

Ashtons

LEGAL

Franchising - Selling



EXCEPTIONAL CLIENT SERVICE EVERY TIME



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Ashtons Legal – Lawyers you want to work with

Ashtons Legal is an award-winning law firm with a strong focus on customer service. The legal teams provide a wide range of advice to businesses and private individuals regionally, nationally and internationally from our offices across East Anglia and Leeds. We are one of the largest law firms in the region with offices in Bury St Edmunds, Cambridge, Ipswich, Norwich and Diss, as well as an office in Leeds. We are a broad service firm, which currently employs over 350 people.

The franchising team at Ashtons Legal, are among the leaders in the franchising world. It has over 20 years of assistance in helping franchise networks and franchisees to succeed both nationally and internationally and maintains a reputation for high end quality advice coupled with genuine sector expertise – all of which is provided at a cost which means we are able to add real value in helping you achieve your goals

Our dedicated franchise team is made up of specialists within their fields who understand the often unique needs of franchisee owners. Assisting many of the country's largest and most prestigious franchise networks in the running of their resale processes, we are well placed to understand the issues which are of key importance to franchisees. Completing the transaction in a smooth and efficient manner and avoiding delays ensures that if you are buying a franchise the relationship between you and the franchisor remains buoyant and if you are selling you can be confident of maximising your return on investment.

When you are looking to sell your franchise and to reap the benefit of your years of hard work, we have developed a package which can we can tailor to suit your needs.

We recognise that each franchise owner is different and the level of support which each franchise owner needs at this important stage of their business life varies depending on each franchise owner's experience, business skills and budget.

Depending on your circumstances, there are a number of key areas on which you may need assistance:

Heads of Terms

These set out the main commercial terms of the deal and need to be agreed upfront, although they are usually not binding apart from in a couple of respects such as confidentiality and any exclusivity period. We will work with you to ensure that they reflect the deal that you have struck.

Due Diligence

Whenever you are looking to sell a business, the buyer will want to carry out some level of due diligence to ensure that the assumptions that you have made, as to what is being bought, are correct. The level of due diligence undertaken by the buyer will vary depending on whether you are selling the assets of the business or you are selling shares in a company which operates the business. In the case of the latter the buyer will be acquiring all assets and liabilities of the business and therefore a higher level of investigation will be required.

The due diligence process essentially takes two forms. The first is a physical inspection of the business and any significant assets you are considering selling (e.g. stock) and the second is a paper exercise – answering the buyer's questions and providing any requested documentation about the business. For example – if you are selling a business that depends on regular work you will be asked to provide copies of all of these contracts.

We will work with you to help answer these questions and provide the relevant supporting document to the Buyer.



Purchase Agreement

The purchase agreement may be in the form of either a share purchase agreement or an asset purchase agreement (sometimes referred to as a business transfer agreement) depending on how the transaction is to be structured. The agreement will give legal effect to the commercial terms of the deal that are contained in the Heads of Terms and will set out exactly what each party is buying or selling, how the purchase price is to be paid, any mechanism for price adjustments after completion and will also detail the mechanism of completion.

It has become increasingly more common for the purchase price to be paid over a period of time (known as deferred consideration) and the seller may request some form of “security” from the buyer that can be called upon if the buyer does not make the deferred consideration payments when they are due.

One of the most substantial elements of the purchase agreement is the schedule of warranties to be given by the seller to the buyer. Warranties are essentially promises made in the form of statements which the seller is asked to give about the business. Should it transpire, after completion, that any of the warranties are untrue then the buyer may have the ability to sue the seller for breach of warranty and seek to claw back part or all of the purchase price. Warranties tend to be more comprehensive in a share purchase agreement because the company’s liabilities are also taken on. These can be very extensive and run for many pages.

As the seller, you will want to ensure that there is a suitably drafted limitation of liability clause in the purchase agreement in order to give you some protection against a breach of warranty claim.

A share purchase agreement will also contain a detailed tax covenant, under which the seller will agree to pay to the buyer an amount equal to any tax liability of the company which relates to the period up to completion which is unpaid and not provided for in the company accounts.

We will advise you on the terms of the purchase agreement and work with you to help negotiate its terms so that you are happy with the purchase agreement says before you sign it.



Disclosure Letter

The disclosure letter is the document which gives the seller the chance to disclose certain information to the buyer to qualify the warranties detailed in the purchase agreement. The seller cannot be sued by the buyer in relation to information they have ‘disclosed’ to the buyer prior to completion.

By way of illustration, the purchase agreement may contain a warranty to the effect that the business is not involved in any litigation. To the extent that the business is involved in litigation then the seller can disclose details of it to the buyer and the buyer cannot subsequently claim that the warranty is untrue.

Where required, we will put together a disclosure letter for you and help ensure that all relevant disclosures have been made to the buyer.

Employees

Employees are a key aspect of any business, as many businesses would not survive without them. English law offers employees certain legal protections when it comes to transactions. Where a transaction involves the sale and purchase of the assets of a business (as opposed to the shares in a company), the employees of that business will automatically transfer to the buyer on their existing terms of employment, as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”). There are certain procedural hoops that need to be completed by both parties in order to comply with TUPE.

