



Buying
or selling
your business



BUCKLES

Solicitors

Working with you to fulfil your dreams and goals

Whether you are a business owner considering making a sale or a potential Buyer looking for the right opportunity, these are invariably unique one-off transactions and the most important business decisions you will ever make.

Over many years, Buckles has purchased and sold hundreds of businesses of all kinds. Our knowledge, expertise and passion will be at your disposal to help fulfil your dreams and objectives. Throughout the transaction, we will work as a partner with you and your Board (and family members who are also likely to be affected), liaising closely with your accountants and wider professional team.

Gaining an understanding of you and the business you lead or wish to acquire allows us to maximise the service we can provide, including access to our extensive networks. This will involve finding out what you want to achieve from the proposed transaction and then working tirelessly as part of your team to bring the whole project to a successful conclusion.

If you are a longstanding client, you will already know how important your business is to us and our dedication to completing transactions smoothly and efficiently.

For new clients, we deliver a proactive service and pragmatic commercial advice that will enable you to make the right decisions with confidence.

As a first step, all you need to do is pick up the phone and have a conversation with us.



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And here's a little about us...

By appointing Buckles, you will have the benefit of our specialist employment, commercial property and private client lawyers, as well as our vastly experienced company commercial team leading the negotiations. Together, we will drive the transaction towards your objectives by being proactive, protecting your position and working closely with your accountants and other professionals.

We have offices in London, Nottingham, Cambridge, Peterborough and Stamford and international offices in Paris and Milan, as well as close association with Graf & Partner in Munich. Our focus and determination is to be the best law firm for your business and its future, by providing the highest level of service. By investing the time to find out about you and your business, we do so with the aim of having a long-term relationship with you, your Board and, where appropriate, your family.

**Put us to the test, we're
ready to do business.**



Selling your business

The first question we always ask clients who want to sell their business is “why?”. Are you selling because you’re ready to retire, or take on a new project or invest in another venture? If you sell, do you hope to have a continuing interest in the business? When making these decisions, the tax considerations are likely to be a central factor.

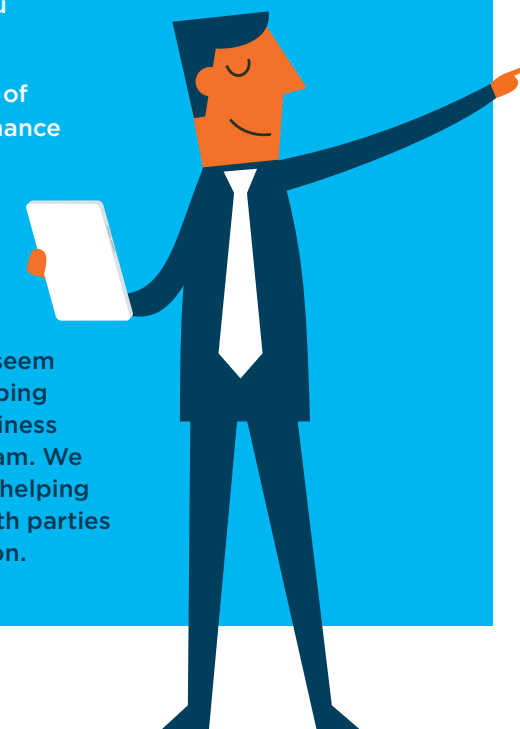
You and your business – the future

You may wish to retain an interest in the business on a permanent basis, possibly as an investor, or for a shorter period to provide you with an income and ensure that the Buyer receives a seamless handover of the business.

Having decided on the best course of action, taking into account tax considerations, Buckles will work closely with your financial advisers and accountants. Here are some key questions to consider:

- Do you need an income stream once you have sold?
- Will the amount you receive for the sale of your business depend on future performance and, if so, how will that work?
- Which transaction model will be most beneficial – a sale of shares (if it is a limited company) or a sale of assets?

We recognise that selling a business can seem like a challenging prospect; involving probing questions about every aspect of your business from the Buyers and their professional team. We are by your side throughout this process, helping you supply the information and giving both parties the confidence to complete the transaction.



“ TAX CONSIDERATIONS ARE
LIKELY TO BE A CENTRAL FACTOR ”



The story of selling a business

Selling any business, particularly a long-standing family business, is a daunting prospect.

For clients who sell following long periods of ownership, the transaction is likely to be the only one of this kind that they will encounter in their working lives.

