

Six documents for a sale to a third party

Organization and caution are in order when it comes to a transfer to a third party. Questions of law and confidentiality arise.

1. The seller prepares a **memorandum** that details his company. He brings it to a specialist who circulates it within a restricted circle of interested parties. This memorandum showcases the company and sets out the sellers conditions.
2. The potential buyer(s) who would like to further analyze the company with a view to making an offer will request access to certain information not presented in the memorandum so they can, among other things, have the company valued. It is normal practice to have them sign a **confidentiality agreement** before giving them access to the information.
3. If there seems to be a mutual interest by both parties, an initial negotiation follows. It is often the legal advisers who negotiate on behalf of the seller and the buyer. They advise their respective clients on the negotiation points to hold out on or to let go. This period can be long and delicate because it is at the heart of the process. The result of this negotiation will be set out in an **offer letter**. This is an engagement to transact at a later date under certain conditions.
4. One of the classic conditions of this letter is the verification of the elements in the **due diligence list**. During this exercise, the buyer will perform an in-depth examination of the financial position of the company, of its assets and liabilities, of its legal situation, environmental situation, etc. The information gathered will validate or modify the conditions initially established in the offer letter. The buyer is bound by rules of confidentiality.
5. The **sales contract** is the result of final negotiations between the buyer and the seller and it specifies their rights and respective commitments, including the representation and guarantee clauses of the seller to the buyer. It could also include possible price adjustment clauses. The signatures are added following one last reading before the parties. The deal is sealed.
6. Following the sale, if there are several shareholders, if the seller accepted a seller's credit or he still retains shares, the legal adviser will draft a **shareholder's agreement**, an essential document even when the new owners are family members. This document sets out ways to handle all possible litigation among the partners, including situations that could lead to dissolving the company.