In limited circumstances a buyer can propose certain changes to the employees terms of employment. The buyer would be required to inform the employees about any such changes prior to completion but generally the employees are transferred without any changes being made.

“The ‘absolutely excellent’ team at Ashtons Legal has a ‘professional, approachable and commercially minded team’.

Legal 500

“I would rate them amongst the best. Good value for money.”

Chambers & Partners

The requirements of TUPE vary according to the circumstances of each business and whether there are 10 or more effected employees. But in many cases the requirements are fairly simple. However, it is important to get the procedure right as the financial implications for failure to do so can be significant. Please be mindful that under limited circumstances TUPE may apply where you are buying or selling shares in a company, for example, where part of the business is being transferred out of the company immediately prior to the sale of shares in the company.

If you are also an employee of the business, it is common for your employment to be terminated upon completion. It may be that the buyer will request that you enter into a settlement agreement, which will deal with the termination of your employment and confirm that you have no claims against the business.

Property

In most businesses, one of the key assets is the property from where the business is operated. There are a number of different structures which franchisors use from the franchisees owning the freehold of the property (although this is relatively uncommon) to, more likely, the franchisee having a leasehold interest in the property.

On a franchise re-sale, where the transaction involves the sale and purchase of the assets, the likelihood is that it will involve either the buyer entering into a new lease or arranging for an existing lease to be transferred. A transfer will not only involve the formal transfer between the buyer and seller of the franchise but also obtaining the landlord's consent. Where a transaction involves the sale and purchase of the shares of a company, the buyer would need to check whether the lease contains what is known as a “change of control” clause. If it does, the company's continued occupation of the property under the lease will likely require the landlord's consent.

Transaction Management

We will manage the transaction for you and be the first point of contact for any enquiries from the buyer's solicitors. You will be given the name of the person who will be your main point of contact throughout the transaction, maintaining an oversight of the entire process and who will be supported by a team of lawyers from across the firm who you will be able to speak to directly as well.

Fees

As we recognise that each business owner is different and the level of support which each seller of a business needs varies, we have developed a number of packages which can be tailored to suit your needs. We set out below the key elements of a transaction which are included within each package together with an indication of our costs for each package.

“Ashtons Legal has helped us to navigate through many of the business landscapes ranging from employment to business acquisitions. Through quick and intelligent advice they have allowed us to move and scale faster than our contemporaries.”

Legal 500

WHEN YOU ARE SELLING THE ASSETS OF A BUSINESS

	Basic	Standard	Premium
Drafting (if necessary), amending and negotiating the asset purchase agreement	X <small>(no substantial negotiation of the asset purchase agreement)</small>	X	X
Purchase Price paid in full on completion or in simple instalments	X	X	X
TUPE advice with 9 or less employee taken on with no changes to their employment terms	X	X	X
Transaction management and dealing with completion	X	X	X
Warranties	Limited	Full	Full
Due Diligence		Limited	Full
Deferred consideration		X	X
Drafting (if necessary), amending and negotiating the disclosure letter		X	X
Review lease and prepare a basic lease report*		X	X
Agree the licence to assign with the landlord and buyer*		X	X
Agree a contract and transfer of the property with the buyer.		X	X
Settlement Agreements		No more than 2	No more than 2
Preparation of ancillaries		X	X
Advising on the Heads of Terms			X
Price adjustment mechanism			X
Security for deferred consideration.			X
CPSE's*			X
TUPE advice with more than 10 employee to be taken on with no changes to their employment terms			X
Fee indications			
If the franchisor provides a template sale and purchase agreement	Circa £3,000 plus VAT	Circa £8,000 plus VAT	Circa £13,000 plus VAT
If the franchisor does not provide a template sale and purchase agreement	Circa £4,000 plus VAT	Circa £9,000 plus VAT	Circa £14,000 plus VAT

*All property work set out above assumes a single leasehold property.

Excluded items

- Advice on any banking facilities or security;
- No contracts to be assigned;
- No consultancy agreements;
- The transfer of any freehold property;
- There are no complications with the lease;
- Any references that are needed are provided directly without our involvement;
- We are not required to negotiate the terms of any renewal lease;
- There is only one leasehold title to review and no more than one superior title to review;
- There are no material title, planning, environmental, contamination or construction issues arising which will need to be resolved prior to completion; and
- No authorised guarantee agreements.

WHEN YOU ARE SELLING THE SHARES OF A COMPANY

	Basic	Standard	Premium
Drafting (if necessary), amending and negotiating the asset purchase agreement	X <small>(no substantial negotiation of the asset purchase agreement)</small>	X	X
Purchase Price paid in full on completion or in simple instalments	X	X	X
Transaction management and dealing with completion	X	X	X
Warranties	Limited	Full	Full
Due Diligence		Limited	Full
Deferred consideration		X	X
Drafting (if necessary), amending and negotiating the disclosure letter		X	X
Review lease and prepare a basic lease report*		X	X
Dealing with the landlord regarding any change of control*		X	X
Settlement Agreements		No more than 2	No more than 2
Preparation of ancillaries		X	X
Advising on the Heads of Terms			X
Price adjustment mechanism			X
Security for deferred consideration.			X
CPSE's*			X
Fee indications			
If the franchisor provides a template sale and purchase agreement	Circa £3,000 plus VAT	Circa £9,000 plus VAT	Circa £15,000 plus VAT
If the franchisor does not provide a template sale and purchase agreement	Circa £4,000 plus VAT	Circa £10,000 plus VAT	Circa £16,000 plus VAT

*All property work set out above assumes a single leasehold property.

