There are typically three avenues available when going into business: starting a new venture, buying an existing business or purchasing a franchise. It is advisable to seek professional accounting and legal help before starting any business.

Starting a New Venture

A new start-up is typically pursued when you have a unique idea that requires special equipment, specialized talents or a new way of doing things. A new venture may also be pursued when there is a customer base you can serve, or you are aware of an unfilled market need (e.g., there is not a dry cleaner within 12 square miles). The principal advantage of starting a new business is that you are in control of how you want your business to operate. There will be no negative history or track record to overcome. You will be able to provide your product or service the way you think it should be provided. The principal disadvantage is the need to start from scratch and to set everything up from square one. Factors you need to consider when forming a new venture include: legal structure, location, marketing and advertising, facilities, equipment, employees, taxes, a records system and capital.

Buying an Existing Business

Buying an existing business can have its advantages. By purchasing a business that is already established, you may eliminate some of the problems associated with starting a brand new business. However, when you acquire an existing business, you may also acquire its debts. Purchasing an existing business can be fairly complex. The following is a brief summary of some of the concerns of which you should be aware:

- How successful is the business? How well known is the business? How loyal are the customers to the business? Is their loyalty based upon the current ownership?
- Do you know why the seller is selling the business? If the business has not been profitable, find out why. Do you have a plan to make it profitable?
- Does your purchase agreement include the sale of the business name? The property? The equipment and inventory? The debts? Be sure the exact terms of the sale are explained clearly, in writing, before you buy.
- Ask the seller about outstanding claims on inventory, equipment and fixtures. Whose responsibility will it be to settle these claims?
- Are there liens against the property you are buying? Check with the seller and recorder's office in the county where the business and the seller are located. Check with the Colorado Secretary of State, Uniform Commercial Code Section, 1700 Broadway, Suite 200, Denver, CO 80202, (303) 894- 2200 then press 2, or at www.sos.state.co.us for records of any security interests that may have been filed as liens against the property or assets of the business.
- Will the owner of the building transfer the lease to you? What are the terms and restrictions of the lease?
- Review the business' past and current financial statements. Are they in good order? Examine any existing contracts that affect the business.
- Can you transfer the existing phone number? The phone service may require information from both you and the seller.

If there are employees in the Business

You will be responsible for withholding income tax, Social Security (FICA), Medicare and local employment taxes. You will have to pay the employers portion of FICA, Medicare and local employment taxes. You must open new employee payroll accounts unless you buy out the stock of an existing corporation or membership in a limited liability company and do not set up a anew business entity. In every case, the unemployment history established under the former owners will transfer to your unemployment insurance account. When you purchase the business, the former owner should file Form UILT-2 to report the change in ownership for unemployment tax purposes. For more information on payroll tax requirements see the Employer Responsibilities section of this guide.

Tax Liabilities

If you purchase a retail business you may be liable for sales tax debts of the business. As a precaution, you should get a tax status letter from the Colorado Department of Revenue before buying. The tax status letter must be requested by the current owner using Form DR0096. Tax status letters may be requested on all state collected tax accounts including sales tax, wage withholding and corporate income tax accounts. There is a $7 charge for each tax letter requested. If you purchase a corporation or limited liability company, you may have the option of keeping the same sales tax account with the Colorado Department of Revenue. If you purchase a sole proprietorship or a partnership, you are required to open a new sales tax account. When you purchase tangible property as part of a business, such as furniture, fixtures or equipment (new or used) pay state sales tax using form DR 0100A. For further information about state tax liabilities when purchasing a business, contact the Colorado Department of Revenue, (303) 238-SERV (7378). Many cities and counties also collect a sales tax. All county sales taxes and most city

sales taxes are collected by the state. "Home Rule" cities may collect sales/use taxes directly. There may be additional liabilities for personal property taxes imposed by the county. Contact the local city clerk, the county assessor and/or the county treasurer's offices for more information regarding local use and personal property taxes. Except when purchasing the stock of an existing corporation and continuing the operations of that corporation, you must establish all new tax accounts when buying an existing business. The previous owner's sales tax licenses, state wage withholding, unemployment insurance accounts and federal employer identification numbers do NOT transfer to you, the new owner.

