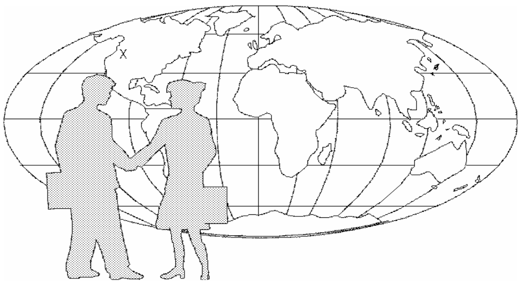
Building Your Future in British Columbia, Canada



Government of British Columbia
Business Immigration Office
Suite 730 - World Trade Centre
999 Canada Place
Vancouver, British Columbia - Canada V6C 3E1
Tel: 604 775-2227 Fax: 604 660-4092
Website: www.businessimmigration.gov.bc.ca

Buying a Business or Partnership in British Columbia

This publication was written for those planning to purchase a business or enter a partnership, regardless of whether the operation is a limited company, proprietorship, legal partnership or joint-venture.

Joining an existing business or entering a partnership are excellent ways for a newcomer to go into business. The company can benefit from the new manager’s skills and from an investment to finance its growth. The newcomer can benefit by joining a company with a business history, something which should provide less risk than he or she would face in a new business. In addition, by gaining a partner or employees familiar with local suppliers, customers and market conditions, the entrepreneur should be able to learn about the industry much more quickly and easily.

If organized carefully, either a purchase or a partnership can be a very profitable long-term arrangement. Done quickly and without good planning, many serious problems can arise. The following information was produced to assist those evaluating a business in British Columbia. **Always** get professional advice from a qualified accountant and a lawyer before signing an agreement to buy all or part of a business.

Qualities of a Good Business Opportunity:

1. Earns sufficient income to provide you with a good living,
2. Needs the business skills you have,
3. Any potential partner has a personality you can work well with,
4. You and your partner or key employees have similar objectives for the company's future,
5. Financial statements show increasing sales and profits,
6. Clear evidence exists that customers want the company's products or services,
7. Good potential for growth and expansion,
8. Has a unique and continuing competitive advantage.

Recommendations:

1. Do your own detailed examination of the business including an assessment of:
   - ★ the skill of the employees,
   - ★ its ability to efficiently produce and deliver its product or service,
   - ★ its ability to service and maintain any existing customers,
   - ★ its ability to develop new customers and markets,
   - ★ its ability to produce sufficient goods or services to meet the needs of new customers,
   - ★ its financial position (assets, debts, monthly cash flow, sales history & profitability)
   - ★ its reputation among suppliers and customers,
   - ★ the personal reputation of the current owner(s).

2. Once you have finished your own examination, and have decided to continue evaluating the business, have your accountant examine the business to:
   - ★ determine if all the financial information provided is correct,
   - ★ advise you whether the amount you plan to invest is fair for the amount of equity you will receive in return,
   - ★ ensure there are no hidden debts or unstated obligations,
   - ★ provide his or her professional opinion of the opportunity.

3. If the business is a partnership:

   Discuss with your potential partner what your expectations will be from the company and from each other, as well as short, medium and long term goals for the business. This will allow you to determine whether or not you have the same objectives. If this step is positive, you can begin to negotiate a partnership agreement including:
   - ★ definition of the role, responsibilities and authority of each partner,
   - ★ responsibility for later cash requirements of the business,
   - ★ partner's salaries & profit sharing arrangements, present & future,
   - ★ access to financial records of the business,
   - ★ a buy-sell clause between partners,
   - ★ insurance to protect the company in the event of injury or death of a partner,
   - ★ rules regarding the future sale or transfer of company shares to others (new partners, family etc.),
   - ★ how you will solve any disagreements that may arise later,
   - ★ any other item(s) you feel are of concern.

   You can work out the majority of the points of agreement between yourself and your partner. Once you are both agreed on the basic points you can proceed to step 5.

