

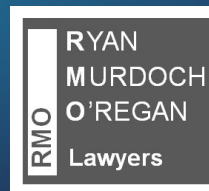


Corporate & Business Law



Get it right. From the start.

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About Ryan Murdoch O'Regan Lawyers

We are a general law practice which is organised into teams of specialised experts in each of our areas of law.

Our practice area teams are committed to focussing on their area of law to ensure you always have the expertise that you need.

And, unlike some other firms – who focus on only one area of law – we can offer expert solutions for all legal areas, without the need for you to search around.

As a client you can have comfort that irrespective of what problem you may encounter in whatever area of law, our teams in all our practice areas will be able to work in tandem to offer any other specialist solutions you might require – utilising the history we already know about you and / or your business.

"Often, we meet our clients for the first time at the most stressful period in their life. Together we work to solve their personal and / or business problem, leading to a lifetime relationship."



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Corporate & Business: An Overview



Our Corporate & Business Law Team is led by Duncan Murdoch and the entire team consists of experienced lawyers who deal with a range of commercial and business matters, including:

- business sales and purchases,
- business structuring,
- banking, finance and securities,
- commercial agreements,
- employment law,
- franchising,
- landlord and tenant law, and
- succession planning.

Our team provides expert legal advice and assistance to a diverse range of clients across numerous industry sectors including:

- agriculture and primary production,
- building and construction,
- financial,
- health and pharmaceutical,
- hospitality, food and beverage,
- manufacturing,
- printing and publishing,
- professions – accountants, doctors, engineers, etc,
- R&D and technology,
- retail, and
- transport.

The plan we will develop for you:

1. Takes into account your individual circumstances –
we listen!

2. Draws on our experience –
we are the experts!

3. Helps you achieve the best possible outcome –
you win!

“Invest in the best. RMO Lawyers”



Duncan Murdoch
Director

Bankruptcy & Insolvency



Factors Contributing To Business Failure

Each year in Australia many individuals seek to start a new business or buy an existing business. Unfortunately, a number of these ventures fail within the first few years. Factors contributing to failure may include:

- business plans based on budgets designed more to satisfy criteria of banks rather than on realistic projections,
- over confidence leading to overlooking obvious risks and pitfalls,
- under capitalised leading to heavier reliance on credit and overdrafts.

When problems with cash flow and profitability do arise, not obtaining early legal advice to look at appropriate strategies to trade through difficult periods.

Bankruptcy

Insolvency of an individual is formally dealt with under the *Bankruptcy Act 1966* (Cth).

Conditions which generally apply include:

- bankruptcy does not release you from certain debts, e.g. child support,
- certain debts remain payable e.g. fines and penalties—this means you are still liable for these debts—you need to contact your creditors directly to discuss payment options, and
- if you are a director of a company, upon bankruptcy you are disqualified and must cease to act as director.

It is possible to enter into Part IX debt agreements or Part X personal insolvency agreements as an alternative to bankruptcy.

Insolvency

Insolvency of a company is formally dealt with under the *Corporations Act 2001* ("the Act").

Conditions which may apply include:

- an administrator, receiver or liquidator is appointed,
- directors can remain liable for the company's unpaid tax, and
- the Act imposes on directors a positive duty to prevent insolvent trading i.e. such that directors can be subject to a civil claim or criminal proceedings if they fail this duty.

Did things not turn out as expected?

If you are experiencing non-disputed financial distress we can assist you to negotiate a settlement with your creditors.

We can provide you with advice as to your rights and obligations and the processes to be followed whether that be in relation to Part IX debt agreements, Part X personal insolvency agreements, bankruptcy petitions, debt restructuring, company deregistration, company winding up applications, assisting with the appointment of an administrator or receiver or advice generally.



Business Sales & Purchases



Just like owning your own home is a desire of many Australians, the notion of owning and operating one's own business also appeals to many people.

Starting or buying a business should not be taken lightly.

Any prospective business person needs to consider various commercial, financial and legal issues.

Commercial Issues

- Obtaining appropriate legal, financial, business and accounting advice,
- Preparing a business plan,
- Undertaking appropriate due diligence, and
- Verifying that all plant & equipment is in good and proper working order.

