

## Hints and tips to buying a business

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Buying a business is complex. It can involve: intellectual property, leasing, franchising, tax, GST, personal property securities, licencing and employment not to mention finance, marketing and a maze of other legal and non-legal issues. Finding your way through the maze is time consuming. The following are some *hints and tips* to help you during the process.

### Understand what you are buying

This may seem obvious but a closer look at what you are buying is essential. A business sale contract (**contract**) will normally include:

- Assets
- A client/customer list
- A list of suppliers
- A business name, logo, trademark or other intellectual property
- Phone, fax, email and domain name
- Plant and equipment
- A restraint on the seller after settlement

Carefully check the contract for what you are buying. Make sure the assets are accurately described. For example, include the make, model, registration number and engine number of any vehicles included with the business.

**Employees** can form a very important part of the business. Locking in key employees could be critical to the success of the business and may require special conditions to the contract.

**Stock** or **work-in-progress** is also another important aspect of the contract. You need to understand whether the purchase price includes stock or work-in-progress or whether this is an additional cost. A stocktake may be required prior to the settlement to establish the stock price payable in addition to the purchase price.

Makes sure you are not buying obsolete stock or excessive work-in-progress.

Your **licencing** could be critical to buying the business. Check what qualifications you need before you sign the contract.

Your **finance** could also be critical to buying the business. A pre-approval as to finance can often qualify what you can afford to pay and save critical time after the contract is signed.

Understand your **costs**. A trip to the bank will probably involve working out all your expected future costs. You should also talk to your lawyer and accountant about the costs.

### How do you buy the business?

You will need a contract prepared. The usual contract is a standard REIQ contract which comes with standard conditions. The contract may be prepared by either the business broker or a lawyer.

At this point, consult your lawyer to review the contract and consider:

- What special conditions may be required
- What entity you should use to buy the business – sole trader, partnership, company or trust?
- What due diligence will be required
- What costs will be incurred

### Special conditions

The contract contains standard conditions which contain the usual rights and obligations that the seller and buyer must observe. However, these may not be enough.

Special conditions to the contract typically include:

- Due diligence – such as mechanical review of vehicles or plant and equipment or a review of the financial records of the company

- Obtaining the consent of a franchisor
- Special licence requirements

Each business is different and special conditions should be tailored to the business you are buying.

### After the contract is signed

Each party has legal obligations that it must meet after the contract is signed:

The buyer must typically:

- Pay the deposit
- Conduct its due diligence within time limits – e.g. lease review, review of financial records, review plant and equipment
- Apply for finance approval within a time limit
- Apply for landlord approval if a lease is required
- Apply for franchisor approval if the business is a franchise
- Apply for all licences and permits
- Apply for supplier approval
- Pay the transfer duty
- Pay the purchase price at settlement
- Collect and account to the seller for money owed to the seller before the settlement. (Remember, you are not responsible for the seller's debts owed before the settlement despite what some suppliers may try to tell you after settlement.)

The seller must typically:

- Provide a copy of the lease by a set date
- Provide access to its books of account by a set date
- Provide a copy of the franchise agreement by a set date
- Pay the debts of the business up to and including the settlement date
- Pay the employees entitlements up to the settlement date

- Comply with any restraint of trade after settlement
- Transfer the business assets
- Provide tuition or assistance to the buyer before or after settlement
- Continue to properly manage the business until settlement

Special conditions may oblige either party to satisfy other requirements.

The Buyer should immediately apply for an ABN and a TFN.

You may require a new **lease** or the transfer of a current lease. Either way your lawyer should review the lease. The landlord will typically require from the buyer:

- Three business references
- A statement of assets and liabilities
- the buyer's business experience
- A valuation of land held by the buyer
- A guarantee or bond
- Insurance for public liability etc.

You can **terminate** the contract in certain circumstances but there is no cooling off period in the standard contract. Great care should be taken before deciding to terminate a contract.

Your **due diligence** requires special mention:

- your lawyer can conduct various searches of the business
- your lawyer should review the lease, franchise agreement and supplier's agreements etc.
- your accountant should conduct a review of financial records
- vehicles may require a mechanical check
- computer systems may require a technical review

Your due diligence must usually be conducted within strict time limits. You may lose the benefit of the due diligence provisions if the time limits are not strictly observed.

Your due diligence should be tailored to the specific business. For example, a business conducted within a body corporate may require an inspection of the body corporate records.

## Your costs

Costs will vary for each transaction. You should consider the following possible costs:

- Your legal fees including search costs
- Your accountant's fees
- The landlord's costs (if any)
- Insurance costs
- Bank guarantees or bonds for the lease (if any)
- Your bank's costs (if any)
- Your marketing campaign
- Working capital for the business
- Transfer costs – e.g. registering the transfer of a vehicle or a licence
- Transfer duty (stamp duty)
- Rent adjustments at settlement
- Stock or work-in-progress
- Employing staff

## This advice

This advice has been prepared as a guide only. It does not replace specific legal advice. We encourage you to contact *Matthew Yates* **0428 898 100** for specific legal advice.

**Best of luck!**

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