

# Buying or Selling Business – Issues to Consider

Buying or selling a business typically involves the following:

- entering into confidentiality undertakings regarding acquisition negotiations
- purchasing entity – individual, trust, joint venture, partnership or other entity?
- determining the selling entity – any impediments to sale (eg trust deed or constitutional issues)
- commercial terms (price and apportionment of price for tax purposes)
- legal, tax and other due diligence (business, accounting, GST, FBT, Super, employees, valuation, IP, etc)
- consideration of prior, current, pending claims against the business
- suitability and condition of premises, stock and inclusions
- stock take – when and how it will take place, how will stock be valued, disputes in relation to stock valuation
- book debts – how they are to be collected and dealt with post completion
- employees and entitlements, including superannuation and long service leave
- purchaser access to the records/employees/customers of the business pre completion
- vendor assistance to the purchaser - pre and post completion
- vendor guarantees and indemnities regarding the business, stock, lease, employees, IP, etc
- vendor warranties in relation to the business, employees, stock, etc
- intellectual property rights – business names, patents, designs, copyright, trade marks, confidential information, domain names, etc
- secrecy/confidentiality of agreement and business generally
- vendor's and principal's restraints post completion
- current business Contracts and assignment of them (eg equipment leases, trading accounts)
- negotiating a transfer of the existing lease or a new lease (if applicable)
- conditions of Franchise Agreement (if applicable) and relationship with franchisor
- ASIC, DFT, ACCC, FIRB and other statutory approvals for the sale
- third party consents (landlord, franchisor, mortgagee, other owners of the business, etc)

- financing requirements
- GST and other tax implications of acquisition
- dispute resolution
- legal documentation and timing of acquisition
- adjustments on completion (stock, employees, lease payments, franchise fees, licence fees, etc)
- adjustments post completion

### **Why choose DLS?**

Our lawyers:

- have considerable experience and expertise in business acquisition and disposal and related areas of law (such as leasing, franchising and contracts law).
- adopt a pragmatic and commercial focus.
- adopt the highest ethical standards.
- aim to get the job done as soon as possible.
- are contactable by phone, fax and email for direct access.

We offer cost estimates in all leasing matters at competitive hourly rates. Cost agreements are issued in all matters.

We also have a network of valuers, surveyors, property consultants, franchise consultants, and other experts if required.

We also have strong affiliations with mortgage brokers and lenders. This means you can have direct access to an experienced and fully qualified mortgage broker who can arrange personal and commercial finance through the major financial institutions in Australia, including all the major banks. Relocation and fitout finance can also be arranged.

### **For further information, contact:**

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