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# 购买和出售企业 专业指南

税收、价值评估、法律和会计核算

[美] 威拉德·D·霍里奇(Willard D. Horwich)/著

Professional's Guide  
to Purchase

and Sale  
of a Business

Taxation, Valuation,  
Law and Accounting.

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著 者: [美]威拉德·D·霍里奇

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## 中文版序

以一句很多人使用的话说，会计行业近两年正处于争论的漩涡之中。

2001年以来，美国爆发一系列财务虚假案，使得安然、世通等巨型公司破产，也导致安达信这样一个有着九十多年历史的世界级会计师事务所饱含屈辱地退出审计市场。安然和世通等事件的影响巨大，损失了几十亿美元的价值。人们开始质疑，这些巨人公司的账面价值到底在多大程度上是真实的？事实上，公众对这种价值创造所依赖的会计和财务制度的信任已经动摇。为了重树公众信心，美国制定颁布了《公众公司会计改革和投资者保护法》（Public Company Accounting Reform and Investor Protection Act of 2002），简称为《萨宾纳斯—奥克斯莱法案》（Sarbanes-Oxley Act），对美国而且对世界各国会计、公司治理以致整个证券市场，都产生了相当大的影响。

在中国，上述问题也一样沉重。由于与会计信息相关的违规行为而被证监会查处，或被沪深证交所公开谴责和批评的上市公司，已经是越来越多。在一张张让人不放心的公司财务报表面前，公众感到疑惑，无所适从。银广夏和中天勤案件的查处，让会计师和注册会计师面临空前的信任危机，会计和审计专业的信誉面对巨大的挑战。

在会计信息和资本市场问题上，存在着一个“公司财务报告供应链”。谁组成了公司财务报告供应链呢？毫无疑问，公司财务报告供应链启动于公司内部管理层，他们是原始会计信息的拥有者，他们负责编制和向投资者与其他利益相关者提供财务报表，并承担会计信息质量的最终责任。实务中，会计报表和财务报告由CFO领导下的公司财务报告系统编制，由CPA进行独立审计鉴证，经过董事会批准和股东大会通过后予以公布，还要由证券分析师进行分析，由媒体进行信息传播。在获得上述直接和间接财务信息的基础上，投资人和其他利益相关者做出自己的决策。

显然，这个长长的公司财务报告供应链由许多环节组成，每个环节都有不同的供给方和需求方。

从公司财务报告供应链的视角看，应该说，财务信息的可靠性是由链条中的所有各方共同保证。当然，社会和公众有理由对链条中最为重要的两个环节——会计师和审计师——提出更高、更严格的要求。会计师和审计师必须在具备诚信度的同时，把透明度和受托责任奉为职业要素。

写了以上几段话，是为了引出对本套中信财会图书馆影印系列专业书籍的认识和介绍。这套系列丛书包括12本书。大体上可以归为三类：

第一类：《会计案头必备：财会人员日常速答手册》、《金融工具——会计及财务报告综合指南》、《商业企业与工业企业财务比率年鉴》、《购买和出售企业专业指南：税收、价值评估、法律和会计核算》、《启动财务——企业初创阶段筹集资金指南》。这几本书的内容聚焦于企业会计和财务管理人员的日常专业工作。

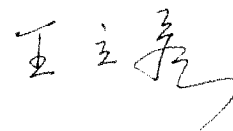
第二类：《审计委员会——公司董事、管理层以及咨询人员指引》、《会计违规和财务欺诈》、《审计程序》、《审计人员风险管理指南：审计与企业风险管理的结合》。这几本书的内容聚焦于审

## ii PROFESSIONAL'S GUIDE TO PURCHASE AND SALE OF A BUSINESS

计方面，维护财务信息质量是共同主题。

第三类：《欧洲会计指南》、《国际会计准则指南》、《FASB准则的再阐释与分析：GAAP指南》。这几本书的共同主题是会计规范。

总而言之，这12本书是一套财会方面的好书，既包含有详细的专业规范，又包含了丰富的实务经验，具体应该特别指出以下重要话题：其一，与公司治理有关的机制问题，《审计委员会——公司董事、管理层以及咨询人员指引》非常值得细读；其二，有关《萨宾纳斯—奥克斯莱法案》的问题，在《会计案头必备：财会人员日常速答手册》一书中专设一章“The Sarbanes-Oxley Act of 2002”予以介绍；其三，《购买和出售企业专业指南：税收、价值评估、法律和会计核算》、《启动财务——企业初创阶段筹集资金指南》等书的主题，不在会计、审计方面，而是专项财务管理；其四，我国会计界对英美制度关注比较多，而对欧洲国家的会计制度了解很少，对此，阅读《欧洲会计指南》会有收益。



