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ENTREPRENEURS – BUYING, BUILDING AND SELLING BUSINESSES

A dictionary definition of the word “*entrepreneur*” is:

“A person who undertakes and controls an enterprise or business venture, especially one in which risk is involved.”

Buying, building and selling businesses each have risks. Some of the risks relate to legal matters and these risks are capable of being limited by implementing appropriate legal advice at the appropriate time.

Buying a Business

Whilst an exciting exercise (as to the day to day running of the business and the hope of making ongoing profits and a high profit on sale of the business itself), care must be taken on purchase to minimise the risks by giving consideration to the appropriate conditions to be included in the Agreement for Sale and Purchase, inter alia, to allow proper and complete due diligence, to deal with particular peculiarities of the business and the required loan funding. Also, the terms and provisions of any lease, franchise agreement or other document on which the business is based (all of which need to be properly checked out for any defects and unacceptable financial or other obligations) need to be carefully considered.

Building the Business

Methods of building businesses include:

- **Opening Branches**

This involves expenditure of additional capital and the investment of managerial skills for the decentralised locations. If third parties are to be brought in to provide capital and/or management then possible methods are through partnership, joint venture or other unique arrangements. In all cases care needs to be taken to properly document the relationship of the parties.

- **Appointment of Agents**

In this case the agent sells goods on behalf of its principal. A properly drawn and comprehensive agency agreement is needed to describe the parties’ rights and obligations so as to avoid uncertainties and conflict.

- **Appointment of Distributors**

This situation anticipates a manufacturer/supplier selling product to another party (retailer) who resells them. The supplier looks to the distributor for payment. There should be mutual interest in the supplier and distributor maximising the sales of the product but there is no guarantee that this will occur and again a well drawn agreement

is required to provide a framework within which the arrangement is to operate and to clearly demarcate the rights and obligations of the parties if things do not work out.

- **Licensing**

By this arrangement a supplier authorises other retailers to use its trade mark for payment of a royalty. This arrangement can also sometimes be used to allow sale of a particular product (which may carry the trade mark). The Licence Agreement must be comprehensive and contain the necessary protection of the Licensor and its intellectual property and clearly record the intended arrangements between the parties to avoid uncertainties and provide the necessary rights of enforcement.

- **Franchising**

This usually means the use by the franchisee with consent of the franchisor of a full business format (including intellectual property) in the manufacture and/or supply of goods or services. Franchising law has become specialised and potential franchisors and franchisees should engage professionals experienced in this area to ensure agreements contain appropriate provisions.

Selling Businesses

Care needs to be taken well in advance to “groom” the business for sale so as to be able to market it with confidence that it will pass an intrusive due diligence investigation by a purchaser. To achieve this an intending vendor needs to work with his/her professional advisors (including accountant and lawyer) to ensure that, amongst other things, all leases and similar arrangements relating to property and equipment and all licences, permits and contracts relating to the business are renewed and in force and that any legal problems are being properly dealt with.

Take Legal Advice

It is very important for the entrepreneur when buying, building or selling a business to engage the services of an accountant and an experienced lawyer.

This article was written by **Clive Neifeld**, partner in **Stewart Germann Law Office**. Clive Neifeld and Stewart Germann have years of experience and will assist you professionally to a very high standard. Phone today at (09) 308-9925 or email clive@germann.co.nz or stewart@germann.co.nz.



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