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Starting a Business: Buying a Business - Reducing the Risk

No matter how careful you have been in assessing a business, there will always be an element of risk. Buying a business has risks

Contracts for the sale of a business normally state a settlement date upon which the purchaser takes possession and pays the balance of the purchase price. If subsequently the purchaser discovers or suspects that the vendor has supplied misleading or incorrect information, or if for any reason the purchaser regrets buying the business, there is very little that can be done. You can protect yourself by carrying out the following.

Work in the Business

Insist on the right to work in the business, preferably before entering into a binding contract of sale or at least prior to settlement. This gives you the opportunity of checking, as far as is possible, the accuracy of the information provided by the vendor. If there is any evidence that the vendor's information is not reliable, you may have grounds to refuse to settle, retaining at least most of the purchase price.

Performance Clauses

Insert a performance clause into the contract that specifies the minimum takings of the business over an appropriate period leading up to settlement. If the takings reach the specified amount then you the purchaser must settle, but if the takings do not reach the specified amount you may withdraw from the contract and recover the deposit.

Transfer of Existing Contracts

Where it is anticipated that you will take over some important customer contracts, such as in a cleaning or maintenance business, it should be a condition of the sale contract that those contracts are transferred to you.

Payment in Stages

Structure the contract so that payment is made in stages. Most contracts call for payment in full at the time of transfer. But some part of the purchase price could be retained for a certain period and if necessary placed in trust with a solicitor or estate agent. If a dispute arises after possession is transferred, the retained money provides you with some bargaining power as the purchaser.

Guarantee on Representations

You should ensure that any representations made by the vendor, whether written or otherwise, are guaranteed by the vendor as correct and that this guarantee is incorporated as a condition in the contract. This will make it much easier for you to take action against the vendor for any misleading or incorrect information.

Restraint of Trade

Insert a restraint of trade clause in the contract. This will restrict the previous owner from operating a similar business within a certain distance for a number of years. Some clauses are written to say that the previous owner cannot open a similar business within a five-kilometre radius for five years.

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