

THE **BUSINESS LEGAL LIFECYCLE**

How to Successfully Navigate
Your Way from Start Up to Success



JEREMY STRETN

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For Abigail and Benjamin

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Contents

Foreward	7
Preface	9
Introduction	11
Chapter 1	Phase 1 – Conception 15
1.1	Your Initial Team 16
1.2	Goals 17
1.3	Choosing the Right Name 17
1.4	Conclusion 18
Chapter 2	Phase 2 – Start-Up 21
2.1	Structures 22
2.2	Leasing Premises 31
2.3	Directors' Responsibilities 36
2.4	Becoming a Franchisee 38
2.5	Borrowing Money 39
2.6	Insurance 46
2.7	Conclusion 48
Chapter 3	Phase 3 – Initial Clients 51
3.1	Who is your Ideal Client? 52
3.2	Tracking 53
3.3	Businesses Based on one Client or a Government Body 54
3.4	Where are you Going to get the Clients from? 55
3.5	Your Initial Agreement/Terms of Trade 55
3.6	Debt Recovery 57
3.7	Conclusion 58
Chapter 4	Phase 4 – Bringing on Employees 61
4.1	Employee vs Contractor 63
4.2	The Interview 65
4.3	The Agreement with your Employee or Contractor 65
4.4	Liability for Employers 66
4.5	Workplace Policies 67
4.6	Conclusion 68
Chapter 5	Phase 5 – Protecting Intellectual Property 71
5.1	Trademarks 72
5.2	Separate Entity to Hold your Intellectual Property 74
5.3	How-to Guides (including Operating or Process Manuals) 77
5.4	Patents 78
5.5	Conclusion 78
Chapter 6	Phase 6 – Maximising your Business/Bringing in Investors 81
6.1	Maximising your Business 83
6.2	What to Look out for in an Investor 83
6.3	Shareholders'/Unitholders' Agreements 86
6.4	Joint Venture Agreements 88
6.5	Conclusion 89
Chapter 7	Phase 7 – Expansion/Franchising/Licensing or Buying an Existing Business 91
7.1	New Business Premises Considerations 93
7.2	Franchise 94

7.3	Licensing	96
7.4	Buying an Existing Business	97
7.5	Conclusion	98
Chapter 8	Phase 8 – Estate Planning	101
8.1	Wills	102
8.2	Power of Attorney and Advanced Health Directives	104
8.3	Personal Insurance	105
8.4	Buy/Sell Option Agreements	106
8.5	Conclusion	107
Chapter 9	Phase 9 – Investing in Property	109
9.1	Buying Residential Property	110
9.2	Buying Commercial/Industrial Property	111
9.3	The Process of Buying a Property	112
9.4	Important Factors to Consider when Buying a Property	113
9.5	What Questions are Important to ask the Real Estate Agent?	115
9.6	Selling Property (be it Residential, Commercial or Industrial)	116
9.7	Conclusion	119
Chapter 10	Phase 10 – Litigation and Dispute Resolution	121
10.1	What is Litigation?	122
10.2	Dispute Resolution	124
10.3	Debt Recovery	126
10.4	Defending Proceedings brought against a Business	127
10.5	Conclusion	129
Chapter 11	Phase 11 – Sale of Whole or Part of the Business or the Listing on a Stock Exchange	131
11.1	Taking Cash for Fees	133
11.2	Selling a Business	133
11.3	Considerations about the Sale of Part of the Business	138
11.4	Listing a Business on a Stock Exchange	139
11.5	Conclusion	141
Chapter 12	Phase 12 – Retirement	143
12.1	Setting Up for Retirement	144
12.2	Superannuation	145
12.3	Buyout Periods	145
12.4	Conclusion	147
Chapter 13	Phase 13 – Insolvency/Winding up	149
13.1	Insolvency	150
13.2	Winding Up	151
13.3	Bankruptcy	152
13.4	De-registration	154
13.5	Conclusion	154
Conclusion		157

Foreword

I believe entrepreneurs are extraordinary. Starting, scaling, and selling a business is one of the greatest endeavours a person can embark on. This endeavour has the potential for great financial rewards as well as personal growth but it also comes with enormous risks and many pitfalls.

Being an entrepreneur can be a lonely journey with no one to turn to for guidance, support or advice. For many entrepreneurs, they can't talk about their challenges with their employees, their family or their friends because they "just won't understand" or they fear being perceived as arrogant when talking about their business. This leaves many entrepreneurs feeling isolated when trying to figure it out on their own or, worse still, being guided by what they read on the internet or social media. From what I have learnt by helping over 1160 entrepreneurs grow sustainable businesses, this is never more true than when looking at the legal side of growing a business.

