

STRUCTURING THE SALE OF A BUSINESS

If selling your business is part of your exit strategy, you need to be aware of the options for structuring the sale. There are two key methods to consider when you sell a business, being an asset sale or a share sale. The best option for you will depend on a range of factors.

Share Sale

A share sale involves selling the shares in the company which operates the business. The purchaser takes on all assets as well as all debts and liabilities of the company. Sellers often prefer a share sale as it allows them to cut ties from any historic liabilities. However, it can be a less palatable transaction for the purchaser because they take these liabilities on.

Share sales can be beneficial for several reasons. Individual assets remain with the company and do not need to be assigned to the purchaser, making the actual transfer more straightforward. For these reasons, a share sale often allows for greater continuity and a smoother transition period.

A purchaser will assume all historic liabilities, therefore a share sale will require thorough due diligence and a much more comprehensive sale and purchase agreement. A purchaser will want to seek warranties and indemnities from the vendor regarding the business to help protect against the increased exposure.

Asset Sale

In an asset sale, the purchaser buys the assets and stock required to operate the business. This is likely to include inventory, equipment, intellectual property and goodwill (value attached to a business not directly attributable to its assets and liabilities).

They are also likely to want to offer employment to the current employees. The purchaser does not purchase the entity itself.

It is common for the business to be operated by a new company with a similar name.

Purchasers often prefer an asset sale because they are essentially able to pick and choose which assets they wish to purchase. An asset sale is usually less risky for the purchaser as they do not take on the historic liabilities of the company.

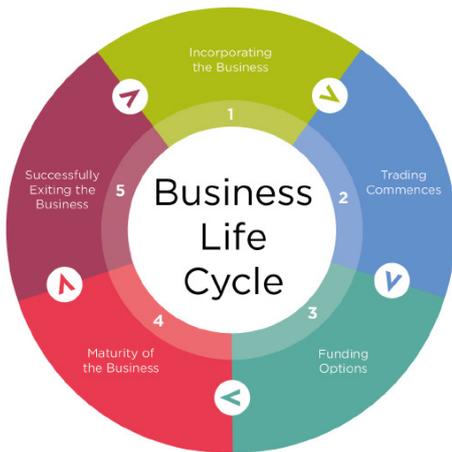
When compared to a share sale there are, however, some disadvantages. Contracts will need to be assigned to the new owner. Depending on the wording of the contract, this may require the consent of the other party or may not be allowed at all which may affect the value of the sale or deter the purchaser entirely. The transfer of assets and recording changes of ownership can also be a time consuming and costly process.

Purchase Price

There are a number of ways to fund the purchase price of the business. The most common of these are; outright payment, vendor financing, or an “earn out” (whereby some of the purchase price becomes contingent on the future earnings of the business). Most importantly, the structure of the payment of the purchase price should fit with your situation.

Ultimately, what option is best for the sale of your business will depend on its specific circumstances. For comprehensive and personalised advice about your exit plan, get in touch with Phoebe Davies or Charlene Sell from our corporate and commercial team.





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Phoebe advises on a wide range of corporate and commercial law, including overseas investments, mergers and acquisitions, corporate structuring, shareholders' agreements, corporate governance and commercial contracts.

Phoebe acts for clients in a broad range of industry sectors with specialist knowledge in the agribusiness and consumer finance sectors.

In addition to Phoebe's New Zealand experience, she has worked for international firms in both London and Birmingham in the United Kingdom, and is qualified to practice law in both New Zealand and England & Wales.



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Charlene advises business owners and managers on how to structure their businesses and how to resolve their day-to-day issues. Her expertise includes business acquisitions and sales, drafting and providing advice on commercial contracts and terms of trade, advising on export arrangements, dealing with employment matters and protecting clients' brands.

Charlene also advises business owners with structuring their personal affairs, including establishing family trusts and advising on succession planning.

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The Legal 500 Asia Pacific 2020 and Chambers 2020**

