

Our
Services

Sladen **drives**
Legal **results**

Mergers & Acquisitions



Creating value

An opportunity for synergy.

In a competitive and ever-changing market, opportunities to merge, acquire or sell your business will arise. Being able to embrace these market altering deals and create synergy is symbolic of an entrepreneurial spirit and a fierce determination to succeed.

At Sladen Legal, we understand the practical realities of the deal are not easy to ascertain. Our team will help you achieve the best commercial result by minimising risks and enhancing growth opportunities.

Mergers and acquisitions (M&A)

There are countless instances where mergers and acquisitions (M&A) will take place and it will affect a broad range of business structures. For example, one company may be seeking to merge with a direct competitor, a distributor may be looking to acquire a manufacturer, similar companies in different states may be looking to unite, or a conglomerate merger may take place where two totally unrelated companies merge.

Getting the deal done right

M&A is the most common form of corporate development. Due to time pressures, problems can arise at every stage from inception to completion which may derail any deal. Our M&A team link every phase of the deal together and draw upon expert assistance from our specialised tax, property, intellectual property and workplace relations teams for specific technical matters.

Legal advice should be sought from the outset to help deal with the myriad of potential problems that may arise, from a clash of organisational cultures, a rival bidder or non-commercial focused lawyers on the other side. Our team at Sladen Legal can mitigate these potential problems by planning the deal from inception to post-completion and aligning both parties goals for a commercial outcome.

We will help you recognise the performance and strategic benefits and pitfalls of the proposed M&A deal, and can even help you with arguably the biggest problem of any M&A deal – the emotional and behavioural responses of employees.

Ready to sell?

To get the best result in an M&A transaction, your business must be ready for sale.

Whether you are considering a sale of business and assets or alternatively the sale of the entity that conducts the business, ensuring your business is ready for sale will enable you to achieve the best financial results and commercial and strategic benefits available as part of a deal.

We are able to work with you and your advisors in getting your business ready for sale. Taking the time to get your business ready for sale avoids the circumstance of being placed on the back foot as part of any negotiations.

In brief

To be placed in the best position for negotiating a deal as a seller, it is important you have ownership or rights to all things a buyer would expect to receive.

Structuring

If you are thinking of selling one of the first issues to address is if you are selling the business and associated assets, or the entity that owns the business.

Structuring the deal as an asset sale or an entity sale can have a significant impact on the terms of the deal including:

- Involvement of third parties in the deal as a result of the requirement to obtain consent to the sale
- Whether a restructure will be required in order to achieve an entity sale
- The warranties and indemnities required to be provided to a buyer under the terms of the deal.

Do you have all the assets to sell that you think you have?

To be placed in the best position for negotiating a deal as a seller, it is important you have ownership or rights to all things a buyer would expect to receive.

Confidentiality

Confidentiality is very important in the early stages of a deal. Failure to have the potential sale kept confidential can have a negative impact on a number of aspects of a business including:

Confidentiality within the business

Staff are important to the ongoing success of any business. It is therefore fundamental that the announcement of any sale is managed in such a manner that limits uncertainty for staff and ensures their continued involvement in the business.

Confidentiality in the market place

Generally your customers and suppliers work with you because of the relationships you have developed with them and the services you provide. Without management of customers and suppliers, the sale of the business or entity may result in the loyalty of those customers and suppliers being reduced, or in some cases lost.

Sladen Legal ensure that obligations of confidentiality are imposed on prospective purchasers to minimise any potential damage to the business.

Disclosure

The process for due diligence and disclosure is a very important part of any deal, as is a seller's ongoing liability to a buyer under any warranties and indemnities.

We can work with you to prepare for the process of due diligence and help identify any matters that should be disclosed to a buyer to avoid further warranty claims.

What are you buying?

If you are buying a business or entity, the most important question to ask is what are you really buying?

In the initial stages of a transaction, identifying what you are buying ensures you are placed in a position to determine the price you should be paying for the business. This will help you determine whether the business is suitable for you or your existing business, and whether there are any risk areas involved in the transaction or the business.

In brief

Before signing any agreement relating to a commercial transaction, consideration should be given to the structure of ownership of the business, or alternatively the entity the subject of the proposed transaction.

Due diligence

The process of due diligence provides you with the opportunity to examine the business or entity you are considering purchasing.

Any due diligence should cover a number of key areas including:

- The ownership structure
- Financial performance of the business
- Identification of the assets necessary to conduct the business
- Key contracts and the relevant terms
- Personnel required to conduct the business
- Any other matters necessary to conduct the business
- Potential risk areas of the business.

We can work with you and your advisors to:

- Identify information relevant to the business that should be requested from a seller
- Review the information available
- Ensure that any sale agreement addresses key terms and risk areas based on the results of the due diligence.

Structuring

Before signing any agreement relating to a commercial transaction, consideration should be given to the structure of ownership of the business, or alternatively the entity the subject of the proposed transaction.

These may include:

- If a share sale or merger is proposed, determining a suitable structure for the purchaser to inherit the business. This requires a full understanding of the potential liabilities that exist in that structure, and indemnities provided to allow protection from any unknown liabilities.
- Determining the structure of the acquiring entity that is most appropriate for ownership of the business (if a sale and purchase of business) or the underlying ownership of an entity (if an entity sale), in light of both asset protection and taxation matters.