One of the blessings of growing a business is that you get multiple opportunities to test and measure, tweak and improve in all areas of business. If you make a mistake, you learn from it and do it better next time. Unfortunately, this does not apply to the laws around growing a business; for the most part, you only get one shot to get it right, so it has to be done right the first time.

Unfortunately, entrepreneurs often seek professional legal advice way too late, often to their personal peril or sometimes to the demise of their business. That's where the Business Legal Lifecycle steps in. It will give you early and accurate knowledge before it's too late.

This practical and easy-to-read book will become your companion guide as you discover the legal obligations and options that await you at each phase. Written with insightful intelligence and full of practical examples and anecdotes, this is a legal and business book that is easy to read and simple to follow. It is a book every entrepreneur should have within arm's reach because it will help you safely navigate the often nerve wracking and treacherous waters of the laws associated with running a business.

Although there are many books on how to grow a successful business (of which I have written one), there are few, if any, that focus on the legal steps associated with starting, scaling and selling a business. This book is the missing and critical piece of the puzzle that aims to support entrepreneurs in any phase of their business development. It is a long overdue and much needed resource to be added to the bookshelves of small to medium business owners everywhere. It gives the reader insight with the ability to predict and prepare for the future. Properly applied, it will allow entrepreneurs to not only grow a sustainable business but to make sure their treasured asset is also well protected.

The Business Legal Lifecycle is laid out like an old 'choose your own adventure'

novel, allowing you to enter at the place that is right for you. It then gives you the options you can take with the pros and cons of each, so you can be well-informed and grow your business with confidence and certainty.

This is a refreshing book not written by some lawyer sitting in their ivory tower pointing their judgmental finger at you like your school teacher did when you didn't do your homework. It's written by someone who not only cares about entrepreneurs but who has walked the path himself. Jeremy started his business from scratch and has grown it into an iconic boutique legal practice. He is also an entrepreneur who has experienced the highs and lows of growing a sustainable enterprise. Unlike many legal texts which are long, boring and full of legalese, this book is written in plain English, making it simple to understand and easy to apply. It is also written with compassion, care and clarity.

In my experience, people want more direction, not more information. While this is an informative book, you will also come away with very clear direction as to what your next business legal steps should be. I expect it will help you navigate safely through your entrepreneurial pathway as you set out to achieve your dreams and desires in business.

Enjoy.

Dr David Dugan

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Author of Bullet Proof Business, Amazon No 1 Best Seller

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Preface

As a lawyer and a business owner I am often frustrated with the legal industry as a whole. All too often, advice from lawyers is boring and repetitive with no thought for the client's actual situation. What happens more often than not is that clients are scared of going to their lawyer, scared of being told that they need to spend tens of thousands of dollars to do everything that they need to do. There is no commercial advice given and legal advice becomes unworkable in the real world. This frustration led to the creation of the Business Legal Lifecycle, a concept to shift legal advice away from the simple 'do everything at once' approach to a more commercial set of instructions for every business owner to use.

This book is all about demystifying the legal processes and unlocking the often confusing world of legal advice for business owners. My aim is to give business owners a reference guide to be able to use in business, to give guidance on legal terms, and to give a clear direction of where a business is and should be going. The 13 phases of the Business Legal Lifecycle have been developed to solve these issues and give business owners a clear path for their business.

As with anything in life, business owners are on a journey of discovery. In writing this book, I have developed a deeper understanding of the Business Legal Lifecycle in general and discovered new and interesting ways to look at businesses. The examples I have given are designed to give that clarity to business owners to be able to identify whether they have encountered a similar problem in the past or as a beacon saying to a business owner that they are not alone and that issues that they face in business are normal. Moreover I want to give you the knowledge and confidence to tackle problems head on and know that other business owners have been there before and there is always light at the end of the tunnel.

In writing this book I have researched other business books and legal processes and have also undertaken an extensive review of the business owners that I have dealt with over the years. I have examined where businesses did things correctly and where they did not, and I have developed the phases of the Business Legal Lifecycle as a guide to where the most successful businesses did things correctly.

Your journey as a business owner will be fraught with danger but it should be a journey that is interesting and allows you to develop many different skills. Whether you are a small, medium or large business owner, you will at some stage of your business life have many different roles, embrace them and learn from your mistakes and also from your successes. This book has been designed for you to establish and build a successful business.