Financial Issues

- Ensuring there is sufficient capital to finance the business venture,
- Making sure the business accounts system is up to date and correct,
- Properly assessing present and forecast costs, liabilities, income, cash flow and profits, and
- Understanding security obligations in relation to mortgages, charges, guarantees, etc.

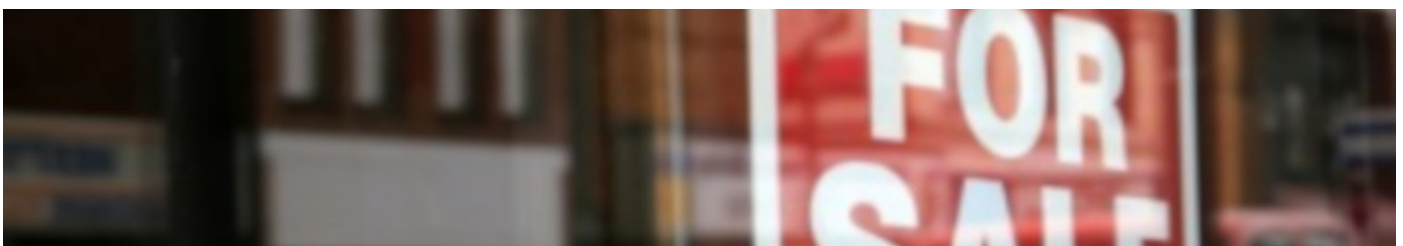
Legal Issues

- What structure should be adopted? Sole trade, partnership, company or trust?
- If you are going into business with someone else do you have an agreement such as a partnership or shareholders agreement dealing with ownership, management and exit strategies?
- Do you understand the statutory and regulatory obligations applicable to the business and industry and have they been complied with?
- Do you understand your rights and obligations in relation to employees?

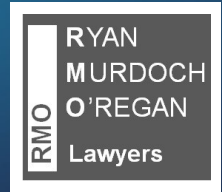
The above lists are a sample of the issues that need to be considered.

How We Can Help

- Advice in relation what due diligence you should consider.
- Undertaking necessary searches.
- Advice about issues relevant to start up businesses and existing business purchases.
- Drafting all relevant documentation.
- Meeting applicable statute and regulatory compliance.
- Settling the purchase
- Attending to all other matters.



Business Sales & Taxation



The purchase of a new business or the sale of an existing business will revolve around the contract for sale of the business.

It is vital that the contract for sale reflects the intentions of the parties and sets out exactly what each party is required to do to give effect to the sale.

If you are a purchaser or a vendor our Corporate & Business Team can handle all the necessary pre-contract negotiations and an investigation, as well as drafting the contract of sale making sure that the contract protects your interests.

Selling Your Business?

When a business owner determines it is time to sell their business there are a number of issues that the seller needs to consider. The seller may be requested to give certain warranties in respect of the business. If the statements are not true then they may expose the seller to an action for misleading or deceptive conduct or misrepresentation.

Taxation

From a business perspective the two most common taxes to consider on sale of the business are:

Goods & Services Tax ("GST")

The GST legislation - *A New Tax System (Goods and Services Tax) Act 1999* - provides exemption from GST on the sale of a business provided the GST going concern exemption applies. As GST is a considerable impost it is important to ensure the provisions for the going concern exemption are satisfied.

Stamp duty is assessed on the GST inclusive price, making the overall tax impost even greater.

Capital Gains Tax ("CGT")

There are four CGT possible concessions available for small business owners:

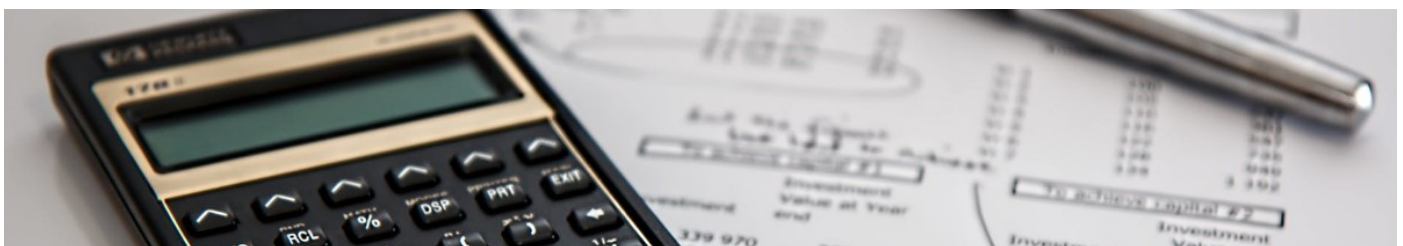
- 15-year exemption,
- 50% active asset reduction,
- Retirement exemption, and
- Roll-over.

