



## Notes for clients considering purchase of a business

These notes are for general information only. They should not be relied upon in the absence of advice about a particular situation and no liability is accepted in the absence of our receiving formal instructions and providing formal advice.

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Although there is only one transaction it is made up of quite different parts e.g. the purchase of a freehold or leasehold property and the purchase of a business. This means that the transaction is more complicated, usually more time consuming and more expensive than a house purchase at an equivalent price. You obviously do not wish to buy a good business with a bad lease or vice versa.

The business itself involves various matters for example:

1. You being reassured that the profits are and will remain sufficiently high to justify the purchase price.
2. The implications of you taking over existing staff and also the implications of the Seller dismissing any of those staff.
3. Whether there is a risk of the Seller or staff setting up business in competition with you nearby.
4. Whether anything else may affect the goodwill of the business, e.g. any public health prosecutions pending against the Seller.

In some cases the Sellers Solicitors send us adequate information with the contracts. In other cases we have to keep pressing them before we have enough information to give you reasonable reassurance about the transaction.

For this reason, at this stage it is not practicable to give you an estimate of our charges. We will try to do so when we have received the draft papers. Even then it can only be an estimate as matters often arise which are not foreseeable.

Meanwhile I advise you to contact your Accountants (if you have none then we can make recommendations to you which we will try to relate to the size and nature of your business and your particular needs).

I suggest that you discuss with your Accountant the last three years figures produced for the business. He may see something significant in them which has escaped your notice. He can also advise on how the purchase price should be divided between e.g. the building, the goodwill, the equipment. If the building includes living accommodation he may also comment on how the price should be split between the business and the living accommodation parts. The apportionment of the price is significant as it could affect your

liability to Capital Gains Tax. NB where values are significant, or the apportionment affects the tax payable, the Inland Revenue may require valuation evidence from an appropriate expert e.g. a surveyor re the building, e.g. suitably experienced valuer re the equipment, e.g. an accountant re the goodwill.

He may also advise on whether there is any particular benefit in seeking a particular date for exchange of contracts or completion.

You can also discuss with him the advantages from a tax point of view of trading as a Limited Company or as a sole trader or as a partnership. The tax implications are not the only criteria however and I can comment on others. In some cases it is preferable for a wife to be an employee rather than a partner. This gives added security in that any property which she owned would not be caught by the unfortunate financial collapse of the business. It is possible for the business to be owned and operated by a different combination than the building itself, e.g. you could both own the building and lease it to one of you who runs the business. This can affect Inheritance Tax and terms registered with your lender.

Do you want the opportunity to actually work in the business for a period between exchange of contracts and completion? Alternatively do you want the Seller to agree to be present after completion for a few days or weeks to help you find your way around?

It is important that you consider which staff you want to take on. It is important that you realise that the number of years they have worked for the Sellers will count towards their redundancy payment should you make them redundant while they are your employees. It is also important to realise that it is sometimes possible for staff dismissed by your Seller to have a claim against you. We will seek proper indemnities from the Seller to cover this situation.

You may also wish to utilise the experience and expertise of the Seller by employing him/her on a consultancy basis following the purchase. This may be for a limited time following completion or on a more long term basis.

If the stock is going to have a significant value then you need to consider whether you and the Seller will value it between you or whether you want to pay an independent person to do it for you. You should also consider what minimum amount of stock you would want to be present when you took over the business. Presumably you would not want to start with empty shelves. On the other hand you would not want the business to be so highly stocked that you had to make fresh financial arrangements to pay for it on completion.

I suggest that you check the equipment. If any of it is obsolete or dangerous or illegal then you should refuse to buy it.

Are there any significant customers whom it is important you take on with the business? If so you may want to reassure yourselves that those customers are not about to leave for whatever reason.

You will have to negotiate your own terms with various suppliers. Presumably the Seller will introduce you to them.

Usually bills owed to the business will be collected by the Seller but there are other ways of dealing with them.

Are there are licences (e.g. sale of liquor) which you need to take over?

Have you dealt with VAT before? You should check what arrangements are necessary here.

Valuable advice can often be obtained from various organisations e.g. West Cornwall Enterprise Trust or Business Link (Prospect). There are all sorts of schemes assisting business people these days and in particular contributions to the cost of training staff may be of interest.

Being self employed you will need to make some sort of independent pension provision. I would also advise that you have some sort of sickness benefit cover so that, if you are unable to run the business yourself for a time, you have funds available to pay for an extra member of staff or keep up the mortgage instalments et cetera. I suggest to you that I arrange for an independent financial advisor to come and discuss these matters with you on the basis that you will pay no fee for his preliminary advice and that you will not be obliged to take the advice. At the very least you can use it to compare with any other source of advice you have. It would also be a good opportunity to look at your Wills as the purchase of the business may have a very significant impact on how your estate would be divided and taxed.

Are there any other rights which you need with the business e.g. the use of a trade name or a patent, website or email address? If you use a name other than your own for the business, you must display the names of and address for, the owner(s) on stationery and at the premises.

If you are purchasing or leasing a building as part of the business then we strongly advise that you obtain a professional surveyor's report. And we enclose some notes on surveys for your assistance. You should not only be concerned about the value of the premises and whether you might incur substantial repair bills. You also need to consider your liability to persons working in the building, eg. if it is affected by asbestos or radon. The seller should have conducted risk assessments regarding fire at the property, once the business is taken over, these will be your responsibility.

We have additional Notes of Advice regarding leases. If we have not already supplied a copy, please ask.

Has the seller complied with the requirements of the Data Protection Act? For further information on these we recommend the website of the Information Commissioner, [www.dataprotection.gov](http://www.dataprotection.gov)

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