

# Business Buy/Sell Basics: The Letter of Intent

A letter of intent (or "LOI") is often the first step in buying or selling a business. The parties are able to set out the primary terms of the deal without committing to binding obligations or getting bogged down in legalese. While the deal terms in the LOI are not binding, the parties typically want certain protective terms with binding legal effect. Below is a non-exhaustive list of items to consider when preparing an LOI.

## Terms of the Deal (NON-BINDING)

LOI TERM	BUYER	SELLER
 <b>TRANSACTION STRUCTURE (SHARES VS. ASSETS)</b>	The buyer usually wants to <b>buy assets</b> to: (i) avoid inheriting the target company's liabilities, (ii) pick-and-choose which assets to buy and, (iii) create a depreciable tax base for assets.	The seller usually wants to <b>sell shares</b> to take advantage of the lifetime capital gains exemption.
 <b>PRICE</b>	The buyer (of course) wants the lowest price, but may pay more to buy assets for the tax reasons above.	The seller (of course) wants the highest price, but may accept less to sell shares for the tax reasons above.
 <b>PARTIES</b>	The buyer will usually want language that contemplates the option to incorporate a purchase company.	If proceeding with a share sale, the seller(s) will be the shareholder(s) of the company.  If proceeding with an asset sale, the seller will be the company that owns the assets and carries on the business.
 <b>PAYMENT OF PURCHASE PRICE</b>	The buyer may want to delay payment by way of a "vendor take-back loan" or "earn out".	The seller typically wants the full purchase price paid at closing.
 <b>NON-COMPETITION</b>	To protect the acquired business interest, the buyer wants the seller (or principal of the seller) to provide the broadest non-competition terms possible.	If the seller will continue working or carrying on business in the same industry after the sale, the seller will want to ensure the non-competition terms are sufficiently narrow.
 <b>TRANSITION SERVICES AGREEMENT</b>	The buyer may want the seller (or principal of the seller) to stay on as an independent contractor or employee to help operate the business for a period after the closing.	The seller may be happy to stay on and receive a consulting fee or salary during the transition period, or the seller may wish to walk away from the business at closing.

## Protective Terms (BINDING)

LOI TERM	BUYER	SELLER
 <b>EXCLUSIVITY (NO SHOP) CLAUSE</b>	Given that assessing a potential business purchase requires considerable time and resources, the buyer wants an exclusivity clause to ensure the seller is not offering the business for sale to other prospective buyers.	The seller may try to avoid this clause and seek offers from other prospective buyers.
 <b>DEPOSIT</b>	The buyer would prefer not to make any payment until the closing of the transaction.	The seller may want a deposit to ensure that the buyer is serious and has at least sufficient funds available to make the deposit.
 <b>CONFIDENTIALITY</b>	The buyer may want to place the seller under confidentiality obligations, depending on the amount of information the buyer will disclose to the seller.	The seller will certainly want to place the buyer under confidentiality obligations because the seller will be disclosing sensitive information about the seller's business.

For assistance acquiring a new business or selling your existing business, reach out to a member of Boughton Law's Business Practice Group for an initial consultation.