Introduction

Business owners are in business to take control

When you first start out in business, you need to do everything yourself to keep your business going. You need to be the marketer, strategist, salesperson, manager and even the cleaner. Staying in control of all aspects of your business is vitally important to its ongoing success. As your business grows and develops, it is critical that you are aware of the changes and cycles that it will go through. All businesses go through very predictable and repetitive cycles that are both positive and negative. They are all very important and you need to be proactive and ready to take action when the time comes. I have examined not only what successful business owners have done well, but also where business owners have failed, in order to work out what went wrong. This led me to develop the 'Business Legal Lifecycle' based on my experiences as a lawyer working with over 5200 business owners and their businesses.

The main problem that I observe is that many business owners do not know what they need to do with regards to the legal side of their business. They often do not establish the appropriate structure for their business and do not know when certain legal processes of the business should be undertaken. I developed the Business Legal Lifecycle to guide businesses through what legal steps they need to take and when they need to take them.

Experiences

As a young corporate solicitor during the 2000s it was drilled into me that a business should have every single legal document in place before it starts to trade. Part of this is due to the increasingly litigious nature of our society, and part is due to the commercialisation of legal businesses.

Crossing the t's and dotting the i's before you start trading is critical in order to make sure that you are ready for the challenges that you will face as a business owner.

What we see from many business owners

All too often, a business owner, struggling to get their product off the ground, engages with clients and starts employing staff without having the resources or the time to implement all the necessary steps at the beginning of their journey. Setting up your business properly from day one is crucial as the decisions you make at the start will have huge impacts down the track, and could be the difference between success, failure and even bankruptcy.

The Business Legal Lifecycle was developed to help business owners overcome the challenges and protect yourself from the risks that you will face at different stages of your business' development. When your business is about to transition to the next

phase, it is critical for you to understand what your legal options and obligations are so as to ensure that the transition from one stage to the next is successful.

The aim of the Business Legal Lifecycle

The aim of this book is to demystify the legal processes, explain the different legal practices, and demonstrate why they are necessary through the use of real-life examples. I will also attempt to fight my inner lawyer by doing all of this in plain English! The focus of this book is not specific to any particular type of business and can be used by all types of businesses and business owners.

It should be used by entrepreneurs, existing business owners, accountants, lawyers, financial planners, business mentors, business coaches, mortgage brokers, business brokers, real estate agents and other professionals as a guide to the legal aspects of a business.

It may be that some steps occur in a different order or certain events trigger the phases slightly differently, but from my experience, both as a business owner and as a lawyer, successful businesses generally follow a predictable pattern as presented in the Business Legal Lifecycle.

How to use this book

Before we begin, a word of warning: specific businesses and business owners have requirements that are unique to their particular circumstances. This book is a general discussion on the phases of the Business Legal Lifecycle but it should not replace the advice that you, as a business or business owner, receive from your professional team of advisors which is specific to your own particular circumstances.

I have included many different case studies and examples to show how following the phases in the Business Legal Lifecycle can help your business grow into an asset that can either be sold or be used as a lifestyle business (a business set up to fund your ideal lifestyle as opposed to a larger type business). I have not included any names and some of the details have been changed for privacy. The effect of what happened in each case study or example, whether it is positive or negative, is very real. Ideally, you should read this book from cover to cover at least once and I encourage you to flag chapters that are especially relevant to you and scribble notes as you go. You may discover things that you have done correctly (or incorrectly) and, as you reach each transition to a new phase in your business, I encourage you to continually revisit the book to ensure that you follow the correct processes and seek the appropriate advice from your consultants.

What is the Business Legal Lifecycle?

Starting a new business is an exciting venture for any entrepreneur. I know from my personal experience of starting three businesses that sometimes you get swept up in the excitement and resist getting bogged down in important, but let's face it, often boring, legal matters. There is a long list of considerations that a business owner needs to think about when starting a business, with initial start-up costs typically

being the driving factor behind making decisions.

This is one of the reasons that the Business Legal Lifecycle was developed: to ensure that you are aware that you need to start thinking about implementing the different legal processes from the very beginning.

