



Conveyancing of (Liquor) Licensed Premises

One important consideration when dealing with any conveyance is to consider whether the premises in question requires certain licences or permits to operate. Such transactions can be complex and must be considered during the negotiations stage otherwise the parties could face significant complications at settlement.

One area that has its own peculiar requirements is the liquor industry. Even though liquor licensing is regulated at state level, the requirements and process for transferring a licensed premise is similar across the country.

Purchasing Land on which a Licensed Premises operates

An incoming owner of land from which a licensed premise operates needs to be aware of their risks and obligations with respect to the liquor licence, as well as the obligations of the licensee tenant.

One of the main considerations is what, if any chattels are being transferred from the vendor to the purchaser of the land. It is important that these items are carefully distinguished from any of the tenant's chattels. As part of this, the Personal Property Securities Act needs to be considered by the purchaser and whether protection is required by way of registration on the Personal Property Securities Register.

Lease of Licensed Premises

As part of any purchasers' due diligence, investigations should be conducted as to the current status of the lease, including rent reviews and paint and repair obligations of the licensee tenant.

Protection Orders

It is also imperative that a purchaser of licensed premises is aware of their ability to carry on the operation of the licensed premises as if they were the licensee. Situations in which this can arise include if the lease is terminated or the licensee tenant vacates the premises. In such situations, the owner of the land can apply to the licensing authority and temporarily step into the shoes of the licensee.

If this situation eventuates, it then becomes the obligation of the land owner to find a new operator of the licensed premises and transfer the liquor licence to the new tenant.

Type of Licences

The first consideration is whether the type of liquor licence held can be transferred. There are certain licences (such as club licences) that cannot be transferred.

Prior to entering into a contract, it is imperative that any contract for the sale or assignment of the right to carry on business under the licence must be subject to a condition precedent under which the prior approval of the relevant licensing authority is a prerequisite to the contract taking effect.

Approval and Transfer of Licences

Effectively, the licence cannot be transferred until the purchaser (or assignee) has been notified in writing by the licensing authority of the approval of the application. Once the



approval has been granted by the licensing authority, and assuming all other conditions of the contract have been satisfied, the transaction can then proceed to settlement.

It is important to note that during the processing of the application by the licensing authority, the licensee (vendor) must not vacate the premises and the applicant (purchaser/assignee) must not sell or supply liquor until approval has been given by the licensing authority.

The Licence Application Process

The application process itself requires applicants to meet strict criteria. Applicants need to satisfy the licensing authority that they are fit and proper persons to hold a liquor licence and will need to provide particular personal details required by the licensing authority. Relevant liquor knowledge, skills and experience, the results of a police check (including having fingerprints taken) and creditworthiness will be taken into consideration.

Timing in preparing and processing the application must be considered, especially if parties have a settlement date they are working towards. Relevant police and creditworthiness checks may take up to six weeks to complete and if individuals reside interstate or overseas, this may take even longer. It is strongly advised that applications are lodged as soon as possible after signing the contract to avoid any delays in settlement.

“Responsible Persons”

Another requirement for applicants is ensuring that not only do employees have to have the requisite responsible service of alcohol training but applicants (including directors, shareholders, trustees and/or beneficiaries) have completed the mandatory training. The training required depends upon each individual involvement with the applicant and the day to day operations of the business.

Lessor’s Consent

As with most business conveyances, the parties need to seek the consent of the lessor for the assignment of the lease to the purchaser. The licensing authority will also require evidence that the purchaser will have tenure of the licensed premises following settlement.

Current Conditions of a Licence

Any purchaser of a liquor licence should also carefully consider the current conditions imposed on the liquor licence together with any permits required to operate any outdoor dining areas. If there are outdoor dining areas, especially on the footpath, the local Council will need to be notified.

In order to avoid any delays in processing (and approving) an application, it is imperative that the right documentation is lodged with the licensing authority.

If you or your clients need any assistance with a conveyance of a liquor licensed premises, please contact Murfett Legal by telephone on +61 8 9388 3100, via our website at www.murfett.com.au or email one of the following directors:

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