A FOUNDER'S GUIDE

# You Signed the Deal.
# **So Where's the Money?**

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In many deals, signing is not when you get paid.

Signing is when the waiting starts.

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THE SETUP

# Signing is when the **waiting starts.**

There's a moment in every exit that founders picture long before it happens: the signing. The documents are executed, the handshakes go around the table, and the wire hits your account.

Here's the problem with that picture. In many deals, signing is not when you get paid.

Most founders assume every acquisition is what lawyers call a sign-and-close: you execute the purchase agreement and the deal closes simultaneously — same day, money moves. Plenty of deals do work that way. But a meaningful share of them don't, and if yours is one of them, the period between signing and closing is where your deal is most exposed.

These are sign-then-close deals, and I've seen the surprise on founders' faces enough times to know **this gap is worth a guide.**

PAGLAW

THE STRUCTURE

# Why signing and **closing split apart.**

A deal signs and closes on different days when something has to happen in between — something that can't happen until the documents are signed, and without which the deal can't close.

## The regulated buyer

A founder sold his company to a publicly traded insurance conglomerate. Because the buyer was public and operated in a heavily regulated industry, the acquisition required regulatory approval — and the regulators wouldn't even review the transaction until the definitive documents were executed. So the sequence was fixed: sign, submit, wait for approval, then close.

## The private equity buyer

PE firms generally don't sit on piles of cash. When they do a deal, they call capital from their limited partners to fund it, and they typically won't make that capital call until they're sure they have a deal. For my client's acquirer, that meant binding deal documents must be signed. So my client signed, waited two months, and then closed his sale.

Two different buyers, two different reasons, **same structure.**

PAGLAW

THE EXPOSURE

# The gap is where **the risk lives.**

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Between signing and closing, an odd thing is true: you've committed to sell, the buyer has committed to buy, and yet the deal can still die. A regulator can balk. Financing can fall through. A closing condition can fail.

And while all of that plays out, you're still running your company — except now you're running it under the terms of an agreement that constrains what you can do. This is why the interim period deserves as much negotiating attention as the price.

Founders spend months fighting over the purchase price, then wave through the covenants and conditions that determine whether they ever receive it. The protections that follow are how a seller keeps the gap from becoming a trap.

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Protection One

NOT YOUR FAULT, NOT YOUR PROBLEM

PROTECTION 01

# Narrow the **buyer's outs.**

The buyer's rights to walk away should be specific and limited. Some outs are legitimate: if the deal genuinely requires regulatory approval and the regulator says no, that's nobody's fault and a reasonable exception.

But be careful about what else creeps in. A PE firm failing to raise its financing is not your fault — and arguably shouldn't be your problem. Whether the buyer bears its own financing risk is a negotiating point, and you should negotiate it rather than inherit it.

A PE firm failing to raise its financing is not your fault — and arguably **shouldn't be your problem.**

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Protection Two

YOU STILL HAVE
A COMPANY
TO RUN

PROTECTION 02

# Keep "ordinary course" **workable.**

Every sign-then-close deal requires the seller to operate the business in the ordinary course during the interim period — no major asset sales, no unusual contracts, nothing that changes what the buyer agreed to buy. That's fair.

But the definition matters. You still have a company to run, and the covenant needs to let you run it. Push for language that restricts genuinely extraordinary actions rather than requiring buyer consent for decisions you'd make on any normal Tuesday.

You still have a company to run, and
**the covenant needs to let you run it.**

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Protection Three

YOUR EXIT
FROM THE EXIT

PROTECTION 03

# Set a hard **outside date.**

There must be a drop-dead date — a date after which, if the deal hasn't closed, you're free to walk.

Without one, a stalled approval or slow financing can leave you in limbo indefinitely: bound by the agreement, constrained in your operations, and unable to pursue alternatives.

The outside date is **your exit from the exit.**

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Protection Four

MAKE THE BUYER'S OUTS EXPENSIVE

PROTECTION 04

# Get a **breakup fee.**

If the deal dies for reasons outside your control — the financing fails, the buyer's board gets cold feet, an approval doesn't come through — you should be compensated for the time, cost, and business disruption of a deal that went nowhere.

A reverse breakup fee, payable by the buyer, does exactly that.

## It also makes the buyer's outs expensive, **which makes the buyer work harder to close.**

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Protection Five

EVERY CONDITION IS A DOOR THE DEAL CAN WALK OUT OF

PROTECTION 05

# Limit the covenants and **closing conditions.**

Every closing condition is a reason the deal might not close. Third-party consents, absence of a material adverse effect, accuracy of representations at closing — each one is a door the deal can walk out of.

You won't eliminate them, but you should count them, question them, and keep the list as tight as the deal allows.

A seller's leverage is never higher than the day before signing. Use it on the conditions, **not just the price.**

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Protection Six

BINDING, OR BINDING IN NAME ONLY

PROTECTION 06

# Secure a specific **performance remedy.**

If you've satisfied your conditions and the buyer simply won't close, damages may not make you whole — you didn't want a lawsuit, you wanted the deal.

A specific performance provision lets you go to court and force the buyer to complete the transaction.

It's the difference between a binding agreement and an agreement that's **binding in name only.**

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IN SHORT

# Six protections, **in one page.**

1. Narrow the buyer's outs. **Financing risk is negotiable.**
2. Keep "ordinary course" **workable.**
3. Set a hard **outside date.**
4. Get a **reverse breakup fee.**
5. Limit the covenants and **closing conditions.**
6. Secure a **specific performance remedy.**

If there's going to be a gap between your signature and your wire, **negotiate the gap.**


ABOUT THE AUTHOR

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Tony Bell is a corporate attorney at PAG Law in Miami, where he advises founders and investors on M&A and venture transactions across the U.S. and Latin America.

> Deal terms are negotiated **before signing**, not after. By the time you're wondering why the money hasn't arrived, the answer is **already in the agreement.**