

## **Letter of intent in corporate acquisition - Company law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Düsseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London [www.grprainer.com/en](http://www.grprainer.com/en) conclude: The letter of intent is generally submitted in the run-up to business acquisitions by either one or both of the parties to any acquisition agreement. It is conveyed in the letter of intent that the parties concerned take the contractual negotiations seriously. Additionally, the intentions with respect to the business acquisition can be enumerated.

Generally, a letter of intent does not, however, establish an intention to be bound. That is to say the parties do not necessarily have to conclude a corresponding agreement thereafter. Thus, the letter of intent does not normally constitute a binding offer, so that in the event no agreement is concluded in the end, no claim for damages will accrue. Nonetheless, a binding offer to purchase or sell a business can potentially arise from a letter of intent in isolated and exceptional cases.

This is the case, for instance, if an offer to sell the business in question emerges from the letter of intent with the statement that no contractual negotiations be entered into with third parties. The recipient of the letter of intent is then able to enforce injunctive relief if the declarant nevertheless enters into contractual negotiations with third parties, yet the letter of intent does not have a binding effect on the recipient. This is a so-called "option?".

If the parties are negotiating the agreement, a non-binding letter of intent can, under certain circumstances, turn into a binding statement in the course of the contractual negotiations. Nevertheless, no explicit statement is required in advance to the effect that the matter concerns a non-binding letter of intent.

The parties concerned are regularly specified in the letter of intent and the interest of the party making the statement in the business acquisition or sale made known. All information that is important for the transaction can be included in the letter of intent. The parties are in this respect free to decide what information they would like to include in the letter of intent.

It may be advisable to obtain legal advice when drawing up the letter of intent. A lawyer who is competent and experienced in the area of M&A can help by providing his opinion on all important points as early as the stage of the letter of intent, so that this is definitely taken into account in the context of the contractual negotiations.

<http://www.grprainer.com/en/M&A.html>

## **Pressekontakt**

GRP Rainer Rechtsanwälte Steuerberater

Herr M Rainer  
Hohenzollernring 21-23  
50672 Köln

[grprainer.com](http://grprainer.com)  
[presse@grprainer.com](mailto:presse@grprainer.com)

## **Firmenkontakt**

GRP Rainer Rechtsanwälte Steuerberater

Herr M Rainer  
Hohenzollernring 21-23  
50672 Köln

[grprainer.com](http://grprainer.com)  
[presse@grprainer.com](mailto:presse@grprainer.com)

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Anlage: Bild

