

# EVALUATING A BUSINESS OPPORTUNITY

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## SOME GENERAL CONSIDERATIONS

When buying an existing business, investing in a franchise, or beginning a new business, the entrepreneur should thoroughly evaluate the business opportunity he or she is considering. This step is very important but often overlooked; many times, a person's hopes for a business cloud his or her judgment. It is not uncommon for an entrepreneur to invest a substantial sum in a business without analyzing whether the business opportunity is a viable one. In addition, it is not uncommon for an unscrupulous business promoter to take advantage of such an entrepreneur.

Although there are no foolproof steps to take in evaluating a business, this section offer guidance on the types of questions to ask, and sources of information to review, before investing in a new business (whether or not it is a franchise) or buying an existing business. Assuming that after evaluating the opportunity the entrepreneur still wants to proceed, the sections of the Minnesota Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota* on Accounting for the New Business – Income Forecasting Techniques, and on Business Plans, should be consulted.

It is worth emphasizing here that an entrepreneur's analysis and evaluation should occur before he or she makes any kind of commitment (even oral), whether contractual or financial, to the business, or makes any payment, of any size, in connection with the business. In any event, a potential entrepreneur should carefully avoid obligating himself or herself to participating in any business opportunity, in any way, without first evaluating that opportunity.

## SOURCES OF INFORMATION

One source of information is the Minnesota Attorney General's office, at (651) 296-3353, online at [www.ag.state.mn.us](http://www.ag.state.mn.us) and the Better Business Bureau, at (651) 699-1111, online at [www.minnesota.bbb.org](http://www.minnesota.bbb.org) to determine if any complaints have been filed in connection with that business. Also, the National Consumer League's (NCL), National Fraud Information Center (NFIC) is a private, nonprofit organization that operates a consumer hotline to provide service and assistance in filing complaints against unscrupulous business operators. The NFIC helps the FTC and state Attorneys General by entering complaints into a computerized database to help track and identify operators of business frauds. Contact the NFIC at (800) 876-7060, online at [www.fraud.org](http://www.fraud.org). These are prudent, but not foolproof, steps in evaluating any business opportunity.

Note that the FTC is another potential source of information about the offeror. The FTC's website, [www.ftc.gov](http://www.ftc.gov), contains a summary of each of the FTC's legal actions against offerors of franchises and business opportunities, along with information on specific types of fraudulent business opportunities that the FTC has become familiar with. Also, the website contains a copy of the FTC's brochure, *Franchise and Business Opportunities*, which summarizes the types of protections provided to entrepreneurs by the FTC's *Franchise Rule Compliance Guide*, 16 C.F.R. section 436 (the FTC Franchise Rule). Remember that, as discussed in more detail in the Franchise Registration section of the *Guide*, the Minnesota Department of Commerce also will have copies of the registration statement made by the offeror of any franchise or business opportunity that is a franchise within the meaning of the Minnesota Franchise Act, Minn. Stat. § 80C.

## SPECIFIC INFORMATION TO SEEK FROM THE OFFEROR

If the franchise or business opportunity is a franchise under the Minnesota Franchise Act, the offeror is required to make certain filings, including the Uniform Franchise Offering Circular (UFOC) with the Minnesota Department of Commerce, before offering that franchise or business opportunity to anyone. See the section of the *Guide* on Franchise Registrations. Note that although the UFOC will contain certain detailed information on the business opportunity or franchise, including audited financial statements, it is not the job of the Minnesota Department of Commerce, or any other government agency, to assess the merits, completeness, or even accuracy of any of the information contained in a UFOC. That work is for the entrepreneur.

Similarly, if a franchise or business opportunity does not meet the definition of a “franchise” for Minnesota state law purposes, it nevertheless may be subject to the FTC Rule. Similar to the Minnesota regulation of franchises and business opportunities, the offeror of a business venture covered by the FTC Rule must provide certain information to the prospective offeree. Also, and again similar to the Minnesota system of regulation, it is not the job of the FTC to assess the merits, completeness, or even accuracy of the information mandated by the FTC Rule.

Even for ventures not regulated by the Minnesota Department of Commerce or the FTC, the FTC in its *Franchise and Business Opportunities* brochure recommends that an entrepreneur seek the following information before investing or committing to a franchise or business opportunity:

- Talk to any persons named as owners or investors in the opportunity. Don’t rely on persons listed as “references”, unless it is clear that they are truly owners or investors.
- Carefully and thoroughly investigate any claims made about potential earnings. Seek written information on this topic, not just oral statements, and seek the most detailed information available (i.e., do not rely on broad claims such as “we are a ten billion dollar industry”). Independently analyze, if possible, the written basis for those claims. For example, the entrepreneur could hire his or her own CPA to independently audit that information.
- Seek similar information from the business competitors of the offeror. For instance, seek the UFOCs from other offerors of similar franchises or business opportunities.
- Be aware of high pressure sales tactics, and consider why they are being used; if the offeror does not have any other way to sell the franchise or business opportunity, do you really want it? Be wary of any oral statement that differs from any statement made in writing. Also be wary of any presentation that promises “easy money”. Successful entrepreneurs almost always agree that there is no “easy money”, and that owning one’s own business, while rewarding, takes a great deal of time and energy.