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## About Panel Publishers

Panel Publishers—comprising the former Little, Brown and Company's Professional Division, Wiley Law Publications, the Bureau of Business Practice, Summers Press, Harcourt Professional Publishing, and Loislaw—is a leading publisher of authoritative treatises, practice manuals, information services, and journals written by specialists to assist attorneys, financial and tax advisors, and other business professionals. Our mission is to provide practical solution-based how-to information keyed to the latest legislative, judicial, and regulatory developments.

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## **ABOUT THE AUTHOR**

Willard D. Horwich, Esq., has been a certified public accountant since 1953 and a member of the State Bar of California since 1959. He has written several books and articles pertaining to tax issues in bankruptcy, business, and legal matters. Mr. Horwich's law practice primarily deals with tax and probate issues of all descriptions, including the litigation of tax controversies. He also is an adjunct professor of tax law in the Masters of Law program at Golden Gate University, California.

# PREFACE

## New in This Edition

To provide additional legal and accounting guidance in buying and selling a business, the 2002 edition of *Professional's Guide to Purchase and Sale of a Business* contains new material in the following areas:

- Updated Section 12.9 on corporate reorganizations
- The latest tax regulations and legal developments
- Full text of relevant federal and state statutes and regulations on CD-ROM

The updated and enhanced 2002 edition of *Professional's Guide to Purchase and Sale of a Business* brings into one place the different legal and accounting concepts that are necessary for an intelligent approach to the purchase or sale of a *small business*—defined for purposes of this book as one small enough to be acquired by one person. It might be a retail store doing \$50,000 a year in sales, or a rather substantial manufacturing business with several plants in different locations and doing millions of dollars of sales a year.

Whether the buyer is sophisticated (e.g., a corporate executive who deals in business acquisitions) or a novice (e.g., someone buying into the American dream of owning his or her own business), a substantial amount of money is going to be committed to the purchase. Frequently, the amount of money represents the majority of the assets of the buyer. To attempt such a purchase without an appropriate investigation and without competent advice by professional advisors is, except in the very rarest of situations, to put the entire investment at risk.

The purchase of even a modest-sized business requires certain business, legal, and accounting skills that the average entrepreneur usually does not possess. The professional expertise of lawyers and accountants is often necessary for the legal, accounting, and tax matters that arise during the purchase transaction. The complexities of the current tax laws dictate significant tax considerations in every acquisition and sale. Indeed, at times the tax considerations seem to dwarf the other aspects of the transaction.

*Professional's Guide to Purchase and Sale of a Business* differs from typical reference books: It combines information, references, and source materials dealing with both the accounting and the legal matters of the purchase or sale of a business. It is a rare businessperson who has the accounting or legal background, or both, with which to take on the challenges of purchases and sales of small businesses. Almost invariably, the investor turns to his or her accountant or lawyer, or both, for advice and professional services with respect to the transaction. The roles of the professionals are related. The accountant's primary duties are to determine the value of the

business and to verify the financial data presented by the seller. To do so, the accountant must be conversant with the legal contents of representations and warranties, contracts, misrepresentations, and breaches. Lawyers are asked to determine in what type of business entity the buyer should operate, to review the purchase documents, and to protect the buyer's investment or to be sure the seller is adequately secured. The lawyer must be concerned with accounting matters because the basic information in regard to a business is found in the financial statement. A lawyer who is reluctant to deal with financial statements and numbers, and the relationships between financial statements and numbers, and the relationships between financial statements and contracts, will be unable to cope with the problems that are found in connection with business acquisitions or sales.

