

Partner

Stewart Lloyd Germann
B.Com, LLB, FCIS, ANZIM, Notary Public

Partner

Clive Frederick Neifeld
B.Com, LLB

Ground Floor, Princes Court
2 Princes Street, PO Box 1542
Auckland, New Zealand
DX CP20531, Auckland

Telephone 0-9-308 9925
Facsimile 0-9-308 9922
email stewart@germann.co.nz

Buying a Small Business or Franchise?

Purchasing a business is very exciting but great care must be taken to minimise the risks. A business may be a stand-alone or independent operation, or it may be part of a franchise system.

Before you purchase any business you should consider the following:

- Engage an accountant to examine the books and records.
- Test any financial representations made by the vendor.
- Check whether the business will be able to service your proposed borrowings and still leave an adequate return.
- Check the terms and conditions of the contract and discuss them with your solicitor before you sign anything.
- Check the provisions of the lease and obtain legal advice.
- Ensure that a schedule of plant, fittings and equipment is attached to the agreement.
- Undertake due diligence in a thorough and professional manner.

If you require finance you will need to submit a business plan to a bank. In relation to choosing a competent lawyer, Stewart Germann Law Office has over 25 years experience in the sale and purchases of businesses and in franchising in New Zealand - so come to the experts.

Franchise

If you are going to buy a franchise you must understand what franchising is. Basically, franchising is a method of marketing goods and services where the franchisor owns the name, idea, secret process or piece of equipment together with the goodwill and know-how associated with it. The franchisor grants a franchise to another person called the franchisee permitting the exploitation of the name, idea, process or equipment. There must be a franchise agreement between the parties which is robust and fair.

The Franchise Association of New Zealand (FANZ) was formed in July 1996. The FANZ has a mandatory Code of Practice which all members must adhere to and the Code is a benchmark for promoting high standards. If a franchisor belongs to the FANZ it must publish a disclosure document, have a seven day cooling-off clause in the franchise agreement and provide a dispute resolution process for resolving disputes between the parties. Look for the Franchise Association logo.

Ways of Expanding Offshore

Many New Zealand franchise systems are sophisticated, mature and ready to go offshore. The methods for going overseas include the following:

- Direct franchising - where a franchisor enters into a franchise agreement with each individual franchisee in the target country, with the franchisor providing initial training, back-up and continuing support.
- Master franchising - by far the most popular method whereby a franchisor appoints a master franchisee in the overseas country to either take the whole country or part of the country as its territory.
- Company-owned operations - where the New Zealand franchisor sets up business in an overseas country and owns the outlets.
- Joint venture - where a franchisor enters into a joint venture with a foreign company which is, in effect, the franchisor on the ground. The joint venture company must establish the system in the target territory on a shared basis with a local partner.
- Development agents - who are appointed in overseas countries to own and operate outlets and to subsequently sell them to independent franchisees.

Take Legal Advice

It is crucial if you are buying a business, whether it be a franchise or an independent business, to engage the services of an accountant and an experienced lawyer and Stewart Germann and Clive Neifeld of Stewart Germann Law Office are here to assist you. Most commercial documents are complex and can be ambiguous so you must understand what you are signing. Once an agreement is signed it is too late to go back and negotiate any missing terms. SGL is a member of the Franchise Association of New Zealand and adheres to the Code of Practice. SGL is a boutique business firm providing friendly service and expert advice.

Stewart Germann and Clive Neifeld have years of experience and will assist you professionally to a very high standard. Phone today at 09 308 9925 or email: stewart@germann.co.nz.