The rules vary between each. Specific tax advice should be obtained from an accountant.

How We Can Help

Providing appropriate legal advice as to your obligations to a potential buyer or seller in the event of the purchase or sale of your business.

Settling the purchase or sale of your business.



Business Structuring



There are a number of different structures which can be used to operate a business. Each has its own advantages and disadvantages.

The most common structures include sole proprietor, partnership, company or trust.

Sole Proprietor

A sole proprietor or sole trader is an individual who operates a business on their own account.

Partnership

This is where two or more individuals carry on a business together with a view to making a profit. In Queensland partnerships are regulated under the *Partnership Act 1891*. There are both "general" partnership and "limited" partnerships, with each having different rules.

Company

Companies are regulated through the *Corporations Act 2001* (Cth) as administered by the Australian Securities & Investments Commission. Shareholders represent the ownership of the company and the directors manage the company. There are a number of different types of companies including private and public companies.

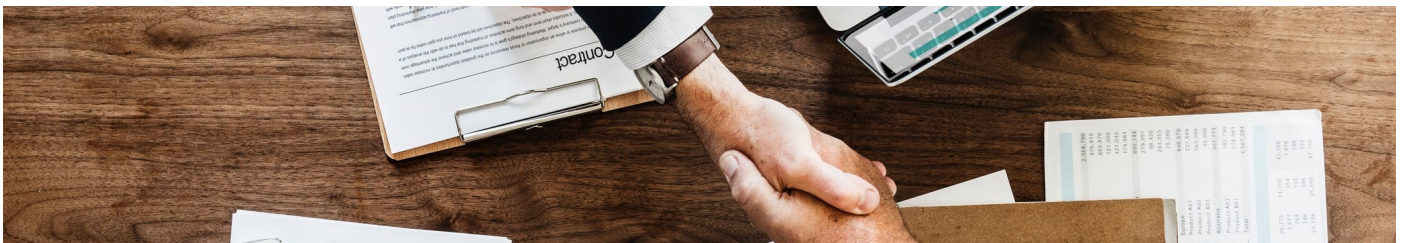
Trust

A trust involves property, assets and income being held by a trustee on behalf of others i.e. beneficiaries. Trusts are often adopted for their asset protection and tax minimisation characteristics.

There are a number of different types of trusts, such as discretionary trusts, unit trusts, hybrid trusts, fixed trusts, testamentary trusts and inter vivos trusts.

How We Can Help

- Structuring advice (in conjunction with your accountant),
- Drafting deeds of partnership, shareholders/directors agreements and trust deed,
- Incorporating companies,
- Business name registration, and
- Advice and drafting of service agreements between business entities.



Commercial & Business Agreements



Ryan Murdoch O'Regan Lawyers experienced Corporate & Business Team regularly draft and advise on a wide range of commercial and business agreements.

Types of commercial and business agreements include:

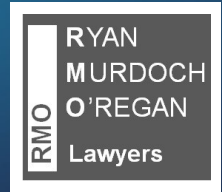
- Agency agreements,
- Agistment agreements,
- Asset sale agreements,
- Building / construction agreements,
- Buy / sell agreements and option deeds,
- Confidentiality deeds,
- Contracts of business sale in relation to the sale and purchase of businesses,
- Contractor and employee agreements,
- Deeds of guarantee,
- Deeds of indemnity,
- Deeds of partnership,
- Distribution and supply agreements,
- Equipment / chattel lease agreements,
- Franchise agreements,
- IT agreements,
- Joint venture agreements,
- Loan agreements, mortgages and charges,
- Management agreements,
- Premises leases and occupation licenses,
- Restraint deeds,
- Rights of entry,
- Shareholder agreements. and
- Trust deeds.

We Can Also Assist With:

- Breach of contract and termination.
- Asbestos management.
- Contract performance.
- Consumer protection.
- Employment law.
- Landlord and tenant rights and obligations.
- Occupiers liability.
- Personal guarantees.
- Product safety and warranties.
- Risk management and due diligence.
- Statutory, regulatory and code compliance.



