

How we can help with

Business Purchases

Purchasing a business need not be a leap of faith. Finding out about the target business through effective **due diligence** and using the information obtained to include relevant **warranties and indemnities** in the sale and purchase agreement helps to minimise risk and ensure that the price agreed is the right price.

Due Diligence – Know the target business

Due Diligence is the process by which a buyer and its legal and financial advisers investigate the records of the target business before the buyer proceeds with the purchase.

Once a target business has been identified and the seller and buyer have reached a broad commercial agreement, the buyer and its advisers carry out the legal and financial Due Diligence process. The process involves the buyer submitting a set of questions to the seller which are designed to draw out all relevant information about the target business. The seller responds by providing answers to the buyer's questions together with supporting documentation.

Key benefits to you:

- Disclosure of any problems of the target business thus enabling:
 - renegotiation of the price;
 - inclusion of relevant warranties and indemnities in the sale and purchase agreement (SPA);
 - problems to be remedied before completion of the deal.

If all else fails the buyer can withdraw from the purchase.

Warranties and Indemnities – The buyer's insurance policy

- Warranties – a series of statements in the SPA made by the seller relating to all aspects of the target business. If these prove to be untrue following completion, the buyer can claim damages from the seller for the loss it has suffered.
- Indemnities – a list of specific matters identified as high risk to the business post-completion. If the indemnified matter arises following completion, the buyer can claim compensation on a pound for pound basis from the seller.

Problems identified in the Due Diligence process are included in the SPA either as a Warranty or an Indemnity. If the buyer doubts the seller's ability to pay in the event of a successful Warranty or Indemnity claim, part of the purchase price can be withheld as retention and only paid to the seller after a specified period.

Key benefits to you:

- if a problem arises after completion that is covered by the Warranties or Indemnities, the buyer can claim against the seller.
- the inclusion of Warranties and Indemnities often flushes out further information which can help the buyer renegotiate the value of the target business before completion of the deal;
- a successful claim operates as a retrospective price adjustment.

Like to find out more?

Looking for a business to buy, or found one already? Please contact one of our Solicitors in the Corporate Services Team on 01635 521212 or by email:

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