



GOING INTO BUSINESS

If you are starting up a new business or buying an existing business, you may need a lawyer as much as at any time in your life. Whether you are planning to be self-employed or to employ people or control a business, there are areas of law you need to know something about.

Some of the things to take into consideration include:

- Will the business be a good investment?
- Will it generate a reasonable income?
- If it is an existing business, what income has it generated in the past?
- Why is it being sold (ie, is the lease expiring, is business declining, is there a tough new competitor on the scene, are local council activities affecting the business)?
- Do the premises comply with zoning, building and health code requirements?
- Is any rezoning or redevelopment planned in the area?
- What health and safety requirements are there?
- Will you own the business as a sole trader, in partnership, as a limited liability company or as a trading trust?
- Will your credit rating satisfy the landlord of any leases being transferred to you (as the landlord's consent is required)?
- What are the lease conditions?
- Does the business involve a franchise arrangement?
- What will your tax liabilities be?
- Will you agree to take on all existing employees?

SALE AND PURCHASE AGREEMENT

If you are buying a business, it is essential that your lawyer helps draft the agreement for sale and purchase to give you the best protection and allow you to get out of the agreement if you discover unsatisfactory things about the business after you have signed.

The agreement should give you an opportunity to:

- inspect the documentation of the business (including the financial records and annual accounts);
- get appropriate warranties from the seller (such as financial warranties and warranties relating to the assets);
- check the location and condition of assets and stock;
- and may include a clause restraining the vendor from setting up a similar business in competition.

The agreement should also identify any conditions to be fulfilled before the sale is complete, such as getting the approval of the landlord to the assignment of the lease.

If you are starting up a new business, your lawyer can check any lease and finance agreements that you are considering, advise on the best business structure for your needs and put you in touch with expert advice on areas such as tax and finance.

WHY USE A LAWYER?

To go into business is to start numerous relationships – with staff, landlords, suppliers, customers, business service organisations, local councils and government departments such as Inland Revenue. The success of your business will depend not only on your expertise and the quality of the goods or services you supply, but also on the quality of these relationships. Lawyers can help – not just to prevent damage to your business should these relationships break down, but also with suggestions that will enhance your business relationships.

All business involves an element of chance: when you hire staff you hope that they will prove suitable and stay long enough to warrant their initial training; when you lease a building you hope that the business will succeed for the duration of the lease; and when you supply goods and services on credit you trust customers to pay you. A lawyer can minimise the elements of risk and help prevent damage to your income. Here are some of the ways in which a lawyer can help your business:

Prudence: Lawyers act for many people in the same situation. They can offer advice on all aspects of your business, drawing from their past experience to help you avoid the pitfalls. They can help make your business a success with advice on such things as:

- how to minimise the risks in purchasing your business;

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- how you can go about financing the business;
- who to contact for other professional services (such as accountants, banks, etc);
- how to cope with financial stress;

and a range of other useful information from the “must dos” to business tips. Why re-invent the wheel when a lawyer can show you the shortcuts?

Licences and approvals: Many businesses need licences or can be operated only by people with particular qualifications. Other businesses or business locations require licences or approvals such as resource consents. Some of the businesses which are affected by licences and approvals are nursing homes, employment agencies, child care agencies, security guards and locksmiths, motor vehicle dealers, liquor sales, many types of food enterprises, and businesses which handle dangerous goods and firearms.

Lawyers are familiar with these matters and often can give an early indication of whether you are likely to get the necessary licence or approval. They can help prepare and present your licence application. Even for very common licences, such as liquor licences, care is needed to ensure that the licence is exactly what the business requires and that no unnecessary and expensive alterations to premises need to be made.

Buying a business: When you buy an existing business, you must be sure what you will own and what you will lease. Ask your lawyer to check your lease, zoning, licensing and other requirements at an early stage. In this way the cost of bringing a business up to scratch may be recoverable from the vendor. You should use your lawyer to lessen the risk of nasty surprises later. Obviously you should see your lawyer before you sign any contracts.

Running a business: New Zealand now has many business compliance requirements. Here are some examples of matters on which your lawyer can assist you:

Premises – including lease details, suitability of lease terms and extent of liability.

Occupational safety and health – controlling work places, factories, safety and related matters (including safety of premises, staff and all people who may be associated with your business).

Employment law – the employment contracts that you enter into can have a profound effect on the motivation and performance of your staff. It would be hard to overestimate the contribution that lawyers can make to good staff documentation and relationships and to lessening the loss if things go wrong.

Customer and supplier relationships – protecting your business by having appropriate terms of trade, effective title retention clauses and contractually binding provisions for the payment of interest. You need effective supply contracts.

- Intellectual property law – including patents, trademarks, franchising and other rights, trade secrets and employment controls. You should protect the value of the “intellectual

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property” of your business.

- Taxation including GST – especially important when buying or selling a business.
- Disputes – including the collection of debts and effective dispute resolution.

The structure of your business: It is very important to consider what type of business structure will suit you – whether it should be a partnership or a company, or whether you should trade on your own. Sometimes a partnership may seem a good idea but it has been said that a marriage is easier to get out of than a partnership – there is no easy divorce for partners. One important consideration is to keep your business and private affairs separate. A popular means of achieving this is forming a company. Other steps may be appropriate to protect your private assets and those of your family. Lawyers know about these options and should be consulted before you go into business.

Selling your business or going out of business: Many of the matters already mentioned in this brochure will be relevant when it comes to selling your business. From time to time even businesses in financial difficulties will sell at a better price following the advice of a lawyer. Many businesses and business people have been rescued from difficulties by the early use of lawyers to make arrangements with creditors or shareholders. Remember that the buyer’s lawyer will look carefully at the entire business and you will need to present everything truthfully and well.

DO THE RIGHT THING – SEE YOUR LAWYER FIRST

Lawyers deal with many personal, family, business and property matters and transactions. No one else has the training and experience to advise you on matters relating to the law. If your lawyer can’t help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Lawyers must follow certain standards of professional behaviour as set out in their rules of conduct and client care. When you instruct a lawyer, he or she must provide you with certain information, as outlined in our guide *Seeing a lawyer – what can you expect?*

This includes informing you up front about the basis on which fees will be charged, and how and when they are to be paid. The fee, which must be fair and reasonable, will take into account the time taken and the lawyer’s skill, specialised knowledge and experience. It may also depend on the importance, urgency and complexity of the matter. There could also be other costs to pay, such as court fees.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 or email registry@lawsociety.org.nz to see if the person you plan to consult holds a current practising certificate. You can also check this on the register accessible through the website www.lawsociety.org.nz.

If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service, phone 0800 261 801.

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If you don't have a lawyer:

- Ask friends or relatives to recommend one;
- Look in the Yellow Pages under "lawyers" or "barristers and solicitors";
- Inquire at a Citizens Advice Bureau or Community Law Centre;

Check these websites:

- www.lawsociety.org.nz/home/for_the_public/find_a_lawyer;
- www.familylaw.org.nz;
- www.propertylawyers.org.nz.

To the best of the New Zealand Law Society's knowledge, all information in this guide is true and accurate as at the date below. However, the Law Society assumes no liability for any losses suffered by any person relying directly or indirectly on information in this pamphlet. It is recommended that readers consult a lawyer before acting on this information.

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