
The Special Bulletin

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Due Diligence: Action Checklist

Buying a business requires careful consideration of various choices. A business can be purchased either through purchasing the business's assets or through purchasing the shares in the company or interests in the trust.

It is important to ensure that a thorough due diligence review has been conducted before a decision to buy is made. The review should find out as much information about the business as possible, which you can then discuss with your adviser. You should also consider how embarking on a business venture would fit with your personal circumstances.

This checklist highlights common areas that must be considered when buying a business.

Item		Yes	No
Where the business is conducted through a company			
1	Has a company search been done to verify the vendor?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are all companies' office requirements up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does the company have any overseas operations?	<input type="checkbox"/>	<input type="checkbox"/>
Financial health			
4	Have you obtained the last four years financial statements of the business?	<input type="checkbox"/>	<input type="checkbox"/>
TIP: The financial statements should contain a breakdown of:			
<ul style="list-style-type: none">• liabilities (including contingent liabilities);• inventory; and• accounts receivable and payable.			
5	Have you obtained information on the business's capital structure and, where possible, obtained a current list of vested interests (such as shares, options, warrants, etc) and outstanding debt instruments?	<input type="checkbox"/>	<input type="checkbox"/>
6	Have you obtained an up-to-date copy of the business's credit report, if available?	<input type="checkbox"/>	<input type="checkbox"/>
7	Has a comparison between the business's gross profits and the industry trends been done?	<input type="checkbox"/>	<input type="checkbox"/>
8	Have you considered the financial projections and major growth drivers of the business in the next four years?	<input type="checkbox"/>	<input type="checkbox"/>
Taxation considerations			
9	Have you obtained the last four years tax returns, including supporting schedules and workpapers of the business, such as Fringe Benefits Tax returns, etc?	<input type="checkbox"/>	<input type="checkbox"/>
10	Have you obtained confirmation that all tax obligations such as income tax, GST, PAYE are up-to-date and paid?	<input type="checkbox"/>	<input type="checkbox"/>
11	Have you familiarised yourself with the tax obligations of the entity to be purchased?	<input type="checkbox"/>	<input type="checkbox"/>
TIP: If the business is conducted through a company, consideration must be given to the duties of a director under the tax law.			
12	Have you reviewed all correspondence with Inland Revenue as to whether the business has any private tax rulings, amended notices of assessment, etc, that may apply?	<input type="checkbox"/>	<input type="checkbox"/>
13	Are you aware if the business is currently being audited by Inland Revenue or has been audited in the last four years and, if so, what its outcome was?	<input type="checkbox"/>	<input type="checkbox"/>

