

Buying a Business – Asset 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 a business's assets or buy the business entity (**buying an existing business entity**). This page focuses on buying a business by buying its assets, which requires addressing the following issues:

Getting Advice to Understand Your Options
Negotiate a Letter of Intent ("LOI")
Negotiate an Asset Purchase Agreement
Conduct Due Diligence
Form Your Company
Acquire Funding
Close the Deal
Manage the Transition from Seller to Buyer
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

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 in operating business themselves, giving them added insight on what new entrepreneurs tackle.

There are many reasons to choose to buy the assets of an existing business and not the business entity. The primary reason is to avoid known and unknown liabilities and risks. By purchasing a Seller’s assets, you can ensure that the assets are free of any liens and encumbrances, and reduce the risks of the assets being seized by the IRS or any known or unknown creditors. You can also avoid any problems the Seller may have had with business partners, employees, contract workers, vendors or personal partners (such as a spouse in an impending divorce). During your consultation with Private Corporate Counsel, you will learn how to analyze the pros and cons of an asset purchase versus an entity 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.

Important Advice Before Buying a Business	PCC
Buying a Business vs. Starting from Scratch	√
Evaluating the Options Before Buying a Business	√
Letter Of Intent (“LOI”) 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 LOI	PCC
Price Terms	√

Scope of the Assets to be Purchased	√
Key Dates for Disclosure	√
Key Timeline for Due Diligence	√
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	√

Once 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 negotiating an Asset Purchase Agreement. **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 key points to effectively protect your interests and maximize your potential to get a fair deal.

Negotiate The Asset Purchase Agreement	PCC
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	√
Identify the Key Timeline for Additional Due Diligence	√
Negotiate 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, you should consider and analyze all relevant issues, including the following:

Due Diligence	PCC
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 and Review Bank Statements for Past 3-5 Years	√
Obtain and Review Equipment Service/Maintenance Logs	√
Obtain and Review Background Search on Seller's Principals	√
Obtain and Review D&B Report for Seller	√
Obtain and Review Title Search on Real Estate	√
Obtain and Review Seller's Litigation History and Cases	√
Perform Other Due Diligence Requirements as Needed	√

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 you, and help you with the rest of the formation process, which includes:

Form Your Company	PCC
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.

Acquire Funding	PCC
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	√

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

Close the Deal	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	√

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 (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 costs and maximizing potential for the advancement of the company's goals. During this stage, you should discuss the following with your Private Corporate Counsel:

Choose the Right Workers	PCC
Which Worker to Keep	√
Which Strategic Partners to Keep	√
Best Way to Notify Key Workers and Strategic Partners	√
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:

Choose the Key Partners	PCC
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.

Protect Your Business with Contracts	PCC
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 effective tools 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 that 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 needed to improve and grow your business. Therefore, it is a good idea to consult with your Private Corporate Counsel about protecting your business with polices and procedures.

Protect Your Business with Policies and Procedures	PCC
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 changes in the environment, technology and politics are unpredictable and can be devastating. They must take steps to protect their assets by creating a risk management plan. The earlier they engage in risk mitigation planning, the more chances they have to create 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	PCC
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 into its prime, they must continually work on improving; they 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 and learn new concepts 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
Ready Access to you Private Corporate Counsel	√
Monthly Coaching Sessions	√
Analyze and Improve Your Business Model	√
Identify and Analyze Your Customer Segment	√
Develop Strong Value Propositions	√
Develop Strong Customer Relationships	√
Analyze and Improve Your Channel of Distribution	√
Analyze and Improve Your Key Activities	√
Identify and Source Your Key Resources	√
Identify and Form Key Partnerships	√
Analyze Your Cost Structure	√
Analyze and Develop Your 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.