Purchasing a Franchise

Franchising offers a unique opportunity for individuals interested in operating a business. It allows you to both own and operate a business while drawing from the resources of the parent company. This arrangement may reduce some of the risks of going into business for you depending upon the quality and stability of the franchiser. While fewer than five percent of all franchised businesses fail annually, success is not guaranteed. You should not rush into franchising before completing a thorough investigation. It should be noted that while a franchise is a method for going into business, it is NOT a form of legal structure. The franchiser – the business with the plan and structure – and the franchisee – you – are two completely separate businesses. You must each determine the appropriate form of legal structure for your own business. Refer to the Legal Structure and Registration chapter of this Guide.

Franchise Service

The franchiser often provides a range of services to assist you, the franchisee, in starting and operating the business. Types of assistance vary depending upon the company. It is important that you fully understand and have documentation in writing regarding which services your franchiser will and will not provide. Types of services available may include:

- Use of the company trademark, trade name, service mark or any other company identification
- Site selection for your business
- Training programs
- Marketing and advertising ideas
- Equipment and inventory purchasing assistance
- Capital/financial assistance

Selecting A Franchise

Once you have decided that you are able to meet the requirements for purchasing a franchise, you may want to shop around for the best investment. There are various publications and franchise directories available from bookstores and public libraries. Many times the classified sections of your local newspaper or magazine have listings of franchise offers. Franchise fairs and conventions are another method for learning about different franchise opportunities.

ASK THE RIGHT QUESTIONS

Obtaining reliable information before you invest in the business will help you make an informed decision. The success of the franchise depends upon a number of factors. Most importantly, you should consider:

- What are the total costs of the franchise? These may include opening costs for inventory and fixtures, franchise fees, licensing fees, working capital, on-site expenses for the lease and construction and any service charges. Is it affordable? Are there any hidden costs that might not be spelled out in the franchise agreement?
- Does the business require any special skills? What types of training programs are available? At what cost? For how long?
- What type of assistance will you receive from the franchisor? At what cost? For how long? What types of ongoing fees or royalties are involved?
- If there are changes in the program or method of doing business, will you have any input into the process? Will changes be dictated by the franchisor's home office?
- Are there restrictions on renewing, transferring, selling or terminating the business? Does the franchisor have the right of first refusal when renewing your contract?
- What type of control will the franchisor exercise over the operation of your business?
- What are the costs of purchasing the necessary equipment? Are competitive rates available? What type of warranty and maintenance services are available? If the equipment becomes outdated, what must you do to update it?
- What financial investment is required of you? Does the franchisor offer credit arrangements?
- How will you finance the business? What are your current assets? What type of loans will you be eligible for?
- Can you terminate the franchise agreement? If so, at what cost?

Exercise Caution

Before you agree to invest in a company that promises you large financial returns, you should exercise some caution. Colorado lacks specific laws to protect you should you need recourse. There are, however, general provisions governing "good business practices." These protections against deceptive and unfair trade practices are stated in the Colorado Consumer Protection Act and the Uniform Consumer Credit Code. The federal government also offers protection from problems encountered by nondisclosure and misrepresentation. The Federal Trade Commission's Franchise Rule requires franchisers to provide prospective buyers with a detailed disclosure statement regarding the company's history, background and operations. This document should also describe the costs and responsibilities of both the franchiser and the franchisee and must be made available to you at least ten days before any agreements are signed, or at the first face-to-face meeting, whichever comes first.

Before You Buy

- **Always** ask for a disclosure statement. The Federal Trade Commission, 1 (877) FTC-HELP (382-4357), has information for franchisers and franchisees on federal disclosure requirements.
- Compare similar franchise benefits and costs.
- Contact current franchisees for additional information and compare their business experiences with the information provided to you by the franchisor. The franchiser should make the names of her/his other franchisees available to you.
- Investigate the franchiser's earnings claim. Is it legitimate?
- Obtain a **WRITTEN CONTRACT** specifying the exact terms of the franchise agreement and any promises the franchiser makes to you.
- Make sure you thoroughly understand the company's operating policies.
- Consider consulting a professional, independent (not one recommended by the franchiser) attorney, CPA or business advisor who is familiar with franchise laws to examine the terms of the franchise offer before you sign to help you secure the best deal. Your advisor should review the franchise contract itself, any property/equipment purchase agreements and any property/equipment leasing agreements.

Additional Sources of Reference

"Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (The Franchise Rule) and "The Consumer Guide to Buying a Franchise" are available free from the Federal Trade Commission, by calling 1-877 FTC-HELP (382-4357).