



Laying the Foundation When Buying or Selling a Business

The pressures of buying and selling a business in a competitive market can lead to a quick or impulsive decision. However, whether you are a vendor or a purchaser, never rush into signing any contract to buy or sell a business without consulting with a corporate or commercial lawyer first.

A thorough understanding is required of the different considerations and needed documentation depending on whether you are selling the shares of your corporation or the assets of your business. For example, depending on the different exemptions that may be available and the taxes payable on a sale of shares under the *Income Tax Act*, a share based transaction can result in either a tax benefit or disadvantage. Buying shares involves buying the corporation including all of the corporate liabilities (such as payroll, possible claims, accounts payable, etc.). Alternatively, the sale of assets requires different documentation and entails different risks. For example, unless the sale complies with the provisions of the *Bulk Sales Act*, creditors can render the sale null and void and come after the purchased assets, without many remedies available to the purchaser.

Another important issue to consider is the risk to which you may be subjecting your business during the due diligence process which precedes a final sale. Confidential information, such as financial statements, contracts, leases, employee and other business information should not be provided without ensuring that the recipient undertakes: a) not to disclose such information to third parties (aside from legal and financial advisors); b) not to use such information to compete against you should the transaction fail to close; and c) not to solicit your clients and employees. Reasonable and properly drafted confidentiality provisions (whether they form part of the offer of purchase and sale, or whether they are covered under a separate confidentiality and non-solicitation agreement) protect your business from dishonest competitive activities.

Small or big, the purchase and sale of a business is not to be taken lightly. You should ensure that the contract of purchase and sale is reviewed and amended as required by a lawyer before you execute it. Otherwise, you may find yourself in a position where you wasted your time and money and inadvertently placed your business in a detrimental position.