



roadmap to success

A PROCESS GUIDE TO
STRUCTURING CORPORATE TRANSACTIONS
FOR MAXIMUM PROFIT & EFFICIENCY

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Lindabury's Mergers & Acquisitions Group

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both acquirers
& targets...

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Throughout the acquisition or sale process, from letters of intent, coordinating with brokers, gaining corporate approvals, negotiating acquisition agreements and conducting due diligence, we work to ensure that each acquisition is carefully designed to meet the unique goals of our client.

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detailed assistance,
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Start Right

pre-sale preparation

1. Assemble Team of Professionals

- Accountant
- Business Broker
- Financial Planner
- Attorney

2. Get House in Order

- Identify, address and resolve any existing tax or financial issues
- Review, organize, reconcile and prepare books and records relevant to the sale
- Value the company's tangible and intangible assets
- Make a list of any existing contracts
- Have the Board of Directors or authorized governing body pass a resolution authorizing sale of company
- Review Bylaws or other governing documents to ensure compliance with any sale

letter of intent (LOI)

An LOI (also referred to as a term sheet) is generally a non-binding document that outlines the key business terms to which the parties have agreed that are later incorporated into a binding purchase agreement. LOIs are not typically intended to be binding with respect to the business terms unless specifically drafted with that intention. The use of an LOI can help focus negotiations early and clarify the deal. The LOI should identify all key terms, deal breakers and serve as a roadmap for both parties.

1. Pros of an LOI

- Clarifies the deal
- Focuses negotiations
- Provides deal stability
- Assists in third party approvals

2. Cons of an LOI

- Can lead to loss of leverage in subsequent negotiations
- Can unintentionally bind parties to obligations. When drafting, be careful not to inadvertently include potentially legally binding words such as "shall", "must", "covenant".

the benefits of the LOI
outweigh the cons,
especially in complex deals

Start Right To
Finish Strong

Diversification
of Business Lines
Exit Strategy

To Finish Strong

the deal

Negotiation of the Purchase Agreement. Here is where an LOI is useful.

1. What is the deal structure?

This will determine the types of terms necessary to incorporate into the Purchase Agreement.

- **Direct Merger**
The Buyer assumes all of the target company's assets, rights, and liabilities, and the target company ceases to exist as a separate entity.
- **Triangular Merger**
The target company is merged with a newly formed subsidiary of the Buyer. The purchase price is paid to the owner of the target either by the Buyer or by the subsidiary.
- **Asset Purchase**
The Buyer purchases "the business" by purchasing assets used by, necessary for, or "making up" the business.
- **Stock Purchase**
The Buyer purchases the Selling Shareholders' stock directly thereby obtaining ownership in the Seller's legal entity, including all of its assets and liabilities. Assets and liabilities not desired by the Buyer can be distributed or paid off prior to the sale. Unlike an asset sale, stock sales do not require numerous separate conveyances of each individual asset because the entity has title to each such asset.

2. Purchase Price

How will the Buyer pay?

- Cash
- Financing via promissory note to Seller
- In this case, Seller should ensure that promissory note is secured via collateral evidenced by a security agreement and perfected by the filing of UCC-1 financing statements (for assets) or a mortgage (for real property)
- Securities

due diligence period

1. Disclosure Documents

• Disclosure Documents

Provide as requested by the Buyer (e.g. all corporate records and documents as they relate to signed contracts within the company or business, relevant leases, insurance coverage, real property (leased or owned), employees and employee benefits) but require the execution of a confidentiality/non-disclosure agreement in advance.

2. Conduct

- Maintain the ordinary course of business consistent with past practice
- Operate in a manner, or use reasonable best efforts, to maintain the status quo as the best way to ensure the transaction is completed

3. Employees (If Applicable)

Employees may either transfer with the business to the Buyer or end employment with the business.

A. If employees are to be transferred with the business, then Seller will need to:

- Provide up to date employee records to the Buyer
- Notify Buyer of any contractual, leave, financial and legal obligations Seller has with its employees
- Negotiate with Buyer as to which of Seller's obligations will be transferred and assumed by Buyer
- Provide employees with notice of sale and that each will receive a new offer or contract from the Buyer as of the date of the sale
- A change of ownership ends an employee's position with Seller on the date of closing, so be mindful of any provision in any employee contract requiring notice or payment in lieu of notice for termination

B. If employees will not be transferred, then Seller will need to:

- Seller may be required by law (e.g. Federal and State WARN Acts) to give employees notice in writing within a reasonable time (a "notice period"). The notice period may vary depending on length of employment and classification of employee
- Seller may need to pay out benefits or entitlements

purchase agreement

Negotiate:

1. Purchase price and adjustments, holdbacks and escrows
2. Representations and warranties
3. Indemnifications and return of purchase price

closing

1. Sign all closing documents
2. Prepare closing statement
3. Exchange funds and related transfer documents



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