



## BUYING AND SELLING SMALL BUSINESS

**B**uying an existing small business can often be more advantageous than starting a business from scratch. It is more than likely the groundwork has already been done. This can include: the goodwill of an existing business; an existing market; an established loyal client base; sustainable cash flow; established relationships with suppliers and distributors; taking on existing skilled staff with structured rosters; existing plant and equipment; and, financial arrangements already in place such as leases and mortgages.

There can also be many hidden dangers when buying a small business. It is paramount that any prospective purchaser knows how to best protect themselves and their new venture from failure and financial ruin. Some common mistakes are: failure to carry out proper due diligence; not considering GST, Capital Gains Tax or stamp duty implications; not planning ahead by developing appropriate marketing, business and succession plans; failing to ensure sufficient funds are accessible; not putting in place proper restraint of trade / non-compete provisions binding on the vendor; and, not having other proper income and asset protections.

Before purchasing a small business, it is critical that you seek advice from your solicitor and accountant or financial planner to evaluate the risks involved and understand exactly what you are paying for. Are you purchasing the shares of a company, the assets or both? Are you buying the business name and intellectual property such as trademarks, patents and copyrights? Does the business have any outstanding debts or existing claims to which you may be liable? What are your legal requirements and obligations under Australian and NSW law? These are some of the types of questions you will need to carefully

consider.

As part of the due diligence process, all aspects of a business should be comprehensively considered and reviewed. Balance sheets, financial statements, supply or purchase agreements, policies, contracts, subcontracts, leases, licences, supplier and distribution agreements, partnership agreements, itineraries and depreciation schedules are just some of a business's operations that should be investigated.

You may need to obtain your own independent valuation and make sure all plant and equipment is in good working order before you commit to a sale. It is also recommended that you ensure that any vehicles are licenced and check if there are any security interests registered over any assets on the Personal Property and Security Register (PPSR).

Most importantly, put your agreement in writing! Sadly, some people neglect this requirement and commit large amounts of money before entering into or finalising a written contract for the sale of business. Often pre-contractual negotiations between parties can be misinterpreted due to language or cultural barriers. Verbal arrangements can suddenly be retracted or changed by a party due to unforeseen events and circumstances. As well as being left embarrassed, this can lead to a dispute between parties and ultimately litigation.

A written contract or agreement will offer better protection and clarity as to what is being purchased and should provide the warranties and remedies in the event a dispute arises. If you are thinking of buying or selling a small business, contact your solicitor to reduce risk and help you achieve your goals.

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[www.legalminds.com.au](http://www.legalminds.com.au)

T 1300 642 166

E [contactus@legalminds.com.au](mailto:contactus@legalminds.com.au)  
157 Beardy Street Mall, Armidale