

# Business Bulletin

## Information about buying a Business

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BALDOCK STACY & NIVEN  
Solicitors and Notaries

Helping you is our practice

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### Introduction

Purchasing a business is a large legal and financial commitment and it is important that you are properly advised in order to avoid the pitfalls. There are many considerations that you should take into account:

- Do you have the appropriate qualifications and/or experience to run the business?
- Are there any competitors or new developments that will affect the future financial viability of the business?
- Why is the vendor selling the business?
- Is the purchase is a good investment?
- Do I have enough funds available to purchase the business and to run the business until it starts generating money.



**Baldock Stacy & Niven** has been assisting purchasers of businesses for over 115 years and we look forward to assisting you in your purchase of a business. ☐

### How will Baldock Stacy & Niven help?

**Baldock Stacy & Niven** will analyse the contract for sale provided by the vendor's solicitor, which is normally a standard "Agreement for Sale of Business" and specially drafted conditions of sale. We will fully explain the agreement to you, noting in particular whether there are any special conditions imposed by the vendor, and what the effect of these conditions may be. We will also advise you on the most suitable legal entity to own the business - sole proprietor, partnership, company or trust. ☐

### What are the steps before buying a business?

- You should determine the structure you would like your business to take – whether it be sole trader, partnership or company.
- Get advice from **Baldock Stacy & Niven** and your accountant and any other key people you can identify that might help you to make an informed decision about your purchase;
- Once you have decided to buy a business ask for the seller to put all details in writing. ☐

### What are the steps in a purchase of business?

1. Initial negotiations, pre-exchange searches, negotiation of special conditions, contracts signed.
2. Exchange of contracts where a deposit of 10% of the purchase price is usually paid and contracts become legally binding.
3. We then send to the vendor's solicitor "requisitions on title", which are a list of questions sent to the vendor's solicitor. If the answers turn out to be false or misleading, these will provide protection to you.
4. After exchange, the vendor will generally have a number of obligations to fulfil, as stated in the contract for sale. These may include executing the necessary documents to transfer title, discharging a mortgage and acquiring a lessor's consent to a transfer of lease.
5. The contract for sale will state a completion date, when settlement will occur. Settlement generally occurs at a place nominated by the vendor. The solicitors for the buyer and the seller must have all the relevant documents signed and the appropriate cheques. ☐

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## What structure should my business take?

The best thing to do is to get accounting and legal advice, but as a guide you should think about:

- The expected income of the business.
- The sort of personal liability you will have or are prepared to have.
- The value of the assets of the business.
- Taxation issues. For example, capital gains tax, GST and income tax payable.
- Who the owners of the business will be and their shared rights and obligations. □

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## What will be in the contract?

The contract will state what assets are being sold. Assets of the business may include goodwill, plant and equipment, lease, business name, stock in trade, debtors and employees.

The contract will also state the price the business is being sold for. This price is generally apportioned between goodwill, plant and equipment, and fixtures. This apportionment is important, as it will affect the amount of tax you will have to pay – as a buyer and also when you come to sell the business.



The contract should clearly state all liabilities that you will assume upon buying the business, and include clauses that will protect you as a buyer and covers issues of inspecting all records, receiving necessary licences etc and ensuring a minimum trading level during any trial period. □

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## What is goodwill?

There is no concrete definition for goodwill, however it is generally thought of as the value of the reputation of the business, good location, market penetration and good relations with its suppliers, customers and employees. Goodwill will generally be transferred to the purchaser through the hand-over of the assets and rights (including the business name) of the business. The goodwill of the business can be protected through a clause in the contract, which restrains the vendor from competing with the business after completion of the sale. □

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## What about plant and equipment?

From a buyer's perspective, it is important that the plant and equipment sold with the business are the property of the seller. We will make appropriate searches in this regard. We will recommend that the plant and equipment included in the contract for sale be inspected before exchange of contracts. We may also advise that a special condition be included in the contract warranting that the plant and equipment are in working order. □

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## Buying or leasing premises?

If you are buying freehold premises with the business, the standard conveyancing process will be followed. Usually the premises will be leased, and if so, it must be determined whether a new lease will have to be negotiated (if it has expired or will shortly expire) or a transfer of lease needs to be arranged. If the leased premises are subject to a mortgage, the mortgagee must consent to the transfer of lease. □