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WHAT IS A LETTER OF INTENT?

A Letter of Intent (sometimes called a Memorandum of Understanding or an “LOI”) is generally a non-binding agreement between a seller of a business and a prospective buyer. It commonly includes a proposed price, the structure of payment (cash up-front, promissory note, etc.), the nature of the sale (asset sale, stock sale, or merger), closing conditions, and expected timelines. While most terms are non-binding, LOIs do include a few important binding terms, such as confidentiality, exclusive negotiation rights for the buyer, and terms governing buyer’s rights to information to conduct due diligence. LOIs set the groundwork for more substantive negotiations to come. Although they are mostly non-binding, sellers should not make the mistake of agreeing to the buyer’s initially proposed terms without engaging an **attorney** to help negotiate.

Why Do I Need a Letter of Intent?

In most cases, buyers will not engage in negotiations to purchase a business without first executing an LOI. Buyers send sellers an LOI as a way to express interest in purchasing the business but also to protect themselves by locking the seller into negotiations with the prospective buyer. Although the LOI’s terms are generally non-binding, they do set the tone for future negotiations, so the buyer has an interest in keeping the key terms short and vague so that they can easily update them as the deal develops. In contrast, a seller who has signed an LOI, generally have little motivation to deviate from the initial terms. Accordingly, if the seller can negotiate reasonable terms in the LOI, it can provide for smoother sailing for the seller down the road as the deal falls into a final form.

An important part of negotiating an LOI is to address any potential deal-breakers before substantive talks begin. For example, if a buyer will only consider an asset sale, and a seller will only consider a stock sale, it would be best to discuss the structure of sale in the LOI phase and, if need be, part ways before both sides pour considerable time and money into negotiating a sale that is doomed from the start.

Additionally, buyers want an LOI because of the exclusivity provisions they often contain. These provisions bar the seller from negotiating with other prospective buyers for a period of time. Buyers will push for a long exclusivity period to increase their bargaining power, while sellers prefer a shorter exclusivity period.

Buyers will also want to include provisions giving them an “out” if certain conditions cannot be met. For example, in a cash up-front sale, buyers will often need to obtain financing to have the requisite funds to close the sale. However, banks typically require detailed financial information about the seller that the buyer can only obtain during its due diligence process. Thus, LOIs often contain a provision

that the sale is contingent on the buyer obtaining the necessary financing. If buyer cannot obtain financing, it has the right to pull out from negotiations.

JAH Can Help

LOIs are an important and often necessary first step in the sale of a business. However, if a seller is not careful in negotiating an LOI, it could find itself in a less advantageous position. Furthermore, an LOI is just the beginning of the complicated and involved process that is a business sale. The experienced **corporate attorneys** at JAH are here to counsel you through every step, from negotiating an LOI to closing the deal itself. **[Click here to contact a member of our Corporate Group if you are in need of assistance.](#)**

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