

Higgins Fairbairn & Company

A Brief Outline on the Process of Selling a Business

Instructing an Advisor: Step one is for the seller to instruct a professional advisor who has the requisite skills. The right chemistry is also important as there will be many hours spent together that will put even harmonious relationships under pressure!

Initial meeting: A partner of Higgins Fairbairn & Co will be pleased to attend an exploratory meeting, without obligation to either side, where the procedures of sale, price expectation and remuneration structure are discussed.

Letter of engagement: The appointment of Higgins Fairbairn & Co is formalised by countersigning a letter of engagement that sets out the terms of the instruction.

Business review: Once on board, we will carry out a review of the history, current position and future of the business. Sales and marketing literature is very helpful but we will need to fully comprehend the business process. Other key factors are: property details, staff profiles, supply/customer contracts, asset and liability identification.

Accounting information: Accounts information is vital. Some businesses are better at this than others but we will be trying to identify turnover and profitability trends and as much analysis of sales as possible, e.g. if the vendor is an accountancy practice, what is the breakdown of income from: audits, accounts preparation, tax, business advice etc.

Price indication: We should now be able to give a good indication of an achievable price range which will only be based on what a buyer is prepared to pay – not on how much the seller needs to fund retirement or other such vendor aspirations.

Preparing the business for sale – timing: When it comes to “preparing” the business for sale, the earlier we are appointed the better. This is so that it is “looking at its best” when put to the market. This is not always easy as there are many influences on the timing of the sale of a business. It could be the state of the market for the kind of business being sold or some sudden event, such as the ill health or death of the owner. Fundamental points include: bringing forward or deferring capital expenditure, reducing stock levels, a purge on late debtors, a review of suppliers, salary reviews, staffing levels, pension shortfalls. As far as possible, all outstanding issues, such as: legal disputes; lease renewals; rent reviews; property revaluations; VAT and tax compliance should be dealt with.

Information Memorandum: We will prepare an Information Memorandum that should give an accurate and comprehensive description of the business (warts and all). From this, a shorter summary can be prepared with the headline details which would exclude sensitive information.

More accurate view on price: At this stage, we will know a lot more about the business, enabling us to provide a more accurate view on price. But this will depend on the structure of the sale. For example, businesses that provide a service are often sold with the vendors remaining for a period (often two years) and part of the consideration is determined by the performance of the business during that time – referred to as an earn-out. In such a situation, the vendor's ongoing contract is also important.

Marketing the business: We will recommend the best ways of marketing the business but the objective is to find several potential buyers.

Interested parties – confidentiality: Hopefully there will be several parties interested in buying the business. It is normal to require prospective parties to enter into a confidentiality or non-disclosure agreement in order to protect the vendor's commercial information. All necessary confidentiality obligations must be met by interested parties.

Selecting a buyer: The best offers of the potential buyers have to be assessed and a preferred one selected, taking into account details of the offer and how it fits with the seller's objectives. The buyer will be asked for proof of funding.

Heads of Agreement: The next step is to agree a detailed offer; price, method of payment, timing of payment(s), ongoing obligations, commitments, warranties, and the restrictions to be imposed on the seller. This will form the basis of a Heads of Agreement that will be signed by both parties, usually giving a period of exclusivity for the buyer to complete the purchase.

Due diligence: The buyer's professional advisers will carry out due diligence. The Information Memorandum will need to stand up to scrutiny and there should be no material surprises!

Legals: The buyer's lawyer will prepare the first draft of the necessary documentation based on the Heads of Agreement. Eventually all of the documentation will be agreed but there are bound to be issues on the way that need to be resolved. Lawyers that are user-friendly, practical and pragmatic are key to avoiding any derailments.

Completion Meeting: This takes place at the offices of one of the advisors to the deal when all the agreed documents are signed and the inevitable last-minute issues dealt with.