

SELLING A BUSINESS

PLANNING

Why would you sell?

- ▶ Strategy? Or opportunity?
- ▶ Key is moving assets to their most highly valued use

How would you sell?

- ▶ An entire company (merger or equity sale), or just parts? (assets, or a "subsidiary" company)
- ▶ Get tax advice!

What happens if you sell?

- ▶ Impact on the rest of your business, and on shareholders, employees, customers and suppliers ("stakeholders")
- ▶ Impact on the community, the marketplace, the government and the environment

Are there good buyers out there?

Look at comparable sales, hire advisers to describe and promote

What do you own?

- ▶ Surprisingly, many owners don't know!
- ▶ Seller "due diligence" review to define and disclose assets and obligations, whether owned or leased, what is needed to transfer them

OFFERING

Prepare an offer package

- ▶ Invitation to bid, data room, form of agreement

What does the seller own?

- ▶ This time, it's the bidders who make "due diligence" reviews!
- ▶ Access data room and confidential information memorandum

Bidders make their offers

- ▶ Take seller's offer "as is," or make counter-offer or non-binding indication of interest
- ▶ Line up financing from banks

The seller and the preferred bidder may negotiate

AGREEING

Define what assets and obligations are being transferred

Spell out the purchase price

- ▶ Cash from the buyer, money from banks, buyer assumes seller obligations
- ▶ Earnouts and other adjustments can bring a seller and a buyer together

"I'll buy the business if A and B happen, unless X or Y happens"—conditions to closing

- ▶ Government and other approvals
- ▶ What if there's an earthquake?
- ▶ Seller keeps the business running
- ▶ Buyer gets financing

"Representations and warranties"

Lawyer talk for "seller promises about the business on which the buyer can rely"

How will employees be treated?

- ▶ Address pensions, health plans, visas, labor union and other worker concerns
- ▶ Incentivize key employees to remain with the business

SIGNING

- ▶ Get final management or shareholder approvals
- ▶ Give public notice to stakeholders and others, comply with preclosing covenants

CLOSING

- ▶ Work with stakeholders to address concerns and promote the deal
- ▶ Get consents from governments and others
- ▶ Complete the buyer's financing, to buy the business and keep it running



**Congratulations—
You've sold the business!**

POST-CLOSING

Wait, there's more? What happens after the end!

- ▶ Make earnouts and other price adjustments
- ▶ Sort out claims that come in after the closing
- ▶ Seller and buyer cooperate and perform their promises



PHS Career Day
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