b) **Partnership** - where there are a small number of proprietors who know and trust each other fully.

c) **Joint Venture** – where two or more parties have pooled resources for a particular purpose, often for a limited period.

d) **Trading Trust** - is any trust specifically set up for operating a business usually having a corporate (limited liability company) trustee to avoid personal liability for business debts.

e) **Limited Liability Company** – recognised structure offering advantages for profit distribution and limitation of personal liability that works well when there is more than one proprietor involved in the business.

Individual circumstances, together with appropriate legal and accounting advice, will dictate the right business ownership structure for you.

7 *What is a Franchise Agreement?*

Franchising is the practice of using (for a price) another's successful business model in a defined locality for a defined period.

The franchisor (the person or company that owns the overall business operation) and the franchisee (the person or company that operates the business process within a defined area for a defined period of time) need to have a Franchise Agreement to define the rights and obligations of each.

The Agreement will usually include:

- what the franchise consists of;
- length of the term;
- geographical area;
- restraint of trade provisions
- payments to be made to the franchisor; such as fees and advertising royalties
- budget expectations and minimum performance threshold;
- initial and ongoing franchise training;
- what happens if the franchisee wishes to sell?

We believe that the franchisee should have legal advice prior to entering into a Franchise Agreement. The franchisee needs to ensure that the business purchase meets with their expectations regarding financing, ownership, leasing and all documentation. The paperwork is usually substantial and is often extremely complex requiring specialist analysis in order for the rights, obligations and risks to be explained.

8 *DO NOTS!*

DO NOT sign an Agreement to purchase a business before consulting us!

DO NOT sign an Agreement to Lease before consulting us!

DO NOT sign a Franchise Agreement before consulting us!

DO NOT sign any Option or Heads of Agreement before consulting us!

If you DO sign, even we may not be able to assist you in getting out of the commitment.

See us first!

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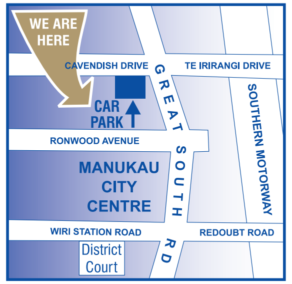

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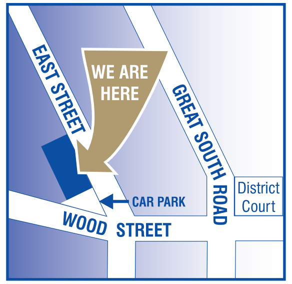

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Business Issues

Inder Lynch

LAWYERS

Important facts about Business Issues

1 What is an Agreement for Sale and Purchase of a Business?

It is a standard form document between a Vendor (seller of the business) and a Purchaser. It sets out all of the terms of the transaction including the purchase price for the plant, goodwill and stock, the settlement date and any conditions that have to be fulfilled. Almost always the Agreement will need to be tailored to suit your circumstances.

Issues for a purchaser include:

- Is this a sale of a "going concern" for GST purposes?
- Is there a lease of premises?
- Identifying the plant (physical equipment) to be purchased and its price
- Assessment of the goodwill value
- Identifying the stock to be purchased and the stock-take methodology
- Vendor's period of assistance
- Vendor's restraint of trade

Issues for a vendor include:

- Deposit to be paid and when?
- What is being sold and what does the vendor wish to retain?
- Potential continuing liability for the lease of premises and equipment
- Restrictions on being able to operate a similar business for a period of time

2 What is a lease?

A lease is a document (usually a Deed of Lease) that sets out the terms and conditions of the tenancy of the premises which are rented for the purpose of the business.

Issues for a purchaser include:

- the rental payable
- other payments required to be made
- frequency of rent reviews
- term of the lease
- rights of renewal
- whether the business use is a permitted use
- restrictions on signage and advertising on, in or about the premises

Issues for a vendor include:

- to assign the lease (passing on the right of occupancy to the purchaser) the vendor will need to provide the landlord with details of the purchaser's suitability and financial standing
- as the vendor remains contingently liable to the landlord until the end of the current term of the lease, it is also important for the vendor to be satisfied of the ability of the purchaser to meet the rental and observe other terms of the lease otherwise the vendor may become responsible

3 What is an agreement to lease?

If you find premises that you would like to operate a business from, the negotiation will be with a landlord (often through an agent). What you will be asked to sign is an agreement to lease. It will set out all the essential terms that will subsequently be incorporated into a Deed of Lease, including the date of occupation, the rental, the term of the lease, the frequency of rent reviews and other responsibilities of the tenant. An agreement to lease can be a dangerous document to sign if you have not given careful consideration to the proposed terms of the agreement and taken appropriate advice in advance.

4 What is "Due Diligence"?

"Due Diligence" is short for "a due and diligent investigation into the business including its assets or property". Due diligence is undertaken by a prospective purchaser and it is prudent to include in the Agreement for Sale and Purchase a term which makes the Agreement conditional upon the purchaser being satisfied with a due diligence investigation.

A vendor should ensure that if the Agreement is conditional upon "due diligence" the purchaser be required to sign a Confidentiality Agreement prior to receiving confidential information relating to the business.

Information sought by a purchaser from a vendor would include:

- financial details both current and for several years past
- contracts held by the business
- staffing arrangements including copies of employment agreements
- particulars of any licences held
- particulars of any franchise arrangements

5 When purchasing, are there other issues to consider?

There are a myriad of potential issues to consider depending upon the type of business being purchased.

Amongst the range of issues to consider are:

- do you have the skills necessary for running the business?
- will the business generate sufficient income?
- do you have sufficient finance or access to affordable finance?
- have you looked into taxation matters (income tax, GST, FBT, etc)?
- what staff are employed? Will you need them? Can you afford them?
- are there any special local or central government compliance issues? (e.g. zoning, OSH, special licences)
- does the vendor have a good reason to sell or is the vendor offloading a bad business?

6 What Business Ownership options are there?

When purchasing a business it is important to consider the legal structure you will use to run the business, taking into account the type of business, the number of owners and relationships between them, the financing arrangements and who will actually run the business day to day.

Ownership options include:

a) **Sole Trader** - operating in a personal capacity – not recommended where there are liquidity issues or potential liability claims.