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GOING INTO BUSINESS

What are the most common business structures?

Most often businesses will be run under one of the following structures.

Sole trader. This lets you run your own business without any other owners. As a sole trader your business and tax affairs are likely to be less complicated and you can still do things like hire employees and enter into other contracts. However, you'll also be solely responsible for any of the business's debts, which means if times get tough you may have to sell or mortgage your assets just to pay back money owed.

Partnership. If you go into partnership with another owner or owners, you can choose to make your relationship informal (in which case you'll automatically be equal owners) or formal (which lets you split ownership any way you want). Any of the business's liabilities fall on all partners so if one absconds or dies, you'll be responsible for their share of the partnership debts. A formal partnership needs to meet a number of legal requirements, including the regulations set out in the Partnership Act. Your solicitor will make sure your partnership agreement covers what it needs to.

Limited Liability Company. When you form a company, you can become a director, employee and shareholder. Shareholders have only limited liability and you can include as many as you like. As a director you'll need to comply with the duties and responsibilities set out in the Corporations Act. You'll also have responsibilities when it comes to tax, record-keeping and reporting.

Your solicitor can explain how these and other structures work.

Negotiating a lease

When you're setting up or acquiring a business you may also need to lease premises. If you do, it's important to get the lease right so that you don't have to change some part of what you're doing or even move when you're not ready to. Your lease must set out the conditions for occupying the premises, including the rent and any rent increases. You

should make sure the lease lets you alter the premises to suit your business. If you're leasing space in a shopping centre, it's probably a good idea to make sure it also restricts competing businesses from setting up in the same centre. Be careful of any restrictions imposed on trading hours or access to the premises.

Before you move into your premises you should always make sure your solicitor has examined the lease, so they can make it work in your favour.

How does a franchise work?

Franchising is a way of letting a business owner operate independently but under the banner of an established business.

The rights and responsibilities of both the franchisor (the head company) and the franchisee (the independent business owner) will be set out in a franchise agreement. Franchise agreements are often fixed-term and there's usually no automatic right to renew.

If you're thinking of starting a franchised business, you should always first make sure the franchise agreement works in your interests.

This includes clearly outlining what fees you'll need to pay, as well as the terms of sale for any goods the franchisor supplies you with. You also need to know whether you can buy stock from outside the franchise network.

The franchisor must give you a copy of the Franchising Code of Conduct and a disclosure document. It must also give you at least 14 days to consider these before you sign and agree to them and become bound by the franchise agreement.

Will you need to pay any government fees?

Depending on the type of business you're starting, you may have to apply to the government for a licence or certificate, just to operate legally. You can find out what licences and permits you may need, as well as the regulations you'll have to follow on the NSW Fair Trading website at www.blis.fairtrading.nsw.gov.au



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Will you need to take out insurance?

Legally, most businesses only need to have workers compensation insurance. However, your landlord or franchisor may make it a condition of any agreement that you also take out things like public liability or fire insurance.

You should consider taking these out, even if there's no requirement to do so. You should also consider taking out insurance for risks such as burglary, personal disability and income protection or loss of profit. Your solicitor can give an independent view on which insurance you need.

What happens to staff entitlements when a business is bought or sold?

If you're buying or selling a business with employees you should always negotiate who will bear the cost of accrued staff entitlements, such as annual leave, sick pay or long service leave, and factor this into the sale or purchase price. The obligation to pay these entitlements will move to the new owner.

Staff can often be a business's most important asset, so if you're buying a business you should also take into account any inducements you may need to pay to get key staff to stay on, as well as any fringe benefits tax obligations that may arise. You should also make sure staff, including the former owner, don't use the business's confidential information or set up in competition with you once they leave. Your solicitor can help you protect yourself against this eventuality.

What is goodwill?

A business's goodwill is essentially the price someone will pay for future earnings. It's the unseen value of a business, or what it's worth beyond the value of the assets it owns.

Things like a business's location, its reputation for quality, the staff it employs, its intellectual property and the market it's competing in, can enhance goodwill. Equally, goodwill can be destroyed quickly by changing technology or consumer behaviour, changes to zoning laws or changes to suppliers.

If you're buying or selling a business you should always make sure both your lawyer and accountant have assessed the value of any goodwill, as there will be both legal and tax implications.

How can your solicitor help?

If you're buying, selling, starting or running a business there are a number of ways your solicitor can help, including:

- Advising you on the best structure for your business
- Preparing a partnership agreement or a shareholders agreement
- Drafting a lease or reviewing a lease you're asked to sign
- Advising on borrowing and funding arrangements
- Explaining your rights and obligations under a franchise agreement
- Preparing and advising you on terms of trade and other business contracts
- Helping you estimate and protect the value of a business's goodwill
- Advising you on your obligations to employees
- Negotiating the terms of a sale or purchase on your behalf
- Advising you on how to avoid and manage business disputes
- Helping you get answers from government and other authorities
- Advising you on your obligations to consumers
- Protecting and enhancing your intellectual property rights including your business name.

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