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?	☐	☐
2	Are all ASIC compliance requirements up-to-date?	☐	☐
3	Does the company have any overseas operations?	☐	☐
	Financial health		
4	Have you obtained the last four years financial statements of the business?	☐	☐
	TIP: The financial statements should contain a breakdown of: • 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?	☐	☐
6	Have you obtained an up-to-date copy of the business’s credit report, if available?	☐	☐
7	Have you done a comparison between the business’s gross profits and the industry trends?	☐	☐
8	Have you considered the financial projections and major growth drivers of the business in the next four years?	☐	☐
	Taxation considerations		
9	Have you obtained the last four years tax returns, including supporting schedules and workpapers of the business, such as Capital Allowance schedules, Business Activity Statements, Fringe Benefits Tax returns, etc?	☐	☐
10	Have you obtained confirmation that all tax obligations such as income tax, GST, PAYG withholding, stamp duty and payroll tax are up-to-date and paid?	☐	☐
11	Have you familiarised yourself with the tax obligations of the entity to be purchased?	☐	☐
	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 the ATO as to whether the business has any private tax rulings, tax elections, amended notices of assessment, etc, that may apply?	☐	☐
13	Are you aware if the business is currently being audited by the ATO or has been audited in the last four years and, if so, what its outcome was?	☐	☐
14	Have you considered the stamp duty implications on the purchase of the business?	☐	☐
15	Have you considered whether the purchase of the business will be a supply of a going concern, ie GST-free?	☐	☐

Item		Yes	No
	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 the sale of units or shares, the purchaser inherits the tax liabilities of the business. 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.		
	If you are buying a business through an asset sale		
16	Has a fixed asset register been obtained detailing all the assets being sold?	☐	☐
	TIP: The register should detail the following information about the assets: • 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.		
17	Have you checked the ownership and condition of the assets being sold? Are copies of instruction manuals available?	☐	☐
18	Where the assets are leased by the business, have you obtained copies of the leases?	☐	☐
	TIP: If you are taking over the existing leases, consideration should be given to whether the leasing terms are reasonable.		
19	Are the assets adequately insured until settlement of the purchase?	☐	☐
20	Has the purchase price been apportioned across the assets being purchased?	☐	☐
	If you are buying a business through a sale of units or shares		
21	Have you obtained a listing of all current shareholders or unit holders?	☐	☐
22	If you are purchasing the business through the sale of units, has the trust made a Family Trust Election (FTE)?	☐	☐
23	If you are purchasing the business through the sale of shares, has the company made an Interposed Entity Election (IEE)?	☐	☐
	ALERT: The existence of an FTE and IEE restricts who may receive a distribution from the trust or company, and to whom the trust may distribute any income derived. Generally, a trust will be denied a tax deduction for carried forward losses or bad debts provided certain tests are passed. Similarly, where the substantial shareholder of a company changes, the company can be denied a tax deduction for carried forward losses or bad debts provided the same business test is satisfied.		
	Employee obligations		
24	Have you obtained a list of the employees, including their salary and other entitlements? Are there any key staff who would be imperative to the smooth continued running of the business?	☐	☐
25	Are you aware of all employment conditions, including key workplace agreements, any incentive bonus plans, staff rotation policies, disciplinary procedures, standard of conduct, etc?	☐	☐
26	Have all outstanding employee entitlements, such as superannuation guarantee and annual leave, been accounted for?	☐	☐
27	Are the WorkCover premiums up-to-date?	☐	☐

Item		Yes	No
28	Are you comfortable with the current business culture, the level of staff relations and turnover over the last four years?	☐	☐

> **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

Item		Yes	No
29	Does the trading stock include any obsolete stock?	☐	☐
30	Has the trading stock been valued at market value?	☐	☐

> **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

Item		Yes	No
31	Have you sighted copies of all real estate lease agreements, deeds, mortgages and any relevant documents to the premises?	☐	☐
32	If the same business premises are to continue, has the vendor facilitated a lease assignment and all documents signed by you?	☐	☐
33	If there are improvements to the business premises, has a register been obtained detailing the improvements?	☐	☐

> **TIP:** The register should detail the following information:
> - the cost of the improvements; and
> - date of construction or acquisition.

Other considerations

Item		Yes	No
34	Do you know why the vendor is selling?	☐	☐

> **ALERT:**
> You should be wary of a vendor who does not disclose important information. Another warning sign could be a vendor who is too keen to close a deal.

Item		Yes	No
35	Is there a documented business plan?	☐	☐
36	If you are acquiring the business with other people, do you have the necessary agreements in place?	☐	☐
37	Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up-to-date?	☐	☐
38	Does the business have any pending or ongoing lawsuits, or any recently finalised litigation cases?	☐	☐
39	Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs?	☐	☐
40	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?	☐	☐
41	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?	☐	☐
42	Have you identified the key customer and supplier contracts and the likely impact a change of ownership might have on these agreements?	☐	☐
43	Have you examined current production, distribution, sales and marketing strategies (including websites) of the business and the likely impact of a change of ownership?	☐	☐