Our London team recently experienced this at first-hand. A retailer in the jewellery trade, run by two business partners for many years, was selling the business to a neighbouring retail jeweller.

The Buyer was only interested in acquiring the lease of the premises. However, there was a considerable tax advantage to the client in selling the shares to the whole business and a sale of the Company would be preferable rather than just an assignment of the lease. We explained how the sale of shares differed significantly, in both form and result, from the assignment sale of the lease and their responsibilities as selling shareholders.



Our clients would not need Landlord's consent, as the Company (the Tenant) would continue to be the Tenant despite ownership of the shares changing. The Buyer would want to know everything about the business and its history. Another unexpected challenge emerged in that the Buyers' lawyers, used to dealing with property transactions, needed all sorts of assistance from us to get the transaction through, including preparation of the Sale Agreement (SPA), usually drafted by the Buyers' lawyers. We even advised them to take tax advice with the expectation that the Buyers would be advised to include tax indemnities to protect their client.

Our client, meanwhile, faced increasing demands for information and we successfully guided them through the torturous and unfamiliar process.

For us, the priority was completing the deal safely. We ensured that our client was protected and got his money, but also that

the Buyer got what he wanted from the transaction.

When a last-minute employment matter arose, we explained that this would need to be disclosed. The client was concerned that this might "blow the deal" because the Buyer only wanted the premises. Nevertheless, the deal included obligations to employees who

“ WE ENSURED THAT OUR CLIENT WAS PROTECTED AND GOT HIS MONEY ”

were on maternity leave. Ultimately, there was no problem and the deal completed.

We keep our experienced commercial eye on the objectives of all parties and work co-operatively with them in order to protect our clients.

Acquisitions of Private Independent Schools

The education sector, and in particular the private independent schools sector, has in recent years attracted the interest of overseas investors, predominantly from the Far East.

From a commercial perspective, overseas investors see the opportunity to acquire a prestigious business which they can help grow by providing much needed finance to improve facilities and adding value through bigger marketing budgets which enable better access to foreign markets to enhance student recruitment.

As the education sector is highly regulated, the acquisition of a private school is not straightforward. Those unfamiliar with the sector may assume that transactions take place quickly especially where the target school is in financial distress.

In reality, however, there are several regulatory hurdles to overcome, including obtaining consent from the Department of Education to a change of ownership which will involve DBS checks for the new owner and evidence of good financial standing. Many private schools are owned by Charities and the consent of the Charities Commission to any sale may be required.

A private school will also require an operating licence in order to continue operating buses and mini

buses for the use of students. The application process for an operating licence can take many months and evidence of good financial standing is required which involves the new operating company holding sufficient funds on deposit for 28 days prior to the application. In many cases schools will have Tier 4 immigration sponsorship licences and the new owner will have to apply for its own registration.

The Company Commercial team at Buckles has experience in advising investors including those new to the education sector on acquiring private schools. We would recommend that you take advice early on in the process, allowing you to take the necessary preparatory steps and proceed quickly with the transaction when the opportunity arises.

A path to a successful sale



Buying a business

As with selling a business, the principal question to ask when considering a commercial acquisition is “why?”.

If your proposed purchase is part of an organised expansion plan, there are a number of further points to consider:

- What is your preferred timeframe for the transaction?
- What is the intended scale of the deal – local, national, international?
- Will the transaction involve changing your business model and structure?
- Will you be entering a sector or market in which you have previous experience?
- How do you intend to fund the new business? Will you invest funds from your existing business or require funding from a bank, financial institution or new private investor?

Getting the answers you need

Buying a business raises many questions, all of which inform our understanding of the deal you want to strike and help us provide you with relevant advice. We will work closely with you and your advisers to help manage any risks, walking you through the transaction and closing the deal on the right terms for you, on budget and on time.

By listening attentively to understand your requirements and by being proactive, accessible and nimble, we can find creative solutions and keep on top of the deal as it progresses.

We will ensure that you get the added value of seamless and comprehensive service delivered by a team comprising a range of specialisms and driven by the common goal of successful outcomes.

You will find us friendly and approachable, so you can use us as a sounding board for any thoughts or concerns you may have about the transaction. By appointing us, you will have access to high-quality professional legal expertise and extensive commercial experience to ensure a successful purchase.