## How to Use This Book

*Professional's Guide to Purchase and Sale of a Business* is structured as a guide to lawyers and accountants who are advising clients in business purchase and sale transactions. It is not intended to be a treatise on accounting, contracts, taxes, or litigation in regard to business purchases and sales. Rather, the material sets forth the information that the professional advisor must be aware of in order to give competent advice to his or her client. It will enable the advisor to address the many questions to be considered, including:

- Are the assets worth the amount of the consideration asked for the business?
- Are there hidden liabilities lurking in the background?
- How will the buyer find out about these things?
- How can the buyer protect himself or herself from outright misrepresentations or from inadvertent misunderstandings?

Although introductory, Chapter 1 offers important guidelines about the manner in which investigations are made and the way small business purchases and sales are initiated. Chapters 2 and 3 are a basic review of book-keeping procedures, financial statements, and the manner in which financial statements are prepared. These chapters do not constitute a text on accounting. Instead, they are an introductory guide for nonaccountants, particularly lawyers, into the construction and meaning of financial statements.

The new Chapter 4 discusses the basics of the valuation of a business. Chapters 5, 6, and 7 are designed to guide the lawyer through the due diligence phase of the purchase transaction. Chapter 5 is a review of the business entity and those problems that are encountered in the verification of the business structure. Chapter 6 examines financial statements and related due diligence procedures, and contains material on computer problems related to the year 2000 as well as a section on environmental controls. Chapter 7 is the investigation on behalf of the seller, which, of necessity, is simpler than the buyer's investigation.

Chapter 8 is a review of those considerations that are peculiar to the purchase of a franchise business. This chapter is primarily a review of the requirements of the Federal Trade Commission rules regarding disclosures in franchise sale transactions.

Chapter 9 is an introduction to the problems that are found in business buyouts. This type of transaction is one where one of the owners of a business is acquiring the business from the others. In this type of transaction, the due diligence requirements are relatively minimal.

Chapter 10 reviews some of the problems encountered in an intra-family transaction. Family dynamics are considered, and there is a review of some of the estate planning techniques that are currently included in some of these transactions.

Chapter 11 is a survey of the principal tax problems and considerations in regard to the acquisition of the business. While it is not a text on these tax matters, this chapter illustrates the common tax problems and considerations that must be reviewed during a business acquisition. Chapter 12 deals with the tax consequences of the collection of the sales price and is slanted toward the seller. Installment sales and corporate reorganizations are discussed. Chapter 13 considers the tax consequences to both the buyer and the seller when full payment of the purchase price is not made. Bad debt losses and real estate foreclosures are two of the problems that are reviewed.

Chapter 14 is an introductory discussion of litigation in failed purchase and sale transactions. A brief review is made of the available remedies and alternatives to litigation.

Chapters 15 and 16 are illustrated agreement forms. These agreement forms are annotated with a discussion of the reasons and purposes for each of the clauses, as well as observations and cross-references to the other chapters. The forms in Chapters 15 and 16, all of which are easily adaptable to a particular transaction, may also be used as checklists for determining whether the documentation of the transaction is being adequately covered.

## ACKNOWLEDGMENTS

The 2002 edition of *Professional's Guide to Purchase and Sale of a Business* is the product of over 40 years of experience and dealings with the purchase and sale of a variety of business enterprises. Those learning experiences have helped to make this book both a guide to the new practitioner and a reference for the more experienced. I would fail in my obligation as an author if I were to suggest that this book is all mine. It is true that all of the errors and miscalculations belong to me, but any credit must be shared.

My wife, Deloris, has heard about this revision and its writing for endless hours. She has encouraged and contributed to its creation beyond any possible expression of acknowledgment. Holly LeQue, my very patient and dedicated secretary, has also contributed enormously. My appreciation goes to John Koschei for his help in guiding and shaping the content of this revision. Finally, I would like to thank my editors, Susan Chazin and Rosemary DeStefano, for their suggestions and encouragement, without which this book could not have been completed.

# ABOUT THE COMPUTER DISC

## System Requirements

- IBM PC or compatible computer with CD-ROM drive
- Microsoft® Word 6.0 (or above) for Windows™, Adobe Acrobat Reader 4.0 (or above), WordPerfect® 7.0 (or above) for Windows™, or compatible word processor
- 7 MB available on hard drive (if you wish to place CD contents on your hard disk)

The CD-ROM provided with the 2002 edition of *Professional's Guide to Purchase and Sale of a Business* contains RTF (Rich Text Format) and Acrobat® PDF files, which correspond to work papers, sample letters, agreement forms, and checklists contained in the *Guide*, plus all relevant federal government documents, including Internal Revenue Code sections.

