Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801

"Tip of the Month"

Independence Day

Business Buyouts

Buying a business can be transacted in a large variety of styles. Sometimes by what are called acquisitions and mergers, buyers can take title to all or part of an existing business (the Target). This can be done in-house by people working at the business, or by outsiders who are either closely related or completely unrelated to the Target.

Most American businesses are privately held, meaning their shares are not traded on a public stock exchange. If the privately-held business is a corporation or a limited liability company (LLC), that business will have shares. Every Target has assets. The buyer can buy either the assets or the shares.

Most buyers want to buy assets. If they buy the shares, buyers get both the assets and the liabilities. Buyers do not want the liabilities, only the assets. Buyers must conduct due diligence before the buyout to identify all the liabilities and get rid of them. These due diligence terms are usually reflected in a purchase agreement before the closing.

The purchase agreement can be either stock purchase or asset purchase depending on the circumstances. Sometimes the buyer wants a stock purchase because the Target has permits or contracts or other connections that would be hard for the buyer to get by starting all over again with only the assets. These existing connections come with stock ownership.

The buyout can also occur by merger. This is where the Target's shares are converted to those of the purchaser. Merger can be the preferred vehicle for buyout in some financial or industry circumstances, and also for tax purposes. The configuration of stockholders and debt holders of the Target might call for a "reverse triangular cash merger."

Whatever the arrangement, the purchase documents and due diligence steps should look beyond the closing to the reality of the intended business operations after the closing. This requires consideration of the personnel working at the Target, and the customers and vendors. The buyer also has to get assignments of leases for equipment and premises.

In addition, all arrangements result in the buyer taking title to the Target's assets. These assets are tangible, like furniture and equipment, real estate and vehicles, and intangible, like goodwill, going concern value, and intellectual property. The buyer wants to make sure these assets are clearly identified with good title before paying to buy them.

If you are considering buying a business, please give us a call at 668-1971, or contact us by email at mailbox @ biz-patlaw.com.

Frank B. Mesmer, Jr., Esq.
Robert R. Deleault, Esq.

(603) 668-1971
Fax (603) 622-1445
E-mail: mailbox @ biz-patlaw.com
Visit our web site at: www.biz-patlaw.com