

# BUYING A BUSINESS



## **BUYING A BUSINESS IS AN EXCITING TIME AND IT CAN LEAD TO FINANCIAL FREEDOM BUT IT CARRIES RISKS THAT SHOULD BE ASSESSED WISELY.**

The legal experts at Bakers Lawyers will help you with all aspects of buying a business, to help you can hit the ground running.

Every single business is different and there are always a range of considerations in any business purchase. Some of the initial considerations are discussed below.

### **DUE DILIGENCE**

It is vital that the contract is subject to a reasonable due diligence period. During the Due Diligence you should thoroughly investigate all aspects of the business including financial operation, customers, suppliers and employees. You need to be confident that you can continue to operate the business profitably.

### **BUYING ENTITY**

It is important to get your legal structure right from the beginning. The most common options are sole trader, partnership, private company or a trading trust.

Private companies have the benefit of limited liability and often have lower tax rates. Companies also have the flexibility of issuing and transferring shares relatively inexpensively. Companies do have higher establishment fees and ongoing administrative requirements.

Sole trader or partnerships (of individuals) are less expensive to set-up and maintain. However, the owner(s) are personally responsible for all liabilities of the business. Ultimately, there is far less personal asset protection if you are sued.

A trading trust will be either a discretionary trust or a unit trust. A corporate trustee can be nominated to provide additional asset protection. One advantage of a trust is that it can access the 50% capital gains tax discount on the sale

of the business, whereas a company cannot.

There are a number of other variations to the above business structures. It is important to obtain advice before the purchasing entity is decided upon.

### **BUYING BUSINESS OR SHARES**

Purchasing the business includes the acquisition of assets, fixtures and fittings, business name, plant and equipment, intellectual property, vehicles, lease of business premises, stock and goodwill. Unless otherwise agreed, you are not purchasing the seller's debts or liabilities. Transfer duty is payable on the purchase price.

If the business is owned by a company, you may purchase the shares in the company instead. Generally no transfer duty is payable in this case. However, you would be purchasing the company's assets and liabilities regardless of whether they have been disclosed. So while there may be savings on transfer duty the due diligence to be carried out by your accountant and solicitor will be more onerous.

### **LEASE OF PREMISES**

If the business is operating from leased premises then the lease will need to be transferred to the new owner. For this to happen, the landlord will need to consent to the transfer of the lease. The landlord may ask for personal guarantees and a security deposit. We recommend investigating the lease thoroughly as it may be instrumental in the future security and viability of the business.

### **OTHER CONSIDERATIONS**

You may wish to consider employee entitlements, restraint of trade periods, training requirements, stocktake and even vendor financing requirements as necessary. Each business purchase will have different requirements. Get in touch and we will help to guide you through your acquisition with peace of mind.

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