The list of the Computer Disc Contents is available on your CD-ROM in a file called `_Contents.rtf`. Open the file `_Contents.rtf`. To open any listed file, click on the hyperlinked filename. If your word processor doesn't support hyperlinked documents, you will need to open each document directly. You can open the contents file and view it on your screen or print a hard copy to use for reference.

## Using the Hyperlinked RTF Documents

To use the RTF documents, simply double-click on a filename (in Windows Explorer, My Computer, File Manager, etc.) and your default word processor will then load the document. All modern word processors will automatically import RTF files. You may then edit the document and save it to a location on your hard disk. If you like, you may copy all the document files from this CD-ROM to your hard disk and use them without the CD-ROM inserted in your CD-ROM drive. If you do so, remember to remove the "Read Only" attribute from the files you have copied.

## Using the Hyperlinked Acrobat® PDF Documents

To use the PDF documents, simply double-click on a filename (in Windows Explorer, My Computer, File Manager, etc.) and Acrobat Reader® will then load the document. If you like, you may copy all the document files from this CD-ROM drive. If you do so, remember to remove the "Read Only" attribute from the files you have copied.

If you do not have Adobe Acrobat Reader® installed and you are running Windows 95 or higher, open the `\Acrobat` folder on this CD-ROM and run the file `ar50eng.exe` (or double click on `ar50eng.exe` in Windows Explorer or My Computer) to install Acrobat Reader®.

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If you need technical support for this product, please call 1-800-486-9296 or send an e-mail to [aspentechsupport@libera.com](mailto:aspentechsupport@libera.com).

## Word Processing Tips

Wherever possible, the text of the documents has been formatted so that you can modify the text without altering the format of the documents.

If you are working within a table, you may find the following tips useful. To maneuver within a table, press TAB to move to the next cell, and SHIFT + TAB to move backward one cell. If you want to move to a tab stop within a cell, press CTRL + TAB. For additional tips on working within tables, consult your word processor's manual. It might be helpful to turn on the invisible table lines in Microsoft Word while modifying the document by selecting Gridlines from the Table menu. In WordPerfect, select Reveal Codes and Show Paragraphs from the View menu to reveal all formatting codes and formatting tools such as QuickStops; this will help you to determine the shape of the table.

Microsoft Word and WordPerfect are equipped with search capabilities to help you locate specific words or phrases within a document. The Find option listed under the Edit menu performs a search in both Microsoft Word and WordPerfect.

*Important:* When you are finished using a file you will be asked to save it. If you have modified the file, you may want to save the modified file under a different name rather than the name of the original file. (Your word processing program will prompt you for a file name.) This will enable you to reuse the original file without your modifications. If you want to replace the original file with your modified file, save but do not change the name of the file.

## Print Troubleshooting

If you are having difficulty printing your document, the following suggestions may correct the problem:

### Microsoft Word

- Select Print from the Microsoft Word File menu. Then choose the Printer function.
- Ensure that the correct printer is selected.
- From this window, choose Options.
- In the media box, make sure that the paper size is correct and that the proper paper tray is selected.

- Check your network connections if applicable.
- If you still have trouble printing successfully, it may be because your printer does not recognize the font Times New Roman. At this point, you should change the font of the document to your default font by selecting the document (CTRL + A) and then choosing Font from the Format menu and highlighting the name of the font you normally use. Changing the font of the document may require additional adjustments to the document format, such as margins, tab stops, and table cell height and width. Select Page Layout from the View menu to view the appearance of the pages before you try to print again.

## **WordPerfect**

- Select Print from the WordPerfect File menu. Then choose Select.
- Make sure the correct printer is selected.
- From this menu, press Setup.
- Ensure the correct paper size and paper source are selected.
- You may be having difficulty because your printer does not recognize the selected font. You can correct this problem by changing the base font of the document to your default font. From the Edit menu, choose Select All (or press CTRL+A). The entire text of the document should be highlighted. Then choose Font from the Layout menu and highlight the font you normally use. Changing the font of the document may require additional adjustments to the document format, such as margins, tab stops, and table cell height and width. Select Two Page from the View menu to view the appearance of the pages before you try to print again.

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