

Becoming a Small Business Owner – Some Ground Rules

Becoming a small business owner can arise in a number of ways including:

- (a) a business start-up, including consultancy;
- (b) buying an existing business, or a franchised business; and
- (c) entering into a franchised system via an untested site (a 'greenfields').

No matter which of the above applies to you, the same fundamentals will apply.

1. First up, is the need to fully appreciate that moving from PAYG employee to business owner adds another layer of complexity to your working week.

In all likelihood, up to now, you have just worked in a business with no real stress other than retaining your job. Now, not only will you be working in the business, but you will also need to be working on the business as well.

In this regard, Kerwin Rae, a well-known business strategist, coach and mentor very accurately observes:

“The ability to manage the balance of working in your business and working on your business comes down to the level of clarity you have on your purpose.

If you're too caught up and attached to the day to day activity, and actions, and tasks that are required to run the business, then you're probably not looking at the bigger picture.

Why are you here? What is the reason you do what you do?

It's so important to work from a purpose driven space. Because purpose is less about tasks and more about your mission and the main objective that you're working towards.

In order to live out our purpose and fulfil our mission on a business level, we have to be willing to spend equal parts working on the business as well as in it.

2. Next, you should conduct a thorough Due Diligence on the business and/or your proposed new business venture.

In this regard, too many people think that due diligence is confined solely to figures and financial statements which are glossed over by your accountant.

Whilst I am not discounting this as an important part of the decision making process, "due diligence" is much more than just that.

A good starting point is to stand in front of the mirror and do a due diligence on the person looking back at you. Challenge yourself by asking whether you're really cut out for what you are thinking of doing. Do I have the necessary expertise? (which should

be a given). Do I have the right temperament for the magnitude of tasks and difficulties that will be encountered on a daily basis? Am I prepared to take all of this on?

And if the circumstances warrant and/or allow, always:

- (a) speak with suppliers and customers of the business you're looking at buying;
- (b) observe the business in operation; and
- (c) in the case of a franchise, speak with other franchisees in order to ascertain what the franchisor is really like.

1. Another fundamental rule is that under no circumstances should you ever sign a document intended to legally bind you without first asking yourself the question - '*should I get independent legal advice beforehand?*'

In the context of business law, such documents include, but are not limited to:

- (a) Contract of Sale of Business;
- (b) Commercial Lease; and
- (c) Personal and/or Director's Guarantees.

2. You will also need to give due consideration as to the business structure you should adopt for your new enterprise. These can be summarised as follows:
 - (a) Sole Trader;
 - (b) Partnership;
 - (c) Pty Ltd Company with one or more directors and/or shareholders;
 - (d) Family/Discretionary Trust with an incorporated trustee; and
 - (e) Unit/Fixed Trust with an incorporated trustee.

Each has its own specific 'pros' and 'cons' and the answer to the question as to which is the best one for you, must always depend on your own personal circumstances including the nature of the business itself and your present asset base.

3. There are many other considerations that may arise including premises lease, finance, insurance and business succession.
4. It is critical therefore that before getting to the '*point of no return*', you obtain the right legal advice and guidance.

If you would like that advice, please contact Peter Haug, Special Counsel at peterh@schetzerconstantinou.com.au or (03) 8602 2000.