

Purchasing a Business Checklist

- 1. Do you know why the vendor is selling the business?** Try to find out as much information as you can about the circumstances surrounding the sale. The reason for the sale might impact the future of the business. The vendor might not tell you the truth about the reasons behind the sale, so must also do your own research.
- 2. Have you chosen your advisors?** You should get professional accounting and legal advice before entering into a contract to purchase a business. You should choose your accountant and lawyer at the beginning of the process so you can receive advice from the beginning. This is important so you avoid wasting time, or becoming emotionally invested in an outcome which may not be in your financial or legal interests.
- 3. Have you been provided with sufficient information to conduct due diligence?** For example, you should be provided with at least the last three years' financial statements, employee contracts, and any other contracts and agreements. Usually copies of relevant contracts are provided with the sale contract. You should seek legal and accounting advice about this information.
- 4. Have you been provided with taxation information?** The vendor should provide you with the last four years' tax returns and confirm that all tax obligations are up-to-date and paid.
- 5. Do you understand the laws and regulations that apply to operating the business?** Consider relevant licence permits or consents. Have they been kept up-to-date? Will these be transferred, or will you need to make applications? For example, if you are purchasing a restaurant, you may need to ensure that the business can comply with food safety regulations, or that a liquor licence can be transferred to you. You will also need to understand development plans which apply to the business, and which awards or enterprise agreements apply to employees.
- 6. Will you purchase the assets of the business or the shares of the vendor's company?** Each option has advantages and disadvantages, depending on the legal and financial position of the business. If you're not sure whether you should purchase assets or shares, you should seek legal and accounting advice.
- 7. Have you insured assets of the business adequately insured up until completion?** There are usually at least a few weeks between exchanging the contracts and completion. If something happens to the assets during this time period, you will still need to through with the sale (unless the contract explicitly says otherwise). This means you need to ensure the assets of the business from the date you sign the sale contract.



- 8. Have you checked the ownership and conditions of the assets you are purchasing?** You should check that all assets you are purchasing are owned by the business entity, in good condition, and are unencumbered. If the vendor has granted security interests over their assets, your lawyer can help investigate these registrations, and ensure that security interests are released before settlement.
- 9. Have you considered how trading stock will be sold?** There are many ways stock can be handled in a business sale. For example, stock can be sold on a walk-in-walk-out basis, which is self-explanatory – the stock is handed over ‘as is’ at settlement. Another common option is for sale of stock-in-trade. In this type of sale, a certain portion of the sale price is allocated to stock. On the day before or day of settlement, a stock take is conducted. The purchaser will only pay up the amount already allocated to stock. If the stock value is over or under this amount, an adjustment will be made to the sale price.
- 10. Have you considered your financing options?** If you are obtaining finance, the contract should be subject to the approval of funds. You will need to consider the terms of the finance you are seeking.
- 11. Does the business have any intellectual property?** The business you are purchasing might own intellectual property such as trademarks, a registered business name, or copyright materials. You will negotiate with the owner the terms of using the intellectual property. For example, the intellectual property rights may be transferred to you, or you might enter into a licencing agreement with the vendor. Your lawyer will be able to advise you of the risks relating to the intellectual property.
- 12. Will you require the vendor to agree to a restraint of trade (or non-compete) clause? If so, on what terms?** This would prevent the vendor from operating a similar business, or soliciting employees and customers. Restraint of trade clauses usually apply to an area surrounding the business premises and a certain time period. However, you can negotiate additional terms.
- 13. Will existing employees be transferred to your business?** You should consider whether you will recognise previous service of employees for calculation of entitlements, and how adjustments should be made to the purchase price for their entitlements. The vendor should provide you with details of their entitlements. Your lawyer can advise you on the impact of these entitlements, and whether you should recognise past service.
- 14. Are you aware of all employment conditions?** For example, you need to understand relevant awards, enterprise agreements, bonus plans, and policies and procedures. If you’re not sure about your obligations, you should seek employment law advice before purchasing the business.
- 15. Will the lease be assigned to you, or will you enter into a new lease with the landlord?** You should consider key terms of the lease, such as the term and options to renew. If an existing lease is being assigned to you, consider whether you should negotiate any variations to the lease.

