BUYING A BUSINESS

Buying a business allows you to skip the start-up procedures. However, researching the business before you buy still includes many of the same steps.

- What is the legal structure? If you decide to incorporate, do you know that incorporating an existing business is different and much more complex than incorporating a startup?

- Some of the information needed to make a knowledgeable decision is confidential, and a confidentiality letter might be requested by the seller. Some of the information needed to make a sound decision is as follows:
  - Financial records for last 3-5 returns
  - Tax returns
  - Profit and loss statement
  - Cash flow statement
  - Balance sheet
  - All accountants' reports (compilation, review, audit)
  - Documents related to lawsuits, administrative processes, claims against the firm, letters threatening lawsuits, product liability lawsuits
  - A list of liabilities and the terms of those liabilities
  - Warranties and guarantees made by the firm
  - Inventory
  - Equipment
  - Workers' compensation claims
  - Unemployment claims
  - Employee contracts and benefits
  - Patents, trademarks, copyrights and licenses
  - License transferability
  - Maintenance of trade secrets
  - Contracts with suppliers and customers
  - Zoning, local, state and federal code
  - Toxic waste
  - Availability of credit
  - Franchiser approval

- Talk with the firm's lenders, suppliers, customers, neighbors and former employees. The more information, the better. Evaluate and analyze everything. Ask questions. Compare earnings to comparable firms in similar areas. Use the library to research area demographics and industry trends.

- Obtain professional assistance. Valuing the business can be done through an appraiser or CPA. A broker usually does not have the training to make valuations, but can give guidance. Value is typically based on inventory; fixed assets, such as furniture and equipment; intangible assets, such as lease and customer list; and the return on investment expected. Goodwill is a tangible asset. Great care should be used in assigning it a monetary value. It is very hard to guarantee the ability of a different person to run a business in exactly the same way with the same personality as the seller. The ISBDC can serve as a source for getting a professional business valuation, along with an appraiser or CPA.

- During the research, but before a purchase decision is made, a letter of intent to purchase and a deposit of earnest money might be necessary to show the seller you are interested and not wasting time. Be sure the letter is non-binding and provides for the return of your deposit if the deal falls through. It is a good idea to seek legal advice regarding the wording of the letter before sending it.

- Once you have decided to purchase the business, there needs to be a sales agreement between the two parties. The agreement should be very precise and include every item concerning the business. A sample list of items to include is as follows:
  - Names of the seller, business and buyer
  - Assets being sold
  - Purchase price and allocation of assets
  - Covenant non-compete agreement
  - Allowance for adjustments
  - Terms of payment
  - Seller's representation and warranties
  - Inventory
  - Accounts receivable
  - Bulk sales compliance
  - Buyer's representation and warranties
  - Access to information
  - Conduct of business pending closing
  - Contingencies
  - Seller to be a consultant
  - Broker fees
  - Notices
  - Closing date

- Before closing, you will want to create a business plan. At closing, there is more than an exchange of a check and a set of keys. A checklist of paperwork to be completed is suggested. Prepare ahead of time so you are familiar with the items and their language.

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Business Guide

Resource Guide for New and Existing Businesses