to a buyer when it becomes evident during the due diligence process that the presented information or performance isn't sustainable.

An advisor will provide guidance on key valuation drivers, which can help determine a potential value range that the market may place on your business. As you're preparing for a sale, this table offers areas for evaluation from an operational perspective:

MANAGEMENT

If you're heavily involved in the day-to-day running of the business, the purchaser may be keen to retain your services for a period after the sale. Depending on your personal position, this may be something you wish to avoid.

Where possible, developing a sound management team and having a succession team in place for key positions can greatly enhance the value of a private company. It helps to demonstrate that you're not critical to the business and it reduces the buyer's investment risk.

PROFITABILITY

Increasing sales and margins as well as controlling overhead spending before entering into a transaction are important and desirable. It's likely that this is exactly what you're already doing in the normal course of running your business.

Easy solutions are rare and often need to be viewed with caution. You should attempt to capitalize on opportunities that exist to improve the profitability of your business.

CAPITAL EXPENDITURES

If you're considering a sale, deciding whether to incur significant capital expenditures in the run up to a sale is always difficult. A buyer will consider the quality of assets when deciding how much it thinks the business is worth. If the business has been run to maximize cash and there's been underinvestment in capital and operational resources, a sensible purchaser will focus on what remedial investment is required and factor this into its assessment of the value of the business.

In most cases, it's sensible to continue investing in your existing business as though you were going to continue running it. However, it's also often prudent to avoid major capital expenditures on new projects leading up to a sale as it can introduce unnecessary risks for the buyer.

NON-RECURRING EXPENDITURES

Identifying non-recurring expenditures is a valuable exercise. These expenditures may include exceptional owner's expenses and pay, and one-off expenditures, such as the costs of relocation or unusual disruption to normal business.

TAXES

When considering a sale, it's best to start the planning process at least two years in advance to prepare your business for sale. You want to determine whether you want to sell shares or assets.

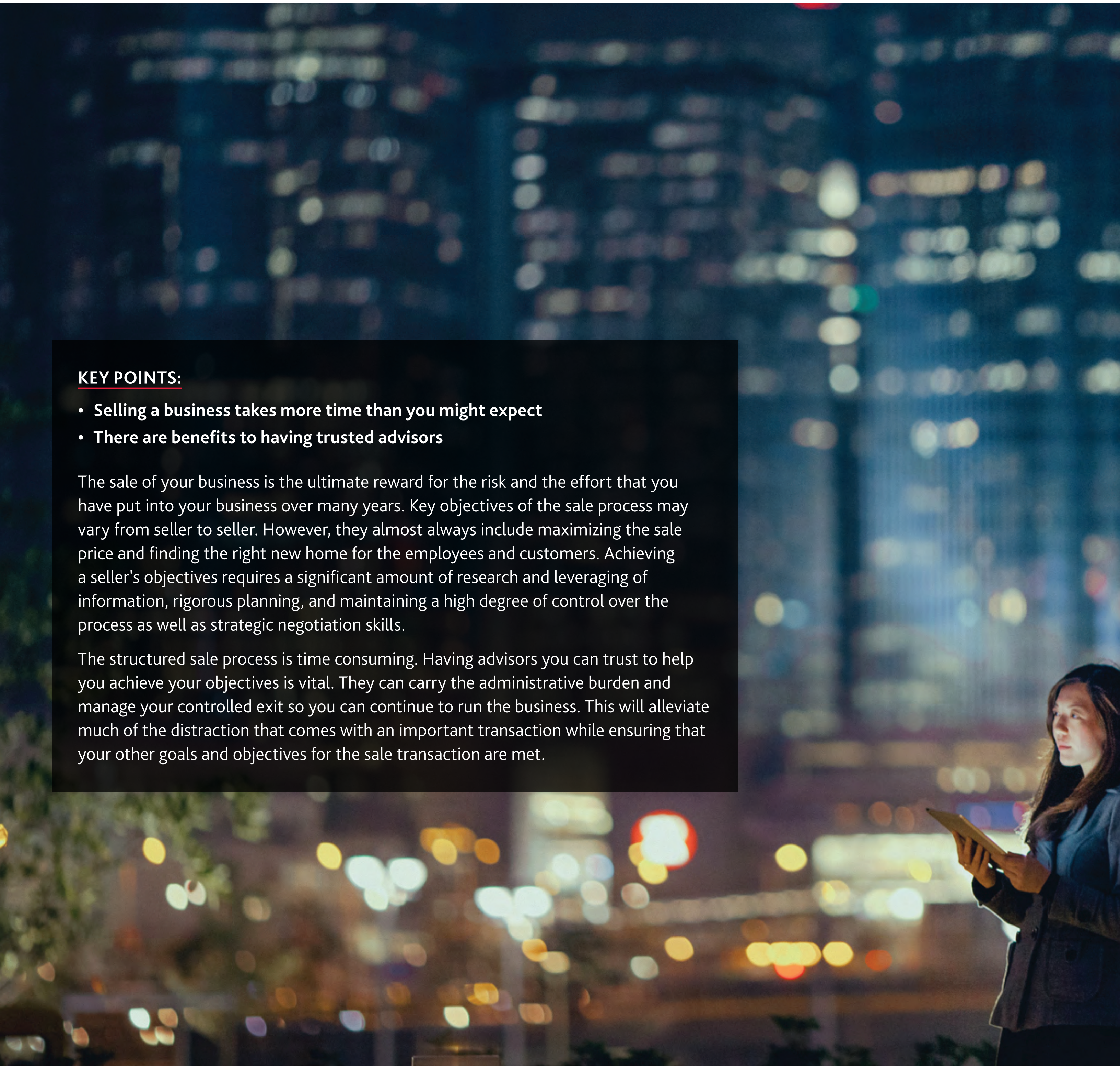
Selling shares is usually better for the seller due to potential tax advantages. On the other hand, selling assets is often better for the buyer because they get an increased tax cost on the assets acquired and the business' legal and tax risks usually remain with the seller.