Employment Law



Our Commercial Litigation Team can assist with the myriad of employment law issues.

If the employment relationship has ended or is not working out as you intended our Commercial Litigation Team can assist you to resolve the dispute pursuant to the *Fair Work Act 2009* (Cth) ("**the Act**").

We provide practical and cost-effective advice to business owners and employees.

Our employment law services include:

- Advising on employment contract disputes,
- Bullying and harassment,
- Collective agreements,
- Confidentiality agreements,
- Employers trying to contract out of their obligations e.g. requiring employees to become subcontractors to avoid paying super,
- Executive services agreements,
- Handling general employment disputes,
- Greenfields agreements,
- Preparing and advising on employment contracts,
- Preparing and advising on other industrial relations contracts,
- Restraint of trade agreements,
- State awards,
- Underpayment of wages,
- Unfair dismissal, and
- Unlawful termination.

In the course of the sale or purchase of a business invariably there will be employee considerations to take into account. Most Australian workplaces are governed by the Act. The Act sets out certain criteria to ascertain if there has been a transfer of business.

In the event of a sale and purchase of a business it may well be that the provisions of the Act apply.

We can advise you on the relevant criteria and your legal obligations.



Franchising



As a concept, franchising is a market-expansion method wherein an existing business owner (franchisor) licenses others (franchisees) to use its operating systems, know-how and intellectual property to sell its range of goods and services.

In return the franchisor receives certain fees and royalties.

Franchising in Australia is regulated through a code as administered by the Australian Competition and Consumer Commission.

The legal relationship between the franchisor and its franchisees is created by a franchise agreement and ancillary documents including IP licenses, deeds of guarantee and indemnity, restraint deeds, premises leases and occupation licenses, operations and procedures manuals, etc.

As with any business there are various factors which must be taken into account in order to ensure the franchised business is successful.

Our experienced Franchising Team have considerable experience assisting franchisees who are looking to enter into a franchise.

We have advised on the purchase and sale of various franchises, including:

- Bakers Delight,
- Battery World,
- Brumby's Bakery,
- Dominos Pizza,
- Fastway Couriers,
- Gloria Jeans Coffees,
- Outback Jacks,
- Pizza Capers,
- Pizza Hut,
- PoolWerx,
- Subway,
- The Cheesecake Shop, and
- The Coffee Club,

How We Can Help

Buying a franchise: we can advise you in relation to necessary due diligence; the terms and conditions of the franchise agreement, disclosure document, any IP licenses, any premises lease/occupation licenses, ancillary franchise documents and assist you to settle the purchase.

Selling a franchise: we can advise you on the your obligations under the franchise agreement as seller/assignor and assist you to settle the sale.



Succession Planning



Succession planning is intertwined with business risk management, taxation, insurance and estate planning.

A sound succession plan will assist to ensure a smooth transition with less likelihood of disruption to business operations in the event of the transfer of management, control and ownership of the business should you decide to sell or retire from the business or in the event you die, suffer ill-health or are forced to exit the business.

Fundamental to the success of any succession plan is ensuring you have an up to date and valid will and enduring power of attorney ("**EPA**") which should incorporate appropriate directions in relation to your business.

Wills & Testamentary Trusts

A will is a legal document which sets out how you want your assets to be distributed after you die. The document names the people you want to receive your assets i.e. your beneficiaries. The will also appoints an executor / trustee to administer your estate.

To provide more specific asset protection and to minimise taxation, a testamentary trust maybe a more prudent vehicle. A testamentary trust is a trust created by a will whereby your assets are given to a trustee to be held for the benefit of beneficiaries on the written terms of the trust deed. The trust is typically set up to be discretionary in nature.

EPA

An EPA is a legal document which allows you to appoint one or more attorneys to make decisions on your behalf whilst you are still alive but somehow incapacitated through say illness.

Buy / Sell Or Option Agreements

If you are in business with co-owners a sound business succession plan will provide a mechanism whereby a retiring, deceased or permanently disabled co-owner's interest in the business can be bought by the surviving or remaining co-owners.

Buy / sell agreements or option agreements enable the owners to prescribe certain conditions and mechanisms in the event of the future sale of a retiring, deceased or permanently disabled co-owner's interest and the purchase of that interest by surviving or remaining owners.

