



MILLWATER TYRRELL
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OPEN

10 THINGS TO CONSIDER BEFORE BUYING A BUSINESS

YOUR DUE DILIGENCE CHECKLIST

This factsheet will give you a brief summary of the basics of purchasing a business. Legal advice is always based on your actual circumstances, so you should not rely on the information in this factsheet in the absence of legal advice.

Millwater Tyrrell Law offer a free 30 minute consultation with one of our partners to provide you with advice specific to your needs.



DO YOUR RESEARCH.

Congratulations! You have negotiated the terms for the purchase of your new business either through a business broker or directly with the vendor. There are however, some aspects of your purchase that you really should consider before going further. Importantly, we at Millwater Tyrrell Law can help you with these matters.

Before you go any further, it is important that you carry out a “due diligence” investigation of the business and of the vendor. It may make the difference between whether you ultimately decide to proceed with the purchase of the business. Separately, you may discover important information which helps shape either the success or failure of your new business. The purpose of ‘due diligence’ is for you to find out as much as you can about the business that you are buying and the vendors.



DUE DILIGENCE

Reasonable steps taken by a person to avoid committing a tort or offence.

- *a comprehensive appraisal of a business undertaken by a prospective buyer, especially to establish its assets and liabilities and evaluate its commercial potential.*



Your due diligence checklist.

We recommend that at minimum you consider the following 10 items during the due diligence process.

1

How long the vendor has owned and operated the business and why is the business being sold? If the seller has only owned and operated the business for a very short period of time, there may be a very good reason that they are looking to sell!

2

Ask to see the financial records of the business for at least the last 3 years. It is not unusual that in preparation for the sale of a business, a business owner can change the way they operate the business for a short window of time to inflate the profitability of the business. Ensure that you obtain at least three years financial records and engage a competent accountant to review these financial records with you.

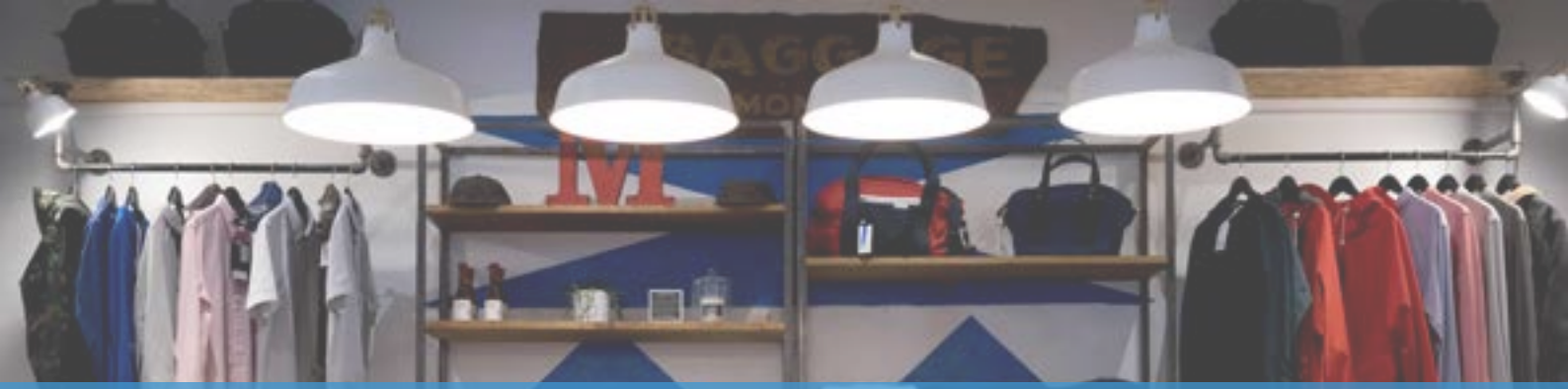


3

Be extremely cautious if you are told that the business generates a lot of cash which is not reflected in the financial records.

4

Considered whether you are buying the business through the appropriate structure. It may be that you ought to be buying the business through a company. You may wish to consider a structure with or without a supporting trust structure. Alternatively, you may be best suited purchasing the business or as a partnership or sole trader? There are significant legal and tax implications that will follow from the structure you use to set the business up and you should ensure you receive appropriate advice on which option is best suited to your needs.



Your due diligence checklist. - Cont.

5

Ensure that the purchase price is broken down to show separate values for “goodwill”, “stock” and “equipment” If not, you could be creating tax problems for the future.

6

Does your business depend on you having the right to use intellectual property owned by a third party? If so, make sure that you are able to secure the transfer of any existing licences or that you will be able to purchase a licence to use that intellectual property. Additionally, you should also consider whether or not the business you are buying has the right to use any intellectual property that it currently purports to use. If you do not make these investigations at this time and at some point in time in the future you receive notification that your business is utilizing an already registered trademark, in most circumstances you will have no recourse against the seller!

