



Oghma Partners M&A Guides

Responding to an Unsolicited Approach for your Business

The acquisition and disposal of businesses, particularly in the food and wider consumer sectors, continues unabated despite the current difficult economic climate in the UK and Europe. For the private company owner, quite often an unsolicited approach will come out of the blue and may be seen as either: a pleasant surprise; a distraction; or an annoyance. Below we review the methods of assessing an unsolicited approach and the various ways to respond to it. Dealt with correctly an approach, even if unwanted, could supply you with valuable intelligence; treated badly an approach could cost your business considerable amounts of time and you may unwittingly disclose commercially sensitive information.

The Approach

An approach may range from a simple phone call, an informal chat with a business contact, an email or formal letter. The latter two forms of communication are, in our opinion, preferable as they offer you time to reflect and consider before responding.

- The need for time to reflect is an important point. A phone call or informal contact can put you off guard and your response may miss an opportunity to collect valuable commercial information.
- If you own a successful business you should be alert to approaches and ideally should be prepared to respond in a way that gives you proper time to reflect and importantly log the interest.
- Keeping a record of interested parties can provide valuable commercial information; it may also give you a port of call if you do decide to sell your business and may provide valuable information regarding the competitive behaviour of your competition.

Step 1). If approached informally, be prepared with a stock reply. For example, “thank you for your call or interest, could you put your thoughts down in writing for me to review properly with my colleagues” or “thank you for your interest, we have a policy of only responding to any expression of interest made in writing, would you be so kind as to drop me an email or letter”. Either of these replies should at least allow you to: a) Log the interest. b) Give you time to consider and reflect with colleagues before committing to a response. c) Leave no distinct message that your business is for sale.



The Predator

As important as how you have been approached is who has approached you. If it is a competitor, you should be well aware of their business and can begin to assess their credibility as buyers.

- If you are uncertain as to the financial position of the company who has approached you, ask an advisor to access summary financial information or order a credit check.
- Think through whether or not a transaction would make sense and whether the business has the financial capability to take your company on.
- This information provides you with a better opportunity to assess your response to any approach. Furthermore, you should enquire whether the person who has contacted you has the support of the board, owners or management team or are they simply 'flying a kite' for later internal consumption.

Step 2). Identify who has approached you and their position in their organisation. Do they have the authority to initiate discussions? Try and identify early on the financial capabilities of any buyer.

The Intermediary

Often an approach will emanate from an intermediary such as a corporate finance firm, accountants, or possibly solicitors acting for the potential purchaser. However, these same counterparties may only have a tentative interest from their 'sponsor,' may not be mandated to search and, therefore, the level of real interest in your business may be relatively low.

- An intermediary may be on a 'fishing exercise' looking for an entry contact into your business, hoping perhaps for an eventual sale mandate. Any such approach needs to be analysed carefully.

Step 3). If approached by an intermediary, seek out information about their organisation and check out their credentials. Are they knowledgeable about your business sector? Are they just engaging in a wide ranging search? Who do they represent? Any party not divulging their identity should not expect a committed response from you. Finally, is the intermediary mandated on this search i.e. are they being paid to find an acquisition for their client? If not, the initial approach may lack credibility.



Private Equity

The third most likely party to approach you regarding your business may be private equity. The modus operandi of many private equity businesses is to target a multitude of businesses hoping that, once in a while, one of the opportunities may work for them.

- The probability is that an enquiry from a private equity firm is less serious than that from a potential trade buyer and therefore the distraction cost to you much higher. However, you can make an assessment yourself of their level of interest by asking for a presentation on their business and visiting their website.
- Most private equity companies publish their fund size, typical size of investment, the sectors and types of investments they are seeking (i.e. turnaround, buy and build, Management Buy-Outs, Management Buy Ins). They also usually list current investments on their web site thereby enabling you to gauge whether your business would fit in their portfolio.

Step 4). If approached by private equity, review their web site and ask for a copy of their business presentation as background material. Work out in your own mind - do we fit ?

The Formal Response

If, following the steps above, you have begun your due diligence on a potential buyer, you then need to respond. How you respond is important. What message do you want to give? Is it a 'not now message'; a 'not ever message'; or a 'possibly' message?

Step 5). Be clear as to your message. If you are not likely to want to sell your business in the near future but may think of selling in due course, invite a follow-up call in twelve months' time or longer, depending on your time horizon.



The Dialogue

If you have gone through the steps above, started your due diligence process on the buyer and decided to engage, consider how you can deepen your understanding of them.

- Depending on the level of information you are willing to share at an initial meeting, you may decide to ask them to sign a Non-Disclosure Agreement (NDA) or Confidentiality Agreement (CA). An NDA will test the buyer's intent, but will also formalise your response.
- A worthwhile request, if you are setting up an introductory meeting, is to ask the potential buyer to share a presentation on their business. This will fill in any gaps you have on your knowledge of them. Importantly take the opportunity to ask how they will finance any transaction (including a comfort letter from their bank if appropriate).

Step 6). Ask the potential buyer to present on their business and how they see the business fit with your operation. Ask the buyer how they plan to finance any acquisition, including a comfort letter from their bank if appropriate.

Other Parties

If you have decided to enter into a dialogue with a potential purchaser then you have made a mental decision to at least consider a sale. At this point the question needs to be posed – is this the best way of selling the business? If you were selling your house, for example, would you sell to the first person to 'knock on your door'?

- Consider engaging other interested parties and look to appoint an advisor. An advisor would guide you through any sale process and more importantly discuss options with you as regards to potentially broadening out a process and holding discussions with third parties.
- Not surprisingly, we suggest talking to advisors with relevant sector expertise. Such focused corporate finance firms will typically have a greater knowledge of what potential sector buyers are up to and what they are looking to acquire.
- By investing in a specialist advisor, the process should be more efficient, less time consuming and offer you the maximum valuation for your business.

Step 7). Talk to a specialist advisor about running a wider process and bring more potential buyers in to a discussion, in order to maximise the valuation of your business.



Response to the First Party

Let's assume that you have held your first meeting with the potential buyer but you have in tandem decided to run a broader process including other possible buyers. You need to communicate that you continue to be engaged in a dialogue with the first party but want to temporarily pause any further discussions.

- Don't be afraid that the first party will disappear if there is an auction – if this were the case then you may be able to discount them as their level of interest is low. If they really do want to buy your business, the first party will be content to wait until a proper process has begun. Communication along these lines should also help test the intent of potential buyers.
- We would recommend communication to the first party along the following lines; “thank you for your interest, your approach pre-empted a sale process that we are about to embark upon. We will get back in touch inviting you into that process when it formally begins which is likely to be in a few weeks' time”.

Summary

Most approaches for your business can be used to glean interesting commercial information, but must also be managed to reduce the potential cost to your company. Following the above steps will reduce the potential risks to your business and provide you with a good template of how to handle an unsolicited offer.

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