



Due Diligence: Purchasing a Business action checklist

Buying a business requires careful consideration of various choices. A business can be purchased either by purchasing the business' assets or 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. Through the review you should find out as much information about the business as possible, which you can then discuss with your lawyer and your accountant. 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
Conducting relevant services		
1	<input type="checkbox"/>	<input type="checkbox"/>
2	<input type="checkbox"/>	<input type="checkbox"/>
3	<input type="checkbox"/>	<input type="checkbox"/>
4	<input type="checkbox"/>	<input type="checkbox"/>
5	<input type="checkbox"/>	<input type="checkbox"/>
6	<input type="checkbox"/>	<input type="checkbox"/>
Financial health		
7	<input type="checkbox"/>	<input type="checkbox"/>
8	<input type="checkbox"/>	<input type="checkbox"/>
9	<input type="checkbox"/>	<input type="checkbox"/>
10	<input type="checkbox"/>	<input type="checkbox"/>
11	<input type="checkbox"/>	<input type="checkbox"/>



Item		Yes	No
	Taxation considerations		
12	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?	<input type="checkbox"/>	<input type="checkbox"/>
13	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?	<input type="checkbox"/>	<input type="checkbox"/>
14	Have you familiarised yourself with the tax obligations such as PAYG withholding, superannuation, guarantee charge, payroll tax and fringe benefits tax of the entity to be purchased?	<input type="checkbox"/>	<input type="checkbox"/>
15	Have you reviewed all correspondence with the ATO and determined whether the business has any private tax rulings, tax elections, amended notices of assessment, etc that may apply?	<input type="checkbox"/>	<input type="checkbox"/>
16	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?	<input type="checkbox"/>	<input type="checkbox"/>
17	Have you considered the stamp duty implications of the purchase of the business?	<input type="checkbox"/>	<input type="checkbox"/>
18	Have you considered whether the purchase of the business will be a supply of a going concern, ie GST-free?	<input type="checkbox"/>	<input type="checkbox"/>
	Employee obligations		
19	Have you obtained a list of the employees, including their salaries and other entitlements? Are there any key staff who would be imperative to the smooth, continued running of the business?	<input type="checkbox"/>	<input type="checkbox"/>
20	Are you aware of all employment conditions, including key workplace agreements, any incentive bonus plans, staff rotation policies, disciplinary procedures, standards of conduct, etc?	<input type="checkbox"/>	<input type="checkbox"/>
21	Have all outstanding employee entitlements, such as superannuation guarantee, personal leave, annual leave and long service leave been accounted for?	<input type="checkbox"/>	<input type="checkbox"/>
22	Are the Workers Compensation premiums up-to-date? Are there any current, or have there been any Workers Compensation Claims by employees?	<input type="checkbox"/>	<input type="checkbox"/>
23	Are you comfortable with the current business culture, the level of staff relations and turnover over the last four years?	<input type="checkbox"/>	<input type="checkbox"/>
	Trading stock		
24	Does the trading stock include any obsolete stock?	<input type="checkbox"/>	<input type="checkbox"/>
25	Has the trading stock been valued at market value?	<input type="checkbox"/>	<input type="checkbox"/>
26	Is any stock held on consignment from suppliers?	<input type="checkbox"/>	<input type="checkbox"/>
27	Is any stock subject to retention of title Personal Property Security Act registrations?	<input type="checkbox"/>	<input type="checkbox"/>
28	Is there any ageing report for stock held?	<input type="checkbox"/>	<input type="checkbox"/>
29	Is there a list of work in progress and its value	<input type="checkbox"/>	<input type="checkbox"/>



Item		Yes	No
	Business premises		
30	Have you sighted copies of all real estate lease agreements and any relevant documents relating to the premises to confirm the term, rent, rent review and outgoings?	<input type="checkbox"/>	<input type="checkbox"/>
31	If the same business premises are to continue, is a lease assignment or new lease available to you?	<input type="checkbox"/>	<input type="checkbox"/>
32	If there are improvements to the business premises, has a register been obtained detailing the improvements?	<input type="checkbox"/>	<input type="checkbox"/>
33	Are a rental bond and director's personal guarantees required to be provided under the lease of the premises?	<input type="checkbox"/>	<input type="checkbox"/>
34	Have you sighted a copy of the development consent from the local council approving the operation of the business at the premises?	<input type="checkbox"/>	<input type="checkbox"/>
35	Have you searched at the local council and other authorities for any outstanding notices in respect to the premises?	<input type="checkbox"/>	<input type="checkbox"/>
36	Have you ascertained what licences are required to operate the business at the premises?	<input type="checkbox"/>	<input type="checkbox"/>
	If you are buying a business through an asset sale		
37	Has a fixed asset register been obtained detailing all the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
38	Have you checked the ownership and condition of the assets being sold? Are copies of instruction manuals available?	<input type="checkbox"/>	<input type="checkbox"/>
39	Where the assets are leased by the business, have you obtained copies of the leases?	<input type="checkbox"/>	<input type="checkbox"/>
40	Are the assets adequately insured until settlement of the purchase?	<input type="checkbox"/>	<input type="checkbox"/>
41	Has the purchase price been apportioned across the assets being purchased?	<input type="checkbox"/>	<input type="checkbox"/>
	If you are buying a business through a sale of units or shares		
42	Have you obtained a listing of all current shareholders or unitholders?	<input type="checkbox"/>	<input type="checkbox"/>
43	If you are purchasing the business through the sale of units, has the trust made a Family Trust Election (FTE)?	<input type="checkbox"/>	<input type="checkbox"/>
44	If you are purchasing the business through the sale of shares, has the company made an Interposed Entity Election (IEE)?	<input type="checkbox"/>	<input type="checkbox"/>
	Other considerations		
45	Do you know why the vendor is selling?	<input type="checkbox"/>	<input type="checkbox"/>
46	Is there a documented business plan?	<input type="checkbox"/>	<input type="checkbox"/>
47	If you are acquiring the business with other people, do you have the necessary agreements in place?	<input type="checkbox"/>	<input type="checkbox"/>
48	Are the business operations subject to any government regulations? If so, are all relevant government licences, permits or consents up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
49	Does the business have any pending or ongoing lawsuits, or any recently finalised litigation cases?	<input type="checkbox"/>	<input type="checkbox"/>
50	Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs?	<input type="checkbox"/>	<input type="checkbox"/>



Item		Yes	No
51	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?	<input type="checkbox"/>	<input type="checkbox"/>
52	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?	<input type="checkbox"/>	<input type="checkbox"/>
53	Have you identified the key customer and supplier contracts and the likely impact a change of ownership might have on these agreements?	<input type="checkbox"/>	<input type="checkbox"/>
54	Have you examined current production, distribution, sales and marketing strategies (including websites) of the business and the likely impact of a change of ownership?	<input type="checkbox"/>	<input type="checkbox"/>
55	Do you know who the main competitors are?	<input type="checkbox"/>	<input type="checkbox"/>
56	Have you ascertained if there have been any claims made on the business insurances or whether insurance cover has been refused?	<input type="checkbox"/>	<input type="checkbox"/>

If you require assistance with due diligence enquiries regarding any business or assistance in any aspect of your business, please contact our Law Society Accredited Specialist in Business Law, Michael Battersby on 4731 5899 or email commercial@batemanbattersby.com.au.