



## CHECKLIST

# Sale & Purchase of Business

Buying a business isn't as easy as it sounds. Whether you're buying or selling, make sure you deal with these essential tasks.

Our [team of commercial lawyers](#) have drafted this checklist, which we work our way through with clients when they're looking to acquire or sell.

## PARTIES

### SELLER

List identification details of the seller(s)

- › Company type  
e.g. Sole Trader, Partnership, Limited Company etc
- › Company name & ACN
- › Address
- › Contact Details
- › ABN
- › Registered for GST?

Is there more than one seller? If yes,

- › Who owns what?  
e.g. Business Names, Trade Marks, Leases, Licenses etc
- › How will the purchase price be split?
- › Will there be joint or separate liability?

Locate original Certificates of Registration

### BUYER

List identification details of the buyer

- › Company type  
e.g. Sole Trader, Partnership, Limited Company etc
- › Company name & ACN
- › Address
- › Contact Details
- › ABN
- › Registered for GST?



**DON'T SIGN ANYTHING** until you've obtained legal and accounting advice - you could save a huge amount in the long run.

## RESTRICTIONS ON TRANSFER

- Does anyone need to consent to the sale?**  
e.g. Franchisor
- Locate stamped original copies of franchises / licenses**
- Have you granted an option to another?**



**CORNEY & LIND**  
L A W Y E R S

- What will your financier require?**  
Speak to your financier as early as possible.
- Will there be sufficient proceeds from the sale to pay out their loan?**
  - › If not, what arrangements can be made for continuation of part of the facility?

## ASSETS

### PLANT & EQUIPMENT

- Obtain a list of the following**  
Make sure you validate the accuracy of this list
  - › Which equipment is owned, leased or hired? (including vehicles)
  - › Agreed values of seller-owned equipment
  - › Finance details of leased or hired equipment—are these to be paid out or transferred?
  - › Do you have the necessary consents?
  - › If vehicles are owned,
    - › Are they roadworthy?
    - › Gather certificates of registration

### STOCK

- Obtain a list of the following**  
Make sure you validate the accuracy of this list
  - › Quantity (stock levels)
  - › When is the stocktake to occur?
  - › Who will conduct the stocktake?
  - › How will the stock be valued?
  - › What will be done with obsolete stock?
  - › Will there be a retention of title clause?  
These may impact on the ability to give clear title to stock.

### WORK IN PROGRESS

- Identify work in progress**
- How will work in progress be valued?**

### DEBTORS

- Will debtors be purchased?**
  - › Yes
    - › Method of Valuation
    - › What about bad & doubtful debts?
    - › Will there be any exclusions?
  - › No
    - › Method of collection
    - › Will the seller enforce them?



### TRAILING COMMISSIONS

- If these remain property of the seller, how are these going to be collected and monitored?

### NAME

- Obtain a list of the following names
- › Business Name (registered number)
  - › Seller's Name
  - › Product Name – list

- Seller must apply to ASIC to get a business name transfer number

### TUITION BY SELLER

- How long will the seller's tuition be for?
- Will the seller's tuition be before or after settlement (or both)?

### INTELLECTUAL PROPERTY

- Identify the following:
- › Business Names
  - › Copyrights
  - › Patents
  - › Trade Marks
  - › Trade Names
  - › Other defined industrial, commercial and intellectual property
  - › Software & Databases

### GOODWILL

- What's the goodwill value?

### RESTRAINT ON SELLER

- Are there any restraints on the following?
- › Geographical Area
  - › Time limit of restraint
  - › Business or Products
  - › Persons Restrained

### SELLER'S PRE-COMPLETION CONDUCT

- Will the seller be carrying on the business as a "going concern"?
- Please ask us if you would like further explanation.

- Obtain all User Agreements & Licenses
- Any agreements you have with third parties—gather these together for your lawyer to look at.

## PREMISES

**List your Premises**  
(Address and real property description)

**Keep any property searches held on file in one accessible place**

**Will the buyer be acquiring ownership of the property, or the lease?**

- › Acquiring Property
- › Acquiring Lease

**Do you need consents from third parties or statutory bodies?**

- › If yes, do you have the necessary consents?

**Does the proposed use comply with statutory requirements?**

**Are the premises affected by any statutory proposals?**

If the buyer is acquiring the lease, will you be...