Excluded items

- Advice on any banking facilities or security;
- No contracts with change of control clauses that need to be dealt with;
- No consultancy agreements;
- The transfer of any freehold property;
- There are no complications with the lease;
- We are not required to negotiate the terms of any renewal lease;
- There is only one leasehold title to review and no more than one superior title to review;
- There are no material title, planning, environmental, contamination or construction issues arising which will need to be resolved prior to completion; and
- No authorised guarantee agreements.

Meet the Team

Geoff Hazlewood

Partner
Corporate & Commercial

T 01284 727006

E geoff.hazlewood@ashtonslegal.co.uk



Geoff is a partner and Head of the Corporate & Commercial team. He acts for clients in a number of sectors which include a number of professional partnerships and LLPs who have required assistance with LLP incorporations, LLP and Partnership agreements and partner appointments and retirements. In addition to this he also acts for clients providing general commercial advice as well as advice on corporate acquisitions, corporate finance and banking.

Damian Humphrey

Partner
Franchising

T 01603 703243

E damian.humphrey@ashtonslegal.co.uk



Damian heads up the firm's nationally recognised franchise team, which provides a first-class service to many of the country's leading franchise brands. His work involves helping franchisors set up and grow their franchise networks with a particular emphasis on helping franchisors expand their brands internationally. Damian regularly speaks at franchise industry events (both nationally and internationally) and has been awarded the Qualified Franchise Professional qualification by the British Franchise Association.

Mark Watson

Senior Associate
Corporate & Commercial

T 01603 703087

E mark.watson@ashtonslegal.co.uk



Mark advises upon a broad range of corporate transactions including partnership and LLP matters. Mark also advises on a variety of complex commercial arrangements and agreements. Clients include a range of local and national businesses, in a variety of sectors, together with our panel banks and other financial institutions whom Mark advises as part of our cross-team banking group.

Tracy Williamson

Senior Associate
Franchising

T 01603 703079

E tracy.williamson@ashtonslegal.co.uk



Tracy has extensive knowledge of franchising matters having worked in the industry for over 25 years. Her experience and knowledge of the franchising industry is invaluable and provides her franchising clients with continuity and a seamless service. Tracy acts for new start, growing and mature franchisors providing them with ongoing support and advice.

James Brighton

Paralegal
Corporate & Commercial

T 01603 536260

E james.brighton@ashtonslegal.co.uk



James is a paralegal in our Corporate & Commercial team in Norwich. James is studying for his CILEX qualifications, completing his Level 3 Diploma. James will be the first point of call for many of the department's clients, providing first-class client care, while assisting fee earners across all aspects of business law. James has over three years' experience within the legal field, working for a regional law firm in a client relations role.

Ruth Burrell

Senior Associate
Commercial Property

T 01603 703092

E ruth.burrell@ashtonslegal.co.uk



Ruth specialises in Commercial Property work, including commercial landlord and tenant work and commercial conveyancing, also working with large estates involving agricultural land and industrial premises to enable diversification. Ruth also has an interest and expertise in leasehold enfranchisement work, acting for landlords and tenants on agreed and statutory lease extensions, purchases of freeholds and rights to manage.

Jessica Piper

Senior Associate
Employment

T 01603 703073

E jessica.piper@ashtonslegal.co.uk



Jessica is involved in advising on a range of contentious and non-contentious employment issues, for both employers and employees, including representing clients in claims before the Employment Tribunal, such as for wrongful and unfair dismissal. She also has experience in advising on directors' service agreements, employment contracts, policies and procedures, settlement agreements, and within corporate transactions.

Ashtons Legal office locations

Bury St Edmunds

The Long Barn
Fornham Business Court
Fornham St Martin
Bury St Edmunds IP31 1SL

E: enquiries.bury@ashtonslegal.co.uk

T: 01284 762331

Ipswich

Portman House
120 Princes Street
Ipswich IP1 1RS

E: enquiries.ipswich@ashtonslegal.co.uk

T: 01473 232425

Norwich

Trafalgar House
Meridian Way
Norwich NR7 0TA

E: enquiries.norwich@ashtonslegal.co.uk

T: 01603 703070

Cambridge

Chequers House
77-81 Newmarket Road
Cambridge
CB5 8EU

E: enquiries.cambridge@ashtonslegalco.uk

T: 01223 363111y

Leeds

(Trading as Heslop & Platt)
Suite E14
Joseph's Well
Hanover Walk
Leeds LS3 1AB

E: contact@heslop-platt.co.uk

T: 0113 393 1930

For further information on how we can help
you, please call or email us today:

enquiry@ashtonslegal.co.uk

www.ashtonslegal.co.uk