

Buying A Business – Entity Purchase

By Private Corporate Counsel

Buying an existing business requires careful planning and execution. There are many issues to consider before you buy a business. You can either buy the business entity or buy the business' assets (**buying a business' assets**). This page focuses on buying a business by buying the business entity, which requires addressing the following issues:

Getting Advice to Understand Your Options
Negotiate LOI
Negotiate Stock/Membership Purchase Agreement
Due Diligence
Acquire Funding
Closing
Manage Transition
Evaluate Workers
Evaluate Key Partners
Evaluate and Update Contracts
Protect Your Business with New Contracts
Evaluate and Update Policies
Reduce Your Risks with Advice and Planning
Improve Your Business with PCC
Grow Your Business with PCC
Get Training for Your Team
Innovate and Improve

First, you must get the right counsel to help you on this journey. Private Corporate Counsel (“PCC”) business lawyers have the legal and business education, training, and experience to help you. They also have practical experience representing businesses in many sectors and operating business themselves, giving them added insight on what new entrepreneurs tackle.

There are many reasons to choose to buy the equity (shares of stock of a corporation, or the membership interest of a limited liability company) of an existing business and not only the business assets. The primary reason may be to take advantage of the company's goodwill developed from years of delivering excellent service and exemplary goods. There may also be tax advantages and other strategic advantages as well. By purchasing a Seller's assets, you may also be able to ensure that key relationships are preserved, and key licenses, permits and other critical government issues are undisturbed. This will reduce the time and costs required to obtain new licenses and permits and preserve the current and future opportunities which the Seller may have spend decades cultivating.

During your consultation with Private Corporate Counsel, you will learn many of the other pros and cons of an equity purchase versus an asset purchase. After the consultation, you will have enough information to make an informed choice. Below are some issues that can be addressed during your consult:

Get Advice Before Buying a Business	
Buying a Business vs. Starting from Scratch Analysis	√
Evaluating the Options Before Buying a Business	√
Business Purchase Letter of Interest (“LOI”) Terms Negotiation	√
Business Purchase Contract Negotiation	√
Due Diligence	√
Entity Purchase vs. Asset Purchase	√
Tax Considerations with Buying a Business	√
Workers Considerations with Buying a Business	√

Once you have decided that you want to purchase a business and have identified the business you want to purchase, it is a good idea to negotiate a Letter of Intent (“LOI”), with the help of your Private Corporate Counsel. The negotiation will include several issues, including the following:

Negotiate a Letter of Intent (“LOI”)	
Identify the Price Terms	√
Identify the Assets of the Entity to be Purchased	√
Identify the Key Dates for Disclosure	√
Identify the Key Timeline for Due Diligence	√
Negotiate the Scope of NDA and Confidentiality Agreements	√
Negotiate the Contingencies of the LOI	√
Negotiate the date to Move from LOI to Contract	√
Analyze the Business Opportunity	√

After you have negotiated a LOI and both parties have signed off, you will have an opportunity to do some preliminary due diligence. If you are satisfied with your initial due diligence, then it is time to begin to negotiate the entity purchase agreement (a Stock Purchase Agreement, if the target is a corporation, or a Membership Purchase Agreement, if the target is a Limited Liability Company). **CAUTION: DO NOT ALLOW A BROKER, SELLER, OR SELLER’S ATTORNEY TO FORCE YOU INTO SIGNING THEIR AGREEMENT.** Consult with and leverage your Private Corporate Counsel to help you negotiate the following key points to effectively protect your interests and maximize your potential to get a fair deal.

Negotiate The Entity Purchase Agreement	
Negotiate the Price and any Contingencies	√
Negotiate & Identify the Physical Assets Being Purchased	√
Negotiate & Identify the Intangible Assets Being Purchased	√
Negotiate and Identify the IP Assets Being Purchased	√
Negotiate the Assignment of Key Contracts	√
Negotiate & Identify the Company’s Liabilities	√
Identify the Key Timeline for Additional Due Diligence	√
Negotiate Other Key Terms of Agreement	√
Draft the Asset Purchase Agreement	√
Continue to Analyze the Business Opportunity	√
Negotiate the Deposit, if Any	√
Negotiate Seller Financing, if Possible and Feasible	√

The due diligence phase of the process is critical. With the help of your Private Corporate Counsel, consider and analyze all relevant issues, including:

Due Diligence	
Obtain & Analyze Financial Statements for Past 3-5 Years	√
Obtain & Analyze Tax Returns for Past 3-5 Years	√
Verify Ownership of Tangible, Intangible and IP Assets	√
Obtain & Review Key Contracts	√
Obtain & Review Key Personnel Files	√
Obtain & Review Key Vendor Files	√
Obtain & Review Key Supplier Files	√
Obtain & Review Key Customer Files	√
Obtain & Review Bank Statements for Past 3-5 Years	√
Obtain & Review Equipment Service/Maintenance Logs	√
Obtain & Review Background on Company's Principals	√
Obtain & Review D&B Report for Company	√
Obtain & Review Title Search on Company Real Estate	√
Obtain & Review Company's Litigation History and Cases	√
Obtain & Review Company's Organization Records	√
Verify Seller's Good Standing in Jurisdictions it Operates in	√
Obtain & Review Company's Auditor's Letters Past-3-5 Years	√
Obtain & Review Company's Budgets and Plans	√
Obtain & Review Company's Internal Control Procedures	√
Obtain & Review other Company's other relevant records	√

If your due diligence did not uncover any deal breakers, then it is time to begin the process of preparing to close the deal. Once you have reached this point, be prepared to invest the time, money, and focus on forming your company. Your Private Corporate Counsel can help you understand the differences between a Sole Proprietorship, Corporation, Limited Liability Company, and Partnership. Then, your Private Corporate Counsel can help you form the entity that is best for your Company, and help you with the rest of the formation process, including the following:

Form Your Company	
Corporation Formation	√
LLC Formation	√
Partnership Formation	√
Joint Venture Formation	√
Obtain your Federal Tax ID	√
Obtain your State Tax ID	√
Obtain your licenses	√
Comply with City and County Codes	√
Open Your Bank Accounts	√

While you should explore funding sources at the beginning stages, once you have formed your business, it is a good time to ramp up your funding search. This is especially true if you do not have the funds on hand or have not negotiated Seller's financing. This is a good time to talk to your Private Corporate Counsel about the following:

Acquire Funding and Close Deal	
Buyer's Resources	√
Explore Seller's Financing	√
Friends and Family Analysis	√
Traditional Lender Analysis	√
SBA Guarantee Loan Programs	√
Selling Equity in New Company	√
Other Funding Options	√
SEC and Mini-SEC Considerations	√
Review and Final Negotiations to Closing Documents	√

At closing it is important to have your Private Corporate Counsel present to ensure that you understand all of the closing issues addressed below, documents being signed, that the correct documents are executed correctly, and that any unexpected issues get resolved.

Close the Deal and Manage Transition	PCC
Prepare for Closing	√
Closing Checklist	√
Escrow Services	√
Review, Analyze and Advice on Closing Documents	√
Ensure Assignments of Key Contracts	√
Ensure Transfer of Title to Key Assets	√
Ensure Warranties Survive Closing	√
Notification of Key Workers and Partners	√

Once you have closed the deal, you will need to evaluate the key workers who help you operate the business. At this stage, it is important to consult with your Private Corporate Counsel to analyze whether or not you have the right people (who want to work for you, understand what you need, and have the capacity to do the job), and how to structure the relationship between your company and its workers to strike a balance between minimizing their costs and maximizing their potential for the advancement of the company, and themselves. During this stage, you should discuss the following with your Private Corporate Counsel:

Evaluate Workers	
Employees – Part-time vs. Full-time	√
Independent Contractors vs. Employees	√
Internships and other Training Programs	√
Individual Contractors vs. Contracting with a Company	√
INS Form I-9 Eligibility Verification	√
Volunteers	√

In addition to the workers who help you operate your business, it is also important to evaluate the key partners who can help you with the essential goods and services to maximize your potential for success. At this stage, you should consult with your Private Corporate Counsel on how to identify, evaluate, and choose key external partners, including the following:

Evaluate the Key Partners	
Accountant	√
Banking	√
Suppliers	√
Vendors	√
Private Corporate Counsel	√
Consultant	√

Having the right internal workers and external partners is essential, and brings a level of risk for your business. In order to protect your business, you need to have them all sign contracts designed to protect you and your business. Therefore, before you hire or engage any employee, worker or partner, you should consult with your Private Corporate Counsel to learn how to identify and analyze the risks they bring, and develop strategies to minimize these risks, including negotiating, drafting and executing the right contracts, including the following:

Evaluate and Update Key Contracts	
Confidentiality Agreements	√
Dispute Resolution Agreements	√
Drug Free Workplace Agreements	√
Employee Agreements	√
Independent Contractor Agreements	√
Internet and Computer Use Agreements	√
Joint Venture Agreements	√
Loyalty Agreements	√
Non-Compete Agreements	√
Non-Solicitation Agreements	√
Operating Agreements	√
Shareholder Agreements	√
Trade Secret Agreements	√
Vendor Agreements	√

While contracts are an effective tool to protect your business against risks and threats from internal workers and external partners, you can enhance this protection by having good policies and procedures in place to guide your workers in their daily tasks and to ensure that everyone complies with the standards you set for the business. This will help create and maintain the positive culture you want and need to improve and grow your business. Therefore, it is a good idea to consult with your Private Corporate Counsel about the following:

Evaluate and Update Policies	
Anti-Discrimination Policies	√
Anti-Harassment Policies	√
ADA Policies	√
Vacation, Sick Leave and Volunteer Leave Policies	√
Pay and Overtime Policies	√
Conflict Resolution Policies	√
Performance Improvement Plan Policies	√
Grooming and Dress Policies	√
Media Policies	√
Social Media Policies	√
Crisis and Disaster Relief Policies	√

Successful entrepreneurs recognize that there is always a risk to their business and personal assets since accidents do happen. They also recognize that they do not live forever. Changes in the environment, technology, and politics are unpredictable and can be devastating. They must take steps to protect their assets, and take steps to create a plan for the future. The earlier they engage in risk mitigation planning, the more chances they have of creating a plan that will be effective when they need it. Therefore, at the onset, it is a good idea to talk to your Private Corporate Counsel about the following:

Reduce Your Risks with Advice and Planning	
Asset Protection Planning	√
Company Structuring Planning	√
Estate Planning	√
Segmentation of Risky Assets	√
Key Contracts to Limit Risks	√
Key Insurance to Cover Risks	√
Ready Access to Private Corporate Counsel to be Proactive	√

Entrepreneurs start a business to succeed, not only in their business life, but also in their personal lives. They want to achieve prime in their personal life cycle, relationship life cycle, family life cycle, professional life cycle, work/job life cycle, and their financial life cycle. If their business is in prime, they hope that it will generate enough profit to allow them to spend time on all of their life cycles, afford the things that will help them be the best version of themselves, and give them the opportunity to help others. In order to get their businesses in its prime, they must continually work on improvement and need a guide to help them maximize their time, energy and potential.

The Private Corporate Counsel’s membership program provides unlimited access to business professionals to help entrepreneurs through each step of the journey, and monthly coaching to address difficult issues as well as to learn new ideas to ensure that they keep improving. With the help of Private Corporate Counsel, entrepreneurs can begin to transition out of “working in their businesses” to “working on their businesses.”

Improve Your Business by Becoming a PCC Member	PCC
Analyzing and Improving the Business Model	√
Identifying and Understanding Key Customer Segments	√
Developing Strong Value Propositions	√
Developing Strong Customer Relationships	√
Analyzing and Improving the Channels of Distribution	√
Analyzing and Improving Key Activities	√
Identifying and Sourcing Key Resources	√
Identifying Key Partners and Forming Key Partnerships	√
Analyzing Cost Structures	√
Analyzing and Developing Revenue Streams	√

Success is also growing your business to increase sales, expand its market share, expand to other jurisdictions, and expand its offerings. When you are “working on your business”, you will have time to expand your knowledge, skills, experience and relationships. This will help you see the trends in your industry, and anticipate changes in the environment and technology, allowing you to identify opportunities that you are now ready to pursue. At this stage, it is critical to have your Private Corporate Counsel readily accessible to review and analyze the opportunities and help you choose the right opportunity for the moment. This requires consistent communications between you and your Private Corporate Counsel to help with the following:

Grow Your Business with PCC's Help	PCC
Continually Analyze and Improve Your Business Model	√
Continually Analyze and Improve Your Value Proposition	√
Continually Working in Innovating	√
Continually Working on Differentiating From Competitors	√
Continually Identifying and Analyzing Trends	√
Anticipating and Preparing for Changes in the Environment	√
Anticipating and Preparing for Changes in Technology	√
Analyzing Key Life Cycles & How They Impact Your Business	√
Identifying and Analyzing Opportunities for Growth	√
Taking Strategic Advantage of Opportunities for Growth	√
Training Your Team to Make Sure They are Always Ready	√

If you are buying a business, before making any decisions call us at 407-647-7887 to discuss your options.