WORKING CAPITAL

Working capital (current assets minus current liabilities) is required for the buyer so they can continue to run the operation once the business is sold. Calculating working capital on the last day of every month for one year and averaging it out over a year will be fair for both the buyer and seller.

Working capital is often included in the sale price of your business. Sellers shouldn't expect to be paid extra for these assets although there usually is special treatment for cash. There are often opportunities to lower the amount of working capital in the business and take more cash out of the business. However, often there needs to be a track record of being able to operate the business at lower working capital levels for at least one year.

THE TRANSACTION PROCESS



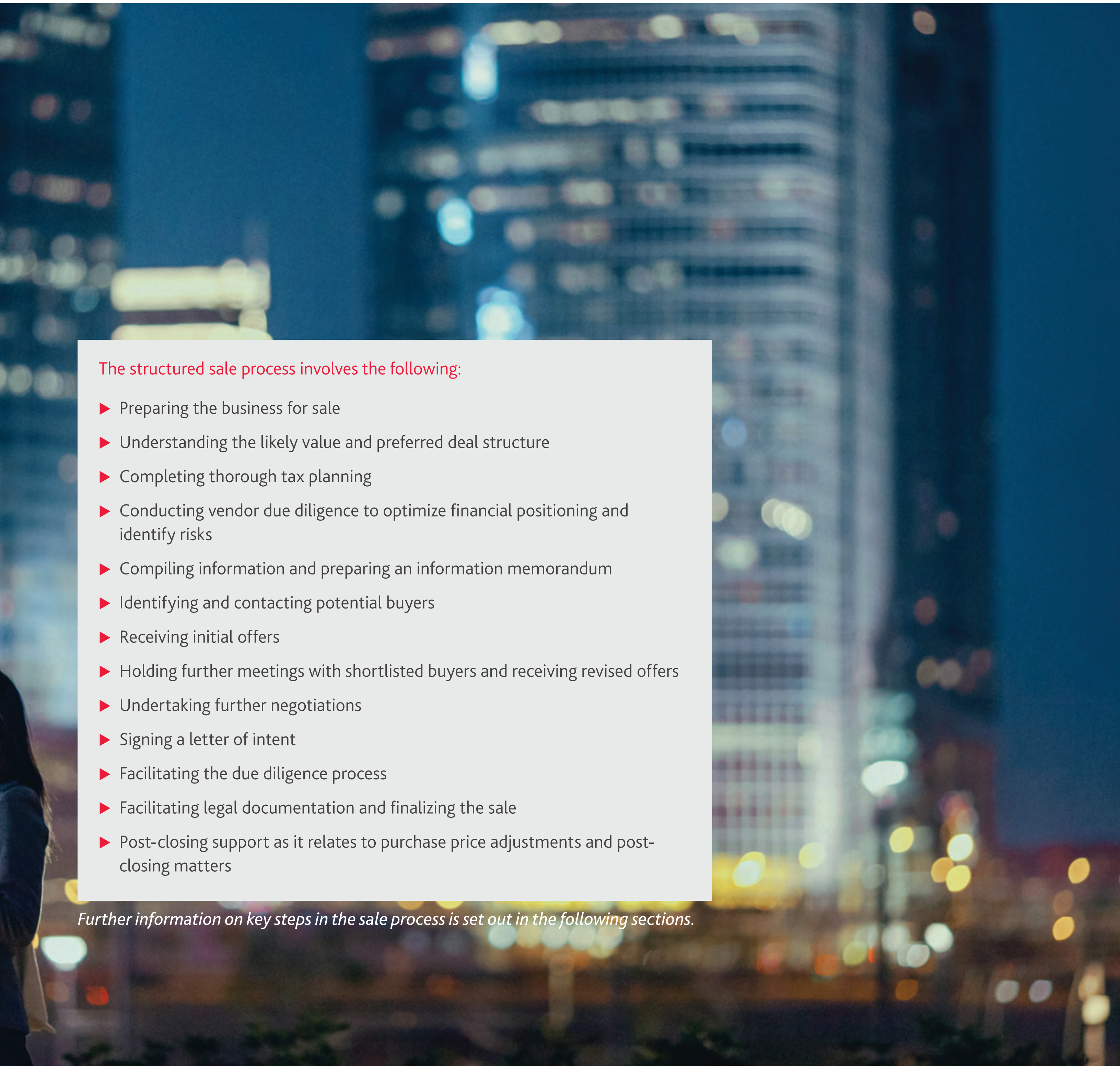
KEY POINTS:

- **Selling a business takes more time than you might expect**
- **There are benefits to having trusted advisors**

The sale of your business is the ultimate reward for the risk and the effort that you have put into your business over many years. Key objectives of the sale process may vary from seller to seller. However, they almost always include maximizing the sale price and finding the right new home for the employees and customers. Achieving a seller's objectives requires a significant amount of research and leveraging of information, rigorous planning, and maintaining a high degree of control over the process as well as strategic negotiation skills.

The structured sale process is time consuming. Having advisors you can trust to help you achieve your objectives is vital. They can carry the administrative burden and manage your controlled exit so you can continue to run the business. This will alleviate much of the distraction that comes with an important transaction while ensuring that your other goals and objectives for the sale transaction are met.

THE STRUCTURED SALE PROCESS



The structured sale process involves the following:

- Preparing the business for sale
- Understanding the likely value and preferred deal structure
- Completing thorough tax planning
- Conducting vendor due diligence to optimize financial positioning and identify risks
- Compiling information and preparing an information memorandum
- Identifying and contacting potential buyers
- Receiving initial offers
- Holding further meetings with shortlisted buyers and receiving revised offers
- Undertaking further negotiations
- Signing a letter of intent
- Facilitating the due diligence process
- Facilitating legal documentation and finalizing the sale
- Post-closing support as it relates to purchase price adjustments and post-closing matters

Further information on key steps in the sale process is set out in the following sections.

IS YOUR BUSINESS READY TO MANAGE THE PROCESS?

KEY POINTS:

- **The transaction process can last 12 months or more**
- **Provide potential buyers with comprehensive information about the company's operations**

The sale of a company creates a great demand for information. While an advisor can help coordinate and prepare the information required as part of the sale process, the business is ultimately responsible for delivering it to potential purchasers. Buyers may lose confidence and conclude that a company has inadequate systems and/or human resources if there are significant information delays or poor quality responses, which could affect value.

If you do ultimately decide to sell your business, it can take six to 12 months or more to complete a transaction. During this period, the company must continue to run effectively despite the diversion of your time. Your management team must therefore be strong enough to cope with the additional demands likely to be placed on it during the sale process.