A path to a successful purchase

Decision to buy

- Reasons:
- Expand business
 - New business venture
 - Investment

Finding a target company

- Informally - through friends/contacts
- Formally - through agents/professionals

Target found

- Seller requires confidentiality agreement
- Exclusive negotiating period

Due diligence enquiries

- Financial and commercial
- Start legal due diligence
- Main terms negotiated

Securing finance

- Own funds
- Third party loan or investment
- Third party security over assets
- Investment from shareholders

LAWYERS INSTRUCTED

Purchase agreement

- Buyer's lawyer prepares 1st draft
- Seller's lawyer often prepares 1st draft if assets only
- Warranties and indemnities from Seller
- Ancillary documents agreed

HOTs

(Heads of Terms)

- Assets or company purchase?
- Purchase price agreed
- Payment terms
- Timing
- Specific terms e.g. Seller as consultant

NEGOTIATIONS

Disclosure

- Buyer's lawyer (& accountants) raise various enquiries (due diligence questionnaire)
- Seller's lawyer (& accountants) respond
- Any problems raised and dealt with

CONTINUING NEGOTIATIONS

Subsidiary documents

- Tax covenants
- Powers of Attorney
- Assignments (asset sale)
- Transfer
- Board minutes

Extra documentation

If negotiated

- Long or short term investment
- Is the Seller an investor?
- Shareholder's Agreement
- Exit Strategy
- Consultancy Agreement with Seller

Completion

▶ Company's sale

▶ Assets sale

- Implementation of assets or sale?



Jargon buster

From first step to completion
9 need-to-know technical terms

1. Non-Disclosure Agreement (NDA) (sometimes called a confidentiality agreement)

This is an agreement in which the Seller will require the Buyer to enter into during the early stages of negotiation. It enables the Seller to pass important confidential information to the Buyer about the business so that the Buyer can evaluate the business and make informed decisions.

2. Heads of Terms (HOTs)

These refer to the principal terms of the deal for a sale or purchase, setting out in concise form the main structure (shares or asset purchase), price, method of payment, timeframe and other material terms specific to the transaction.

3. Due Diligence (DD)

This term refers to the Buyer's financial and legal investigation of the business being purchased. The Buyer's lawyers will invariably provide a questionnaire to gather as much information as possible about the business, including the accounts, tax position, employees and premises, IP, etc.

The Buyer will also want to be made aware of any potential risks to the business and the result of the process may affect the warranties required/given. DD is time-consuming, especially on the part of the Seller as they will need to satisfy the Buyer's need to access detailed information and documentation.

4. Share Purchase Agreement (SPA)

This is the principal agreement or contract under which shares in a company are sold. The first draft of the SPA is usually provided by the Buyer's lawyers and contains the warranties, indemnities, limitations on the Seller's liability and arrangements regarding completion.

It may take some weeks to negotiate the final terms of agreement. When the Buyer purchases the shares in the company, they will 'stand in the shoes' of the Seller and acquire all the rights and obligations of the company, past, present and future. That's why it's so important that the Buyer, through their lawyers and accountants, makes the due diligence enquiries about the business.



If the original owner wishes only to sell assets of the business rather than the shares, the agreement made is an Asset Purchase Agreement (APA) usually prepared by the Seller's Solicitors.

5. Warranties

The Buyer will want the Seller to give statements in connection with all aspects of the business being acquired, for example, those confirming that there are no disputes or Court actions against the company. Common statements in the SPA deal with the ownership of the shares, the accuracy of the management accounts and the disclosure of any environmental, data protection, IT and material contracts that relate to the business.

There will also be representations regarding relevant law and regulations to ensure that full details of employment and property related matters are addressed. These statements are called warranties and the Buyer will require the Seller to personally warrant their accuracy. The Buyer will also require tax warranties specifically relating to the compliance by the company of its tax liabilities.

The Buyer will want the warranties to be as wide as possible, whilst the Seller would like them to be specific and restrictive. This usually forms the heart of the negotiations of the SPA and the accompanying disclosure letter.

6. Disclosure Letter

The Seller's solicitors will provide the first draft of the disclosure letter. The aim of the disclosure letter is to qualify any of the warranties given to minimise the exposure of the Seller in the warranties. In the letter, the Seller will disclose any existing or anticipated information which may be contradictory to the general warranties given in the SPA, for example, an existing or possible claim against the company (be it a dispute with an employee, customer, HMRC etc).

