



## PLAIN ENGLISH GUIDE

# BUYING AND SELLING A BUSINESS

Buying or selling a business is one of the biggest decisions you can make- many people have invested a lot of time and money into the business, and there are emotions at stake.

Each business is different, and you will require legal advice tailored specifically to your needs and to that of the business very early on in proceedings. However, the information below is of a general nature, and designed to give you a few basic pointers. Remember - legal advice is **essential** before making or accepting an offer of sale on a business, and the friendly team at Commins Hendriks can assist you with more detailed information.

### **For the vendor:**

Your business will need to be prepared for sale- this means to ensure everything is in order as best you can. A potential purchaser will be looking for a good stable organised business, so you need to make sure that your business is what a purchaser wants. Talk with your accountant or financial advisor, and make sure that the business financial records are accurate and up to date. All figures need to be able to be explained and everything accounted for.

You can also ensure that all legal documents, including but not limited to leases, employment contracts, hire purchase arrangements, intellectual property (patents, trade marks etc) and client contracts are all up to date and there are no outstanding issues with them.

Client records should also be all up to date and correct, and it is a good idea to try to identify any potential business weaknesses that a prospective buyer might notice, and address them before hand- little things like this gives your business the best chance at a successful sale.

GST and Capital Gains Tax are both relevant considerations in the sale of your business. Most businesses will be what is termed a “sale of a going concern” and so the sale would be GST exempt. However, you will need to discuss this issue with your legal advisors, as there are specific criteria that need to be met to ensure the business is a going concern. We can also discuss Capital Gains tax with you and examine whether any small business concessions may apply.

### **Business value:**

There are several things that need to be valued when deciding on the appropriate sale price for your business. They can include:

- Real estate and property values
- Equipment
- Goodwill
- Trademarks
- Intellectual property

Commins Hendriks and your financial advisors can help you to establish the best price for these various business assets, and together we can come up with an appropriate figure.



### **For the purchaser:**

It is vital that you speak to your financial and legal advisors before you make an offer on a business- you need to ensure that they are happy that the state of the business, as well as the purchase price on offer is suitable to your individual needs.

It is a good idea to research the business and find out a few things that could help you decide if this is the right investment for you; such as why is the business for sale? Some good places to begin this research are governmental bodies, customers and industry associations. Our experienced commercial legal team at Commins Hendriks will help you conduct this research.

When you are purchasing a business, your financial and legal advisors will need to perform a process called “due diligence”. This means that they have to review all of the information possible on the business. This step is very important as it can alert purchasers of problems with the business.

The kinds of things that this process will investigate includes, but is not limited to:

- Taxation,
- Liabilities,
- Contracts,
- Accounting information and bank records,
- Property,
- Licensing,
- Restraint of trade issues,
- Staffing issues,
- Intellectual property,
- Confidentiality.

### **Franchises:**

If the business you are looking at is a franchise, there is specific legislation in place, and so different things need to be examined. Some of the things you may wish to look out for include:

- Are there any special conditions to the franchise, like minimum contract term, or restrictions on locations?
- Is the franchise transferable?
- Has the seller abided by the terms of the franchise agreement?
- Is there any advertising levies and what is the ongoing franchise fee?

There is a code of conduct under the Trade Practices act which may apply to your franchise, It is therefore important to discuss this with your lawyer so that you know if your franchise is effected, and if so, how to comply with the code.

Franchise documentation is becoming increasingly complicated. The ACCC and ASIC are cracking down on franchises and so it is vital to your business success that your legal team are familiar with franchise agreements and their operation. Rest assured the Commins Hendriks team are highly qualified and experienced in this area.

### **Negotiation:**

When the time comes to negotiate the agreement, it can be very stressful and heated, and so it pays to have an experienced team of legal and financial advisers to help you, so that you don't commit yourself to something that is not suited for your needs. We are more than happy to assist you in the negotiating process.