CLIENT ALERTS & INSIGHTS

Selling Your Transportation Company? Here's the road map.

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Many transportation and logistics (T&L) companies are family-owned or closely held businesses that often bear their founder's name. Some have been passed down through two or more generations of family ownership. But there comes a time for most businesses when selling full or partial ownership becomes a desire or even a necessity. This article is a brief seller's road map, based on years of experience helping owners sell their businesses or take on investments, from those first thoughts of selling your business through the closing process.

Getting Your House In Order. To paraphrase the old Boy Scouts of America motto-it is always a good time to prepare. Readying a business for eventual sale can add value and alleviate the obstacles that can slow or even derail a sale process. One initial point of consideration is determining exactly what is being sold, whether it includes some or all of the business's operations and assets, and whether the assets to be sold are ready for sale in their current condition. Ensuring that all books and records are ready also eliminates stress during the all-important due diligence process, when a seller needs to demonstrate clear title to assets, payment of taxes, appropriate licensing and operating authority, and due business formation and qualification.

Kicking-Off the Process. Early discussions with buyers are usually "exploratory" in nature. They are big-picture discussions about goals and fit to see whether more substantive conversations are worthwhile. Having a non-disclosure agreement (NDA) makes perfect sense even at this early stage because you will not want the details of your business shared-including the very fact that you are exploring a potential sale or investment.

A key consideration in any sale process is whether or not to hire a financial advisor. In our experience, engaging an investment banker experienced in the T&L industry can be very helpful, and a qualified banker's value to the process should pay for itself. The role of the banker is to help you shop your business, test the market, and help you achieve the optimal outcome in terms of value and deal terms. Depending on your objectives, the process may be aimed at a wide audience or curated to a smaller subset of potential buyers. An investment banker will help to manage the sale process from start to finish, including organizing the due diligence production inherent in every transaction.

Selecting a Buyer. While the total "top line" purchase price consideration that a given buyer proposes to pay is certainly a major factor in selecting the ultimate buyer, there are a number of other factors to keep in mind. For instance, what form will the consideration take? All cash? Cash and a Seller Note (meaning that you, the seller, are financing part of the purchase)? Or is the buyer

planning to use its stock to pay part of the purchase price? If so, there are many nuanced issues to address regardless of whether the buyer is a publicly traded business or a privately owned business. And, by the way, in the case of privately owned business, there will be significant differences in the approach of a private equity-sponsored company versus a non-sponsored company (i.e., a family-owned or closely held business).

Other factors to consider are cultural fit and the role you expect to have and the roles you expect your management team to have under new ownership. And, certainly a key consideration in differentiating among buyers is certainty of closing. What items have the various buyers indicated as conditions to their ability to close-and how will they finance the transaction?

Structuring the Sale. Eventually in every transaction the subject of asset purchase versus equity purchase arises. Buyers often have strong financial, tax and liability mitigation reasons for the type of structure they prefer. The T&L industry has its own unique character since some operating authorities, licenses and permits are not easily transferrable in asset transactions. Understanding the nature of the consents required in order to convey key customer and vendor contracts is an important part of identifying the viability of an asset sale versus an equity sale transaction. As a business seller, one of your objectives is to understand the nuances of various deal structures, how they impact the likelihood of a successful sale process and, ultimately, how they may impact the legacy of your company.

Going Through the Sale Process. Once it is time to talk price and the basics of structure, then a letter of intent (LOI) is often in order. The LOI will include key terms, such as the anticipated sale price, how that will be paid, and the proposed transaction structure (asset or stock purchase). In addition, the LOI will establish the buyer's exclusivity period, during which the seller is prohibited from negotiating an alternative transaction with another buyer. The full third-party due diligence process generally kicks off at this point, and the buyer's legal, accounting, insurance and IT professionals will review your company to confirm the buyer's expectations. Negotiations will also begin on a definitive purchase agreement between you and the buyer.

Closing Considerations. Transactions generally "close" (i.e., the deal is finalized, and the purchase price consideration is delivered to the seller) concurrent with the signing of the definitive purchase agreement. In some cases, though, the purchase agreement is signed, but the transaction "closing" is delayed until certain conditions have been satisfied. For instance, government approvals, third-party consents and confirmatory customer calls may be required; however, the parties may choose to pursue those only after the signing of the definitive purchase agreement. From the seller's perspective, the latter approach is often preferred because the definitive purchase agreement has been signed and the buyer has limited "outs" to not close the transaction.

Post-Closing Considerations. Not all deals mean that the seller walks away from the business. It is frequent for sellers of T&L businesses to stick around after close under a short- or long-term employment contract or consulting agreement. Keep in mind, that if you do walk away from business, you will likely be subject to noncompete obligations, meaning that you are prohibited from starting a competing business or soliciting customers for a period of time.

No single reason exists to sell, since every company is as different as its leaders and history. Still, for almost everyone, it is an emotional once-in-a-lifetime decision. A little effort in

planning ahead and bringing the right team can help steady nerves through that unfamiliar terrain.

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