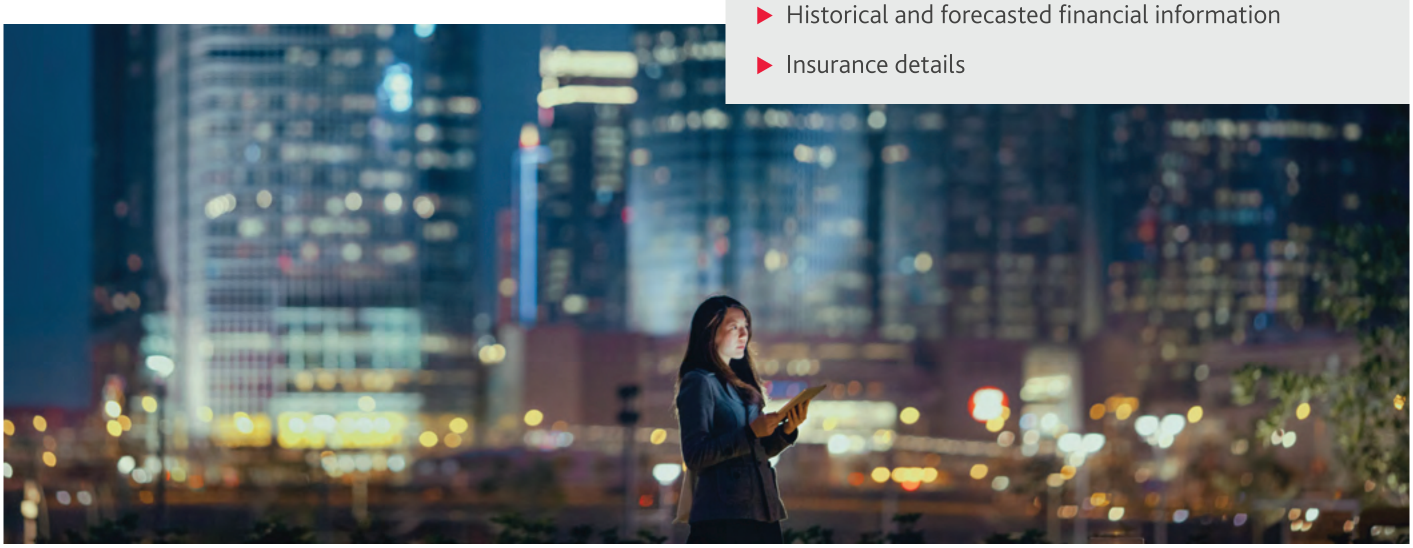
As mentioned earlier, it's recommended that the planning process begins at least two years in advance. This will give you time to prepare for tax planning and clean up the company's balance sheet. Most buyers usually look at the last three years of the company's operations so the better shape the company is in, the more likely you can get a better price.

As such, it's usually a good idea to start preparing the information that potential purchasers are likely to require well in advance of any sale process. Also, ensuring the information that purchasers will want to review is comprehensive and well organized is essential to the smooth completion of any transaction.

Much of the information noted above is typically contained in key transaction documents to a buyer, including information memorandums, process letters, a draft sales and purchase agreement, due diligence reports, etc. A good advisor provides the appropriate level of disclosure and confidentiality.

Examples of the types of information you may need to put together for the benefit of potential buyers include:

- Corporate/legal information
- Company information
- Management/organizational structure
- Details of products and technology
- Systems and financial reporting
- Tax information
- Historical and forecasted financial information
- Insurance details



STRUCTURING THE SALE

KEY POINTS:

- **There are tax implications with any sale**
- **You should conduct pre-sale tax planning before a sale**

Having a view on your preferred structure is important before starting the sale process. Informing buyers at an early stage will help ensure the offers you receive comply with your objectives.

If you plan to leave the business soon after the sale, you will most likely want your consideration paid on completion. If, on the other hand, you believe there are significant opportunities for additional growth under the new owners and you wish to stay on with the business, you may want to consider an element of deferred consideration linked to future performance, usually called earn-outs. These are less risky for buyers and can increase the final value you receive for the business. However, they could be risky for you and are often fraught with complications.

If you have private use of assets owned by the company that aren't required for carrying on the business, these should be identified early so that they can be transferred out of the business and the buyer is informed of this intention. For example, if your vehicle is owned by the company, it could be distributed prior to sale.