Item		Yes	No
14	Have you considered whether the purchase of the business will be a supply of a going concern, ie GST-free?	<input type="checkbox"/>	<input type="checkbox"/>
<p>ALERT:</p> <p>Where a business is sold through an asset sale, the purchaser does not inherit any tax liabilities of the business. However, where a business is sold through the sale of units or shares, the purchaser inherits the tax liabilities of the business.</p> <p>Where a business is sold through the sale of units or shares, it will not qualify as a supply of going concern, ie the purchase of the units or shares will be an input taxed financial supply.</p>			
If you are buying a business through an asset sale			
15	Has a fixed asset register been obtained detailing all the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
<p>TIP: The register should detail the following information about the assets:</p> <ul style="list-style-type: none"> • the original purchase price; • the purchase date; • the depreciation method used; • the depreciation rate used; • the effective life of the asset; and • the written down value. 			
16	Have you checked the ownership and condition of the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
17	Where the assets are leased by the business, have you obtained copies of the leases?	<input type="checkbox"/>	<input type="checkbox"/>
<p>TIP: If you are taking over the existing leases, consideration should be given to whether the leasing terms are reasonable.</p>			
18	Are the assets adequately insured until settlement of the purchase?	<input type="checkbox"/>	<input type="checkbox"/>
19	Has the purchase price been apportioned across the assets being purchased?	<input type="checkbox"/>	<input type="checkbox"/>
<p>ALERT:</p> <p>If the purchase contract for an asset sale includes the purchase of the business's trade debtors, you will not be able to claim an income tax deduction for bad debts.</p>			
If you are buying a business through a sale of units or shares			
20	Have you obtained a listing of all current shareholders or unit holders?	<input type="checkbox"/>	<input type="checkbox"/>
Employee obligations			
21	Have you obtained a list of the employees, including their salary and other entitlements?	<input type="checkbox"/>	<input type="checkbox"/>
22	Are you aware of all employment conditions, including key workplace agreements, any incentive bonus plans, staff rotation policies, disciplinary procedures, standard of conduct, etc?	<input type="checkbox"/>	<input type="checkbox"/>
23	Have all outstanding employee entitlements, such as medical insurance guarantee and annual leave, been accounted for?	<input type="checkbox"/>	<input type="checkbox"/>
24	Are you comfortable with the current business culture, the level of staff relations and turnover over the last four years?	<input type="checkbox"/>	<input type="checkbox"/>
<p>ALERT:</p> <p>Where a business is sold through an asset sale, the purchaser can choose not to take on the employees of the vendor (except in the case of specified categories of employees under section 69A of the Employment Relations Act 2000). However, where a business is sold through the sale of units or shares, there will be a continuity of employment and the buyer is responsible for any employee liabilities accrued.</p>			

Item		Yes	No
Trading stock			
25	Does the trading stock include any obsolete stock?	<input type="checkbox"/>	<input type="checkbox"/>
26	Has the trading stock been valued at market value?	<input type="checkbox"/>	<input type="checkbox"/>
TIP: Where the purchase of the business includes trading stock, the trading stock must be valued at market value on the day of disposal, which is normally the date of the purchase contract.			
Business premises			
27	Have you sighted copies of all real estate lease agreements, deeds, mortgages and any relevant documents to the premises?	<input type="checkbox"/>	<input type="checkbox"/>
28	If the same business premises are to continue, has the vendor facilitated a lease assignment and all documents signed by you?	<input type="checkbox"/>	<input type="checkbox"/>
29	If there are improvements to the business premises, has a register been obtained detailing the improvements?	<input type="checkbox"/>	<input type="checkbox"/>
TIP: The register should detail the following information: <ul style="list-style-type: none"> • the cost of the improvements; and • date of construction or acquisition. 			
Other considerations			
30	If you are acquiring the business with other people, do you have the necessary agreements in place?	<input type="checkbox"/>	<input type="checkbox"/>
31	Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
32	Does the business have any pending or ongoing lawsuits, or any recently finalised litigation cases?	<input type="checkbox"/>	<input type="checkbox"/>
33	Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs?	<input type="checkbox"/>	<input type="checkbox"/>
TIP: The structure of the business will determine your legal obligations. Factors that should be taken into account when considering whether the structure of the business is suitable for your needs include asset protection and succession planning.			
34	Have you searched the local council and other government agency records to ensure there are no plans or council orders that could disrupt the business or lead to a potential drop in sales?	<input type="checkbox"/>	<input type="checkbox"/>
35	If a restrictive covenant, earn-out clause or claw-back clause is included in the purchase contract, have you ascertained the legal and tax implications?	<input type="checkbox"/>	<input type="checkbox"/>
36	Have you identified the key customer and supplier contracts and the likely impact a change of ownership might have on these agreements?	<input type="checkbox"/>	<input type="checkbox"/>
37	Have you examined current production, distribution, sales and marketing strategies of the business and the likely impact of a change of ownership?	<input type="checkbox"/>	<input type="checkbox"/>

Important: This is not advice. Clients should not act solely on the basis of the material contained in *The Special Bulletin*. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. *The Special Bulletin* is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval. 195/2010