

Operating a business

Many facets of the law come into play while operating a business. Guidance on these matters before they become an issue may save your business and possibly your personal assets. From the start, seek your solicitor's advice on legal issues arising from:

- employer/employee relations
- debt recovery
- copyright and trade marks
- consumer protection and trade practices
- superannuation.

Legal costs

Ask your solicitor about the legal costs and the processes involved in purchasing or setting up a business. Consulting a solicitor in the early stages will prevent any issues once you are operating.

Your solicitor can also advise you on state and local government charges including business name registration fees, lease registration fees, licensing and permit fees and transfer duty on the purchase of a business.

Looking for a solicitor?

You can find one via the Queensland Law Society referral service at qls.com.au or phone 1300 367 757.

buying or setting up a small business

public information



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The information in this brochure is merely a guide and is not meant to be a detailed explanation of the law and does not constitute legal advice. Queensland Law Society recommends you see your solicitor about particular legal concerns.



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Establishing yourself as a business owner requires careful planning, including understanding of various legal requirements. The best chance for new business success is to get the right start with professional guidance from a solicitor.

Starting up a new business can involve purchasing an existing business or franchise, or setting up your own enterprise. While existing businesses and franchises provide immediate cash flow and have infrastructure in place, the purchase can be a complex process which is best discussed with your solicitor.

Business structures

Deciding on your business structure has implications for the running of your business in relation to taxes, liabilities, ownership and profitability. The four most common structures are:

- sole proprietor (owned and run by an individual)
- partnership (arrangement of people to cooperate but not as a separate legal entity)
- company (body corporate which is a separate legal entity from its shareholders)
- trust (holding property for the benefit of one or more persons).

Your solicitor can advise you on the best suited structure considering your tax position, personal legal liability and availability of capital.

Buying an existing business

Serious negotiations usually commence with an agreement in principle that is followed by your solicitor conducting due diligence. This process includes checking business records such as licences, permits and registrations, plans and operations, financials, meeting minutes and intellectual property of the business. You should check the industry's landscape, competitors and the dynamics of the marketplace before signing a contract.

Do not sign the contract without first seeking legal advice or, if you feel you want to seal the deal, make sure the contract you sign is subject to your solicitor's approval with a full refund of the deposit if the purchase does not go ahead.

The contract

Your solicitor will study the terms of the contract to ensure they cover what is to be included in the sale such as:

- your rights to the business name
- the price of existing stock and the fixtures and fittings to be included in the sale
- the vendor's warranties and representations on the sales performance of the business
- 'goodwill' (a figure that determines the intangible advantages built up by the business, eg reputation and connections, which differentiate the value of an existing business from a new business)
- your need for a restraint of trade on the vendor to prevent direct competition within reasonable proximity
- your need for training from the seller on running the business
- your access to client lists and records
- transfer of licences and permits required for the running of the business at that location
- transfer of the lease
- whether you are taking over responsibility for existing employees.

Your solicitor will include contractual provisions in case the seller has provided inaccurate or false information, had more liabilities than disclosed or owned less assets than claimed.

Franchising

Buying into a franchise means receiving an established brand, product or service that has marketing and operations in place to support you from the beginning. Existing business chains operate with pre-set rules regarding the purchase of stock, shop fixtures and fittings, and marketing that you have to adopt. For this infrastructure you pay an initial entry cost and ongoing franchising fees.

It is important you seek legal advice so negotiations proceed with a focus on your interests. In particular, your solicitor will look into:

- the reputation of the franchise
- demand for its products
- the franchising fees
- duration of the franchise
- the operating procedures.

Setting up a business

Choosing a recognisable business name is the first step in ensuring your success as well as deciding on the right location, funding options, business structure, insurance and basis for engaging workers in the business.

Leasing versus buying premises

Your business location has a significant impact on business operations. Short-term renting provides flexibility if the business grows quickly, while long-term leases with affordable rent prices can give your business stability. If you are planning to customise your location and want more security, you should consider buying a premise that also serves as an asset to your business.

If you decide to lease, the terms and conditions of the lease can be negotiated. Seek legal advice so that the lease document reflects your needs and outlines

- how rent increases occur
- the duration of the lease
- the ways in which the lease can be terminated
- payment responsibilities for repairs, fixtures, fittings
- your share of rates.

You may also be considering operating a home business. Your solicitor can help you comply with legal requirements as your local council regulations may limit some of your business activities.

Finance

Choosing from the myriad of loans on offer means you need to understand your obligations under a loan agreement or personal guarantee. It is advisable to have reserves to give your business enough time to return a profit. A business plan can help you determine the required funding for start-up, operating and contingent spending. Often lawyers work with accountants and financial advisers to provide you with comprehensive legal business advice.

Insurance

By law, workers' compensation insurance is compulsory for employers. You may want to consider insurance against fire, burglary, public liability, personal disability, and loss of profits. Your solicitor can advise you on your legal requirements and areas of risk. The areas of risk will change depending on the type of business and its arrangements.