7 things to consider when buying or selling a business

Buying or selling a business is a complex process that requires legal skill and expertise. At Carter Bond Solicitors, we understand the intricacies and pitfalls inherent in business acquisitions and sales, so here's seven legal points that all prospective buyers and sellers should be aware of when negotiating a deal.

Before we start, it is important to mention that the legal tips should also be complemented with appropriate tax advice to make sure that your intended transaction is as tax efficient as possible.

1. Buyers Beware of Buying Shares

When acquiring a company, a share purchase may not always be the best option, as this will mean taking over all of the company's liabilities, including outstanding debts. There is also the added risk that the share value may have been based on the business' expected future earnings rather than the actual market value of its assets or liabilities.

2. Buyers Should Consider an Asset Purchase

An asset purchase involves buying some or all of the assets owned by a business, including land, buildings, and equipment, as well as intangible assets like goodwill and intellectual property.

Buying a company's assets and then forming a separate company as the purchaser can bring you all the value of the business without any of its liabilities.

3. Businesses are Valued Differently by Industry

Business appraisal methods may focus on assets, historical earnings, future earnings, or a combination of earnings and assets, but it's important to note that the market for similar businesses in the industry can also be a determining factor.

When looking at your industry to value your business, a valuer may consider comparable sales, price to earnings ratio methods, and the given industry rule of thumb.

4. Caveat Emptor which means "Let the buyer beware"

In turbulent times, it is vital to understand that a seller's main objective is to offload a business, in whatever shape or form, and achieve a clean break from all liabilities. Although the seller will disclose information about the business' state of affairs, ultimately, the onus is on the buyer to carry out their own due diligence and ask the right questions to determine the business' value and liabilities.

5. Compromise is Key

While a competent commercial lawyer is essential for preparing and advising on the legal structure of a business acquisition, it's important that your lawyer doesn't take a cutthroat approach to get you the best possible deal.

The goal should be to settle on a deal that benefits both the buyer and seller, compromising where necessary; otherwise, you risk having the deal fall through completely. The best way to start this the right way is to agree a non-binding set of heads of terms that allow the buyer and seller to get on the same page regarding key commercial terms and expectations while providing a road map to the advisers involved to ensure that the deal is progressed smartly.

6. Watch out for Hidden Liabilities

When purchasing a parent company, be sure to meticulously and thoroughly investigate the state of affairs of each of its subsidiaries, as the acquisition of the parent company means the acquisition of all its subsidiaries' liabilities as well.

7. Examine Existing Contracts

Before acquiring any company, look through each of its commercial contracts in case there is a 'change of control' clause; these clauses often state that a key customer or supplier may terminate their contract when there has been a change of company ownership. This can have a major impact on the company's value, especially when considering expected future earnings.

For more information, or for expert advice on business or personal legal issues, call us on 020 3475 6751 or via email at info@carterbond.co.uk

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