HARBOR LAW GROUP

Legal counsel keeps close eyes on the details

Purchasing a business can be an incredibly rewarding experience. After all, unlike starting a business from scratch, this is an opportunity to benefit from the fruits of the seller's labor: a pre-existing customer base, established relationships with vendors and suppliers, experienced employees and industry recognition.

However, in order for the business to thrive under new leadership, it is vital for the buyer not to allow excitement to cloud judgment with respect to evaluating the transaction and putting the proper safeguards in place. Competent and experienced legal counsel can assist with the purchase negotiation process as well as the implementation of agreements and processes designed to protect the acquisition.

As described below, lawyers can assist in various key aspects of the purchase.

Buyer beware. Buying a business is a bit like buying a house: The seller is always going to try to dazzle you with the positive attributes ("10 percent growth over last year!") while downplaying any issues ("The contract with our largest client is ending in two months, but you'll be fine!"). No matter how solid and profitable the business is represented to be, you should conduct a thorough investigation of the contemplated transaction. The involvement of your attorney, accountant and business consultants with the due diligence process is key to ensuring that the business is actually performing as represented by the seller, and that you will not be assuming any material liabilities such as back taxes, pending or threatened litigation, and intellectual property infringement matters.

Payment options. Buyers often hold the erroneous belief that the purchase price of the business must be paid in full at the closing. This misconception often leads buyers to take out home equity loans, borrow money from friends and family, or dip into savings or retirement funds. This is certainly not a matter to attempt to sort out without legal guidance. An attorney can help identify available funding options, which may include bank financing, seller financing, employment contracts, earn-outs or a combination of these.

Co-ownership. If you are going to co-own the business with at least one other person (even if that person is your spouse, child, sibling, or best friend in the world since kindergarten), the roles and responsibilities of the owners should be determined early on and memorialized in writing. While it is impossible to anticipate every potential hurdle, this agreement should answer questions that commonly become the source of problems later on. For example, the agreement may address the percentage ownership interest held by each owner; financial contributions; compensation and the timing of payments; decision-making processes; resolution of disagreements; and what happens upon the termination, death or permanent disability of an owner. Such questions should be answered up-front with the assistance of an attorney in order to lessen the risk of nasty and expensive legal battles in the future.

Continued legal support. Your relationship with the attorney should not end once the purchase transaction has closed and the initial business agreements have been executed. In addition to drafting new documents, your attorney can review agreements inherited from the seller to ensure that both you, individually, and the business are protected. Hiring employees, entering leases and adhering to state- and federally-mandated formalities are just a few of many business activities with which your attorney should be involved.

Failing to hire appropriate legal counsel now could backfire later. Buying and operating a business — even a well-established one — is not something to undertake alone.

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