FTA Launch NEW Classifieds Service

As an alternative to using a commercial business brokerage service to buy or sell your business, Freight & Trade Alliance (FTA) has launched a business sales classifieds service through an enhanced dedicated web page and listings to be broadcast via our social media and weekly report.

How does it work?

The seller provides details that they are comfortable to release in the classified. Any referral to FTA is then passed on to the seller's contact (perhaps an accountant or lawyer).

Once contact is made between the buyer and seller, it is up to the respective parties to complete their own due diligence, valuations and legal proceedings.

What is the commercial arrangement with FTA?

The service is exclusively available to FTA with an agreed fee paid by the seller on a "success" basis – in other words, no sale no fee.

Want to know more?

Please contact us at classifieds@FTAlliance.com.au if you are interested in knowing more or want to receive a Memorandum of Understanding to commence a campaign – all enquiries will be managed in strictest confidence.

An asset purchase or a share purchase – how to best grow your business?

By LYNNE GRANT Special Counsel, Hunt & Hunt Lawyers

You are looking to grow your business, enter a new market or strategically acquire customers or employees by purchasing another business. One of the first questions we are often asked is whether this is best achieved by an asset purchase or a share purchase. The answer always lies in the nature of the business being acquired, the particular objectives of the buyer, the risks of the purchase, the risk appetite of the buyer and of course your negotiating power.

A well-executed acquisition can add significant value to your business. But you do need to get the structure of the acquisition right to take the best advantage of the opportunity.

So what is the difference between an asset purchase and a share purchase?

An asset purchase allows you to identify the key assets of the business and acquire only those. Think of a bucket with many different things inside of it (contracts, physical assets, employees). An asset purchase allows you to look through the bucket and decide which of those things you want to buy and offer a price to the seller. You leave the bucket behind with the seller along with any of the items inside that you don't want.

In contrast, with a share purchase you will be buying the entire company – all of its assets, liabilities and employees. You are buying the whole bucket and taking it away with you. This is simpler – you can't miss anything. But, what if there are some things at the bottom of the bucket that you didn't notice or that the seller didn't know about (perhaps undisclosed or unknown tax liabilities). Now, you are liable for those.

Often, it looks like a share sale is riskier and in some ways it is. But, if you are acquiring a consumer facing business, then it can have significant advantages.

The business continues post-share acquisition with few hurdles to overcome from a consumer perspective. There are no new bank accounts, no changes to payment arrangements, no new ABNs and in many cases, no need for new contracts. Depending on the type of business being acquired, customers may hardly notice that there is a new owner and the employees will remain in place with no changes required. These benefits will sometimes outweigh the risks.

But if the target business has a handful of critical contracts with large businesses and those contracts (as they often do) require the consent of that party before you can proceed with a share or asset acquisition (unless you are prepared to risk that party terminating the contract), then the differences between an asset and share sale may be less pronounced.

There are other factors that might constrain your decision. Business structure will play an important role. If the selling business is operated through a family trust, then the purchase will need to be an asset purchase, as you won't be able to simply buy that family trust structure. There are tax advantages and disadvantages which you'll need to work through with your tax advisor in relation to your business and the business you're looking to acquire. There might also be regulatory considerations. For example, does the selling entity have a regulatory licence or permit that is needed to operate the business that you can't easily obtain without buying the company or that can't be transferred?

So there is not an absolute answer for every situation.

You need to have a clear objective for your acquisition and then undertake due diligence – legal and financial – in a measured and unemotional way. Don't sign a binding term sheet or offer letter until you've completed your due diligence and obtained good legal and financial advice. Don't give away information about your business until you have built a reasonable amount of trust with the other party and certainly not without a good confidentiality agreement.

Then make sure that the purchase agreement contains the appropriate protections, which will be different for an asset and share purchase. It also needs to be tailored for the particular business you are acquiring. There is no "off the shelf" agreement, but an experienced advisor will know how to navigate the identified risks.

If you are thinking of growing or exiting your business, please feel free to call Lynne Grant at Hunt & Hunt Lawyers to talk about how to best achieve your goals. Lynne is an experienced transactional lawyer, with a particular speciality in helping private business owners to grow or exit their business.