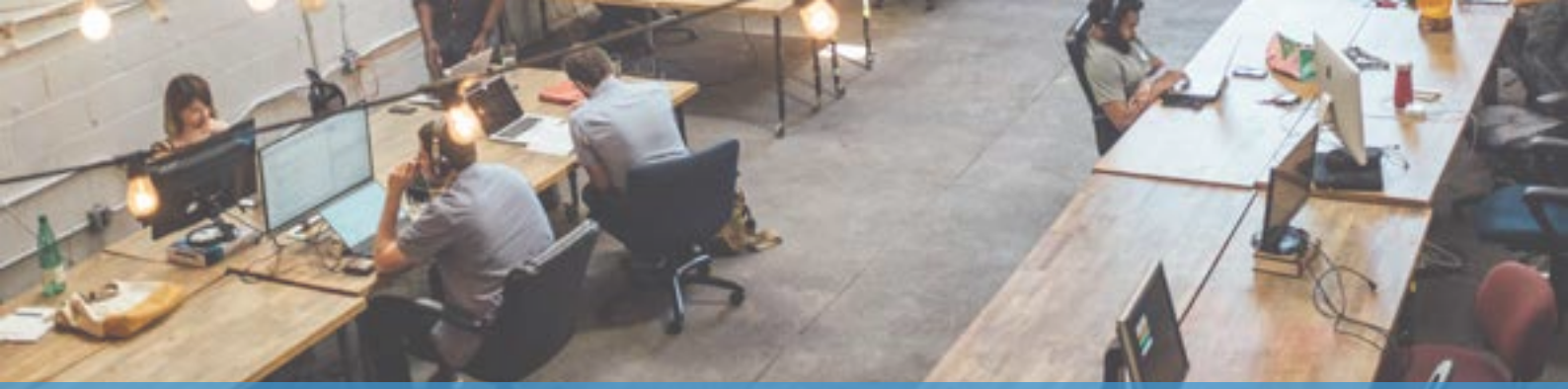
7

Does the purchase price include the GST? If the business you are buying includes the transfer of the lease of the premises from which the business is carried on and everything else necessary for you to continue to carry on the enterprise (business), then the transaction may be treated as the sale of a “going concern” for GST purposes. If not, then the purchase is likely to be treated as a “taxable supply”. That means that the GST is payable on the transaction and you may be required to pay 10% GST on top of the purchase price.



**BOOK A FREE
30 MINUTE CONSULT**





Your due diligence checklist. - Cont.

8

Are you purchasing a business with a lease over the premises that it is being operated from? If so, the landlord of the premises is entitled to ask for details of your financial circumstances and evidence of your experience in conducting a business of the type that you are buying. In this way the landlord can be satisfied that you are likely to be a good tenant who has some experience operating a particular type of business. The landlord may be required to “consent” to the transfer or assignment of the current lease to you provided he can be reasonably satisfied about these issues.



9

Do you intend to employ any of the current employees of the business? If so, it is important that you are aware of the employees’ entitlements to such things as long service and annual holiday leave, their years of service and their employment status (e.g. permanent or casual).

10

Is there any leased equipment included in the sale of the business? If so, ensure that the leases will transfer to you when you settle the purchase. Alternatively, find out whether the financial institution that owns the equipment requires that you take a new leases of the equipment. You should also find out what the residual value of the equipment is at the time of the sale. Additionally you should find out what other equipment is in the premises. Obtain a full list of all the plant and equipment, and if possible, a depreciation schedule for the plant and equipment. Ensure that the equipment is in “working order” and whether there are any manufacturer warranties still in place to ensure that these will transfer to you.



WE ARE HERE TO HELP



In most circumstances it is usual for the seller's solicitor to prepare a draft Contract for the sale of the business. You can usually at this point inform the seller of the details of your solicitor so that they will also receive a copy of this document.

At Millwater Tyrrell Law we will explain the Contract you and help you through the whole process, from ensuring that the Contract reflects everything that you have negotiated with the seller originally to settlement.

If you would like to learn more about the process of buying a business in general or require any advice in respect to the potential purchase of a business, we suggest you take advantage of our no obligation free initial consult to learn more.



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[CLICK HERE TO GET STARTED WITH MATTHEW](#)

Matthew is a Partner of Millwater Tyrrell Law and holds Bachelor Degrees in both Law and Business from the Queensland University of Technology (QUT).

Matthew commenced his legal career in 2007 working with the Queensland Government within the Department of Justice & Attorney General whilst completing his studies. He has worked under the guidance of nationally recognized and leading Commercial & Structuring Lawyers when working for a large National Law Firm. More recently Matthew has assisted the Ipswich and Greater Springfield community through his employment with a large regional local firm.

Given the broad range of work Matthew was exposed to in the formative years of his career, his experience includes:

- Commercial Transactional Law
- Commercial Structuring Law & Insolvency
- Family Law
- Criminal Law

Matthew comes from a family with a strong involvement within the Military and as such has a history of assisting men and women from within the armed services. This has given Matthew an in depth understanding of Military Superannuation and the unique challenges it brings to Family Law disputes.



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David is a Partner of Millwater Tyrrell Law and holds Bachelor Degrees in both Law and Science from the Queensland University of Technology (QUT).

David was admitted as a lawyer in 2003 and has been working in the Ipswich area for a large regional local firm since that time.

For the last 10 years David has primarily practiced in family law, being the leader of the family law department at his previous firm.

David is an accredited family dispute resolution practitioner (Mediator).

He has assisted countless clients to achieve favourable results in their matters by both agreement and Court proceedings.

His experience includes:

- Complicated and high value property settlement negotiations and agreements
- Relocation parenting cases
- Agreements for parenting arrangements for children
- Child support agreements
- Spousal maintenance agreements
- Mediation and conferencing
- Family violence protection applications (DVOs)
- Criminal and traffic matters
- Litigation

David has an empathetic approach and understands how important it is for people to understand their future when developing a plan of action for each client.



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