The different phases of the Business Legal Lifecycle are:

- (a) Phase 1 - Conception
- (b) Phase 2 - Start-Up
- (c) Phase 3 - Initial Clients
- (d) Phase 4 - Bringing on Employees
- (e) Phase 5 - Protecting Intellectual Property
- (f) Phase 6 - Maximising your Business/Bringing in Investors
- (g) Phase 7 - Expansion/Franchising/Licensing or
Buying an Existing Business
- (h) Phase 8 - Estate Planning
- (i) Phase 9 - Investing in Property
- (j) Phase 10 - Litigation and Dispute Resolution
- (k) Phase 11 - Sale of Whole or Part of your Business or the
Listing on a Stock Exchange
- (l) Phase 12 - Retirement
- (m) Phase 13 - Insolvency/Winding up

Each phase of the Business Legal Lifecycle will have a different impact on your efficiency and profitability. Consequently, you may decide not to go through a particular phase, or another phase may present itself earlier for you. Your company may enter into litigation much earlier in its lifecycle, or you may decide to invest in property sooner than others typically do. Some business owners decide never to franchise their business.

The phases of the Business Legal Lifecycle were created as a general guide based on our experience in dealing with business owners and the stages we see them experience during the life of their business. Whether you follow the cycle exactly or not, the book is designed to give you an idea of where your business is currently situated and where it is headed.

A word on contracts

Throughout the book I use various terms that refer to a contract, such as: a company constitution, a lease, agreements with your staff and so forth. These are all forms of contracts which are very important legal documents. There is an old saying in the

legal profession, “in any dispute there is your belief as to the truth, there is the other side’s view on the truth and then the actual truth is somewhere in the middle.” This is especially true if you do not have a contract in writing as each party to the contract will have a different interpretation of the agreement. In the ever-increasingly litigious nature of our society, putting a contract in writing is imperative for any agreement so that all parties can agree upon the terms and conditions.

CHAPTER 11

Phase 11 – Sale of Whole or Part of the Business or the Listing on a Stock Exchange

Previously, I said that in acting for business owners, the Start-Up phase is the most exciting. Acting on behalf of a business owner in the sale of their profitable business is a close second. This phase is also rewarding as it is all about having a business that you can sell either as a whole, in part, or even listing it on the Stock Exchange.

This phase is often the culmination of all of the effort you put into your business over the years. The positioning of this phase is really due to its inherent nature. In every business, the goal is to build the most successful business possible irrespective of whether it is a lifestyle business that brings in an income to fund an ideal lifestyle, or a company with a turnover of over \$10 million a year with appropriate consideration given to the possible sale of the business in the future.

This phase is at the top of the cycle as it represents the pinnacle of the business owner's involvement in the business. The best time to sell a business is when it reaches its optimum profitability, turnover and staff capability. This does not mean that the business cannot become even more profitable, or that the buyer will then fail in the business. In fact, quite the opposite is often true; a good business that is at the top of its game can be sold to a buyer who then starts their own Business Legal Lifecycle and continues the success of the business.

A well-established business will already have a lot of the necessary processes and procedures in place, which will greatly assist the buyer (new business owner) to move forward.

The new owner may have to revisit the earlier phases in the Business Legal Lifecycle to familiarise themselves with the details of certain phases and to ensure that they are comfortable with the way in which the processes and procedures were set up by the previous business owner and make adjustments where necessary.

Sometimes, a business may be sold in less than ideal circumstances; ill-health, litigation or lack of funding may force a business owner away from their business. Of course, they do not have to sell their business as they may be prepared to sacrifice growth for a lifestyle business that will simply pay themselves a wage for the rest of their foreseeable lives.

The keyword here is 'foreseeable'; as discussed earlier there are many things outside the business owner's control that might force a business to be sold. In this phase of the Business Legal Lifecycle I will go through the key considerations that

buyers have when looking at buying a business and what owners should have in place to maximise their selling price, irrespective of whether the sale is forced or by choice.

Important considerations during this phase are:

- If I wanted to buy this business what would I want?
- What are the unique things that make my business stand out?
- Have I protected my intellectual property?
- Have I completed the other phases of the Business Legal Lifecycle successfully?
- Are the financial books and records of my business up-to-date?
- Have I been taking any cash out of the business that will affect the bottom line of my business?
- Which consultants do I need to engage with to help me to sell my business?

Dangerous considerations during this phase are:

- My business is perfect; I do not need to do anything to get it sold
- I want \$x for my business and what anyone else says does not matter
- I can negotiate on my own sale
- I do not need to bring my books and records up to date; they will be fine
- Everyone wants to buy my business

11.1 Taking Cash for Fees

At the start of this phase I wanted to address a matter which is often overlooked; owners taking money out of the business for personal reasons and without recording the profits. They do this for a number of reasons, including to avoid paying tax on the money, to hide money from their spouse or family law proceedings, or perhaps to hide money from their business partner.

