

Preparing A Business For Sale

Key Legal Issues

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2. Key legal issues which can impact on the value of a business to a buyer?
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**If you only remember one thing today:
Preparation = Value**

Options to sell your private business

- Sell
- Family handover
- IPO
- Wind down the business

- Today, we are focused on sale

What are the key legal issues which can impact on the value of a business to a buyer?

Contracts (customer, supplier, leases)



- Are formal contracts in place?
- Are complete copies available to the buyer?
- Are they signed and current?
- Are they in the name of the right party?

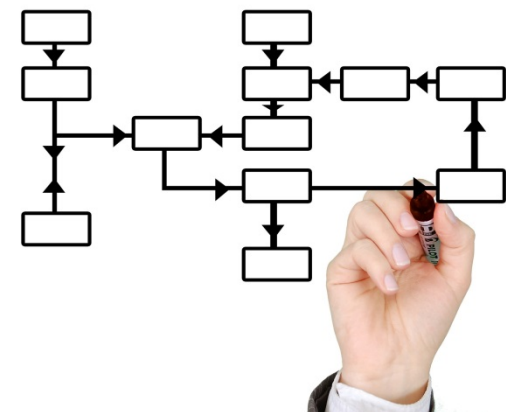
Employment



- It's not enough to rely on strong culture / personal relationships – a buyer won't recognise this.
- Review standard offer letter.
- Check compliance.
- Make sure systems, policies and procedures are in place.

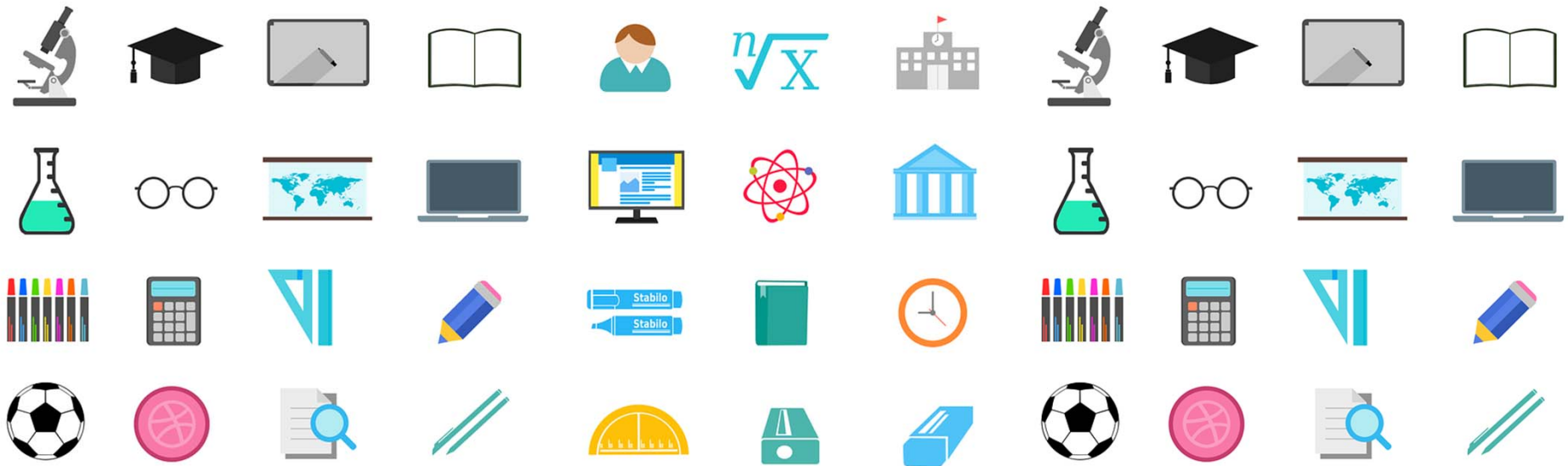
Corporate structure

- Often driven by tax / succession planning and may be out of date.
- Can be difficult for a buyer (and reduce value) at sale time.
- Plan the structure with a sale in mind from the start – or re-structure before the process starts.



hunt & hunt
lawyers

Intellectual property



- Does the business rely on IP and is it protected?
- Are key trade marks / logos registered?
- Is the domain name registered? Who owns the content?
- Are all business names registered (in the right name)?
- Who owns contractor-developed IP?

