How Most Business Owners Sabotage their Business Sale

By Don Hunton

Go to any business broker or M&A Firm to sell your business and the first thing they'll probably do is start preparing a detailed document called an Information Memorandum (IM) detailing all the reasons an acquirer should consider buying your business along with your confidential business information.

Wind forward a few weeks or months and most business owners work out that this was a very bad idea.

So why is producing an Information Memorandum the completely wrong approach to selling your business?

Publicising your intention to sell your business makes you vulnerable to perceptions of instability among staff, competitors, clients and suppliers. Small to medium sized companies are fairly delicately balanced and the last thing an owner needs is to be fielding questions from key management and staff who have heard on the grapevine that the business is for sale!

By distributing an Information Memorandum (IM) – even with a Confidentiality Agreement – you relinquish control over who has access to that information. Competitors can learn – often without qualification, that you are now for sale. This information can lead to all kinds of commercially sensitive situations as suppliers and customers begin to hear the news. While some IM's omit the name of the vendor, they typically contain sufficient information for knowledgeable competitors to deduce who the business is.

Doesn't my confidentiality agreement protect my sensitive business information?

The real issue here is that whilst a confidentiality agreement (CA) can be well written and provide all the right protections, often these agreements are signed by one individual on behalf of a company. Over time other employees or advisors of the potential acquirer become party to sensitive information and are not mindful of the provisions in the agreement which they may never have even seen.

Whilst some large acquirers do take their obligations under such agreements seriously, many will flout the agreement once they determine they do not want to pursue the acquisition. These breaches can have a destabilising effect on the vendor's business with little effective redress for a vendor or his agent.

Even when it's reasonably clear where a leak originated it's almost impossible to prove it to a point where you could successfully litigate.

So why do business brokers and M&A firms insist on distributing sensitive information to minimally qualified prospects – merely because they have a signed CA?

I think it's a well-intentioned but misguided view that they need to provide a lot of detailed and sensitive information before a potential buyer can determine if he wishes to acquire or not.

The Great Dilemma: How do you go to the widest possible market of potential acquirers for your business without compromising the very integrity of the asset you are seeking to successfully exit?

Owners and their advisors must have a clear strategy and plan to square this circle. The truth is, it is possible and indeed essential to thoroughly research and qualify targets prior to divulging the name of the vendor business. Initial qualification should include a conversation with the CEO or strategy setter of the target acquirer clearly establishing that the potential acquirer is actively acquiring now, and details their specific, current criteria. If this cannot be at least broadly unpacked by the acquirer, very rarely does a strategic transaction end up taking place.

There is simply no point even mentioning any details about the business for sale if the target company is not active or looking for something that has been pre-determined. "We'll look at anything" is not the right answer here. Even private equity firms who are often looking widely in multiple sectors have fairly detailed criteria when pressed, however they are still happy to receive Information Memorandums from virtually anybody. Typically they buy 1 in 100-200 opportunities presented to them.

Only when you have a clear understanding that a buyer is currently active, with a specific criteria relevant to the vendor might it be worth disclosing the vendor's identity. Even if an executed confidentiality agreement is in placethe vendor's identity should be protected as long as possible. This can be achieved by providing high level anonymous information followed by detailed but redacted information to further qualify the acquirer.

Information should be earned not given up cheaply and disclosure should be commensurate with the matching of the buying criteria with the vendor's business.

Far better to ask a simple question if there is a high level match – what further information do you need to go to the next stage? Deal with that and always negotiate to release the minimum information needed at each stage.

Different buyers need different information at different stages, so why given everyone everything at once? In the early stages of campaigns don't talk about confidentiality, talk about anonymity and don't reveal the clients' identity easily or cheaply and never without a full justification and a plan that the clients sign off.

About the author

Don Hunton is an internationally experienced Non-Executive Director, Board Member , Commercial Advisor and Business Strategist.

With expertise developed across all aspects of media, consumer packaged goods, ecommerce, manufacturing and allied health, Don brings a wealth of experience developed locally and overseas.

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