The truth is that in any business, no person should be taking big risks for small gains; the tax man, your spouse or your business partner will inevitably find out that you have been hiding money from them and it will not end well. Not only could you end up with either a larger debt to the tax office (different countries around the world have different rules in relation to this but in some countries like Australia if you deliberately avoid paying certain taxes, that can attract significant penalties and interest), but you could have serious trust issues with your spouse or business partner.

However, the main reason you should not take cash from your business is that for

every 30c (the current Australian company tax rate) that you avoid, it could end up costing you \$1, \$3, or \$5 when you sell your business. This is because when a business is sold, the sale price is generally calculated as a multiple of the profit made by the business (usually averaged over the previous two or three-year period). Profits need to be demonstrable so the prospective buyer can verify the purchase price. Therefore, for every dollar that you take out of your business, you are short-changing yourself by much more when you sell your business.

For example, if you take \$100,000.00 in cash from your business and then sold it you could not rely on that \$100,000.00 as it is not recorded in the company books. Consequently, the company's value will be \$300,000.00 less (based on a 3x multiple) than it should have been – quite a bit more than the \$100,000.00 you took out initially. All of this is to save paying approximately \$30,000.00 in company tax.

11.2 Selling a Business

In order to sell your business at your desired price, you need to ensure your business is a well-oiled machine that can work without you. The purpose of this book is not to go through every single aspect of selling your business, but to identify some of the major areas that help drive the price up when you sell your business. The process of selling a business is quite a complex one; it involves a great deal of high level negotiations and a number of important steps, including:

Having your business ready for sale

If you are considering selling your business you should engage a business broker, a valuer, and/or a business valuer to assist in the sale. The right consultant will not only be able to help you through the process but also to ensure that you receive the best possible price for your business.

I have never seen a business with everything in place ready for sale at the time of asking. It generally takes about two years of discipline and hard work to get a business ready for sale. In many cases, a broker is not engaged to prepare a business for sale as the owner prefers to manage the sale personally.

Despite the owner's best efforts, they lack the specialist knowledge to extract maximum value from the sale, and often are unable to secure the sale as they cannot justify the asking price. In the end they are forced to accept a figure much lower than their asking price, abandon the sale, or go back to square one and hire a broker to get the job done properly.

From the Case Files

An example of this was a client who wanted to sell their service-based business. The business was a financial planning business that had a great revenue stream and was making solid profits of over \$1 million per annum. The business owner met with a number of brokers who all told him that he needed to do significant work on the business to sell for the price that he wanted (being a 4x multiple of their profits).

Despite this advice, the business owner decided that he did not want to engage a broker and that he would market the business himself for sale. The business was not ready for sale and the client marketed the business on a general website and did not engage a broker. He was serious about selling but every time a potential buyer came to him the client could not justify the price he wanted for the business. After marketing the business for six months, the business owner finally realised that he needed to engage the services of a broker. The broker spent some more time ensuring that the business was ready for sale and then started marketing the business. The business was sold after one month of marketing for a price greater than the business owner had initially wanted for the business.

The price

Before you sell your business you will, of course, have an idea of what you think it is worth. Invariably, the actual value will be less once the price of the business is actually calculated. Generally, the three main components that determine the price of a business are:

- (a) the goodwill including intellectual property of the business
- (b) any plant and equipment including digital assets of the business
- (c) any stock or inventory that the business owns

The goodwill of the business

Goodwill is the real value and profit of the business and includes intellectual property; it is the key figure used in calculating a business' real worth. The goodwill of the business is generally worked out as a multiple of earnings before interest, tax, depreciation and amortisation (EBITDA), or some variant, over a one, two or three-year period. What EBITDA calculates is the profit of the business before you add in any interest that you earn, take out any tax payments, or depreciate or amortise any assets.

The multiple is a figure that is attributed to how easily the business can be taken over and run without the current owner. The lower the multiple, the more reliant the business is on its owner; the higher the multiple, the more independent the business is from the owner, the better systems that the business has in place and the easier it is for a third party with no relatable experience to walk in and take over. Law and accounting firms, for example, generally have a low multiple as a large part of the goodwill is tied up in the personal relationships the practitioners have with their clients. Conversely a printing firm will have a much higher multiple as it is not so dependent on personal relationships.

Having systems in place and intellectual property protected is a great way to increase the multiple, meaning you are not needed in the daily operations of the

business as much and it therefore becomes a more valuable and marketable asset.

