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## Buying & Selling a Business

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# Confidentiality Agreements and Term Sheets

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## PRELIMINARY CONSIDERATIONS

### Planning For a Successful Acquisition

Once a corporation or individual has identified a promising candidate for a potential transaction it is time to begin planning the deal. The success of a transaction will depend heavily on diligent planning, good counsel and sound strategy. Before negotiations begin in earnest, both parties will need to work through certain preliminary considerations. The following list provides an outline of certain high-level issues that need to be carefully considered in advance of the transaction:

- Deal structure: decide which method of acquisition (e.g.: asset purchase, share purchase or amalgamation) is optimal given the business, commercial, corporate and tax objectives of the parties.
- Transaction costs: depending on the size and type of deal, transactions can incur significant costs and can tie up key employees and officers for extended periods of time.
- Due diligence: consider the scope of due diligence that will be required for the transaction, and estimate the expected time and costs required to complete due diligence.
- Transaction financing: consider if third-party financing will be required to close the transaction and the impact it may have on deal structure and timing.
- Tax and accounting: consult with tax and accounting experts to identify preliminary issues that might affect the deal structure.
- Preliminary transaction documents: consider whether preliminary transaction documents, such as a term sheet or confidentiality agreement, will be necessary.
- Post-closing issues: consider how the transaction will affect your business post-closing, including: hiring and/or layoffs, changes in supplier or other material agreements, relocation of the business or key employees, regulatory requirements and the integration of new assets.

Mapping out these high-level issues will allow the parties to begin efficient negotiations and ensures that key deal points are incorporated into the preliminary transaction documents. A more in-depth discussion of preliminary transaction documents can be found below in “*Letters of Intent*” and “*Confidentiality Agreements*”.