



Wine Industry Sale & Purchase Tips & Traps

JAMES OMOND

Lawyer and Registered Trade Mark Attorney

www.omond.com.au

Omond & Co.

www.AusBevTMs.com.au

First Step?



AJS BEV TMs
AUSTRALIAN BEVERAGE TRADE MARKS

Omond & Co.

First Step

- Logical purchaser?



AUS BEV TMs
AUSTRALIAN BEVERAGE TRADE MARKS

Omond & Co.

First Step

- ~~Logical purchaser?~~
- Tidy up



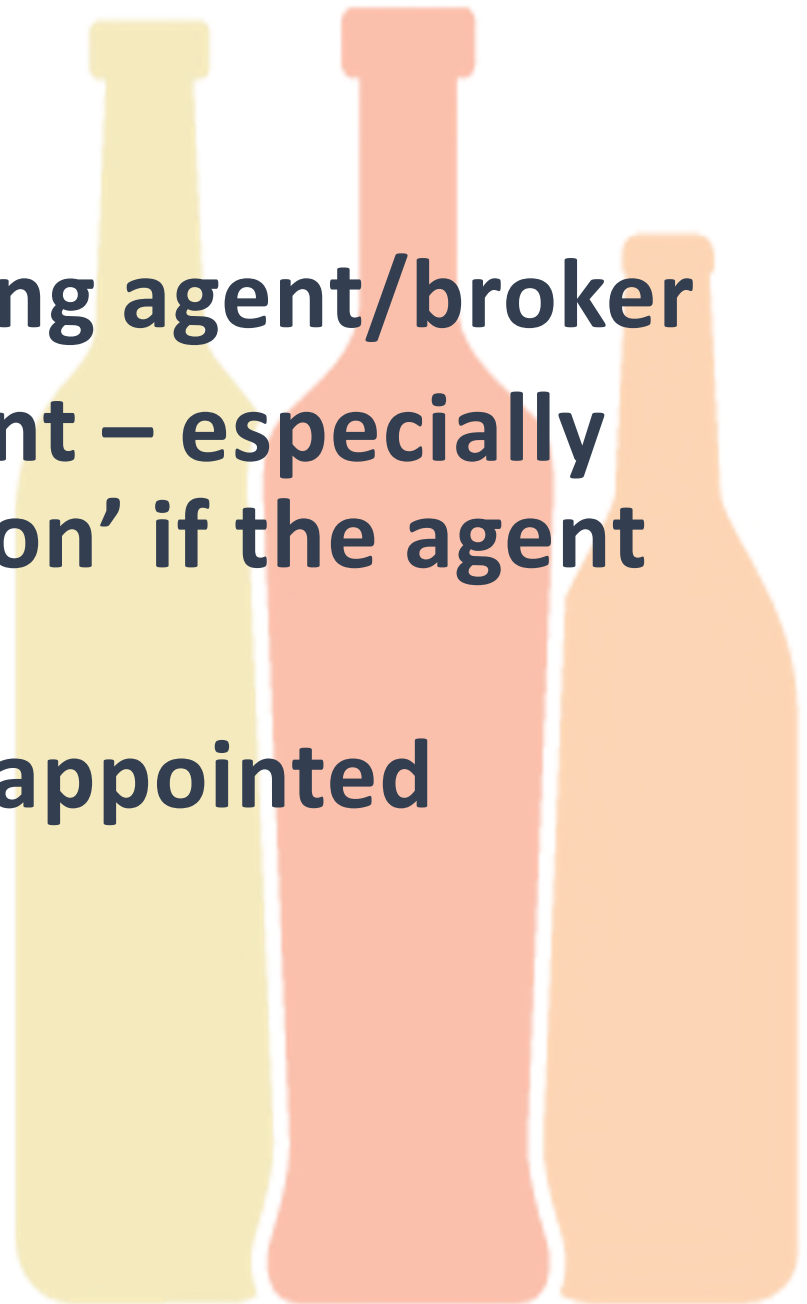
First Step

- **Tidy up**
 - **Contracts (fruit, land, staff)**
 - **IP (TMs, copyright in labels)**



