DOLGIN PROFESSIONAL CORPORATION
BUILD A BETTER BUSINESS

ASSETS VS. SHARES:
SOME GENERAL CONSIDERATIONS

1. ***What Does the Purchaser Want/Need to Buy?***
   - entire balance sheet + all critical relationships with employees, contractors, customers, suppliers, office/equipment lessors, etc. – or - only discrete assets or a particular division of target company
   - depends on nature of purchaser – i.e., competitor with existing infrastructure/relationships or purchaser from another industry or employee (MBO) purchaser?

2. ***What Liabilities Does the Purchaser Not Need/Want to Assume?***
   - any existing/threatened litigation?
   - any significant contingent tax reassessment risk?
   - need to review balance sheet liabilities/payables of the target company

3. ***Employment Considerations***
   - does purchaser want/need all of the target's employees?
   - allocation of any employee redundancy termination costs pre/post closing
   - concept of "successor employer" under provincial employment legislation

4. ***Regulatory and Contractual Considerations***
   - key regulatory/governmental consents may apply only on a "change of control" rather than sale of assets
   - key contractual consents often apply where a change of control is treated as a "deemed assignment" but often may not be required on a sale of assets
   - if elect an asset sale, beware of purchaser liability risk for liabilities not intended to be assumed (i.e., Bulk Sales liabilities, exposure for unpaid GST/RST/WSIB premiums and other taxes and statutory liens)

5. ***Deal Complexity/Documentation***
   - asset transactions are often more complex as (i) title to specific assets must be verified and separately transferred, (ii)key contracts/relationships must be specifically assigned to purchaser and (iii) target company creditor issues must be addressed
   - vendor must consider if 3rd party guarantee releases will be obtained or how risk of purchaser default will be managed
   - contractual assignments may not necessarily release vendor/target company
   - asset sales require shareholder approval under applicable corporate legislation and give rise to statutory dissent rights
   - share sales will typically require full board/shareholder approval (subject to drag-along rights contained in a shareholder agreement)

6. ***Income/Commodity Tax Considerations***
   - from purchaser's perspective, an asset sale is usual preferable
   - from vendor's perspective, a share sale is usual preferable
   - income tax, GST and/or PST consequences will vary depending upon whether the deal is structured as a sale of assets or shares and allocation of price