**Sub-leasing or assigning existing lease? Inspect the existing lease.**

- › An original lease is required
- › Check Rent (& GST), Other Outgoings (& GST), Term, Option and Permitted Use

OR

**Creating a new lease? Set the terms for your new lease.**

- › You may need to inspect the existing lease first
- › Check Rent (& GST), Other Outgoings (& GST), Term, Option and Permitted Use

## LIABILITIES

### CURRENT LIABILITIES

**Are you up to date on current terms?**

**Is there an agreed method of repayment?**

**Are terms available to the buyer after completion?**

### CONTINGENT LIABILITIES

E.G. WARRANTY CLAIMS OR COURT PROCEEDINGS

**List out details of any potential current liabilities**

**Agree a method of fulfilling**

**Agree any compensation for buyer**

## CONTRACTS

- Identify and obtain copies of all material contracts
- What consents are necessary for assignment?



- Are there conditions attaching to consents?
- Deposits and payments on account—how will these be treated?

## STAFF

- List out names of Staff
- List out start dates & annual salaries
- Terms of employment

- Cessation of employment on settlement
  - › Which employees does the Buyer wish to take?
  - › How are potential long service leave entitlements to be adjusted?  
Seller has to pay buyer 70% of long service leave

## SALE PRICE (ASSET SALE ONLY)

- Will the sale price be in cash or under a different arrangement?
- What will the deposit be?
- Apportionment of price between Assets being sold

- Speak to your taxation advisor
- Are there going to be guarantees from the director(s) of the purchasing company?
  - › If so, who from?
- Will there be security for a deferred price?
  - › If so, what kind of security?

## SHARE SALE (SHARE SALE ONLY)

- Obtain a copy of the current constitution of the company
- Are there any 'seller' restrictions on share transfer?

- Are there any shareholder agreements?  
if there are, give these to your lawyer
- Are there any tax losses?

## BUSINESS RECORDS

**What will be delivered / retained?**  
Speak to your accountant about:

- › Takings
- › Wages
- › Bank Accounts
- › Age of Debtors
- › Credit Terms
- › Insurance
- › Litigation
- › Service Agreements
- › Employment Contracts

**Ensure that there is an ongoing right of access for delivered records that may be required in future (e.g. by ATO)**

## COSTS AND DUTY

**Who pays legal fees?**  
Usually, each party bears their own legal fees and the buyer pays the stamp duty.

**Who pays duty on Securities?**  
The buyer usually bears this fee

**Landlord – find out an approximate fee for assignment of Lease (if any).**  
The buyer usually bears this fee

## TAXATION



**RUN THIS SECTION PAST YOUR  
TAX ADVISOR AND LAWYER**

**Make sure your accountant is in the loop**  
the sooner you can get them involved, the better.

**What will be the Income Tax implication?**

**What will the Capital Gains Tax implications?**

**Are there any Small Business Concessions or roll-over relief available?**

**How is GST to be treated on the sale?**

**Is sale as a “going concern” planned?**

- › If so, you will need to take specific advice about the preconditions and what needs to be stated in the Sale Contract.

## CONTRACT PREPARATION



CORNEY & LIND  
LAWYERS

Who will prepare the Sale Contracts?

What conditions will a buyer want?

- › Finance
- › Due diligence on books
- › Due diligence on lease / other contracts
- › Interview and securing assurances of continuation from key staff



- Consider encouraging the buyer to perform due diligence before they spend money on contract preparation.

If you do, consider a Non-Disclosure Agreement to get assurances of confidence from the potential buyer.

- Email this document to your lawyer as a basis for contract preparation / review

Will the purchaser retain any employees?

Is the purchaser a constitutional corporation?

i.e. a company, incorporated association or letters patent

**If you answered yes to both questions,**

The purchaser should not express or imply that they do not want to preserve the “qualifying period” under the Workplace Relations Act 1996, as during the initial 6 month period following settlement, the purchaser can terminate an employee’s employment and the employee cannot bring an application for harsh, unjust or unreasonable termination of employment.

Note that this is separate to a “probationary” period.

## TIME FOR SETTLEMENT

Date or days after contract signed  
e.g. 30 days after Contract Date



- Consider everything that needs to be done before settlement and ensure you have allowed enough time.

The minimum is usually 30 days from the date of Contract and is commonly 60 or 90 days.

*just redemptive outcomes*®



**This checklist is legal information only and not legal advice.**

There needs to be a direct clear agreement between us about what we are advising you on before you can assume that we are providing you with legal advice. This is usually set out in a "Confirmation of Instructions" letter from us and you signing and returning our Costs Agreement.