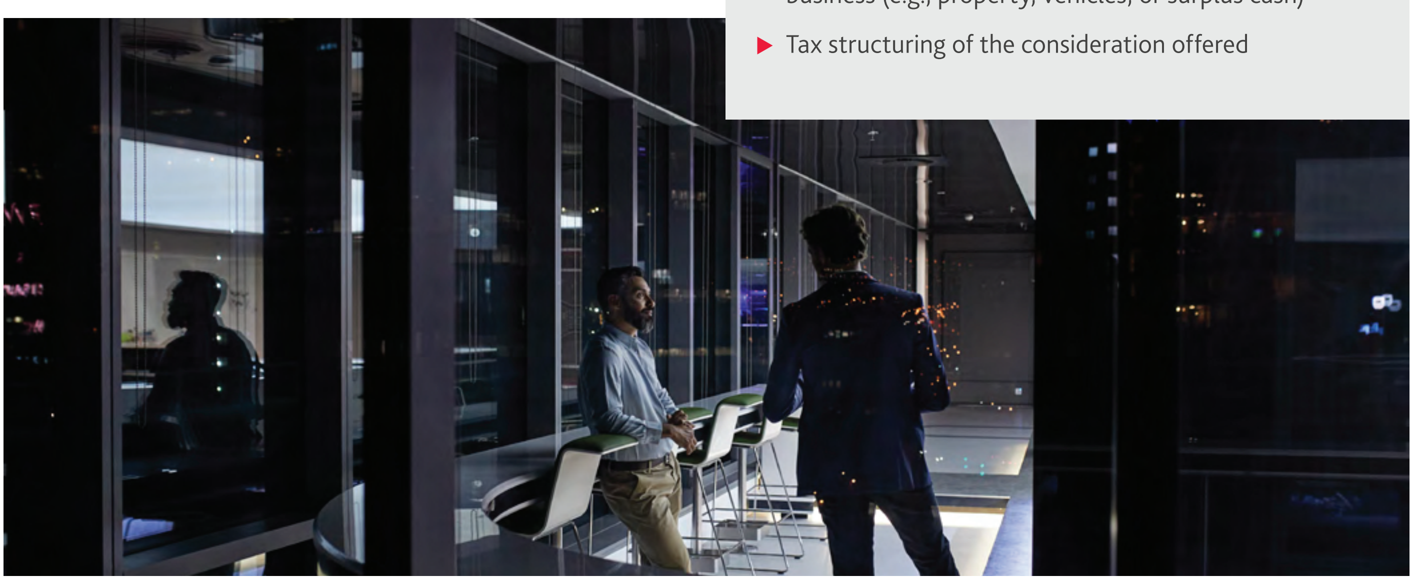
It's fair to say that almost every aspect of a sale has tax implications associated with it. As a result, it's crucial that you receive detailed tax advice at the earliest possible stage of the sale process to help ensure any tax paid on the sale is minimized.

Pre-sale tax planning is important to enable any reorganization or removal of assets to occur in a tax-efficient manner. Doing this in advance helps ensure you give enough notice to a buyer of your requirements.

Planning may also be available to use your company's tax attributes that would otherwise expire on closing. In addition, similar planning may be available to deem dispositions of your company's assets, generating tax attributes that can be used to reduce the capital gain triggered on dispositions by your company's shareholders. This planning may result in increased tax basis in the company's assets acquired by the purchaser for which it may be willing to increase its purchase price.

In general, you will need to consider your requirements in relation to the:

- Sale of shares or sale of assets
- Form of the consideration offered (e.g., cash or shares)
- Timing of the consideration offered (on completion of the sale, deferred, or contingent consideration)
- Assets you wish to keep and need to transfer out of the business (e.g., property, vehicles, or surplus cash)
- Tax structuring of the consideration offered



PREPARING AN INFORMATION MEMORANDUM

KEY POINTS:

- **An information memorandum should be accurate and positive**
- **Buyers should be able to easily assess the business**

In the event you're shopping the business around, you should prepare an information memorandum to explain the business to potential buyers. As a selling document, the information memorandum should present your business in a positive light. However, at the same time, it must be both factually accurate and complete.

You need to provide enough information to enable buyers to make a reasonable assessment of your business. However, sensitive information such as customer names, pricing, and details of unregistered intellectual property should be withheld until the later stages of the sale process. This avoids the potential damage to the goodwill of the business, which the distribution of this information may cause.

The document should be positive, emphasizing the particular benefits that ownership could bring to a buyer. The profile must always be truthful, accurate, and complete. Any elements that are misleading could subsequently undermine the buyer's trust in you, their interest in the transaction, and the sale price.

The information memorandum needs to clearly articulate the following:

- Investment highlights
- Business model
- Management team
- Growth strategy
- Financial performance

SHOULD YOU APPROACH ONE BUYER OR SEVERAL?

