Key Considerations When Purchasing an Existing Business

Purchasing an existing business can be an exciting opportunity, but it requires careful planning and thorough due diligence to ensure a successful transition. Here are some essential factors to consider, from employee and lease concerns to noncompete clauses, seller financing, and post-closing employment agreements with the seller.

1. Employee Concerns

- **Employee Retention and Morale:** Retaining the existing workforce is often crucial for business continuity. Employees possess valuable institutional knowledge and relationships with customers. Addressing their concerns openly can ease the transition, reassure them about job security, and help maintain morale.
- **Employment Contracts and Policies:** Review current employment contracts and benefit packages to determine if they align with your business goals. Be aware of any collective bargaining agreements or union contracts.
- **Employee Liabilities:** Look into any pending employee claims, unpaid wages, or compliance issues with employment laws. These could create future liabilities if left unresolved.

2. Due Diligence Essentials

- **Financial Review:** Verify the business's income by obtaining at least three years of financial records. Assess the accuracy of expenses, ensure there are no hidden costs, and examine tax filings to avoid unexpected tax liabilities.
- **Lease Terms and Assignability:** Review the lease agreement thoroughly, paying close attention to assignability, rent terms, renewal options, and any clauses that may affect future operations. Confirm with the landlord if the lease can be assigned to a new owner and determine if any terms change upon assignment.
- **Licenses and Permits:** Verify that all necessary licenses and permits are valid and can be transferred. Some industries, such as food service or alcohol sales, have strict transfer regulations that may impact your ability to operate.
- **Contracts and Supplier Relationships:** Ensure that key contracts with suppliers and vendors are assignable or can be renegotiated to meet your business needs.

3. Noncompete Clauses

- **Importance of a Noncompete Agreement:** To protect your investment, it's advisable to include a noncompete clause in the purchase agreement. This restricts the seller from starting a competing business within a certain geographic area and timeframe, which can prevent customer and employee poaching after the sale.
- **Scope and Enforceability:** The clause should be reasonable in

geographic scope and duration to increase its enforceability under state law. Too broad a clause may be difficult to uphold, so consult with legal professionals to draft an enforceable agreement.

- **Employee Noncompetes:** Consider implementing noncompete agreements with key employees to prevent them from leaving and joining competitors after the acquisition.

4. Seller Financing

- **Understanding Seller Financing:** Seller financing can be beneficial when bank financing isn't sufficient or you prefer to spread out the financial commitment over time. In this arrangement, the seller finances part of the purchase, typically with a reasonable interest rate and set repayment terms.
- **Negotiating Terms:** Key elements to negotiate include interest rates, repayment schedules, and any collateral requirements. Seller financing can demonstrate the seller's confidence in the business's continued success, as they remain financially invested in its future performance.
- **Due Diligence in Seller Financing:** Evaluate the seller's creditworthiness and payment history if they retain any operational role. Clearly define default scenarios to protect your investment.

5. Post-Closing Seller Employment Contract

- **Purpose of the Contract:** Establishing a post-closing employment contract with the seller can support a smoother transition by allowing the seller to remain involved in the business for a specific period. This arrangement helps ensure customer retention, service continuity, and smooth knowledge transfer.
- **Defining Terms:** Outline the duration of the seller's involvement, typically ranging from a few months to a year. Specify responsibilities, such as introducing the new owner to clients or training employees. Compensation should reflect the value of these services.
- **Non-Interference Clauses:** Include a clause to prevent the seller from interfering with business operations once their employment contract ends, ensuring a smooth handover without ongoing dependency or conflicts.

In Summary

When buying an existing business, taking a comprehensive approach to due diligence, addressing employee and lease concerns, securing noncompete clauses, exploring seller financing, and considering a post-closing employment contract can contribute significantly to a successful acquisition. At every step, these measures help safeguard your investment and position the business for future growth.

For more information or to discuss your unique situation, please reach out to our team. We're here to help you make the best decision as you enter this exciting new venture!

If you have any questions or need assistance, please don't hesitate to contact us at (914) 240-8270 or jdibbini@dibbinilaw.com. We look forward to working with you to ensure the success of your investment property.

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