

Checklist 

Business Transactions

SALE & PURCHASE

This checklist will ensure that you are prepared for some of the processes of buying or selling a business



Don't sign any documents prior to seeking legal and financial advice.

INFORMATION TO PROVIDE / OBTAIN & CONSIDER:

Business details

- ◆ Company name
- ◆ Seller(s)/ Buyer(s) names, DOB, position & share holding
- ◆ Company type e.g. Sole Trader, Partnership, Limited Company etc
- ◆ Address
- ◆ Contact Details
- ◆ ABN & ACN
- ◆ Registered for GST?

Transfer Restrictions

- ◆ Do all concerned parties agree to the transaction including if applicable the franchisor?
- ◆ What does your financier require for this transaction to be possible?
- ◆ Are there any PPSR registrations that are of a concern?
- ◆ Do you have copies of the franchise agreement and or licence?

Business Premises

- ◆ Are you purchasing/selling the premises as part of the transaction?
- ◆ Are you continuing or creating a new lease?
- ◆ Is the premises restricted or needing to comply with statutory requirements?
- ◆ Are you aware of additional costs such as GST and outgoings?

INFORMATION TO PROVIDE / OBTAIN & CONSIDER:

Business Assets

(ensure this is an accurate list including serial numbers/ registrations)

Plant and equipment

- ◆ Agreed values of equipment
- ◆ What is the status of the equipment (leased, hired or owned)
- ◆ Are the vehicles registered and roadworthy with the correct certificates?
- ◆ Have you obtained pay out figures for this equipment?
- ◆ Have you obtained a PPSR search for the business?
- ◆ Do you have a depreciation schedule?

Stock

- ◆ What are the stock levels (held stock)?
- ◆ What stock is aged/obsolete?
- ◆ How often is a stocktake conducted and by whom?
- ◆ How will the stock be valued?

Debtors

- ◆ If the debtors are being purchased with the business;
 - ⇒ How are they being valued?
 - ⇒ Which can be considered as “bad Debt”?
 - ⇒ Are there any exclusions?
- ◆ If debtors will not be purchased;
 - ⇒ Will the seller enforce the payments?
 - ⇒ What is the method of debt collection ?

INFORMATION TO PROVIDE / OBTAIN & CONSIDER:

Business Assets (cont'd)

WIP (work in progress)

- ◆ Obtain/Identify WIP schedule
- ◆ How is the WIP Valued?

Commission Trail

- ◆ Does the sale include the ongoing commission trail?
- ◆ How will this be transferred?

Intellectual Property

- ◆ Business Names
- ◆ Trade marks (logos & branding)
- ◆ Trade names
- ◆ Software and business related data
- ◆ Copyright
- ◆ Patents
- ◆ Employee developed IP

Licences & Agreements

- ◆ Does the business require licences to trade? E.g. EPA approval, liquor etc
- ◆ Are there any B2B agreements ?
- ◆ Are there other third party agreements that are detrimental to trade?

Business Hand over

- ◆ Will the seller be providing operational training/tuition?
- ◆ What timeframe will the is training be based on?
- ◆ Will the training be pre or post settlement?

INFORMATION TO PROVIDE / OBTAIN & CONSIDER:

Restraint of Trade

- ◆ Are there any restraints on the following;
- ⇒ The time in which the seller cannot trade after the point of sale?
- ⇒ The geographical area in which the seller cannot trade?
- ⇒ Persons in which business is conducted with?
- ⇒ Business and or products that can be traded?

Employee's

- ◆ Do you have a full list of staff names
- ◆ Start dates and annual salary packages listed
- ◆ Terms of employment—Are there any enterprise agreements?
- ◆ Are you aware of the terms should you terminate current employees?

Sale of the business

Asset sale

- ◆ What are the payment terms; is it to be paid in full or is there vendor finance terms ?
- ◆ Have you agreed upon a deposit amount to be paid prior to settlement?
- ◆ Is there an apportionment of price between assets being sold?
- ◆ Have you spoken to an accountant or tax advisor?
- ◆ Have any guarantees been discussed?

Share sale

- ◆ Are there any share holding agreements ? (These need to be provided to lawyer)
- ◆ What are the restrictions if any on a share holding transfer?
- ◆ Are there any financial or tax losses
- ◆ Do you have copies of the company constitution?

Contract

- ◆ Who will prepare the contract?
- ◆ What conditions should appear on the contract?
 - ⇒ Due diligence on financial and internal books
 - ⇒ Due diligence on lease and other third party agreements
 - ⇒ Finance
- ◆ Identify and or obtain copies of all material contracts
- ◆ Are there any consents for assignment
 - ⇒ What consents are necessary?
- ◆ How will deposits and payment be treated?



Consider encouraging the buyer to perform due diligence before they spend money on contract preparation.

Should you do this, consider a Non-Disclosure Agreement to get assurances of confidence from the potential buyer. This reduces the risk of loss of IP and confidential information.

Business operational records

- ◆ What records will be provided and able to be retained going forward?
 - ⇒ Aged debtors
 - ⇒ Bank accounts—Statements and other records
 - ⇒ Insurance
 - ⇒ Employment contracts / agreements
 - ⇒ Service agreements / Contracts
 - ⇒ Litigation—Past legal records
 - ⇒ Takings
 - ⇒ Wages



Ensure there is a method and a right to access all business records that may be required in the future.

(e.g. ASIC, ATO, Legal and Financial)



Costs to consider

- ◆ Legal costs—These costs can vary and depending on the scale of the business and complexity of the contract; your solicitor can provide a more detailed estimate after a consultation.
- ◆ Tax—Whether you're the buyer or the seller, an array of taxes can be charged from capital gains tax to GST—Speak with your accountant for further information relating to tax costs and implications.
- ◆ Valuation costs—obtaining a valuation will come at a cost for example a commercial property valuation can start anywhere from \$2000 and go into the tens of thousands. A business valuation is similar and can be done via an accountant.
- ◆ Financier costs—Should you be obtaining finance, bank fees can be quite considerable, again depending on the size of the loan fee's can range from anywhere between \$600 to tens of thousands.



When entering into a contract such as a business purchase, it is always advised to ensure all advisors are kept in the loop and have an understanding of each parties contributions and progress. Have your accountant speak with your solicitor.



Settlement

- ◆ How many days after the contract is signed does settlement occur?
- ◆ Does anything conflict with the date of settlement?



Consider all the steps that need to be completed prior to settlement. Discuss with you financier about approval times. Commercial loans can take up to at least 6 weeks in some cases.

Communicate requirements to all of your advisers and financier to establish an expectation of time frame.



This checklist is legal information only and cannot be considered legal advice.

There needs to be a direct clear agreement between us about what we are advising you on before you can assume that we are providing you with legal advice.

This is usually set out in a “Confirmation of Instructions” letter from us and you signing and returning our Costs Agreement.