4. If you are purchasing a limited company (corporation):

   A limited company can be purchased in one of two different ways. The first method is buy all the outstanding shares of the company. In this scenario, the company continues to exist as before, with the exception that it will have a new owner. This is very good for continuity as the employees, customers and suppliers see no formal changes in their business relationship. On the negative side, the new owner will become responsible for any existing debts or obligations of the company, including those the previous owner did not know or tell about.

   For this reason, many people prefer to buy a company's assets rather than its shares. In this alternative, the purchaser forms a new limited company which buys the equipment, lease, customer list and other important elements of the business, but does not buy the business itself. The buyer can choose whether or not to hire the company's previous employees.
   This method offers protection against unknown or undisclosed debts, but can cause difficulties with customers and suppliers as both find themselves dealing with a new company with no history or experience.

   Before choosing which scenario to use, it is important to understand some tax issues. Normally, the owner of a small business is motivated to sell shares rather than assets because, if they sell their shares for a profit over what they originally invested, they can take up to $400,000 in tax free capital gains. If they sell the assets only, any profits will be taxed. This gives the seller the incentive to be more flexible on the price if the buyer is willing to purchase shares instead of assets.

   A smart buyer will consider this method if it provides a price advantage or if corporate continuity is highly desirable. Responsibility for previous debts or obligations can usually be handled by holding a certain percentage of the purchase price in escrow with the buyer's lawyer, while the lawyer checks for any problems. If there are any debts, that money is used to pay them. If not, the seller gets the balance of the purchase price when the checks are complete.

5. Make certain to have your lawyer examine any agreement before you sign it to ensure the documents are legal, reasonable and in your best interests.

   Important Notes:

   ★ don't use the same lawyer or accountant as the business you are considering investing in. Your own professionals will act on your behalf only.

   ★ don't invest in a company without a formal partnership agreement that has been approved by your lawyer. The cost of legal advice for an agreement is small compared to the amount required to settle a dispute later on.

Lease Agreements
It is a very important part of small and medium size businesses. Please make sure that there is enough time left at a reasonable rate so that you can operate the business to pay back the investment. If you are purchasing a business that is running towards the end of a lease, it is always advisable to purchase with subject that you can renew the lease at an acceptable rate for three or more years. Lease Agreements are sometimes complex and have terms and agreements that are best looked at by your lawyers.

Non-Competition Agreements
It is common in North America to request a non-competition agreement from the seller of a business or from a partner. A non-competition agreement is a contract which restricts a person's business activities by limiting the areas in which that person may operate. For example, the buyer of a retail operation would not want the former owner to open a competitive shop right next door. A common solution is to have the former owner, as a condition of the sale of the business, sign an agreement not to compete in that business in that market.

Most non-competition agreements are for a specified period of time, five years being very common. They usually specify the geographic areas in which the person may not operate and the type of business they may not undertake. It is important to note that Canadian law does not allow a non-competition agreement to be so restrictive that it denies a person the opportunity to earn a living. A good agreement then, will prevent a former business owner or partner from competing directly with the company, without preventing them from earning a living in that business in a different market.

Valuing a Company for Investment Purposes
Every company has a value which can be estimated. No matter how complicated the valuation process, the fact to remember is that the ultimate purpose of investing in a business is to earn an income, and the return to the owner must reflect the amount invested and the degree of risk taken. An independent valuation by a qualified professional is highly recommended.

In some cases, a company may try to convince a potential partner that part of the owner's compensation is taken in cash and not reported on the financial statements or tax returns. While this may appear attractive, there is no way these claims can be verified and they should be ignored in any valuation of the company. As well, this practice is illegal and can cause serious problems for anyone involved.

Deposits or Offers to Purchase
Sellers sometimes request a deposit and/or a signed offer to purchase the business before they will provide financial statements or other detailed information. This is done to protect confidential information. This request should not present a problem to the serious buyer so long as the amount of the deposit is reasonable. You must, however, make certain you have a receipt and a written statement that your deposit is refundable in full if you do not reach a satisfactory agreement to become involved in the business.

As well, any offer to purchase or invest in a business should state in writing that the purchase will be subject to the business being deemed satisfactory after a thorough examination by the entrepreneur, and subject to completion of a satisfactory purchase or partnership agreement between the parties.