KEY POINTS:

- **Having multiple bidders can lead to a higher sale price**
- **Finding a preferred bidder is sometimes a better option**

A structured sale process will usually involve some form of confidential auction to a carefully selected, tightly controlled group of buyers. Having an advisor shows you're taking the sale process seriously and that other buyers may be interested, which you can use to your advantage to get a better price.

While this is a more complicated process than dealing with a single purchaser, a competitive process has many advantages over a one-on-one negotiation. For instance, if you don't explore the market, you will never know whether you could have achieved a better deal and price.

Buyers also often try to use the results of their accountants' due diligence on the company to reduce the agreed price. Your preferred bidder is much less likely to do this if they know you're in a position to sell your business to someone else if they don't deliver on the agreed terms. A competitive sale process is likely to be the best way to realize the value of the existing business.

For those assets that have a unique element to them, however, it's often better to focus on finding the right buyer rather than trying to facilitate a competitive sale process. In many cases, finding the right buyer can help to unlock the true value of an asset in a relatively quick and less complicated way.

HANDLING MEETINGS, OFFERS, AND NEGOTIATIONS

KEY POINTS:

- **Meetings allow you to build a relationship with potential buyers**
- **Discuss any important business issues sooner rather than later**

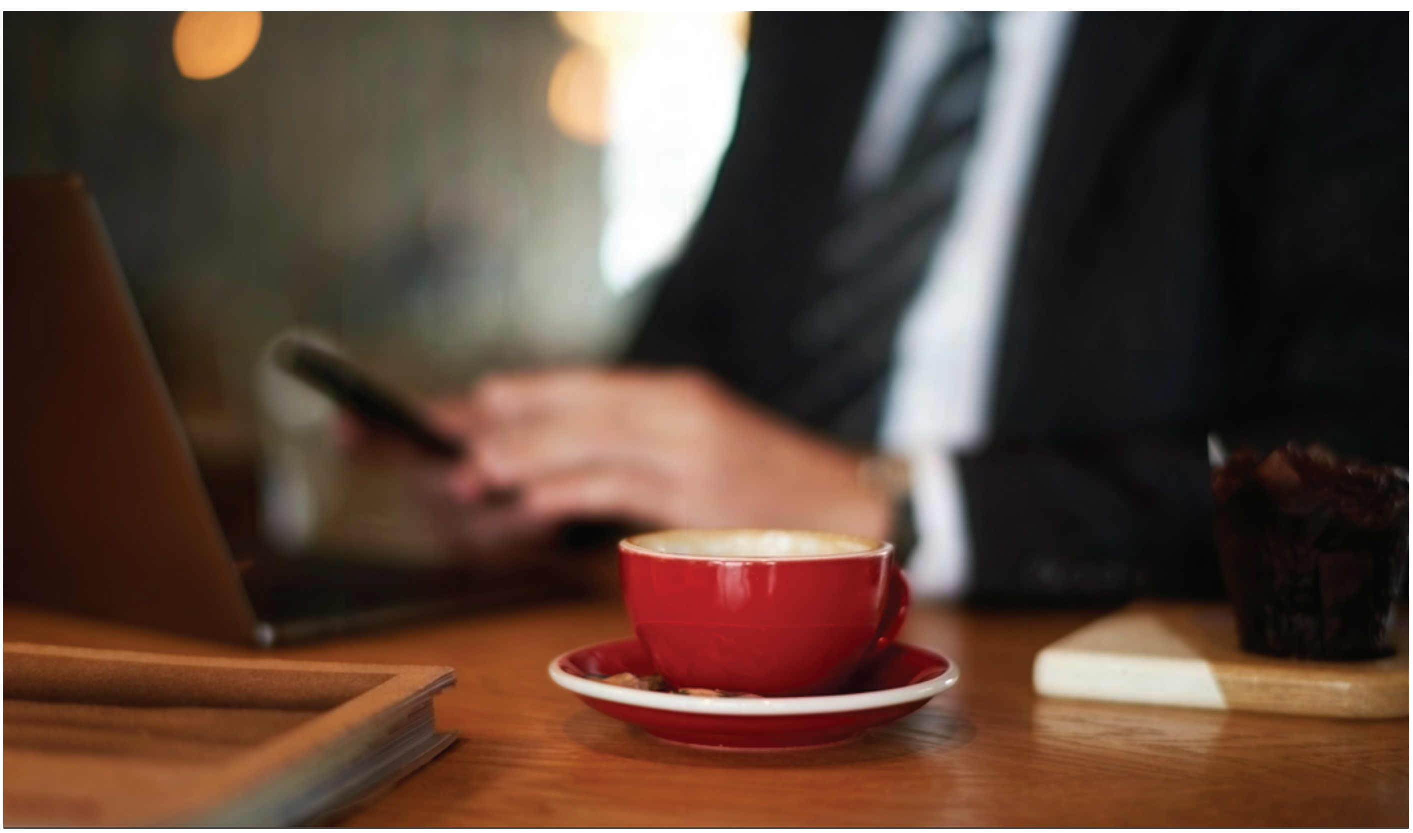
Having reviewed your information memorandum, buyers are asked to submit an initial offer. The information memorandum provides enough information to do so. While it's not typical, a buyer may ask for a first-round meeting even though the advisor has provided sufficient information.

