

Five Phases of a Deal from a Sell-Side Perspective: Due Diligence

December 22, 2021

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You've signed your letter of intent (LOI). So what's next? Now it's time to roll up your sleeves as the real work on your sale begins. Due diligence commences. Prior to signing the LOI, you likely provided your buyer some limited financial diligence, enough that the buyer could determine to move forward and on what proposed terms. With the LOI execution, the buyer will now seek to learn much more about your business. Diligence will generally fall into three categories –financial, legal and operational. As a seller, the buyer will send you a very long and detailed diligence request list. Many times, this request list feels very overwhelming and beyond the scope of your business. This is intentional by the buyer. The buyer is casting a very large net in an effort to uncover and learn about your business in every aspect. Your approach to due diligence likely will require a new mindset. Diligence is opposite the natural inclination of entrepreneurs. Diligence requires disclosure of all things in your business –the good items and the not-so-good items. However, in all events, disclosure and diligence is the seller's friend. Fully opening up your business in a complete and honest fashion allows the buyer to fully understand the mechanics of your business. The seller should not withhold or color any responses in an attempt to mitigate or spin matters. Rather, disclose what is requested and allow the buyer to ask its questions and make its own conclusions. No seller wants to be in a position where a buyer would revise its intentions had it known about an item (think fraud in the worst case). At times, a buyer will modify terms of the transaction (price, payment, etc.) based upon the diligence findings. While this is not usually positive for the seller (terms usually don't get better), it is the opportunity for the parties to have open dialogue based on the same business knowledge. And remember, as a seller, diligence is a continuing process up until closing. It is not good enough to disclose and forget. Business is ever moving, and as items change in your business, the seller has the duty to update diligence to the buyer.

Anatomy of the Deal

5 Phases of a Deal from a **SELL-SIDE PERSPECTIVE**: The Players and Their Involvement

Pre- Transaction Planning

- Phase Rule: Find and eliminate skeletons; create multiple options

Phase I: Letter of Intent

- Phase Rule: Know what you want and get it in writing as the LOI may be your high water mark

Phase II: Due Diligence

- Phase Rule: Disclosure is your friend

Phase III: Contracts

- Phase Rule: Confirm Business terms and

Phase IV: Closing

- Phase Rule: Time is your enemy

Phase V: Post Closing

- Phase Rule: Remember to dot the I's and cross the t's to meet all conditions

Post-Transaction Planning

- Phase Rule: Enjoy your new status in life; make sure you've considered life without the business

Sell Side M&A: Three Rules of Thumb for the Transaction

Rule #1: You haven't sold your business until you've sold your business

Rule #2: Get your money upfront (as soon and as much as possible)

Rule #3: Reduce and eliminate your trailing liabilities