

Any business is always a risk. Starting any new business, you never know what will come of it and what awaits you. Will you become a millionaire, or will you close your business in six months, deeply regretting how much money, effort, and time you spent. You failed. It didn't work out.

Yes, friends, not everyone becomes a great entrepreneur or businessman, and not everyone is able to create a profitable business from scratch. But on the other hand, almost every person who has money has an opportunity to buy a business already created by someone.

Clients constantly contact me with a request to legally consult them on the purchase or sale of a business on the territory of Ukraine. Some are interested in creating passive income (for those who have not read my article: «How to Create Multiple Sources of Income» – it's high time to do it).

Others are determined to make this business more profitable and conquer new heights. Nevertheless, often, clients contact me at the last stage of the deal. When it would seem, all agreements between the seller and the buyer have been put into place, and all that remains is to find an intelligent lawyer who would competently make an agreement of sale and purchase.

In their opinion. But in fact, such an approach is not correct from a business point of view and carries various risks for the buyer. Both financial and legal.

So what a buyer needs to do in order to buy a ready-made business in Ukraine without risks

1. It is necessary to conduct a legal due diligence I do recommend evaluating a business first before buying it. You need to understand what it actually is – how it works, how much money it brings; for what purposes, and by whom it was first created; are there any risks; whether the business is involved in illegal transactions/dealership. It is also necessary to assess how profitable the business will be, and whether it will be able to bring the profit that you expect. Actually, for such purposes, a legal due diligence is carried out. It will provide you with a lot of useful information, allowing you to understand:

1. When and where the company or business is registered.
2. Who are the owners of the business. What is the organizational, legal, and internal structure of the business.
3. Does the company have the necessary licenses/permits (if, of course, they are required under the Law " On Licensing Certain Activities").
4. Does it comply with the (economic, labor, etc.) laws.
5. What contracts have been signed on behalf of the company, and between whom exactly.
6. What assets does the company have? Whether they were obtained legally. Are there any arrests, prohibitions, encumbrances concerning the company or its assets.
7. Does the company provide financial and/or other required reporting? Are the deadlines being met?
8. Does the company and/or owners have debts to the company? Have loan agreements been concluded? What is the financial condition?
9. Are there any court hearings against the company and/or its owners. After the due diligence has been completed, you will have a complete understanding of the situation, and you will be able to clearly answer the question: "Is this business worth buying? Or not".

I have more than solid experience in legal work (more than 14 years) and I can confidently say that clients who decide to save money and do not conduct a preliminary due diligence (legal audit) before buying a ready-made business, then they are very upset, mildly speaking.

After all, instead of spending more time on business development, they are forced to pay impressive sums of money to lawyers and resolve problems that arose after the purchase.

I am against my clients losing money. I am opposed to them buying ice in a bag, which will then melt.

Therefore, if you want to buy a ready-made company, be sure to conduct a legal due diligence before buying.

2. It is necessary to correctly register a decision to sell/buy a business Now I do not mean your own decision, meaning: «I want this business, I take it!»

We are talking about a documentary (written) decision of the highest management body of the company if the buyer/seller is a legal entity. Moreover, if the buyer/seller is a foreign company, then also we need the Head's resolutions. In an LLC, the supreme governing body, as a rule, is the general meeting of participants (if there are several participants), or the Participant himself (if he/she is one).

It is the top management of the company that must approve the sale/purchase of the company. At the same time, it is advisable to do this both from the side of the buyer and the seller. The decision is formalized in a protocol. I can say that in my practice there have been several cases when transactions for the purchase/sale of companies were contested (they were declared invalid) due to the absence of a decision by the company's supreme governing body for this deal.

So consider this.

3. It is necessary to correctly constitute a conveyancing contract.

Here I would like to note that a well-drafted sales contract is the key to a successful deal. It doesn't matter what you are selling. Share, stocks, real estate, or something else.

If you have a properly drawn up contract, the risks of invalidating it tend to zero.

This, in turn, provides additional protection for your asset that you are purchasing.

It is very important to put on paper in the contract the item (what is being sold), the price, outline the mutual rights and obligations, outline the procedure for the execution of the contract (who does what and when), provide for terms, guarantees, penalties for violation of the terms of the contract, and so on.

One more crucial thing: decide on the law to which the contract will be subject and the place (country) where the dispute will be considered if something goes wrong. So that the client does not have any questions later, like – is it possible to be at suit in a foreign state? You has to be aware of what kind of courts there are in Ukraine...

If the seller/buyer of the business is a foreign company, be sure to provide in the contract a condition according to which they must provide documents on the registration of the company, its location, director/head, ultimate beneficiaries. The above documents must be issued in the country of registration of the seller/buyer, apostilled (if the country has joined the Hague Convention), and sent to Ukraine. Here you will need to translate them into Ukrainian.

4. It is necessary to register/obtain permission to this action from the registrar/notary, as well as other authorities (including government).

If the audit showed that everything is ok with the company/business, you can buy it. If before buying it is necessary to obtain merger approval from the Antimonopoly Committee of Ukraine, you can get it.

If you sell shares and need to conclude an agreement with a custodian, submit documents to the Securities Commission – do it! After all this, the only thing left for you is to inform the state that the owner of the business has changed.

Both the registrar and the notary can help with this (although the latter will be much more expensive). And there still is one more important issue where you can't go wrong. As far as seemingly simple technical work of preparing and filling out protocols, acts, cards, etc. is an incredibly important element in the overall chain of the entire deal.

An important point: not all registration actions can be carried out on the same day. First, according to the procedure, the owner/participant is changed (if you buy 100 percent of the corporate rights in an LLC). And only then (a few days later) – the company's head, legal address, telephone number, etc.

5. It is necessary to receive from the seller the originals of documents, material values, etc.

When settlements in cash between the parties are fully or partially completed, and the procedure is practically completed...

Particularly, you signed the acceptance and transfer certificate of a share with the seller (if you buy corporate rights of an LLC), notarized it, took other actions related to making the necessary changes to the register), you can already receive from the previous management of the company originals of important documents (charter, protocols, contracts, orders, licenses, patents, etc.), as well as all existing seals, keys, including for various accounting programs (1C, MeDoc), and other material values.

How to do it? It's that simple! It is enough to indicate everything that is transmitted/received in the corresponding acceptance and transfer certificate. I recommend prescribing the need for such an act in the corporate rights purchase and sale agreement initially.

6. And for the absolute last, after all of the above, you can already settle with lawyers for the support of the transaction. Let's face it... :)

Well. I believe that now you can imagine how the buying transaction for the purchase/sale of almost any (except for small) ready-made business in Ukraine should proceed properly.

If you still have any questions or need professional legal support for your business in Ukraine and abroad, email me and we will discuss all the details: ashkudun@gmail.com

Best regards,

Alex Shkudun

Attorney at law