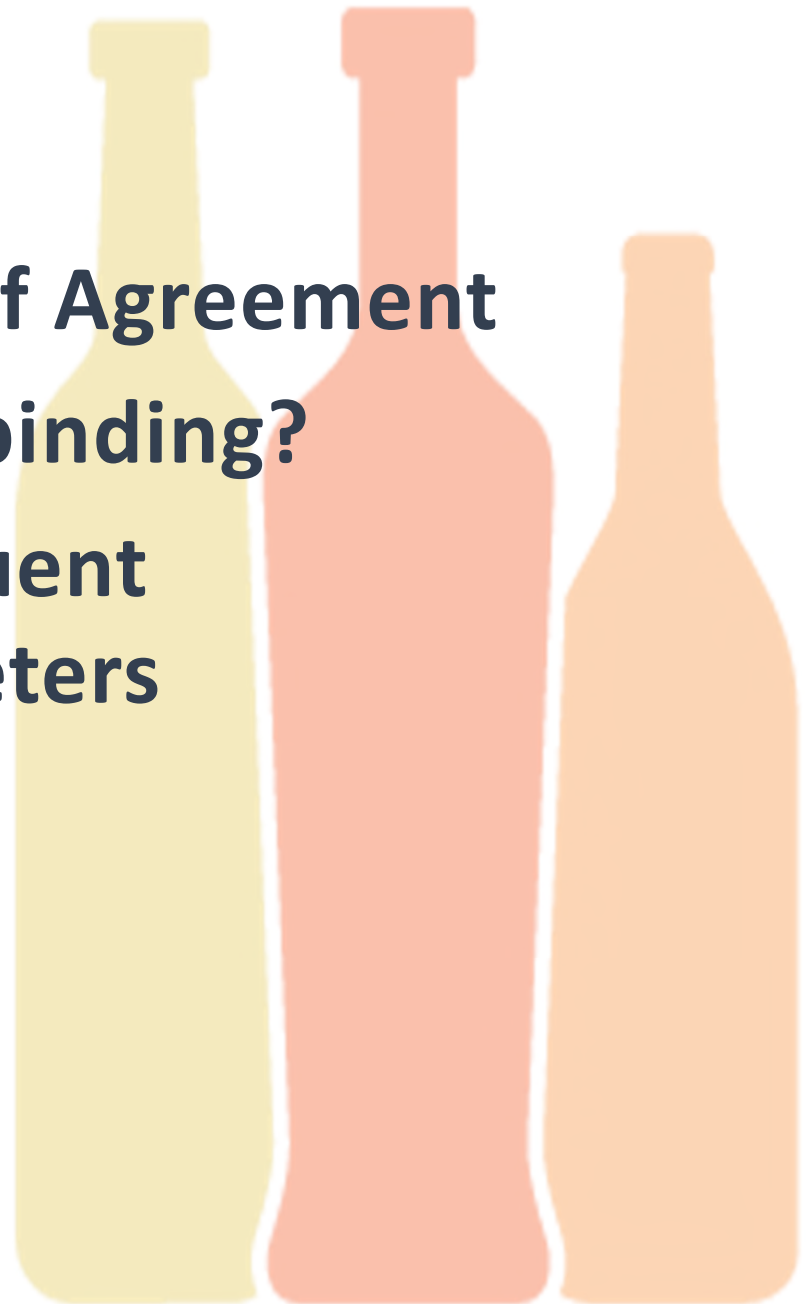
Appointment of selling agent/broker

- **Check the fine print – especially ‘trailing commission’ if the agent fails to sell**
- **Has anyone been appointed previously?**



Terms Sheet / Heads of Agreement

- **Which clauses are binding?**
- **Setting the subsequent negotiating parameters**



Terms Sheet - Deposit

- < 10%?
- When refundable?