Our experienced team can assist you with all aspects of business succession planning, from drafting documentation and general taxation advice through to referrals to insurance brokers and insurers.



Mortgages & Other Security Documents



At one point in life you will be required to borrow money or be advanced credit in some shape or form. Entering into a mortgage or other type of security can be a risky endeavour.

Whether it be for the purchase of residential property, commercial property, a business or a simple loan between relatives, most monetary advances will be secured in one way or another.

Our Corporate & Business Team offer professional legal advice on mortgages and other types of security documents to minimise your risk.

Mortgages

A mortgage is entered into when you pledge your property to a lender as security for a mortgage loan.

In essence a mortgage acts as a security for the loan that the lender makes to you.

In practice you give the lender the mortgage as security for the loan and the lender gives you the funds. You are required to make the agreed repayments and you maintain possession of the property. If you fail to repay the loan then the lender has the right to foreclose on the property.

Foreclosure

Foreclosure means that the lender will have the right to take possession of the property and dispose of it in the manner they wish usually by way of sale. Given the large sums of money that are usually involved in financing a property or commercial venture a mortgage lender will usually want a security for the loan that places them ahead of all other creditors.

General Security Agreement ("GSA")

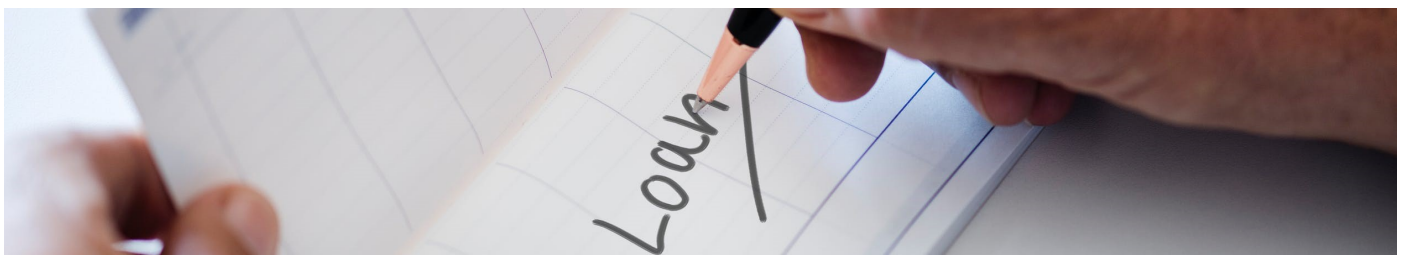
A GSA is a common form of security often used to secure commercial loans or credit arrangements.

It can be an effective way to obtain security over the assets owned by a person or company.

The PPSA established the Personal Property and Security Register ("PPSR") on which the securities are recorded.

A security interest will be an interest in personal property which secures payment of debts or other obligations.

It is recommended that you seek legal advice when entering into any major asset purchase, particularly if mortgage or security documents are involved.



What Our Clients Had To Say



"Most recently we engaged RMO for lease advice and negotiation for our second business. Our lawyer immediately took an interest in our business structure and recommended a better approach (which we took to completion)."

"Our draft lease was explained to us in plain English and we subsequently elected to pursue a number of recommended lease changes to obtain the best possible lease in our particular circumstances. In our opinion they handled our lease negotiations in a professional and pro-active manner. All of the important lease changes were agreed by the landlord and we are very happy with the result. Based on our experience we recommend RMO Lawyers for business matters. AW"

"When I needed to consult a lawyer to handle a business legal matter, I was referred to RMO Lawyers. I found them to be courteous and very competent in handling the legal process in order to reach the desired outcome. They proved to be very patient and meticulous throughout and kept me regularly updated throughout the legal process. Any legal difficulties were handled in a professional manner. I certainly felt very comfortable having RMO represent me. PS"

"I would like to say RMO Lawyers were very professional and well-educated in their field and it was great speaking with them and helped us in our matter. SO"

"Always available to help me, whether it was a large or small matter. DC"

"RMO took the time to explain things in detail which was really appreciated. SH"

"Very professional, friendly and very understanding of our situation. BF"

"Thank you very much for your work carried out. You made everything much easier. MM"

"Professional, courteous and with very good knowledge and understanding of the processes involved. PC"





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This is general advice only.
You should seek specific advice for your particular circumstances.*