As long as any issues are fully and fairly disclosed, the Buyer will not be able to sue the Seller for any losses caused due to the disclosed information (i.e. will not amount to breach of warranty). Therefore, this is a vital document for the Seller and its effect is to limit, as far as possible, the liability of the Seller from being subject to a claim for breach of warranty.

For the Buyer, disclosure may reveal possible problems before shares are acquired which may result in a renegotiation of the purchase price or necessitate the drafting of specific indemnities to cover the risks disclosed. Usually, in addition, a bundle of all the documents referred to in the disclosure letter and the warranties is also issued.

7. Indemnities

In addition to the warranties, the Buyer may require the Seller to agree to indemnify the Buyer for any risks related to specific matters revealed during the due diligence process. The aim of the indemnity provisions is to give the Buyer further reassurance by taking the risk out of the specific matter that has come to light and making it a Seller's risk.

8. Limitation of Sellers' Liability

The Seller will want to limit their financial exposure for any breach of the warranties by imposing a time limit for claims by the Buyer (usually 1-2 years from completion for breach of a general warranty, and 6-7 years for breach of tax warranty) and a financial cap, usually up to the price paid for the shares or assets.

The Seller will also want to prevent procedures being taken against them for claims which are not material (i.e. being small in relation to the size of the business/transaction). Therefore, there will be a threshold to determine whether the claim will be considered so small that it will not be, on its own, an actionable breach.



9. Completion

Completion occurs when the Buyer's and Seller's lawyers have agreed the SPA and Disclosure Letter, along with any other ancillary documents. The parties are then ready to exchange contracts and make the payment to confirm the deal. Unlike in a house purchase, the completion and exchange of the SPA usually happen at the same time. Traditionally, the parties, their lawyers and sometimes their accountants, would physically meet to sign all documents and make payment electronically through the lawyer's bank.

However, it's now more commonplace for the parties to prefer to have a remote completion, with the lawyers sending each other scans of the signed documents (with originals to follow) and completing by a phone call. There are occasions when contracts are exchanged and completion takes place some time afterwards, perhaps where certain conditions are needed to be fulfilled. There are often post-completion obligations on the parties in any event, such as the preparation of completion accounts, as often it's impossible to accurately ascertain the company's financial position until all the information is obtained (this can take a couple of weeks following completion).

As part of the completion process, the existing board of the company will meet to take decisions that are required by the Buyer to implement changes following the sale and for the existing board (or individual members of it) to resign and appoint a new board chosen by the Buyer. Often, accountants and registered offices are changed and the authorisation of the transfer of shares is also registered.

FAQs

Our track record of acting for both Buyers and Sellers means that we understand the challenges from both sides of the table.

Call us to find out how we can help you...

How do I approach a business that I want to buy? Where can I find Buyers for my business?

Try to spread the word through your acquaintances. If you have a business in mind, you may wish to meet the owner for a chat. You could also use the help of professionals such as your lawyers and accountants as they might be able to connect you with clients who may wish to sell, or you could use the help of professional brokers (for a fee).

How do I get a valuation of my business?

The simplest way would be using your accountants (they may refer you to a specialist valuer). However, it will depend on the type of business you own and whether the valuation will be straightforward.

What is the best way to sell my business?

There is no definitive answer to this question, as it will depend on your individual circumstances and objectives. If your business runs through a company and you wish to have a clean break, i.e. sell and forget about it, then you would wish to sell your shares in the company.

However, if you wish to retain an interest in your company and only sell part of it - then a sale of assets would be the preferred option. Furthermore, tax considerations often determine how you buy or sell a particular business.

Why is the process of buying or selling a business so complicated (and costly)?

The Seller usually only wants payment for the business. If they could find a Buyer willing to hand over the money without enquiry or protection then the deal could be completed on a single sheet of paper with little need to involve lawyers. That almost never happens.

Instead, the Buyer usually wants to find out as much as possible about the business they are buying (due diligence) and ensure that any deal is set out with all the necessary assurances included in the contract (the SPA) and all information relating to the business is made known to the Buyer (disclosure and the disclosure letter). It is the negotiating of the deal by our skilled commercial lawyers that enables the competing requirements of the Seller and Buyer to reach agreement so that both parties feel comfortable and protected and cross the finishing line.

When done thoroughly, disputes or claims resulting from the sale of the business are extremely rare, as both sides know exactly what is being offered, agreed and acquired.

We are looking forward to hearing from you, and working with you

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