



# 10 things to consider before selling a café

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There are a number of issues to consider when selling your café business and where to start can be a daunting process. Here are [10 legal issues that should be considered when you prepare for selling a business](#); in particular a cafe.

## 1. Premises

One of the most valuable aspects of a café is its location and whether the right to use the premises is stable. If the premises are leased, then the lease will either need to be transferred to the purchaser or, if the lease has expired, a new one will need to be granted by the landlord to the purchaser.

Taking steps to liaise with the landlord early in the sale process to understand their expectations on this issue, can assist in streamlining this process.

If the premises are owned by you, then you will need to consider whether you plan to sell the premises together with the business or whether you will keep the premises as an investment.

Considering your options early and discussing it with your lawyer, accountant and/or financial planner may affect how you structure the sale.

## 2. Employees

Depending on your purchaser's expectations, your employees may either remain with the business or their employment may end with the sale of the business. If the purchaser would consider taking on your employees, responsibility for their entitlements and transfer of their employment will need to be considered.

For any full or part-time employees, you will need to determine the entitlements for annual leave, any other accrued leave (for example personal leave and long service leave) and their existing working arrangements. These details will need to be disclosed to the purchaser. If the purchaser does not recognise all of the employees' entitlements and length of service, then redundancy payments may be required.

For casual employees, their employment with you will typically cease following their termination on their last shift with you prior to completion of the sale. The purchaser will have the option to re-employ any casual staff at that time.

It's important to understand any notice of termination periods that apply to both permanent and casual employees.

Careful attention needs to be had to your particular employee circumstances early in the sale process.

### 3. Licences

Any licenses that you have the benefit of, which are relevant to the operation of the business should typically be included in the sale. For a café, the most common licences are a Liquor Licence and any outdoor seating licence held for the specific benefit of the cafe.

You will need to have a full understanding of, and supporting documentation for those licences to include in the Contract for Sale.

### 4. Inclusions in the sale

The equipment used in the café are the obvious inclusions for a sale but other items such as the website for the business, domain name or customer database details, social media, and contact numbers may also be included with the sale.

You will need to consider exactly what items you wish to include in the sale. It is best to have all items of equipment listed in an inventory so that it is clear what you will be providing to the purchaser as part of the sale. All other inclusions should also be specifically addressed in the Contract for Sale.

Often it is equally important to consider which items or parts of the business that you **do not** wish to include and make available to the purchaser at completion. This provides an added layer of clarity.

### 5. Stock

The business may either be sold as 'stock inclusive', where there is no additional payment for the stock on hand on the date of settlement or 'stock at valuation' where the purchaser buys the stock on hand for an additional amount. That amount is agreed with the purchaser, over and above the sale price for the business.

The benefit of 'stock at valuation' for a café is that you will not need to try to run down your stock levels for the date of settlement, which could leave you short if there are any delays to settlement. For the purchaser, it means that they can source their initial stock from you, without having any shortages in stock that they would need to fill on the first day of operating the café.

No matter which option is taken, it is important to have an understanding of the value of the stock on hand, so that this value may be taken into consideration in any sale negotiations.

## 6. Restraint of trade

A purchaser will usually want to know that they are getting what they are paying for. This includes ensuring that you do not set up a competing café business down the street immediately after the sale so that you may poach the customers that you have already built a relationship with. For this reason, a purchaser will usually insist on the inclusion of a restraint of trade period and a distance radius within which you would be prevented from owning or managing a similar business during that time period.

You should consider your expectations on this issue early so that you may specify the time and distance that you consider appropriate, which then sets the benchmark from which you can negotiate with the purchaser.

## 7. Personal Property Security Register (PPSR)

Many suppliers to cafés will insist upon taking security over the assets of the business. The way they do this is by registering a security interest over the assets of the business (or the assets they supply) on the PPSR. These are common for café equipment leasing, beer taps, water taps, and some produce suppliers. If there are security interests registered on the PPSR against your business, then these will need to be released or transferred to the purchaser. This involves negotiating with the purchaser to take over certain obligations from you or arranging to release you from the existing arrangements that you may have with suppliers.

It is important that you have a clear understanding of any registered security interests over the business that may need to be addressed prior to, or immediately following completion of the sale.

## 8. Suppliers or contracts

If there are any supply contracts relating to the operation of the business, then there are two options for dealing with them:

1. The supply contracts can be transferred to the purchaser. In this case, the supplier company would need to agree to the transfer of the contract to the purchaser.
2. As is more common for cafés, your existing arrangement with the supplier can be terminated. This allows the purchaser to make their own arrangements with the supplier.

You should review and have a comprehensive understanding of all supply contracts before proceeding with a sale so that you may determine which option will be required by each supplier.

## 9. Accounting and taxation

The [sale of a business can create a number of taxation issues](#), including the calculation of GST on the purchase price, a liability to pay Capital Gains Tax or your ability to access Capital Gains Tax concessions. It is essential that your advisors, in particular your accountant and lawyer, work together to address these issues.

You should seek the advice of your accountant on your taxation and accounting obligations as soon as possible in the sale of business process so that these may be taken into account in any Contract for Sale of your business.

## 10. Legal advice

Your lawyers will be able to assist you by guiding you through the sale process once a purchaser has been found and in protecting you from the range of issues that can arise during the sale process.

Speaking with your lawyer as soon as possible once you have decided to sell your business, so that they may assist you in making the right decisions for your sale, will save you time, money and stress.

If you are seeking assistance with the sale of a café business, we have a team of experienced commercial lawyers. [Contact E&A Lawyers to speak with one of our lawyers who can guide you through the legal steps required for the sale of your café business.](#)

## Additional considerations during the time of COVID-19

COVID-19 has dramatically changed the café industry and the prospects for sale. The prospects of locating a purchaser will likely have diminished in the short term, particularly while the restrictions on trading remain in place.

It is important to keep in mind that:

1. if a purchaser is still willing to proceed, then there would be nothing preventing the sale from going ahead; and
2. the restrictions will be lifted at some point and when they are, the prospects of sale will likely improve.

This makes the need to **plan** and **prepare** your business for the sale prior to looking for a purchaser even more pressing.

Taking the time early in the sale process to tie off any loose ends and ensure the business is ready for sale once a purchaser is located can help to:

1. streamline the process once a purchaser is found; and
2. make your business more attractive than that of your unprepared competitor.

Speak to your team of advisors (your lawyer, broker, accountant, bookkeeper etc.) sooner rather than later so that you are not on the back-foot once a purchaser is found.

# Get help from a commercial lawyer

## Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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