

# A PLAIN ENGLISH GUIDE TO



## >>BUYING AND SELLING A BUSINESS

Buying or selling a business is a major decision (for both parties), and can often be an emotional one. This is particularly so when a lot of time, effort and money has been invested into the business by an individual or individuals.

Regardless of whether you are the vendor or the purchaser of a business there are a number of considerations that you have to take into account to ensure a successful outcome.

The potential issues involved with, and ramifications of, buying or selling a business are many - the most important thing to remember is that legal advice is essential before making or accepting any offers on a business. The information below provides a brief overview, but it is in no way meant to be comprehensive.

### >>Preparing to sell your business

There are two basic stages involved in selling a business: preparing your business for sale and negotiating its sale with the vendor. Each stage is vitally important and the preparation of your business should not be taken lightly.

When preparing your business for sale, consider what the purchaser will be looking for and prepare detailed information on your business that will make the decision to purchase easier and the negotiation process simpler.

Speak to your financial and legal advisers to ensure that you have covered all of the necessary steps prior to the negotiation of a deal.

### >>A quick checklist for the vendor

The following checklist is a very brief outline of the essential steps that you need to take when preparing your business for sale.

- Make sure that your financial records are accurate, comprehensive and up-to-date. Work with your accountant and auditor to make certain that everything is accounted for and that all of your figures can be explained.
- Ensure that all of your legal documents are accurate and up-to-date – these may include leases, hire-purchase agreements, client and supplier contracts, distributor agreements, intellectual property considerations (patent and trademark registrations etc), employment contracts and so on.

- Identify any weaknesses in your business in advance and take steps to address them (eg. renovations, equipment updates, stock levels and so on).
- Make sure that your client records and details are up-to-date and take steps to reduce your debtors if applicable.
- Decide whether or not you are going to tell the staff prior to the sale. If you are, then formulate your "message" and communication plan to ensure that speculation, rumour and gossip do not have an adverse effect on the business.

### >> Valuing Your Business

One of the most critical tasks when preparing a business for sale is determining the sale price, or valuing your business.

It is relatively simple to obtain a valuation of real estate for example, but how do you put a value on a going concern or the goodwill of your customers?

Financial and legal advisers can assist you in the process of determining a sale price that will incorporate equipment, plant and premises if applicable. In addition, they can help you to determine the value of the more intangible assets such as the goodwill, reputation, trademarks and intellectual property of the business.

A question commonly posed by vendors and purchasers alike is whether or not GST will apply to the transaction. Generally speaking, the sale of a business is the supply of a going concern and therefore no GST is payable by the vendor or the purchaser. This will also reduce the amount of stamp duty payable. However, it is important to note that there are strict criteria for determining whether a business is a going concern and you will need to examine these carefully with your lawyer.

### >> Preparing to buy a business

As the purchaser of a business, you will need to speak to your financial and legal advisers to ensure that they are comfortable with the business, as well as the deal.

Once you have the finance arranged it is then a matter of researching the business and trying to gather as much information as possible about it prior to the purchase:

- Why is the business for sale?
- What actually is for sale (goodwill, location, customers etc)?
- What is the current business plan?
- What is the equity in the brand name?
- How is the business perceived within the marketplace?

Sources of information will include external sources such as the government, customers, and industry associations, while internal sources will include the vendor and employees, and the vendor's advisors. An experienced commercial lawyer can help you with both the research and with assessing the value and attractiveness of the business.

### >> A quick checklist for the purchaser

When purchasing a business, your legal or financial advisers must review all of the information available on the business and perform what is known as "due diligence". This process is critical in terms of highlighting any issues that need to be addressed prior to the purchase, or in some cases, alerting a prospective purchaser to the fact that it would be unwise to buy the business.

Some of the items that will be reviewed include:

- Accounting information and bank records
- Taxation
- Liabilities
- Compliance with relevant Acts etc
- Contracts in place
- Superannuation plans
- Leave entitlements of staff
- Bonuses and commissions payable
- Intellectual property arrangements
- Property
- Licensing arrangements
- Restraint of trade issues
- Confidentiality issues

## >> What if the business is a franchise?

More and more businesses today are being franchised and many prospective business owners are looking for the relative security and backing of a household name when starting up.

If you are looking to buy a franchise it is important to note that there is specific legislation covering this area, and a number of unique factors to take into account. Some of the questions you may want to consider include:

- What are the special conditions attaching to this particular franchise? (Eg. restrictions on location, number of outlets, minimum contract term etc)
- Can the franchise be easily transferred?
- What on-going support and/or training is available from the franchisor?
- Has the seller complied with the terms of the agreement completely so that you can "start with a clean slate"?

In Australia, a mandatory Code of Conduct, under the Trade Practices Act, governs franchised businesses. The Code encompasses a wide variety of licensing and distribution businesses and it is important to speak to your lawyer regarding whether the Code applies to the particular business you are purchasing and, if so, how to implement its requirements.

Unlike many one-off business transactions, in a franchising situation, the relationship is usually a long-term one and the franchise documentation

is inherently complicated. With an increase in the scrutiny of franchises by corporate watchdogs the ACCC and the ASIC, it pays to ensure that your lawyer is familiar with the particular requirements of a franchise agreement and how best to look after your interests.

## >>Negotiating the agreement

Once the relevant information has been gathered, reviewed and the sale/purchase has been agreed upon it is time to actually negotiate the formal Agreement.

The negotiation process can be very stressful for both vendor and purchaser. In these instances it pays to have legal advisers assist with the negotiations. They will also be aware of the risks and traps that you can fall into in the heat of the moment.

Over the years, the team at Coleman & Greig has assisted many clients to negotiate business transfers, either as the purchaser or vendor. Throughout these transactions we have seen just about every "drama" that can possibly occur. Whilst some may not be avoided, many of the issues that arise can be anticipated and their impact on the transaction minimised. Don't risk the sale, or purchase, of your business. Speak to an experienced commercial solicitor, before it is too late.

## >>How can Coleman & Greig help you?

Coleman & Greig's experienced commercial solicitors can assist you with:

- Due diligence to identify the issues
- Advice on contracts and agreements
- Employee entitlements
- Confidentiality agreements
- Drafting sale agreements
- Advice on asset protection



## >>Interpreter Services

Coleman & Greig can provide interpreter services in a range of foreign languages including:

- Arabic
- Assyrian
- Croation
- Greek
- Italian
- Samoan
- Spanish

## >>Other Services

Coleman & Greig provides a wide range of services including:

### **Commercial Legal Services**

- Corporate & Commercial
- Employment Law
- Occupational Health & Safety
- Franchising
- Litigation & Dispute Resolution
- Intellectual Property
- Trade Practices
- Building & Construction
- Commercial Securities
- Commercial Property
- Business Migration
- Succession Planning
- Notarial Services

### **Personal Legal Services**

- Property and Conveyancing
- Wills and Estate Planning
- Family Law

Printed June 2006



### **For further information:**

Level 9, The McNamara Centre, 100 George St, Parramatta NSW 2150  
Phone: 02 9635 6422 Fax: 02 9689 3983 Email: [info@colgreig.com.au](mailto:info@colgreig.com.au)  
[www.colemanandgreig.com.au](http://www.colemanandgreig.com.au)