

- **Preparation of Definitive Agreements.** Variations of this section should be included in every letter of intent. It provides a general description of the method by which the parties will negotiate the definitive agreements and the general terms of those agreements. Remember, however, that this section is an agreement to agree and is not binding on the parties. The final terms of the general issues listed in this section are still subject to agreement by the parties.
- **Conditions Precedent to the Closing.** This section describes in detail the conditions to closing. As previously indicated, satisfactory due diligence, successful financing, and compliance with applicable laws and regulations are standard conditions. Other conditions include obtaining the necessary consents from lenders, shareholders, etc., the delivery of legal opinions, and the absence of adverse change to the condition of a party. These conditions could be varied and should be drafted specific to the proposed transaction.

Part Two: Agreements of the Parties Regarding the Procedures for Negotiation and Preparation of the Definitive Agreements

- **Due Diligence.** Whether a transaction reaches closing often times depends on the results of the due diligence. Because of its important role, parties will typically agree to what information will be provided and by whom and in what timeframe. It is common for the target to require that the requests for information not contemplated by the letter of intent be reasonable.
 - **Confidentiality.** The parties should agree to the level of confidentiality that will be required regarding the terms of the letter of intent and their ongoing negotiations. Also, because information will be exchanged during due diligence and during the negotiations, the parties should agree on what information is confidential. In most cases, the parties will expressly state
- that all information is confidential unless otherwise provided and that the obligation of confidentiality survives the term of the letter.
- **Public Disclosure.** The parties should determine when and if the public will be made aware of the existence of the letter and the proposed transaction. This will help prevent any premature disclosure that may jeopardize the transaction or the parties' alternatives should the transaction not reach fruition. It is typical for the parties not to want any public disclosure until the definitive agreements have been signed. The parties may also find it in their best interests to agree on how the proposed transaction is made public.
 - **Disclaimer of Liabilities.** Typically, parties will desire to limit their liability in the event the transaction is not completed. The degree of each party's liability is a point of negotiation.
 - **Termination.** The letter of intent must have a termination provision. The Sample Letter of Intent form allows either party to unilaterally withdraw at any time with proper notice. This unilateral right to terminate, however, is subject to losing the deposit payment as discussed below.
 - **Exclusive Opportunity; Deposit.** A deposit is not always a subject of a letter of intent. However, in the Sample Letter of Intent form, the acquirer agreed to pay a deposit so that it would have the exclusive opportunity to acquire the stock for a specified period of time. When deposits are required, and the transaction closes, the deposit is typically applied to the acquisition price.

Consequences of Breaching a Letter of Intent

If a party breaches a binding provision of a letter of intent, that party will likely be subject to both equitable and monetary damages. For example, if the party breaches the obligation of confidentiality, a court may grant an injunction against the further disclosure of that information.

... and justice for all

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Many materials can be made available in alternative formats for ADA clients. To file a complaint of discrimination, write USDA, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964.

Issued in furtherance of Cooperative Extension work, Acts of May 8 and November 30, 1914, in cooperation with the U.S. Department of Agriculture. Cathann A. Kress, director, Cooperative Extension Service, Iowa State University of Science and Technology, Ames, Iowa.