Business Structure

The most common method of buying ownership in a business is to purchase some of the shares of a limited company. The percentage of ownership is determined by dividing the number of shares you will own by the total number of shares issued (e.g. 100 shares owned ÷ 200 shares issued = 50%).

If the business is not already a limited company, but is a sole proprietorship or a legal partnership, it may be best to form a new limited company and issue shares to the owner(s). This procedure is not difficult and is relatively inexpensive. As well, an incorporated company will provide the owner(s) with some additional shelter from personal liability and will make it easier to transfer additional shares to future partners or investors.

It is important to be aware that a company can issue several types of stock including common shares and preferred shares. Each type may have different rights regarding such things as voting and the distribution of profits (dividends). If you are to have a voice in the operations of the company it is important that your shares have voting rights. Normally, companies issue common voting shares to those who are running the company. Those people who, individually or together, own more than 50% of the voting shares of a company are in the position of controlling the company, unless there is something in the partnership agreement and/or articles of the corporation that indicates a different arrangement.

What your investment will be used for should be clearly stated in your purchase agreement. It is best if all the money you are investing is used to help the company grow (for equipment purchase, working capital, marketing etc.). If some of the money you invest is to be used to buy out an existing partner, or for reducing company debt, you should be certain the company will still have enough money to meet its objectives.

Negotiations

The negotiation process can be as fast or slow as both sides wish, depending on the level of interest and each person's situation, however, negotiations are normally done through a series of meetings at which more detailed information is gathered as the potential partners become more familiar with each other. A typical scenario of meetings in British Columbia might be as follows:

- ★ *First meeting*) Tour the business and gather general information about the company and its owner(s). Each of the parties might also discuss their personal objectives and expectations. The main purpose of this meeting is to determine the compatibility and interest of both sides.

- ★ *Second meeting*) Discuss further details about the business including operations, customers, employees, as well as the possible role of the new partner.

- ★ *Later meetings*) Obtain copies of the company's financial statements, discuss details of a possible agreement, negotiate the amount of the investment and the percentage of ownership that will be received in return.

Cautions:

Be certain to use reasonable caution when considering a business investment and make certain to involve your professional accountant and lawyer in the process before you sign any agreement or make an investment in a business. Be wary of any business opportunity that seems "too good to be true" or deals the seller insists on completing in a hurry. Avoid real-estate salespeople and immigration consultants who guarantee successful immigration based on making a business investment. No one can guarantee successful immigration. Those people considering investing in a partnership to fulfill the terms and conditions of their entrepreneur immigrant visa should contact the B.C. Business Immigration Branch to discuss the eligibility of their project before making a commitment.

Contacts:

Business Immigration Office
#730 - 999 Canada Place
Vancouver, British Columbia
V6C 3E1 Canada
Tel: 604 844-1810 Fax: 604 660-4092
www.businessimmigration.gov.bc.ca
(additional publications on locating business opportunities and starting a business in British Columbia)

Canada/B.C. Business Service Centre
601 West Cordova Street
Vancouver, British Columbia
V6B 1G1 Canada
Tel: 604 775-5525 Fax: 604 775-5520
www.smallbusinessbc.ca
(relevant publications available as well as excellent resource books on this topic in their business library)

Institute of Chartered Accountants
1133 Melville Street
Vancouver, British Columbia
V6E 4E5 Canada
Tel: 604 681-3264 Fax: 604 681-1523
www.ica.bc.ca
(referral service for chartered accountants)

The Canadian Bar Association
845 - 10th Floor, Cambie Street
Vancouver, British Columbia
V6B 5T3 Canada
Tel: 604 687-3404 Fax: 604 669-9601
www.bccba.org
(referral service for lawyers)

Provincial Registrar of Companies
P.O. Box 9431, Stn Prov Govt,
Victoria, British Columbia
V8W 9V3 Canada
Tel: 250 387-7848

(registration of corporations in B.C., computer searches to determine ownership of British Columbia corporations)