

Buying A Business? Conduct Due Diligence

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Once you have decided to purchase an existing business, whether the deal is structured as an asset transaction, a stock transaction, or a merger, it is imperative that you conduct “due diligence.” Due diligence is the process by which the buyer verifies that the business he is buying is consistent with the representations made by the seller. In all transactions, there is typically an informal preliminary due diligence process. However, a more thorough and complete process should occur once there is a signed contract in place. Simply put, buyers must do their “homework” and know precisely what they are buying and the potential risks. It is a relatively painless process, but the buyer must expend some time, energy and costs. The buyer’s advisors must examine matters related to the corporation, real and personal property, environmental issues, potential litigation, employee matters, intellectual property, service contracts, and any obligations to be assumed by the buyer.

Under the contract, at the conclusion of the due diligence period, the prospective buyer may either terminate the transaction or proceed towards closing. Due diligence gives the buyer an opportunity to investigate all material facts required to make a fully informed decision and to assess potential risks. During this process, a buyer should engage qualified advisors, such as an attorney, accountant, and if real property is involved, engineers or consultants to evaluate the structural and environmental condition of such real property.

The buyer’s attorney conducts searches for liens and judgments and, where real property is being purchased, a title search is typically conducted. These searches will disclose whether any encumbrances exist against the assets, and whether the Seller has “good title” to such assets. When Einhorn Barbarito is retained by a buyer, we also examine contracts, including employment and service contracts, which may be assumed by the buyer. Frequently, the buyer also hires accountants to evaluate the financial statements and related materials of the selling business. When real property is involved (including the leasing of space), the attorney should work with engineers and environmental consultants to evaluate the condition of the building and property itself, and should inquire as to the

existing conditions of the lease. The due diligence process may also include the manner in which the company is organized and whether the company is in “good standing” with the State. The process may also include an examination of licenses which will be transferred. If due diligence results in a finding that may affect the buyer in the future, then a renegotiation of the deal will often be required.

Frequently, a complete and thorough due diligence investigation will result in a fair deal for both sides and will reduce the possibility of a surprise down the road. Our firm is experienced in conducting due diligence in a complete, efficient and economically responsible manner. Please feel free to contact our office for more information.