

Five Phases of a Deal from a Sell-Side Perspective: Letter of Intent

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Congratulations, you've received a letter of intent (LOI) to sell your business. What is your next step? Do you sign it because the valuation seems fair and the letter states the terms are not binding? Or do you ask your advisors, especially your legal counsel, to fully review? If you picked option two, you are a very smart seller. The letter of intent is frequently the "highwater mark" for seller deal terms. If the seller does not negotiate material commercial points and legal points, the ability to do so later in the transaction becomes compromised. Yes, the LOI is typically non-binding on the parties. However, it is an expression of goodwill and credibility. As the transaction process gets deeper, it is hard to negotiate material changes to the terms unless the seller is committed to walking away. If closing (and money) is within reach, many sellers will roll over on key items due to deal fatigue, lack of understanding, or buyer pressure. For a seller, leverage is paramount to negotiate the best transaction terms possible. The seller has the most leverage at the LOI stage. In addition, it is always better for a seller to know that a deal will fail on day 1 than day 45 when much time, energy and costs have been incurred. Make certain to have your attorney review all letters of intent before signature!

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

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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