



**DONOVAN OATES
HANNAFORD**

Legal + Conveyancing

A refreshing approach to legal advice

10-Step Checklist for Buying a Business

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CHECKLIST



Thinking of buying a business? There's a bit to think about before you make an offer.

Buying a business can be one of the most significant decisions you'll make. Whether you're relocating and exploring options, looking to fulfil that business ownership passion, or simply ready for a change, this checklist will help you get prepared for a smooth, successful purchase.

These 10 steps are grouped into three key stages:

1

GETTING
PURCHASE
READY

2

COMPLETING
THE
DEAL

3

FINALISING
THE
SETTLEMENT



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1

GETTING PURCHASE READY

Research the business and industry to ensure a smooth purchase and seamless business transition.

1

Clarify your goals – personal and professional

- Do you want a clean exit from the current owner, or would you prefer they stay involved in some way? If this is a new industry to you, you may want their involvement, at least for a short period of training.
- Is this a complex business transaction? Note: most are. You should obtain legal advice, as you will need a specifically prepared purchase agreement for every business.
- What is the correct buying entity you will eventually purchase the business under, i.e., Trust, Company, Partnership, etc?

Tip: Make sure you understand the industry category you are entering. Get legal advice on buyer entities and the necessary agreements required.

Need help with buyer entity options and management agreements?

Please speak with our team and your accountant about the different buyer entity options and which one would best suit your upcoming purchase.

2

Make sure you have all relevant third-party approvals

- Has the seller outlined all the key contracts for easy transfer (e.g. suppliers, major customers, service providers)?
- Does the sale agreement outline the key staff agreeing to transfer their employment to you?
- Do you have the necessary licences or permits required to run the business?
- Confirm all intellectual property is registered in the business owner's name (business name, website, domain, logo, trademarks and branding) and ready to transfer.

2 contd

- Check the lease: is there enough of the term left to offer you stability or an option to extend?
- Is the business a franchise? If so, check the Franchise Agreement: is there enough of the term left to provide you stability, or will you need to negotiate a new Franchise Agreement? You will also need to check that the seller has approval from the franchisor to sell the business.

Tip: Site-based businesses (like retail or hospitality) often rely on location. A lease with less than 3-4 years remaining may affect business stability moving forward.

Unsure if the contracts or leases are 'assignment-friendly'?

Our lawyers can identify red flags early, saving you time and dealing with stress later. We can also advise on Fair Work obligations related to staff transfers.

3

Get your financials in order

- Do you have all the necessary finance in place or a plan to acquire it, not only for the purchase but for the ongoing trade requirements, such as working capital for stock?
- Have you done your due diligence to understand the key terms of what is included in the proposed sale price?

Tip: Ensure you have completed your due diligence and obtained all relevant approvals and information before approaching the bank, as they will require this information to provide unconditional loan approval.

Talk to your accountant – they'll help you understand the financial records and help you go back and request more financial information if necessary. They will also help you determine if this business purchase suits your financial goals.



COMPLETING THE DEAL

You've negotiated and agreed on a sale price;
now you must sign and exchange the Business Agreement.

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Financial information

- Now is the time to thoroughly review all financial information relating to the business's turnover, expenses and profitability (or goodwill)
- If the business you are buying is a franchise, review the terms of the Franchise Agreement carefully, as there may be additional costs that are not readily apparent in the financial statements.

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Plant and equipment

- The seller should provide a list of assets (or plant and equipment) included in the sale of the business. Check this thoroughly to ensure you know what is included in the sale; don't just assume.
- You need to be aware of which assets are actually owned by the seller, or subject to a lease or other secured financial arrangements (such as hire-purchase or business loan).

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Intellectual property

- Check that any form of valuable intellectual property, such as trademarks, patents, designs, graphics marks, taglines, etc, is registered to the business being sold, not the individual. These are generally registered through the government authority, IP Australia.
- Also, check for any copyright that has been asserted on any marketing materials and assets, such as websites, business drawings, publications, and manuals.

Want a lawyer in your corner during negotiations?

We help you balance commercial goals with legal protection – without slowing down the deal.

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Employees and key persons

- The buyer must carefully review the employees' formal employment agreements or arrangements to determine whether they comply with current government awards.
- During this phase of the purchase, both parties must decide which employees will transfer with the business sale and which will not.
- The two parties need to determine who is responsible for the accrued entitlements/liabilities, such as annual leave, long service leave, and sick leave. If it is you (the buyer), there may be room for a reduction to the purchase price.
- The buyer should ensure that any key person(s) key performance indicators (KPIs) are agreed upon; this may include the seller if they are staying on to work in the business after settlement.
- You need to check that the seller has written approval from the lessor/franchisor/licensor/supplier that the contractual agreements will continue under a new owner.

Tip: Good legal advice can speed up a deal – not slow it down.

We have years of experience in Employment Law & Business Law?

We can review the details of the employment agreements and liabilities to ensure there are no surprises. We can also help you ensure that all the seller's responsibilities have been carried out in regard to the current agreements in place.





3

FINALISING THE SETTLEMENT

The deal is done, but there are still a few more jobs on your to-do list.

Assuming all condition precedents have been met and all necessary approvals are in place, the settlement is usually a rapid process.

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Settle up and embrace your new adventure

- Check the exchange of Business Name transfers.
- Make sure you have keys for access to the business premises and any plant and machinery that may come with the business sale.
- Security codes and cheques for final payment.
- Relevant third-party approval documents, such as a lease, franchise agreement or approval by relevant government departments e.g., Racing, Gaming and Liquor.

Tip: Forgetting post-deal admin can leave you financially exposed.

Want a clean business takeover?

Our lawyers can run through a post-deal checklist with you to tie up loose ends and protect your future.

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Stock

- Businesses that operate an inventory usually require a 'stock take' to occur, usually on the day before or the morning of settlement.
- If there is any dispute as to the Value of Stock, this should not stop settlement. Instead, an agreed sum should be retained in trust pending an independent qualified stock taker arbitrating on the Value of Stock if the parties cannot agree.

Commercial law is a key area of our practice. Our team have extensive experience supporting

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Discharge of Encumbrance(s) and Transfer Duty

- The seller will need to provide at settlement any release of security interests on secured bank loans, equipment on finance, etc. These secure parties generally require a payout figure adjusted on the settlement date.
- All business sale agreements will be subject to transfer duty assessed by the Office of State Revenue (OSR). Transfer duty is payable on plant, equipment, and goodwill but not stock. Agreements must be lodged within three months of the date of the agreement or upon settlement, whichever occurs earlier, so make sure you mark this in your diary. Heavy fines apply for failure to lodge on time.

Download the checklist* summary

This document is designed to help you start thinking strategically about your business purchase. Every business is different, so once you've ticked off what you can, we recommend a tailored conversation with a lawyer.

Need to talk to someone now?
Book an appointment to find out how we can help:

Call (02) 6583 0400 or visit www.dohlaw.com.au

*Checklist is for informational purposes only and does not constitute legal advice.



About Donovan Oates Hannaford



**DONOVAN OATES
HANNAFORD**

Legal + Conveyancing

Donovan Oates Hannaford is different.
We are legal experts as well as people experts.

Our aim is to make sure you remain at the centre
of your legal matter or proceeding at all times.

We ensure we have a thorough understanding of your
situation before providing advice and you can be confident
that we understand your needs and expectations.

We offer our clients superior and professional advice which
is easily understood and is provided in a timely manner.

We are a locally based law firm which has been servicing
the Port Macquarie region since 1946.



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Employment law