



## Tips and Traps for Buying & Selling Businesses

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There are many issues to consider when you are buying or selling a business to ensure that you get full value from your purchase or sale.

### What do you need to know?

Firstly, what are you buying or selling? Do you intend to buy a client portfolio or are you looking at acquiring the assets of the business or the shares of a financial planning company? There are legal, taxation and business consequences of which ever choice you make.

For example, if you purchase the shares of the company, you are also acquiring all of the taxation history and other liabilities of that company. However, at the same time, you will not need to write to all of your newly acquired clients to obtain their instructions to act for them.

### Buyer Beware?

Once you have determined what you are buying, take care that your purchase agreement protects your acquisition. You will need to think about:-

- Preventing the seller from marketing to clients included in the portfolio you have acquired. You also do not want the seller competing with the business you have bought. Restraints of trade can provide some protection for your purchase but they must be carefully drafted so that they are as wide as possible and enforceable as well. For example, a restraint of trade cannot operate for an unreasonable period of time or over too wide an area. If it does, you may be unable to enforce it. What is reasonable will depend on the business you are buying and the circumstances of the purchase.
- Ensuring that any key employees that have a relationship with the client base or that are otherwise important to running the acquired business remain with the business you buy.
- Ensuring that the business is run appropriately during any period between signing the purchase agreement and settlement of the sale. The agreement should prevent the seller from 'running down' the client base or the assets during the settlement period.
- How you will value what you are buying? You may want to include a rise and fall clause so that the purchase price reflects the future profitability of the business. A rise and fall clause adjusts the purchase price for the profitability (or lack of profitability) of the business for a predetermined period after the sale is completed. This is often a good idea where the vendors are continuing in the business as an employee or consultant to service your newly acquired clients.
- How to ensure that the clients of the newly acquired business become clients of your business. Whilst you have acquired the right to future trail commissions and to service the clients, you will still need the clients to agree to your appointment as their planner (unless you have acquired the company that serviced the client, but even then, it is wise to secure the clients' loyalty to the changed ownership).

### Seller Secure?

If you are selling, your concerns should include:-

- Ensuring the restraint included in the sale agreement does not prevent you carrying out your post-sale plans. You may need to negotiate a “carve-out” to the restraint to enable this..
- Can you comply with all of the warranties and indemnities required by the purchaser and are they reasonable? If you agree to the requested warranties and indemnities, what is your exposure if they are breached? Always negotiate a time period during which these will apply and if possible, a limit on the amount for which you can be held liable for a breach.
- If a rise and fall clause is included in the agreement, what control will you have over the conditions that may result in a price adjustment? If you will not be involved in the business after it has been sold, you may not want to have the sale price amended by factors that are outside your control.

**Plan ahead!**

So, no matter whether you are buying or selling a business, portfolio or company, get legal advice to ensure your agreement actually buys or sells what you intended and that the obligations and liabilities you have taken on fit with your future plans. As a buyer, you don't want the vendor of your business operating next door and if you are a seller, improving your golf swing is probably more important than managing the business you have sold!

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