

Selling Your Business

Successful entrepreneurs of the world are good in establishing businesses, running them and then selling them with capital gains. This article looks at the steps that an owner of a business would take in selling a business through an intermediary.

In Australia, there are regulations surrounding who may sell businesses on behalf of an owner. In New South Wales, the appropriate person is known as a Business Agent. This person would have taken a course (12 different subjects) and would have submitted many assignments and must achieve a Competent mark for each subject. The Business Agent would need a licence that is issued by the Office of Fair Trading. This licence is renewable each year and the Business Agent must undertake 12 Continuing Professional Development units before the licence can be renewed. Rules of conduct set out in the *Property, Stock and Business Agents Act 2002* govern the activities of the Business Agent.

Normally, a Business Agent would interview the Owner of the business and would try to identify the main points and then compile the information obtained into an Information Memorandum. This Information Memorandum serves as a snapshot of the business from the point of view of potential Purchasers. The Information Memorandum may include:

1. Summary of the Lease terms and attitude of the Landlord;
2. Financial data of the business – concentrating on Profit and Loss Statements and Balance Sheets, over several years;
3. Stock count;
4. Premises;
5. History of the business;
6. Cashflow;
7. Key persons or employees of the business;
8. Appraised value of the business;
9. Comments on market demand and the specific industry;
10. Suppliers;
11. Site of the business;
12. Licencing;
13. Marketing plans;
14. Equipment;
15. Structure of the business;
16. Goodwill;
17. Remuneration of employees; and
18. Any other relevant data.

Before a Purchaser gets access to the Information Memorandum, the Purchaser must first sign a Confidentiality Agreement. This agreement acts to protect the Owner of the business – business ‘secrets’ should not be paraded in the public domain.

A Business Agent typically charges a few thousand dollars for the professional time incurred in preparing an Information Memorandum. Depending on the wishes of the Owner, the business is then advertised through a number of media types, including direct marketing to the Business Agent’s own contacts. The Owner normally gives the Business Agent an exclusive agency period of six months to sell the business. In locating the right Purchaser and closing the deal, the Business Agent would be paid a commission by the Owner of the business.

A lawyer would be engaged by the Owner to prepare a Contract for Sale of Business and the Business Agent would work closely with the lawyer. For a discussion on what is contained in a Contract for Sale of Business, please read our other article titled “Buying a Business”.

Normally, the Purchaser would conduct their Due Diligence for a period of about two weeks before the Purchaser puts down a deposit of 10% on exchange of the Contract with the Vendor (Owner). About four weeks later, the handover or settlement would take place.

The Vendor gets paid, the Purchaser becomes the new Owner of the Business.

© Comasters April 2011.

Comasters can assist in preparing appropriate Contracts for Sale of Business for owners. Comasters can refer vendors of businesses to appropriate Business Agents.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

Comasters Law Firm and Notary Public
Suite 101, Level 1, Capitol Terrace
743-755 George Street
Sydney NSW 2000, Australia
Phone: (612) 9288 0300 Fax: (612) 9288 0399
Email: comasters@comasters.com.au
Website: www.comasters.com.au