Plant and equipment

The plant and equipment of the business are, put simply, the physical assets that are used to operate the business. In an office, for example, these might include the fitout of the premises such as desks, chairs, filing cabinets, computers and telephones, while in a factory it might be the machinery and the ancillary items and equipment used to service the machinery. When a business is sold, the value of these items is calculated at the depreciated value of each asset (and rarely for its replacement value). Depreciated value is simply the loss in value of that asset over time.

Stock and inventory

Many businesses rely on stock and inventory to run the business; these are the products that are sold in the business or that are used to make products for the business to sell. When a business is sold, the source items that are used to make the product are generally sold at cost price. So, if the stock was bought at \$1, it would be sold to the new buyer at \$1 modified by the age and usefulness of the stock.

There are many considerations when looking at the price of a business; this is just a short summary of some of the factors you need to consider when selling your business. You should consult with a business broker, a valuer and/or a business valuer to ascertain the true value of your business and what price you will achieve in your market.

Marketing of the business for sale

Engaging a business broker to sell your business is the easiest way to market it to potential buyers. Generally, brokers will have a database of clients and customers that they can approach that may be interested in your business. They also have the ability and contacts to advertise your business in places where investors know to look when they are interested in buying a business.

The contract

A sale of business contract is a lot more complicated than a contract for the sale of land. It is important that the contract includes all things necessary to make the business continue to operate with the new owner, including:

- (a) the name and address of the business
- (b) the telephone, fax, website, email addresses of the business
- (c) any social media pages of the business
- (d) the price that is agreed upon between the parties

- (e) whether the contract is subject to any due diligence (that is, enquiries made in relation to the business to make sure that it is what the seller says it is), finance (to make sure that the buyer can buy the business) or any other inspections required by the buyer
- (f) the transfer of any government licences required to operate the business (e.g. liquor licence)
- (g) the transfer of the lease for the premises
- (h) restraint of trade provisions, preventing the seller from operating a competing business or taking existing clients from the business
- (i) any other aspect that is required for the business

If the vehicle that operates the business is set up correctly, then the tax position upon the sale of the business should be consistent with what was considered when the business was started (see section 2.1 on structures). You must obtain advice from your accountant and/or financial advisor as to your tax liability from the sale. There are often mechanisms that can be put into place to minimise the tax that you must pay upon the sale of your business.

You must also engage a lawyer to either draft or review any business sale contract that you are considering entering into. For instance, some states in Australia require businesses to give certain types of disclosures when they are sold or when leases are being transferred. Therefore, it is essential that you obtain advice from a qualified lawyer about the terms of the contract and that you tell your lawyer all aspects of the business to ensure that everything is covered in the sale.

There is 'no one size fits all' model for the sale of a business, due to the fact that every business and the way that it is run is unique.

Settlement

Once the contract is signed and all of the conditions have been complied with, the contract is usually settled with the payment of the purchase price by the buyer to the seller and the transfer of the business to the buyer by the seller. At this point, all of the legal forms to do with the names, telephones, utilities, and so on of the business should be lodged with the respective government departments and suppliers to ensure that the transfer is completed.

This is only a short summary of the considerations to sell a business. As can be seen from this list, it is not a simple process. It is one that takes a considerable amount of work and energy. Throughout the process, it is essential that you engage with and keep abreast of all situations with your lawyer, accountant, financial planner, business mentor or coaches, as well as your business broker. All of these consultants are essential to ensure that the business owner achieves the best possible sale price for your business, as well as ensuring that the sale process

proceeds smoothly and successfully.

11.3 Considerations about the Sale of Part of the Business

In section 6, I discussed bringing investors into the business. Part of that discussion revolved around the considerations of bringing in an investor and selling part of the business.

This section focuses on selling off a part of a business but not the entire business. The sale of the whole of the business and part of the business are dealt with separately as there are some significant differences between them.

From the Case Files

A classic example of the sale of part of the business is a real estate agent's rent roll. We acted for an agent that had a very large business with a turnover in excess of \$5 million per annum and a rent roll of over 800 properties. The owner of the business was tired of dealing with the rent roll side of the business as they did not like dealing with the issues that came about from tenants. They decided that they wanted to sell that part of the business to another agent that was a competitor in their area. As with the majority of real estate agents in Queensland, Australia, they had two aspects of their business; the first is property sales and the second is property management. The management rights to those properties are valuable assets that can be purchased by a third party licensed real estate agent whilst the selling agent retains the sales aspect of their business. The agent was able to sell off that aspect of the business to the competitor real estate agent whilst maintaining their business as a sales agent.

