

BUYING & SELLING A BUSINESS: NAVIGATING THE LEGAL AND FINANCIAL RISKS FOR COMMERCIAL LAWYERS

1. Changing Business Structure to Facilitate Business Sale
2. Due Diligence Checklists on Business Sales: The Buyer's Perspective
3. Drafting Business Sale Clauses Addressing Tax and Financial Risk
4. Warranties and Indemnities in Business Sale Contracts
5. Evaluating Intellectual Property and Data on Business Acquisition

A SERIES OF 5 ON DEMAND WEBINARS



Leaders in CPD for Lawyers & Accountants

ABOUT THIS SERIES

What's covered

Buying and selling a business comes with significant risks, and clients expect their advisors to carefully guide them through the process. However, are you prepared for the challenges that may lie ahead? In this five part webinar series, learn directly from the leading experts on the key difficulties associated with buying and selling a business. Sessions include business restructuring when advising a buyer to sell, due diligence checklists on business sales from the buyer's perspective, drafting business sale clauses addressing tax and financial risk, as well as navigating warranties and indemnities in business sale contracts. It also includes an in-depth review of Intellectual property rights and data management issues in business acquisitions.

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THE PROGRAMS

Session 1: Changing Business Structure to Facilitate Business Sale

Getting ready for business sale may require adjusting or changing business structure to help manage risk or improve value. This session looks at the key issues involved with business restructuring when advising a buyer to sell, including:

- Advantages and disadvantages of different business structures and the reasons to change
- Some common business structure transitions:
 - sole trader to partnership
 - partnership to company
 - sole trader to company
- Assessing business structure in terms of:
 - exposure to risk
 - tax considerations
 - transfer duty exposure
 - administration and business operations
- Isolating liabilities rather than cross guarantees
- Case studies

Session 2: Due Diligence Checklists on Business Sales: The Buyer's Perspective

When it comes to buying a business, clients will turn to their trusted adviser to help guide them through the process. While it can be an exciting time, a failure to properly understand the detail can lead to potential for things to go wrong down the track. This practical session examines the key issues buyers need to navigate, including:

- How are you buying it? – asset sale or share sale
- Key searches and due diligence to consider:
 - PPS issues
 - tax, GST, and Payroll Tax
 - IT issues, including software licences, website, socials, cloud computing etc
 - review of IP ownership
 - leases and freehold
 - review of licenses, leases and consents
 - customer and supplier contracts
- Employee entitlements the buyer must recognise
- Super Guarantee compliance
- Case studies

THE PROGRAMS

Session 3: Drafting Business Sale Clauses Addressing Tax and Financial Risk

Getting business sale contracts right present drafting challenges. This session covers some of the key clauses covering tax and financial risk. It includes:

- Drafting financial information and valuation terms – precautionary risk control
- When to use special conditions and conditions precedent
- Allocation of tax liability between buyer and seller
- Allocating financial risk between buyer and seller – bespoke clauses for business type
- Tax liability clauses - sale of assets or purchase of shares in company
- GST clauses – sale of business as a going concern
- Clauses addressing GST free supply and consideration is exclusive of GST
- Case studies: Earn out clauses and tax liability

Session 4: Warranties and Indemnities in Business Sale Contracts

Warranties and indemnities are necessary for both buyer and seller. Getting this right from both perspectives is examined in this session. It includes:

- How far should vendors go with warranties in sale contract?
- Some key warranties:
 - condition of business assets
 - accuracy of financial information
 - compliance and approvals
 - outstanding orders and liabilities
 - employee entitlements
 - tax warranties
- Types of indemnities and their effects
- Limitations on warranties and indemnities
- Indemnities for buyer and third parties
- Indemnity thresholds and liability caps
- Indemnification and insurance
- Limitation periods, warranties and indemnities

THE PROGRAMS

Session 5: Evaluating Intellectual Property and Data on Business Acquisition

Intellectual property rights and data management can sometimes be overlooked during a business acquisition. This session looks at managing this risk, including:

- Evaluating seller's IP documentation – key disclosure schedule issue for IP
- Valuing the IP of acquisition target
- Managing the IP transition – assignment and change of control issues
- Assessing open-source software problems
- Dealing with representations and warranties related to ownership of IP
- Identifying key red flags in IP related agreements
- Data protection and privacy management and control
- Understanding the scope of indemnification and disclaimers by seller on IP issues
- Controlling website and social media IP issues

THE FACULTY

Nick Love, Director, Grant Thornton, Melbourne, Vic

Nick is a Chartered Accountant with 9 years experience in Professional Services. He assists privately owned businesses, their owners and high net wealth individuals/families with their accounting, tax and advisory needs.

Nick develops a deep understanding of his clients by building strong relationships with them. From this he is able to provide tailored solutions focused on growth. Nick works across a number of industry sectors with a particular emphasis on professional services and real estate.



Ron Smooker, Partner, Maddocks, Melbourne, Vic

Ron has extensive experience advising on corporate, commercial and financing transactions. He has been involved in many of Australia's largest and most complex M&A transactions, and is recognised as a leading adviser on transactions involving complex structuring. Ron has acted on various commercial matters for a range of listed and unlisted companies on joint ventures, long-term contracting and other commercial arrangements. He has also acted for financiers of projects.

Ron has advised clients from a wide range of industries including transport and logistics, mining, consulting, energy and resources, and media and entertainment.



THE FACULTY

Patrick Ellwood, Director, Clover Law, Brisbane, Qld

Patrick Ellwood is a lawyer with over a decade of experience assisting high net worth individuals and family business owners.

He is the founder of Clover Law, an Australian law firm specialising in tax structuring, estate planning, superannuation and asset protection.

He is a regular speaker for a range of private and professional bodies and is a published author of a number of legal textbooks.



Malcolm McBratney, Principal, McBratney Law, Brisbane, Qld

Malcolm has spent over 25 years specialising in Corporate, Commercial, Intellectual Property and Technology law.

Malcolm has extensive experience in mergers and acquisitions, capital raising and legal localisation requirements across jurisdictions. He has a particular specialisation in technology and intellectual property and has extensive cross-border experience.

As a recommended lawyer in Asia IP Profiles, Malcolm received acclaim for his 'expertise and responsiveness' and 'fantastic client service'. Malcolm was also acknowledged by Managing Intellectual Property Handbook 'as not only knowledgeable in the law, but also grasps the commercial implications of any action, quickly'.



THE FACULTY

Fred Chilton, Special Counsel, Toomey Peg, Sydney, NSW

Fred is a highly experienced corporate and commercial lawyer who has enjoyed success in a broad range of practice areas – from property trusts, mining and resource matters to telecommunications, media, technology, pharmaceutical and venture capital clients. He has been actively involved in the International Bar Association and the International Law Section of the Law Council and has been recognised by Chambers, Euromoney and Who's Who Legal as one of the world's leading IT and eCommerce lawyers.



Fred holds degrees from Sydney and Harvard Universities. His experience includes over two decades as a partner at a major Australian law firm and two years in New York working for a major American firm.

WHAT YOU GET

This video webinar series includes the following components:

- Online access to the on demand webinar programs. Programs are expected to be 1 hour each in length.
- The programs will be recorded in late September and available to subscribers online in early October 2022.
- Online access to the technical support papers and/or powerpoint presentations accompanying each program.



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