Title:
10 Things you should know before buying a business in California

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1368

Summary:
Quantum Business Solutions Network is a full service Southern California business consulting and licensed brokerage firm. Quantum Business Solutions Network is comprised of professionals that combine valuation, financial, marketing, legal, accounting, tax and transactional structuring expertise to initiate, execute and consummate business acquisition and divestiture transactions.

Keywords:
california business broker, california business brokerage, california business, buy a california business, sell a california business

Article Body:
The decision of buying a business is a very crucial one and should be made only after reviewing all the information available. A buying decision should be made only after all the doubts and uncertainties are removed and you are able to anticipate all of the obstacles that stand before you. There are some essential points to consider when considering the purchase of a California business.

Following are 10 important points, which if kept in mind, can help you as a business buyer to capitalize on the opportunities that present themselves before you.

Purchase the assets and not the entity:
Unless there are intangibles of the business for sale which are not transferrable and represent substantial value, attempt to buy the assets rather than the entity itself. This is important so that you are not exposed to any liabilities of the business before you acquired it and so that you receive an increased tax basis equal to the amount of consideration you pay rather than what the business may have paid for the asset long ago.
Employ Professionals:
In order to ensure that the financial and operational representations made to you by the seller are accurate and complete, it is imperative to hire a competent business broker, attorneys, or CPA to

assist you with respect to your required due diligence. Furthermore, once you are committed to the purchase and obtain an acceptance of your Letter of Intent (see below), hire a lawyer familiar with business disposition and acquisitions to review the contracts and related documents.
Submit an Offer to Purchase through a Letter of Intent:
A letter of intent (LOI), typically non-binding, is a two or three page document between the buyer and seller of a business which details all of the material terms and conditions to which both parties would be willing to commit to. It is prudent to discover whether the parties are capable of achieving an agreement BEFORE employing the expensive services of professionals such as attorneys and CPAs, to conduct due diligence and prepare/review documents. Thus, if the parties can “hammer out” the key terms, the professionals can later focus on consummating the transaction.
Accounts Receivables:
Often times a key asset of any business is its accounts receivable and there may be a substantial balance outstanding at the time of closing. It is not recommended that you purchase the accounts receivable as an asset of the business (in fact, is not typical for the California business buyer to acquire any cash or cash equivalent items in an asset sale); however, you ought to attempt to collect the accounts receivable on behalf of the business seller in order to remain in contact with the customers after the sale and ensure a smooth transition. If you do purchase the accounts receivable you should do so at a discount, the amount of which is dependent on the seller’s past allowance for bad debts, with a right of offset against monies due the seller for uncollectible accounts.
Discover the facts and circumstances surrounding the lease:
The continued success of the business is often entirely dependent on the existing location of the business (to ensure the maintenance of the existing customer base or the retention of key employees). Accordingly, you must determine the remaining term of the existing lease and if not substantial, confirm with the landlord whether you can obtain a new lease on terms and conditions similar to the past before you buy a California business. Learn whether the seller has a security deposit with the landlord, and if so, that the landlord is so notified in writing.
Determine whether there are any prepaid expenses:
As mentioned above with respect to the security deposit relating to the lease, prepaid expenses and deposits are usually not included as part of the assets purchased from the California business seller. Therefore, it may be advantageous to define the assets of the business quite broadly at the time you prepare your

LOI. If these items are not included, then make sure you get a schedule of "closing adjustments" from the seller and escrow so that you can budget accordingly -- since these items are prorated through closing and tacked onto the closing costs.
Pay attention to Bulk Sales Laws and Sales and Payroll Tax Obligations:
Many states require that the buyer (or escrow agent) of a business publish notification of the business sale to creditors in order to receive the business assets "free and clear" of creditor claims. Similarly, the law in many states allow for the taxing agency to pursue the business assets of the seller for any unpaid taxes unless the seller obtains a "tax clearance certificate."
Obtain Seller Indemnity and Right of Offset:
No matter how diligent you are in reviewing the business seller's records and all available information, there is still a possibility that you will be presented with a claim against the California business which arose before the closing. In that case, it is important to obtain an indemnity provision from the seller of the California Business in the Asset Purchase Agreement. Moreover, if the seller is financing any portion of the transaction, a right of offset will provide the buyer with the right to offset any such claims against monies due the seller.
Negotiate for a Management Assistance Period:
In order to ensure a smooth and orderly transition of the business following the closing, negotiate for the business seller to remain available after the sale to provide short term training and necessary introductions to customers, clients and vendors. In addition, make sure the business seller remains available thereafter for in person or telephone consultations for issues and matter overlooked during the training period.
Familiarize yourself with Seller's Employees:
Before closing escrow and removing the due diligence contingency, meet with each of the business seller's key employees to ensure they have a desire to remain with the business after the sale. Thus, you can include a provision in the Asset Purchase Agreement that as part of your due diligence, you are entitled to "announce" the proposed California business sale to all employees of the business within 48 hours of the closing to meet and interview the employees to determine, to your reasonable satisfaction, that the employees are willing to continue their employment with the business.

Many times buyers get confused and intimidated by all the procedure involved in the acquisition of a business, especially those who are venturing into the market for the very first time. Hence it is very important that you obtain proper guidance and before investing your valuable money.

About the Author

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