When selling a part of any business, careful consideration needs to be given to how that portion of the business is sold. A contract needs to carefully define what part of the business is being sold as distinct from what is being kept; the contract needs to ensure that there is no room for misunderstanding between the parties as to their ownership rights. It is also critically important to define the restraint of provisions mentioned earlier. Given that the new business owner is only buying a portion of the business, the only part of the business that the seller can be restrained from continuing to trade in is that part of the business which is sold, otherwise, the restraint would not be seen as reasonable and would no doubt be struck out as such.

So for a real estate agency that both sells and leases properties, the seller would be restrained in operating either a rent roll or sales department, depending on which part of the business is sold, but could not be restrained for both (where only a part is sold).

The considerations in selling part of a business are very much dependent on the type of business that is being sold. There will also be different tax consequences when only part of the business is being sold as different rules apply, so it is important that you engage with your advisers early and work through all the issues.

11.4 Listing a Business on a Stock Exchange

The decision to list a company on a Stock Exchange is one that requires careful preparation and consideration on the part of the business owner. The process of listing a company is known as an initial public offering. When a company lists, it is valued and additional shares are issued which can be traded on a Stock Exchange. You may decide to list a company for a number of reasons, such as:

- Positioning the company for expansion into other markets (both nationally and internationally)
- Making it easier to access new capital through public offerings
- Giving shareholders an easier way to sell their shares in the company and having better access to capital management opportunities to pay off debts
- Creating a measurable and transparent valuation for the company
- Giving the company higher credibility as well as greater visibility (given the disclosure requirements for listed companies)

Before listing your company, you need to be 100% positive that you definitely want to do this as not only is the initial public offering process a costly one, but it is also time consuming and one that you cannot afford to get wrong.

It is very important that when you want to list a company on a Stock Exchange that you seek advice from your lawyers, accountants, financial advisors, and other consultants to ensure that it is appropriate to list the company and that the correct steps are taken.

Some of the important positive and negative considerations include:

- (a) Positives:
- (i) easier to raise capital through a new share issue
 - (ii) easier to sell shares to third parties through the Stock Exchange than trying to sell shares in a private company
 - (iii) easier to expand by buying businesses as it is easier to use shares as equity for purchases
 - (iv) the company brand is enhanced as a listed company rather than a small to medium private company
 - (v) it can be easier to obtain and retain quality staff given with the enhanced status as a publicly listed company

(b) Negatives:

- (i) major decisions cannot be made informally but require a longer bureaucratic and less flexible methodology (e.g. board meetings)
- (ii) increased compliance costs, including additional disclosure and accountability requirements
- (iii) higher risk of hostile takeovers as other investors are attracted to buy large stakes in the company
- (iv) the share price is subject to stock market fluctuations beyond the control of company management, which can cause the value of the company to drop against the company's wishes

In a broad sense, the steps to list a company on a Stock Exchange are:

- Step one – appoint a consultant to prepare the paperwork for the initial public offering
- Step two – decide on the terms of the initial public offering and prepare disclosure documents for the initial public offering
- Step three – the consultant then organises for the registration of the company with the Stock Exchange
- Step four – initial discussions begin with potential investors using managed fund investors to test the waters
- Step five – the consultant helps to determine the price of the stock
- Step six – the company lists and is traded on the Stock Exchange, with share price subject to market forces

Before listing, there are a number of matters that you and your management team need to consider including:

- What gaps are there in the skillset at the management and board level of the company? Can these be resolved with a listed company?
- Is the management of the company ready for the greater disclosure, accountability and transparency requirements after the company is listed?
- Is the company's culture ready to be a listed company?
- Does the company have any issues with tax?
- How will key employees and key customers respond when they learn the news — will they stay on with the company?
- What other initiatives need to be considered (such as other acquisitions) before the company is listed?
- What systems (such as financial, operational and management) need to be

improved before the company is listed?

- Are all corporate governance practices properly in place?
- Is the timing right for both the company and the market conditions?

When making the decision to list a company on the Stock Exchange, it is critically important that you obtain advice from all relevant consultants involved in listing the business.

If you do not take the right steps and heed advice during this process, it is more than likely that the listing of the company will be a disaster and cost you dearly without achieving anything.

