



THE LEGAL INSIDER

of Mr. Alain P. Lecours

COMMERCIAL LAW

Business Acquisition & Due Diligence – An Unbreakable Rule

A business acquisition transaction often implies a very complex operation in which several considerations may intervene in the determination of the purchase price. Although the seller normally provides the buyer with various attestations concerning the property title to be transferred, the buyer should consider a **due diligence** period to protect himself from future litigations, as well as to secure his property title and the accuracy of the offered purchase price.

A due diligence period, allowed to the buyer, is of major importance within any negotiation process leading to a successful business acquisition transaction. While performing his due diligence, the buyer investigates the company's accounting documents, the current and applied for contracts, the business inventory, the employment contracts, the company's property titles, any commercial lease, the business premises, the tangible and intangible assets' value, as well as the company's debts.

Notwithstanding the buyer's general knowledge of the business he projects to acquire, performing a due diligence remains the key element for the success of its acquisition. One may focus its analyze on the assets value to be transferred, while several other considerations may influence the purchase price, such as: the company's accounts payable, any severance benefits to be paid to the company's employees, existing and projected non-competition and non-solicitation undertakings of key employees, the transfer process provided for in the commercial leases, as well as the current and foreseeable litigations involving the purchased company.

Furthermore, as it is possible for any unpaid creditors of the vendor, who suffer prejudice, to obtain a declaration that the transaction may not be set up against them, it is of very importance for the purchaser to obtain an exhaustive list of every unpaid creditors of the vendor before entering in the business acquisition transaction. In certain circumstances, it could be to the purchaser advantage to pay the vendor's debts directly out of the sale price.

In every business acquisition transaction process, it shall be granted to the purchaser a sufficient period of time to perform its due diligence. The analysis performed during the due diligence period shall not only focus on the assets to be transferred, but also on every key elements constituting the company to be acquired. A conscientious purchaser would also secure its projected profits ensuing from the acquisition as being enough realistic and permanent. Meanwhile, the purchaser will be well advised to consult a legal counsel, an accountant and, if needed, a fiscal adviser.

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Mr. Alain P. Lecours

LECOURS, HÉBERT LAWYERS INC.

354, rue Notre-Dame Ouest

Bureau 100

Montréal, QC, Canada H2Y 1T9

Téléphone : (514) 344-8784

Télécopieur: (514) 344-9790

Lecours@LecoursHebert.com

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