Asset protection is particularly relevant where you have an existing business. By considering structuring at the time of purchasing a business, you can ensure that an existing business is not exposed to any potential liabilities of the business or entity being purchased.

Getting the deal done

The terms of the sale and purchase provide the basis for the parties to determine their respective rights and obligations relating to the deal.

Once a seller and buyer agree in principle to the sale and purchase of a business or entity, the negotiation of the legal documents governing the terms of that sale are essential to ensuring that both parties have agreed rights and responsibilities.

The legal documents ensure that the key terms of the deal are documented and that any aspects of the transaction identified as due diligence are dealt with in a manner satisfactory to both parties.

In brief

In addition to the involvement of our M&A team, Sladen Legal draws upon the expertise of our specialised tax, property, intellectual property and workplace relations teams to ensure that any key terms dealing with these areas are adequately addressed.

There are a number of key aspects to any transaction that should be negotiated into the terms of the sale documentation. These include:

- Identifying the assets to be sold
- The purchase price payable for the assets, including any adjustments
- Whether there are any conditions to completion of the sale and purchase
- The rights and obligations of the seller and the purchaser between signing the sale documentation and completion of the sale
- The obligations of both the seller and the purchaser in completing the sale and purchase
- The warranties to be provided by the seller, including addressing any concerns arising out of due diligence
- The indemnities to be provided by both parties
- Post-completion performance obligations
- Deferred payment terms based on the performance of the business post-completion
- The terms of any restraint that is to apply to the seller.

We work with you and your advisors to ensure that the key aspects of the deal are negotiated and agreed on commercial terms. Our focus is on getting the right deal for you and the business involved.

Completion

Realising the value of all your hard work means making sure you get what you pay for.

Our team works with you to ensure that on the day of completion everything is in place to allow the transition of the business from the seller to the buyer to occur.

Sale of business

The period between signing a sale agreement and completion provide the seller and the buyer a short time period to work with several third parties. In this limited time frame, the necessary consents and approvals must be obtained to guarantee that on the completion date, the ownership of the business and assets can be transferred from the seller to the buyer.

The steps required to be taken often include:

- Dealing with financiers in respect of the release of assets
- Transition of employees
- Obtaining the consent to the assignment of key contracts (including premises lease), including release of the buyer and existing guarantors under those contracts
- Obtaining necessary licences for the buyer to conduct the business post-completion
- Preparing documentation necessary to complete the transfer of assets.

Entity sale

Where the deal involves an entity sale, it is important to identify those parts of the business that may be impacted upon by the change in the underlying ownership of the business owning entity.

Once these key areas are identified, a similar process will need to be undertaken to finalise the sale of the business. For example:

- Dealing with financiers in obtaining a release of the entity, or alternatively obtaining the consent of the financier to the change in ownership of the entity
- Obtaining the consent of third parties to the change in the underlying ownership of the entity.

We can work with you to make sure that at the completion of a deal, all of the assets relating to the business successfully pass on to the buyer, or in the case of an entity sale, all of the assets relating to the business remain with that entity.

Once the deal is done ...

Taking steps to get the most out of the business you have purchased should be a priority.

Even where ownership of an asset has been obtained, it may be possible to improve the asset or the business by identifying areas where improvement is available.

Sladen Legal has the expertise in a number of different areas to work with you in identifying areas for improvement and implementing the necessary steps.

In brief

Existing legal and other documentation is one of the key areas in which improvements can be made. This may not be completed immediately but is a process that needs to be implemented over time.

Improving assets

There are a number of circumstances in which assets obtained as part of a deal can be improved.

One of the key areas where this may be relevant is intellectual property. For example, one trade mark may protect the main business asset which has been purchased, but to better protect this critical asset of the business, further trade mark registrations may need to be obtained to ensure full protection, now and in the future.

Review of existing documentation

Existing legal and other documentation is one of the key areas where improvements can be made. This may not be completed immediately, but is a process that needs to be implemented over time.

Some of the key areas in which action can be taken include:

- The terms of existing contracts with customers and suppliers
- Terms of trade, including credit policies
- Implementation of systems dealing with the Personal Properties Security Act 2009.

Circumstances where you haven't adequately dealt with an asset

Where a decision has been made to proceed with completion of a deal, even where ownership of an asset of the business has not been transferred, the transfer of such an asset should be addressed as soon as possible after completion.

In many cases this can be resolved without any adverse consequences. However, the failure to obtain ownership of an asset necessary to conduct the business is a risk to the future of the business, and should be addressed as soon as possible.

In these circumstances there are a number of steps that can be taken, including obtaining assistance of the seller post-completion.

We can work with you to mitigate risks and obtain a successful transfer of the asset in the shortest possible time frame.

Sladen **drives** Legal **results**

At Sladen Legal, we offer a fresh approach – an approach that embodies the passion, dedication and entrepreneurial spirit that we share with you, our client.

For a more detailed overview of our expertise in mergers and acquisitions or any of our fifteen key service areas, please contact us on 03 9620 9399.

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