

Due Diligence Checklist: Purchasing a Business

Buying an existing business requires careful consideration. This checklist highlights common areas that must be considered when buying a business. It should be noted that a business can be purchased either by buying the business's assets or, alternatively, by buying the shares in a company (or units in a trust, etc).

It is important to conduct a thorough due diligence review before deciding to buy. 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, expectations and skill sets.

Item		Yes	No
	Where the business is conducted through a company		
1	Have you conducted a Personal Property Securities Register (PPSR) search to identify any registered security interests over the company or its assets?		
2	Have you obtained and reviewed the company's constitution and any shareholders' agreement?		
3	Have you confirmed the company is not currently under external administration, and checked ASIC's insolvency notices?		
4	If any incoming director does not already hold one, has a director identification number (director ID) been obtained?		
5	Are all ASIC compliance requirements up to date?		
6	Does the company have any overseas operations?		
7	If the purchaser (or an investor in the purchaser) is a "foreign person", have you considered whether Foreign Investment Review Board (FIRB) approval is required before completing the purchase?		
	Financial health		
8	Have you obtained the last four years' financial statements for the business?		
	TIP: The financial statements should contain this breakdown: liabilities (including contingent liabilities), inventory, and accounts receivable and payable.		
9	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?		
10	Have you obtained an up-to-date copy of the business's credit report, if available?		
11	Has a comparison between the business's gross profits and the industry trends been done?		
12	Does the business have a loyal customer base? For example, consider subscriptions, loyalty programs, etc.		
13	Have you reviewed the ageing of overdue debts?		
14	Have you considered the financial projections and major growth drivers of the business for the next four years?		
15	Have you identified all related-party transactions and confirmed pricing is on arm's-length terms?	☐	☐
16	Have you identified existing finance facilities and confirmed whether the purchase triggers any change-of-control or repayment clause?	☐	☐

Item		Yes	No
17	Have vendor "add-backs" to reported EBITDA/profit been independently verified?	☐	☐
	Taxation considerations		
18	Have you familiarised yourself with the tax obligations of the entity?	☐	☐
	ALERT: 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 a sale of units or shares, the purchaser inherits the tax liabilities of the business.		
19	Have you obtained confirmation that all tax obligations (eg income tax, GST, PAYG withholding, stamp duty and payroll tax) are up to date and paid?	☐	☐
	ALERT: You must consider the duties of a director under the tax law. New directors need to take action within 30 days of their appointment if the company has outstanding PAYG withholding or superannuation guarantee amounts, or they face the possibility of becoming personally liable under the director penalty regime.		
20	Have you obtained the last four years' tax returns and assessments? This includes supporting schedules and workpapers of the business, such as capital allowance schedules, business activity statements, fringe benefits tax returns, etc.	☐	☐
21	Have you reviewed all correspondence with the ATO and determined whether any private tax rulings, tax elections, amended notices of assessment, etc may apply to the business?	☐	☐
22	Is the business being audited by the ATO, or has it been audited in the last four years? If so, confirm the outcome.	☐	☐
23	Have you considered the stamp duty implications for the purchase of the business?	☐	☐
	ALERT: There could be additional duty if purchasing shares or units in a landholding company or trust.		
24	Have you considered whether the business purchase will be a supply of a going concern (ie GST-free)? If it will be, a written agreement will need to be completed before the settlement date.	☐	☐
	ALERT: Where a business is sold through the sale of units or shares, it will not qualify as a supply of a going concern – the purchase of the units or shares will be an input taxed financial supply for GST purposes.		
25	Have you confirmed whether the company has any outstanding Div 7A loans, payments or forgiven debts to shareholders or associates?	☐	☐
26	Where buying shares, have you confirmed the balance of the franking account and imputation credits available?	☐	☐
27	Where buying shares, have you considered whether the change in ownership will affect the company's ability to carry forward and use prior-year tax losses?	☐	☐
28	Have you confirmed whether the business is grouped with any other entities for payroll tax purposes?	☐	☐
	If you are buying a business through an asset sale		
29	Have you obtained a fixed asset register detailing all the assets being sold?	☐	☐