11.5 Conclusion

This phase is one of the most exciting in the Business Legal Lifecycle as it is here you will see the reward for all of the hard work and patience. Where a business owner follows the Business Legal Lifecycle in full, they will find that their business is properly set up (or close to it) to successfully navigate this phase. Properly handled, this phase will see you reap the benefits of your business. It should occur when the company is at the top of its game, so it achieves the best possible return to you.

Taking the right advice from your consultants will ensure that you can properly navigate this phase and achieve the best return. If you do not take this step, or worse yet this step fails, then you will need to move on to the Retirement phase or, worse yet, the Insolvency/Winding up phase of the Business Legal Lifecycle.

Dealing with this phase in a careful and methodical way is also important. Rushing through the sale of your business will result in you losing some of the value of the business. You may not be ready to move onto the next phase of Retirement (and may start a new business and Lifecycle all over again) but taking a calm and methodical approach will mean that you have the choice to retire and reap the rewards of all of your hard work and patience or decide upon another course.



QUESTIONS TO ASK BEFORE YOU PROGRESS TO THE NEXT PHASE:

1. Have you put everything in place to be able to sell either the whole or part of your business?
2. Have you engaged a suitable broker to help you sell your business?
3. If you want to list on the Stock Exchange have you engaged the appropriate consultants to assist you in the process?
4. Have you sold your business for the price that you want?

Conclusion

In business you are always learning new systems, procedures and methodologies. This book is all about educating you on the different aspects of your business and when legal processes and considerations should be implemented. The main reason that I wrote this book and developed the Business Legal Lifecycle was to share my experience as a business owner and a lawyer. We built our law firm on the principle of 'Solutions for a Better Life' and all of the work we do is geared towards that goal.

Understanding the Business Legal Lifecycle is not the end point for any business owner; it is the beginning of how to operate your business, how to grow your business, and how to prepare for your future. It is critical that you understand the different phases and times when different legal processes should be followed. It is also critical that you have a basic understanding of a number of legal concepts when in business. I hope that you have appreciated the explanations that I have given in this book and that it gives you, as a business owner, a greater understanding of the legal processes involved in operating a business.

I have used many examples and case studies in this book to illustrate how legal processes work and why they are important. You may find these examples similar to your own experiences or you may find that when you are faced with a similar situation, you can identify a potential problem and fix it before it becomes an issue. No two situations are ever exactly the same but you need to know when to take action at the appropriate time. This will prevent you from continually treading water or, worse yet, being swept away when problems occur.

It is important to remember that in business you will face tough times; that is the nature of business and it is entirely normal. It is *how* you deal with those problems that will determine how successful you are in the future. I also encourage you to read all you can and take in as much advice (but not 'barbecue advice') as you can in relation to operating your business. Do not implement everything you read and hear; consider your options and, if you are not sure of which way to go, it is probably best to take the course of a trusted advisor. Running a business is a rewarding endeavour and is something that I am very glad I have been able to participate in.

As you will have gathered from this book it is important that throughout the Business Legal Lifecycle you obtain advice from the right consultants at the right time.

Often lawyers or accountants will try to do too much, or they will not allow the other consultants to do their job. I have tried to also point out the various types of consultants that I recommend that business owners engage with at different times in their business.

I wish you the best of luck in your journey in business and through the Business Legal Lifecycle. If you have any questions, then please feel free to email me at lifecycle@jeremystreten.com.

"The Business Legal Lifecycle is one of those books every business owner should own. Written in plain English with practical advice, no matter where you are in your business journey there are gems of wisdom on every page."

Adam Houlahan, Author & International Keynote Speaker

Whether you want to have a large company or a small, lifestyle business; you have to pay attention to the legal aspects – right from the start. If you don't take care of your legal obligations and plan for the inevitable problems that will surface, you will be exposing yourself to strain, stress, loss of business and potentially even bankruptcy.

The Business Legal Lifecycle is designed to guide and empower you with the knowledge you need to successfully navigate your business journey.

In this book you will learn:

- Why and when you need to pay attention to the legal aspects of your business;
- How to successfully start up your business;
- What you need to put in place to sell the business in the future;
- Whom you should consult with along your business journey; and
- What you should look at when your business is coming to an end.

Act now and get ready to build a successful business – today!



Jeremy Streten is a successful entrepreneur and lawyer. His passion is to help entrepreneurs and small to medium-sized business owners to succeed in their business so that they can live the life that they want to live. He has challenged and changed the way that many people look at lawyers. With a personal perspective from acting for thousands of businesses and their owners Jeremy often contradicts conventional wisdom.

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