

So you want to run your own business?

Introduction

Owning and running a business in the leisure / hospitality sector offers many people a chance to be their own boss. For many considering the purchase of a business in the leisure / hospitality sector, whether a hotel, guest-house, restaurant or pub, the process can seem daunting and complex.

Nobody said that buying a business was easy but with the right legal and other professional advice the process can be made a lot smoother and you can avoid mistakes which could prove costly in the long run.

Brodies provide expert practical advice to business owners so that they can get on with running their business. Our team of experienced lawyers can help you through the initial process of setting up a business, allowing you to concentrate on developing your ideas for your new business. We also provide ongoing support and guidance as your business matures.

We can offer support at every stage throughout the process

Finding the right business and finance

It is important at the outset that you speak to a bank or commercial finance broker to find out how much you can borrow and how much you can afford to pay for the business. This will determine the direction of your business plan and whether you decide to buy or lease a property.

Brodies can help you find an agent who will identify suitable properties for your business

Buying or leasing a property?

With the continued increase in the value of property in Scotland over recent years, it has become difficult in some circumstances to purchase the "bricks and mortar" from which a business is run and still make a profit. This has led to an increase in the leasing of property for business use.

Once you have decided whether to lease or buy, and have found a property of interest, you should contact us to formally notify the selling agent of your interest in the property. This lessens the chance of the business being sold to someone else while you go through your pre-purchase investigations.

As much financial information as possible should be obtained from the seller and / or the selling agent, and unless you have already appointed one, you should consider appointing an accountant to assist with analysing the figures.

We can assist you in your search for the right accountant

Valuation

If you think you will want to offer for the property you will need to have a valuation carried out. This may disclose valuable information about the physical condition of the property or the valuer's views on the present and future profitability of the business. You will have to pay the valuer's fee whether or not you buy the property, so you should only instruct a valuation if it appears likely you will want to make an offer for the property.

Brodies will advise you on the best tactics to secure the property at the right price and negotiate the details of the deal with a view to agreeing the terms of a binding written contract

Submitting an Offer

Normally this takes the form of an exchange of letters between the solicitors, beginning with the offer for the property and ending with a letter "concluding the bargain". In Scotland, in contrast with England, it is not standard practice for the contract to be drawn up and signed by the parties themselves: the solicitors sign the contractual letters on behalf of their clients.

The offer will deal with a number of issues such as transfer of the liquor licence (if any), sale of the stock, treatment of deposits, restrictive covenants, transfer of employees and transfer of title, whether that is outright ownership or a lease.

Brodies can take away the burden and advise you in all of these areas

Licensing

For licensed property, the contract will normally be conditional upon your obtaining a transfer of the existing licence or licences for the property. At this time the purchaser's application for transfer of the licence will be submitted to the Licensing Board.

You may be aware that the new Licensing (Scotland) Act 2005 comes into force on 1 September 2009. Even though this is some time away, you need to take action now.

We are currently in the transitional period for the new Act which commenced on 1 February 2008 and runs until 1 September 2009. This requires current licence holders to apply for new licences under the 2005 Act by the prescribed dates or they will lose out on the relaxations being made available - which could result in dire consequences. Accordingly, this needs to be fully investigated before you purchase, as does the position if you are proposing to alter the premises. This may result in new licence applications under both the current and new law having to be run alongside each other.

The law is presently very complex in this area. Brodies' licensing team has the experience to guide you every step of the way

Purchase of Stock

You should be aware that the price paid for the business does not include the stock (supplies of drink and food, etc. in the premises on the date of sale). In making your initial calculations on your budget allowance should be made for an amount to be paid to the seller for the stock. Usually the purchaser and the seller will agree, via their lawyers, to appoint a stock-taker who will visit the property on the date of transfer and determine the value of the stock.

Your Business Loan

Your business loan will normally be secured over the business premises. Depending on the size of the loan, your lender may instruct their own solicitor to act for them on taking that security and you will have to pay the lender's solicitor's fee as well as your own. You should ask your lender as soon as possible to provide an estimate of the amount of this before matters proceed.

Brodies can advise you on how best to proceed with this

SDLT / VAT

Stamp duty applies to the purchase of commercial premises just as it does to houses. In the past the Inland Revenue granted a concession for the calculation of the share of the price you are paying to be allocated to the "bricks and mortar", on which SDLT would be payable. However this has now been removed and the allocation between the various elements of the price must be negotiated with the seller.

Detailed advice will be given by Brodies. Our in-house specialist tax team will liaise with your accountant

Even if the seller is registered for VAT, the sale of the business would not normally be subject to VAT, as VAT is not normally chargeable on the sale of a business as a "going concern". However there are a number of conditions which must be met to ensure that this is the case, which we will advise you on.

Planning and Building Control Matters

The purchaser's solicitor will seek evidence that the erection of the building and any previous alterations have been carried out with all necessary consents and that there is planning permission for the current use.

If you think that you may wish to carry out alterations to the property, consideration should be given to the types of consents required for the proposed work under planning and building control rules. Alterations to licensed premises also require consent under the Licensing Laws and Regulations.

Our planning team can advise you on this

Employees

Running your own business may mean that you are about to become an employer for the first time. There are a number of things to think about. You will have to think about a payroll system; ensure that the employees are paid at least the National Minimum Wage; observe statutory rules on working time, holidays and health and safety as well as dealing with ongoing employment issues as they arise.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (often referred to as "TUPE") may apply to the purchase of the business. This means that you effectively inherit the staff employed by the business.

TUPE protects the rights of employees on the sale of a business. For example, you should be aware that -

- You may inherit all rights, liabilities and obligations in relation to the employees
- A dismissal of an employee which is connected with a TUPE transfer may be automatically unfair and changes to the employees' terms and conditions will only be permitted in very limited circumstances
- You and the seller have an obligation to inform and / or consult with any employees affected by the purchase

Brodies' employment team can help you assess what your employment obligations are. We are experienced in helping you to factor employment issues in to the broader commercial decision to purchase your business

Completion

At completion, the price is paid in exchange for a signed transfer of title (known as a disposition) or transfer of lease (known as an assignation). The disposition or assignation must then be stamped (in most cases) and registered in the Land Register. At the same time, there will be a number of factors to consider, including reconciliation and transfer of deposits, floats, money in gaming machines, and the stock taker will value the stock. As well as all of that you will have to take over the running of the business!

Please contact one of our specialists for further information or advice -



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