Due diligence and data room preparation

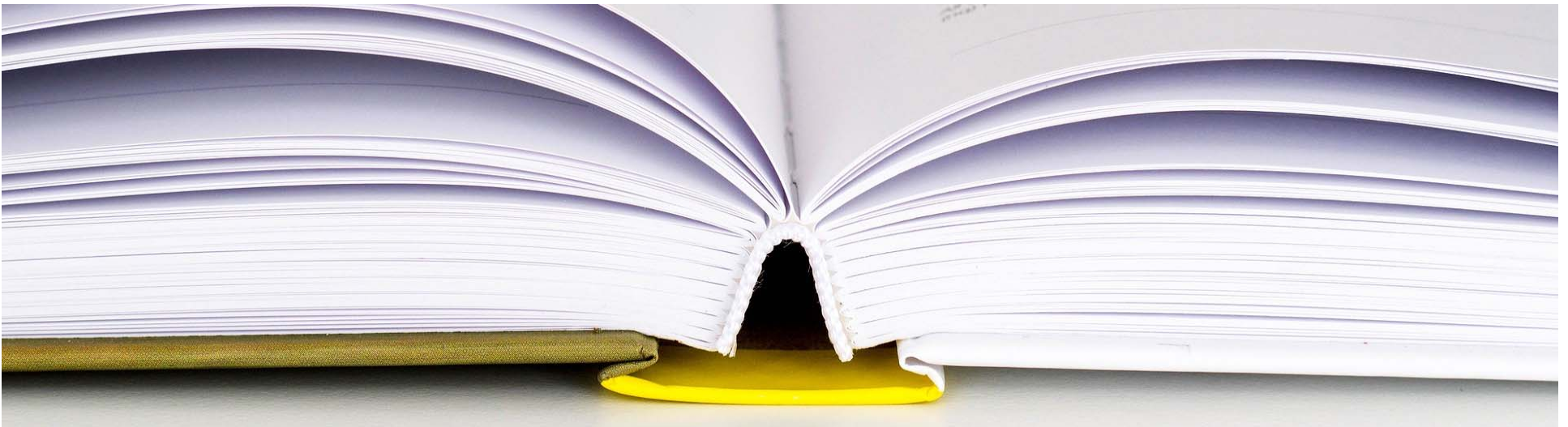
Due diligence

- The role of due diligence is to **identify the legal risks** and obtaining greater certainty regarding relevant factual issues.
- “Doing your homework”.
- Should always be completed by the Buyer before any decision is made to buy the business.
- Critical as this informs the terms of the sale agreement.



Data room

- A well organised, comprehensive (and so confidence – building) data room
- Respond quickly and confidently to buyer questions
- Negotiate lower retention or escrow amounts and shorter retention or escrow periods
- Have less errors/gaps in the information provided, so less risk of a warranty claim



Most common transaction structures

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Most common sale / transaction structures are:

1. Share sale
 2. Business / asset sale
- Pre-sale corporate structure can impact on sale structure

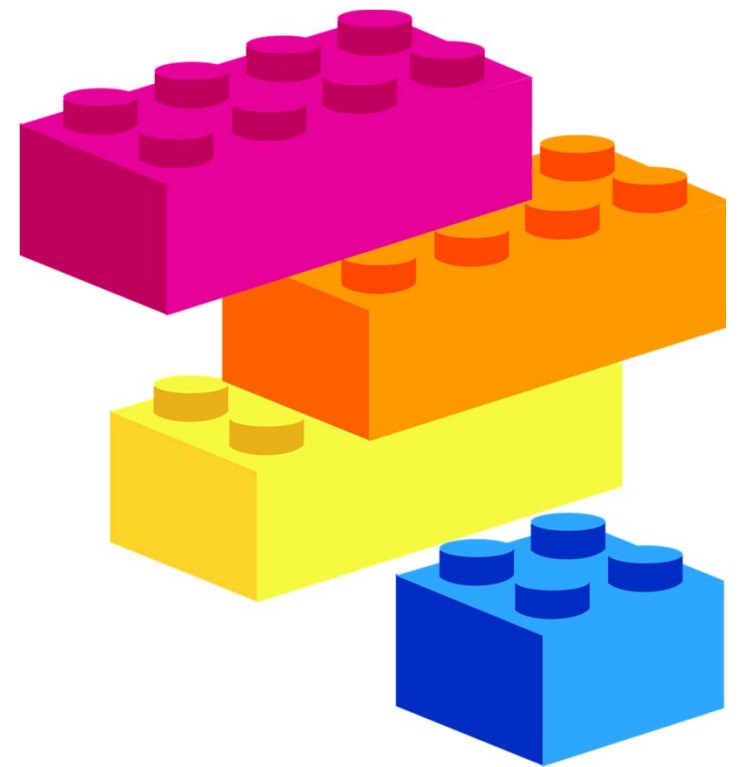
Share sale

- Buy the whole company by acquiring all of the shares
- Often provides a cleaner exit for the Seller
- Company remains “as is”, so third party contracts, leases etc don’t need to be assigned
- Employees remain with the Company – no change
- Often requires consent from counter-party to contracts following a “change in control”
- Can be > potential liability for the buyer (e.g. acquire historical tax issues, 3rd party claims etc)
- Seller faces broader scope for warranties and indemnities and possibly security



Business / asset sale

- Acquire specific / identified assets and liabilities – a “piece of the pie”. Cherry pick assets the Buyer wants.
- Can include fixed assets, land, machinery, stock, intangible assets (eg. goodwill and IP)
- Employee contracts will need to be terminated and new contracts entered into
- Contracts need to be assigned or new contracts entered into
- Many buyers prefer the more defined risk profile (eg. no exposure to historical claims / tax in the Company)
- Leaves “shell” of the Company for the seller to deal with
- No GST if a “going concern”



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