Item		Yes	No
	TIP: The register should detail the following information about each asset: - 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.		
30	Have you checked the ownership and condition of the assets being sold? Are copies of instruction manuals available?	☐	☐
31	Where the assets are leased by the business, have you obtained copies of the leases?	☐	☐
	TIP: If you are taking over the existing leases, you should consider whether the leasing terms are reasonable.		
32	Are the assets adequately insured until settlement of the purchase?	☐	☐
33	Has the purchase price been apportioned across the assets being purchased?	☐	☐
34	Has a PPSR search been conducted against the specific assets being purchased to confirm they are free of registered security interests, or has a plan been made to obtain releases before settlement?	☐	☐
	If you are buying a business through a sale of shares or units		
35	Have you reviewed the company's constitution/trust deed and any shareholders' or unitholders' agreement for pre-emptive rights, drag-along/tag-along or transfer restrictions?	☐	☐
36	Have you confirmed the share/unit register matches ASIC (or trustee) records and there are no partly paid shares or units?	☐	☐
37	Are there any options, convertible instruments or other rights on issue that could dilute or change ownership after completion?	☐	☐
38	Have you identified all subsidiaries, joint ventures or related entities that will come with the company/trust being acquired?	☐	☐
39	Have all necessary third-party consents to the transfer (eg finance facility change-of-control consents) been obtained?	☐	☐
	Employee obligations		
40	Have you obtained a list of the employees, including their salaries and other entitlements?	☐	☐
41	Do any employees have close contacts with customers? If they were to leave, would the business be at risk of losing customers?	☐	☐
42	Are there any key staff who would be imperative to the smooth continued running of the business? Considerations should include special skill sets or knowledge.	☐	☐
43	Are you aware of all employment conditions, including key workplace agreements, any incentive bonus plans, staff rotation policies, disciplinary procedures, etc?	☐	☐
44	Have all outstanding employee entitlements, such as superannuation guarantee and annual leave, been accounted for?	☐	☐
45	Have you confirmed the vendor is complying with the payday super rules and there is no outstanding superannuation guarantee charge exposure?	☐	☐
46	Are the WorkCover premiums up to date?	☐	☐

Item		Yes	No
47	Have you confirmed there are no current, threatened or historical claims for underpayment of wages or entitlements?	☐	☐
48	Have you reviewed any contractor arrangements to confirm correct classification (ie no risk of sham contracting)?	☐	☐
	ALERT: Where a business is sold through an asset sale, the purchaser can choose not to take on the employees of the vendor. 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.		
	Trading stock		
49	Does the trading stock include any obsolete stock?	☐	☐
50	Has the trading stock been valued at market value?	☐	☐
51	Will a physical stocktake be conducted shortly before settlement to verify quantities on hand?	☐	☐
	TIP: Where the purchase of the business assets includes trading stock, the trading stock must be valued at market value on the day it is acquired, which is normally the date of the purchase contract.		
	Business premises		
52	Have you sighted copies of all real estate lease agreements, deeds, mortgages and any documents relevant to the premises?	☐	☐
53	If the same business premises are to continue, has the landlord's consent to assignment of the lease been obtained (or a new lease negotiated), and have all requisite documents been signed?	☐	☐
54	Has arrangement been made for the transfer or replacement of any bank guarantee or security deposit held by the landlord?	☐	☐
55	If the vendor has given a personal guarantee under the lease, has it been released and (if required) replaced with a guarantee from you?	☐	☐
56	If there are improvements to the business premises, have you obtained a register detailing the improvements?	☐	☐
57	Have you considered any make-good obligations under the lease, and who bears the cost of works required before completion?	☐	☐
	TIP: The register should detail the cost of the improvements and the date of construction or acquisition.		
	Other considerations		
58	Do you know why the vendor is selling?	☐	☐
59	Has the vendor attempted to sell the business before? If so, do you have information about what happened?	☐	☐
60	Is there a documented business plan? Does it match your expectations?	☐	☐
61	How complex is the business? Does it involve many disparate subsidiaries or multiple products and services?	☐	☐
62	Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up to date?	☐	☐
63	Are the licences, permits or consents held by the vendor transferable to you, or will fresh applications need to be lodged in your name?	☐	☐

Item		Yes	No
64	Do you know who the main competitors are? Consider whether there are new competitors entering the market.	☐	☐
65	Does the business have any pending or ongoing lawsuits, or any recently finalised litigation cases?	☐	☐
66	Have you considered obtaining an indemnity from the seller to cover activities before the sale date?	☐	☐
67	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?	☐	☐
68	If a restrictive covenant, an earn-out clause or a claw-back clause is included in the purchase contract, have you ascertained the legal and tax implications?	☐	☐
69	Have you identified the key customer and supplier contracts and the likely impact a change of ownership might have on these agreements?	☐	☐
70	Have you examined current production, distribution, sales and marketing strategies (including websites and social media) of the business and the likely impact of a change of ownership?	☐	☐
71	If you are acquiring the business with other people, do you have the necessary agreements in place?	☐	☐
72	Have you considered potential future issues that could negatively impact the viability of the business (eg changing technology, trends, etc)?	☐	☐
73	Are there any intellectual property matters to consider (eg trademarks, licences, patents, etc)?	☐	☐
74	Have you confirmed that all intellectual property used in the business is legally owned by the entity being sold, rather than held personally by the vendor or licensed on non-transferable terms?	☐	☐
75	Has the business's IT infrastructure, data security protocols and compliance with privacy regulations (eg the Australian Privacy Principles) been assessed?	☐	☐
76	Are you aware of any recent or upcoming regulatory changes specific to the industry that the business is engaged in (eg will the business be subject to any additional environmental reporting requirements)?	☐	☐
77	If contamination is a possibility given the premises' history or industry, has an environmental site assessment been considered?	☐	☐
78	Have you obtained details of the vendor's current insurance policies (public liability, professional indemnity, etc) and any historical claims?	☐	☐
79	Do any material customer or supplier contracts contain change-of-control clauses that require counterparty consent to this transaction?	☐	☐