**Purchase or Sale of Existing Business – the Basic Process**

Generally, the purchase / sale of any existing business follows the same basic process, starting with the Letter of Intent, moving to the Purchase Agreement, and culminating in the Closing. However, the timing and distinction of the steps in the process may be compressed due to the relationship of the buyer and seller, the dollar value of the transaction, the complexity of the industry, or a number of other factors.

Letter of Intent. A letter of intent (“LOI”) is a document outlining an agreement between two or more parties before the agreement is finalized. LOIs resemble written contracts, but are usually not binding on the parties in their entirety. Many LOIs, however, contain provisions that are binding, such as non-disclosure agreements or a covenant to negotiate in good faith or keep the buyer “off the market” for a period of time. An LOI may sometimes be interpreted by a court of law as binding the parties to it, if it too-closely resembles a formal contract.

An LOI may be presented by one party to another party and subsequently negotiated before execution (or signature.) If carefully negotiated, an LOI may serve to protect both parties to a transaction. For example, a seller of a business may incorporate what's known as a 'no solicitation' provision which would prevent the buyer from subsequently hiring an employee of the seller's business should the two parties not be able to close the transaction. On the other hand, an LOI may protect the buyer of a business by imposing a contingency to complete the transaction on their part if financing the deal is not obtained.

The most common purposes of an LOI are:

* To clarify the key points of a complex transaction for the convenience of the parties
* To declare officially that the parties are currently negotiating
* To provide safeguards in case a deal collapses during negotiation
* To verify certain issues regarding payments done for someone else e.g. credit card payments

An LOI may also be referred to as a *term sheet* or *discussion sheet*. The terms reflect different styles (an LOI is typically written in letter form and focuses on the parties' intentions; a term sheet skips formalities and lists deal terms in a bullet-point summary), but usually do not indicate any difference under law. A *contract*, by contrast, is a legal document governed by contract law.

An LOI typically provides a window of opportunity (for example, 60-90 days) for the buyer to conduct due diligence in order to give a firm contractual offer to the seller via a purchase agreement. In smaller deals, an LOI often is not used and the parties move directly to the purchase agreement phase.

Purchase Agreement. [As a general statement, a buyer either purchases the assets of the selling company or the ownership interests (shares, in the case of a corporation) of the selling company’s owners. As asset purchase is the most common, in part because the buyer typically does not assume any liabilities of the selling company.] An asset purchase agreement (APA) is an agreement between a buyer and a seller that finalizes terms and conditions related to the purchase and sale of a company's assets. It's important to note in an APA transaction, it is not necessary for the buyer to purchase all of the assets of the company. In fact, it's common for a buyer to exclude certain assets in an APA. Provisions of an APA may include payment of purchase price, monthly installments, liens and encumbrances on the assets, condition precedent for the closing, etc. An APA differs from a stock purchase agreement (SPA) where company shares, title to assets, and title to liabilities are also sold. In an APA, the buyer must select specific assets and avoid redundant assets. These assets are itemized in a schedule to the APA. The buyer in a SPA is purchasing shares of the company. In this case, itemization is not necessary due to transfer of company's ownership occurs as is. The Purchase Agreement is binding and contains the specific terms of the agreement, representations and warranties of buyer and seller, ongoing covenants, indemnification provisions, and termination provisions.

Closing. The Closing often occurs at a date set in the purchase agreement. The Purchase Agreement is binding, although contains many contingencies. In the event that the parties move forward to Closing, documents (as typically spelled out in the purchase agreement) are executed, including bill of sale / assignment and assumption agreement, promissory note, security agreement, corporate resolutions, officer certificates, and the like.