

Buying or Setting up a Small Business

A LEGAL GUIDE TO A PROBLEM-FREE START

Unfortunately too many new small businesses fail within a very short period of time, often with disastrous personal losses to the owners.

The best chance for new business success is to get the right start with professional guidance from a solicitor.

Business structures

When setting up a new business or buying an existing business it is very important that you decide on your business structure.

You have the choice of running the business as:

- sole proprietor
- partnership
- company, or
- trust

Your solicitor can advise you on the structure which best suits your needs considering your tax position, personal legal liability and availability of capital.

Buying an existing business

Serious negotiations usually proceed with the vendor's agent handing you a draft written contract. Do not sign the contract without first seeking legal advice.

If you are pressed by the agent to sign and pay a deposit, make sure the contract you sign is subject to your solicitor's approval with a full refund of the deposit if the purchase does not go ahead.

The contract

Your solicitor will study the terms of the contract to ensure they reflect your chief concerns, such as the potential earning capacity of the business and the reasonableness of the sale price.

Amongst the various terms negotiated in a contract, your solicitor will identify what is to be included in the sale and, in particular, ensure the following issues are canvassed:

- your rights to the business name
- the price of existing stock and the fixtures and fittings included in the sale
- the vendor's warranties and representations on the sales performance of the business
- goodwill
- your need for a restraint of trade on the vendor to prevent direct competition
- your need for tuition from the seller on running the business
- your access to client lists and records
- transfer of licences and permits required for the running of the business at that location
- transfer of the lease
- your access to finance for the purchase

Goodwill

You may be asked to pay for the goodwill or, in other words, the intangible advantages built up by the business such as reputation and connections which differentiate the value of an existing business from a brand new business.

Your solicitor will establish whether goodwill exists and, if so, what constitutes a fair price.

Franchising

Buying a franchise involves buying into an existing business chain with special rules regarding the purchase of stock, shop fixtures and fittings, and marketing. For this infrastructure you pay an initial entry cost and ongoing franchising fees.

When handed a franchising agreement for your signature, as with buying an existing business, it is important to seek legal advice first so negotiations proceed with your interests foremost. In particular, your solicitor will look into:

- the reputation of the franchise
- demand for its products
- the franchising fees
- duration of the franchise
- the operation procedures.

Setting up a business

Lease

Your business location and the rent paid has a huge impact on your business operation. It is vital for you to realise that the terms and conditions of the lease can be negotiated.

Be sure to seek legal advice so that the lease document reflects your needs. Importantly, you need to be aware of how rent is increased over time; the lease's duration; the ways in which the lease can be terminated; payment for repairs, fixtures, fittings; and your share of rates.

Finance

Obtaining finance, choosing from the myriad of loans on offer, and understanding your obligations under a loan agreement or personal guarantee won't be as daunting with the assistance of your solicitor.

Insurance

Workers' compensation insurance, by law, is compulsory. It is also important to consider insurance against fire, burglary, public liability, personal disability, and loss of profits

Your solicitor will advise you on your insurance needs.

Operating a business

Many facets of the law come into play while operating a business. Guidance on these matters before they become an issue may save your business.

From the start, seek your solicitor's advice on legal issues arising from:

- employer/employee relations
- debt recovery
- copyright and trade marks
- consumer protection and trade practices
- superannuation
- and taxation.

Legal costs

Ask your solicitor about the legal costs and the processes involved in purchasing or setting up a business.

Your solicitor can also advise you on State and Local Government charges including business name registration fees, lease registration fees, licensing and permit fees and stamp duty on the purchase of a business.