



Godfreys Law

Welcome to our newsletter specifically **for business**.

We started this special newsletter last year and intended to send two or three issues. As things transpired, with increasing work and some staff changes, we only managed one issue, but we are hoping to get two out this year, on interests relevant to you as a business owner.

Through this newsletter, we hope to give you the benefit of some of the things we know about and observe. For clients who we work more actively with, you will be getting this information from us anyway but it is important to share this information with others in business. There are so many risks and challenges that all information is useful. If you have particular areas of interest that you would like addressed we would appreciate your feedback.

As always, if you have specific queries and concerns it is best to take specific advice on your situation rather than rely on these general comments – we are here to help!

Phil Sewell and Brad McDonald – business partners at Godfreys Law

Preparing your business for sale

Apart from the joy (?) of the daily grind in our business, it is often the prospect of eventual sale/exit which keeps us going.

For most people the exit/sale is not something which is decided on a whim or done on the spot – for most of us, there is a long period of thinking about it before starting to act.

It is surprising then to us, to meet with clients who are in the process of selling a business but have structured things poorly or in a manner which is tax ineffective.

We have seen a couple of occasions recently where the client proceeded on the basis of their knowledge, not realising that there was a large tax liability because of the way they were treating goodwill (and also due to the type of business being sold).

Had these clients consulted their professional advisors earlier, the risk might have been identified earlier; and an appropriate course of action (possibly restructuring things prior to attempting to sell) could have been carried out at their leisure.

While you are still in business, you should be keeping a close professional relationship with your accountant and tax advisor; and where important issues are involved, also with your lawyer.

Selling your business is one of the most important things you will be doing in your business life and it is important to use “the team approach” for this, just as for other important decisions.

If you are considering sale/exit from your business in the immediate term, please contact **Philip Sewell** or your usual advisor in case there are issues which need addressing. Also you must be talking to your accountant/tax advisor.

Protecting personal assets from business risk

Longstanding Godfreys clients already know our views on this – that the law allows many ways of protecting personal assets from business risk and Trusts are one of these structures.

Trusts are also used for all sorts of other reasons, some of them not necessarily valid or clever – but for those in business who are concerned about business risk, a Trust must be considered.

There is always expense, some complication, and future obligations (record-keeping, different ways of transacting business). It is a long-term commitment, but likewise, the family home is a long term keystone for a family.

Trusts are only one of many ways of protecting personal assets and you must always look at the alternatives as well – but if you are in a risky business or you see “dark clouds” ahead, you should be talking to us and your other professional advisors about the possibilities of using a Trust to protect your assets. If you want to discuss this further, please contact **Charles Mullins** one of our solicitors.

Your lease might be out of date

We have always encouraged business clients to keep copies of their own lease and take responsibility for diarying important dates, such as when renewals have to be requested. Also, if you have your own lease easily at hand, you can answer many of the issues which arise, without running up expense in getting others to check.

Recently however we have been involved in some cases where tenants and landlords have been looking at their own leases (which we encourage) but been unaware of some law changes.

One good example concerns payment of the excess if there is an insurance claim. Insurance claims for damage are not common but when there is, one hopes that the landlord's insurance cover will protect you – but the old leases might provide that the excess (up to a stated maximum) is payable by you as tenant. If you look at some old leases that would appear to be the case – but in fact the law changed in 2012. If your lease is earlier than this date, it is possible that it has provisions which no longer apply – the Property Law Act provisions would prevail. In some situations, unless the lease clearly says otherwise, the landlord might have to cover the excess!

Every lease is different so we cannot be more definite than this – but the point is, be careful when reading your lease. It may be an accurate statement of your rights & obligations but the greater the amount of money, perhaps the greater the need to phone us to check first. Please do not hesitate to contact **Janelle Liu** one of our solicitors if you require some assistance in this regard.

Health and Safety Law Reform

The Government has announced the first significant reform of New Zealand's workplace health and safety system in over 20 years.

A blueprint for this reform entitled 'Working Safer: a blueprint for health and safety at work' has now been released. The reforms in this area are aimed at reducing New Zealand's workplace injury and death toll. The Health and Safety Reform Bill seeks to replace the Health and Safety in Employment Act 1992. The new Act will be known as the Health and Safety At Work Act 2013.

The Government has now released an 'exposure draft' of the Health and Safety Reform Bill. A copy of the exposure draft along with the Working Safer blueprint and a good summary of the changes can be found at www.mbie.govt.nz under the workplace health and safety reform tab.

The health and safety landscape in New Zealand is set for a comprehensive overhaul which will see Company Directors owe positive duties to ensure the health and safety of workers in their organisation. These changes will align New Zealand more closely with Australian Health and Safety Laws. The new reforms to health and safety law are expected to come into force from early 2015.

There are many key changes in approach under the new framework, such as;

- New Levels of responsibility for Company Directors;
- Broader risk based approach;
- Change in Standards of care required;
- Duty of due diligence for directors and company officers;
- Stronger Enforcement and Increased Penalties; and
- Increased worker participation.

The new health and safety laws will apply to all persons conducting a business or undertaking (PCBU) as defined by section 5 of the Act. This means most people in business will be caught.

The definition of a worker under the Act is quite wide and includes an employee, contractor, subcontractor, apprentice, trainee, work experience person, volunteer and persons of a prescribed class. The new law will undoubtedly affect you and your business.

As with any change it is perhaps easy to ignore. However this is not a sensible approach given the potential liability through tougher compliance and enforcement action.

Luckily and also importantly, there is a reasonable lead in time for business owners to get up to speed with the new changes including the steps that need to be undertaken to prepare your business for the changes in law. We will endeavour to keep you updated with the changes and give practical advice on the implications to your current systems.

Please do not hesitate to contact **Brad McDonald** if you wish to discuss Health and safety compliance and the impact of the upcoming changes. Brad specialises in all aspects of employment law and is a member of the New Zealand Law Society Employment Law Committee (Canterbury/Westland).

Important: This newsletter is not legal advice. Clients should not act solely on the basis of material contained in this newsletter. Items herein are general comments only and do not constitute or convey advice per se. As well, changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas referred to. This newsletter is issued as a helpful guide to clients for their private information.