Some buyers may seek an initial meeting depending on how many buyers you're interacting with. Based on strategic alignment, you and your advisor may select to move forward with that meeting.

This is an opportunity for you and an advisor to establish a relationship with the potential buyers and learn more about them and their level of interest. The purpose of this meeting is rarely to start negotiations but to allow you to describe the business in greater detail and highlight the key issues.

An advisor can convene and chair these early meetings and explain to the purchaser the rules of the sale process and timetable. This may include structuring the transaction and the form of consideration to meet your tax-planning requirements.

All businesses have their more difficult issues to be considered. It's usually better to present these earlier while several buyers are interested and in competition to purchase your company, rather than later when you're in discussion with one potential buyer.



INDICATIVE OFFERS, FIRST-ROUND NEGOTIATIONS, AND MEETINGS

KEY POINTS:

- **Set a deadline for receiving indicative offers**
- **There are advantages to giving potential buyers a due diligence report**

To maintain momentum and an orderly sale process, a deadline should be set for the receipt of indicative offers from all potential buyers. The indicative offers are based on the information memorandum.

However, in some cases, control over the sale process and value is enhanced by providing potential buyers with a due diligence report (known as vendor due diligence) prepared by an independent firm of accountants and a draft sale and purchase agreement before indicative offers are submitted.

This has three key advantages:

- Once exclusivity is granted, the vendor inevitably loses a substantial degree of negotiating leverage. Vendor due diligence can reduce the period of exclusivity with the final preferred buyer and therefore enhance your control.
- Due diligence always comes up with some negative issues—early disclosure while there's competition between buyers will help negate their impact and reduces the scope for the buyer to attempt to renegotiate the deal.
- Key issues such as warranty limitations, the scope of warranties, indemnities, and retentions are established early and these are more likely to be accepted while there's still competition.

Having received indicative offers, the field of potential buyers can be narrowed down to the top two or three. Without revealing their identity to other buyers, this is a good opportunity for an advisor to give the leading buyers a clear view as to what they have to deliver in order to purchase the company.

If necessary, a meeting can be held. Certain updated or additional information, necessary for a full and more informed offer for the company, may be required before revised offers are submitted.

FINAL OFFERS AND LETTERS OF INTENT

Providing all material information has been disclosed, robust final offers should then be submitted.

KEY POINTS:

- **There's still time to negotiate with bidders**
- **This is one of the last steps before a sale is completed**

This provides an opportunity for further negotiation. Since there is still competition, this is the last opportunity for the potential buyer to win the auction.

Having selected the preferred buyer, the letters of intent that set out the agreed deal and the period and terms of exclusivity given to the purchaser must be negotiated and signed. If final offers have been submitted in light of a draft sale and purchase agreement, then any major legal issues can be agreed upon at this stage.

A conventional sale process will involve selecting the preferred buyer and granting a period of exclusivity in which it can conduct any remaining due diligence and agree to the sale and purchase agreement with you.

HOW BDO CAN HELP

The sale of your technology business is likely going to be one of the biggest financial transactions of your life. You want a team of experienced transaction professionals including financial, tax, and legal professionals who understand the consolidation of companies or assets in an M&A transaction.

First and foremost, we understand business owners' objectives and have designed a transaction process that best positions them as shareholders for success. We've helped thousands of business owners sell their companies every step of the way.

Our team of M&A advisors and tax professionals can help you with the sale of your business by developing the right presentation materials, negotiating and drafting legal agreements, providing fairness opinions and valuations, determining the optimal purchaser population, finding potential buyers, offering wealth advisory, and assisting with tax planning. Contact us to find out how we can help.

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