

Thinking of buying a business?

It doesn't matter how big or small the business is that you might be looking to buy. You could be a director of a company and want to make sure management has considered all the underlying reasons for buying or you may be planning to go into business by yourself. This article presents some key questions an astute buyer would consider before committing to a purchase.

BY TIM SLACK

No enthusiastic purchaser wants to hear a list of potential pitfalls about a prospective business. All he or she can see is the opportunity for growth. Enthusiasm is an important element in a successful acquisition, but educated decision-making and objectivity should not be underrated.

For every enthusiastic purchaser there is an equally willing vendor. Why does the vendor want to sell? Look out for underlying reasons such as:

- Declining business
- Changes in the character of locality
- Expiring lease or franchise
- Imminent rent review
- Change in zoning
- Change in roading
- Critical staff retiring
- Capital asset requiring replacement
- Labour problems

Here's a tip. Ask to view the Share Register of any company presently owning the business and contact any past shareholders that have sold out. Ask them why.

Another tried and true method of verifying the profitability and



stability of a business enterprise is to take a job within the business entity. If you still want to buy it after working as a manager for six months, the chances are you are on to a good thing.

If the lease is running out, re-negotiate with the landlord before you buy if possible. A lessor may be keen to grant further renewals or better terms to an enthusiastic purchaser. It is better to negotiate before you are

committed to the business.

For most people, buying a business will be one of the most significant transactions of their life. The issues can be complicated and obscured by pliable profit figures and vague promises from an outgoing owner.

Carter & Partners has years of experience advising our clients on buying and selling, setting up and winding down all types of business concerns.

Please contact Tim Slack for more information.

Case Study

A client was purchasing 50% of a start-up company. The existing owner and promoter showed our client a number of advertising contracts and other customer contracts illustrating a very healthy business opportunity.

We incorporated into the sale and purchase agreement a "put option" for our client. This was effectively a form of security for the purchase.

It enabled our client to force the vendor to buy back the shares at

the original purchase price at any time within one year from the settlement date.

When the disclosed advertising contracts and other customer contracts didn't eventuate, our client simply reversed the sale and purchase agreement and walked away from the company.

Obviously this is a far superior alternative to suing your co-shareholder for breach of warranty.

Simplifying employment contracts

BY NICHOLAS CARTER

All employees require employment contracts. They don't need to be lengthy documents especially for your part time staff. But there are some things that legally must be included in the agreement.

First of all the employer must:

- give the employee a copy of the proposed agreement
- tell the employee that they are entitled to seek independent advice
- give the employee the opportunity to seek that advice then consider any issues the employee raises and respond to them.

The individual employment agreement must be in writing and it must also include the following:

- the names of the employer and the employee (so it is obvious who is party to the agreement)
- a description of the work (to make clear what the employee is actually expected to do)
- an indication of where the employee is to work
- an indication of arrangements relating to working hours
- wage rates or salary
- restructuring provisions to protect the employer if the business is sold
- a plain language explanation of services available to help sort out employment relationship problems including reference to the 90 day period within which a personal grievance must be raised.
- a requirement to pay at least time and a half for work on a public holiday.

Minimum rights

Legislation imposes some minimum terms and conditions of employment and even if these are not written into the employment agreement they still apply. You can better the provisions if you want. The minimum legislative requirements cover minimum wages, annual leave, public holidays, sick leave, bereavement leave and parental leave.

Annual holidays

Employees are entitled by law to a minimum of three weeks' paid annual holidays after being in the job for a year or to holiday pay for periods of employment less than one year.

Public holidays

The 11 public holidays in the Holidays Act apply unless the employer and employee agree to substitute other days. If employees work on public holidays they must be paid at least time and a half for hours worked on a public holiday. If it is a day on which they would otherwise have worked they are also entitled to another day off as an alternative holiday (a day in lieu).

Sick leave

Employees are entitled by law to five days' sick leave after being in the job for six months, and for each subsequent twelve months. If the leave is not taken, it can accumulate up to a maximum of 20 days.

Bereavement leave

Employees are entitled by law to three days' bereavement leave after being in the job for six months, on the death of an immediate family member. Additionally, the employee is entitled to one days' bereavement leave where the employer accepts that the employee has suffered a bereavement.

The Department of Labour website, www.ers.dol.govt.nz has some simple but effective agreements for you to adapt.

If you are unsure as to whether your employment contract measures up or you want to simplify your agreements contact Nicholas Carter, Carter & Partners Employment Law Specialist.

Golf Success

The annual Carter & Partners Golf Tournament was held on a beautiful sunny day last month. Just under \$23,000 was raised for the Auckland Kindergarten Association to assist their kindergartens in need. A huge thank you to those who either sponsored a hole, made a donation and/or played too.

The first prize winners were Vaughan Spinetto, Daryl Spinetto, John Bockett and Nick Margison. Second prize went to Geoff Baxter, Murray Higgs, Laurie Bell and Alain Bourgogne. Third Prize went to Peter Aitken, Peter Felsted, Gerard Mooney and Jason Blackie.