Foreign purchaser

- **Take account of other holdings re FIRB approval**
- **ATO foreign resident withholding resident capital gains withholding clearance certificate**
 - **Effect of any outstanding tax, returns**



IP

- **Separate simple assignment for lodging purposes**
- **Assignments of all copyright**
- **Foreign compliance requirements (e.g. notarized assignment)**
- **China TM squatting**



Liquor licensing

- **Timing**
- **Condition precedent – best endeavours**
- **Foreign company / foreign directors**



Staff

- **Transmission of business rules**
- **Clear understanding by client before negotiations re redundancy situation**
- **Accrued annual leave**



Stock

- **‘Big bucket’ valuation – make it bigger**
- **Value per quality assessment v stock turns**



Material contracts

- **Handshake agreements**
- **Manage client expectations – both vendor and purchaser - what is realistically achievable for novations**
- **Distributor ramifications**



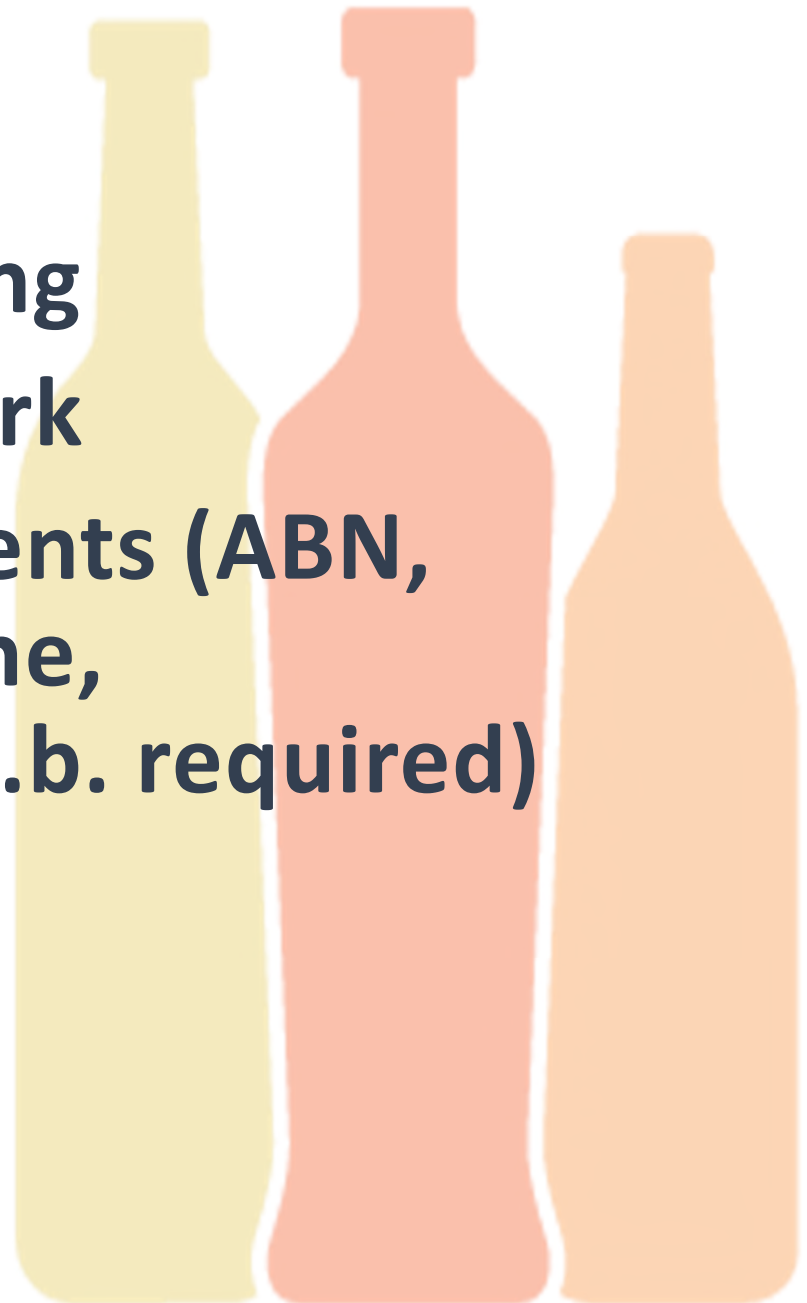
Property issues

- Existing tenants
- Make good / condition as at start of tenancy – what was it?



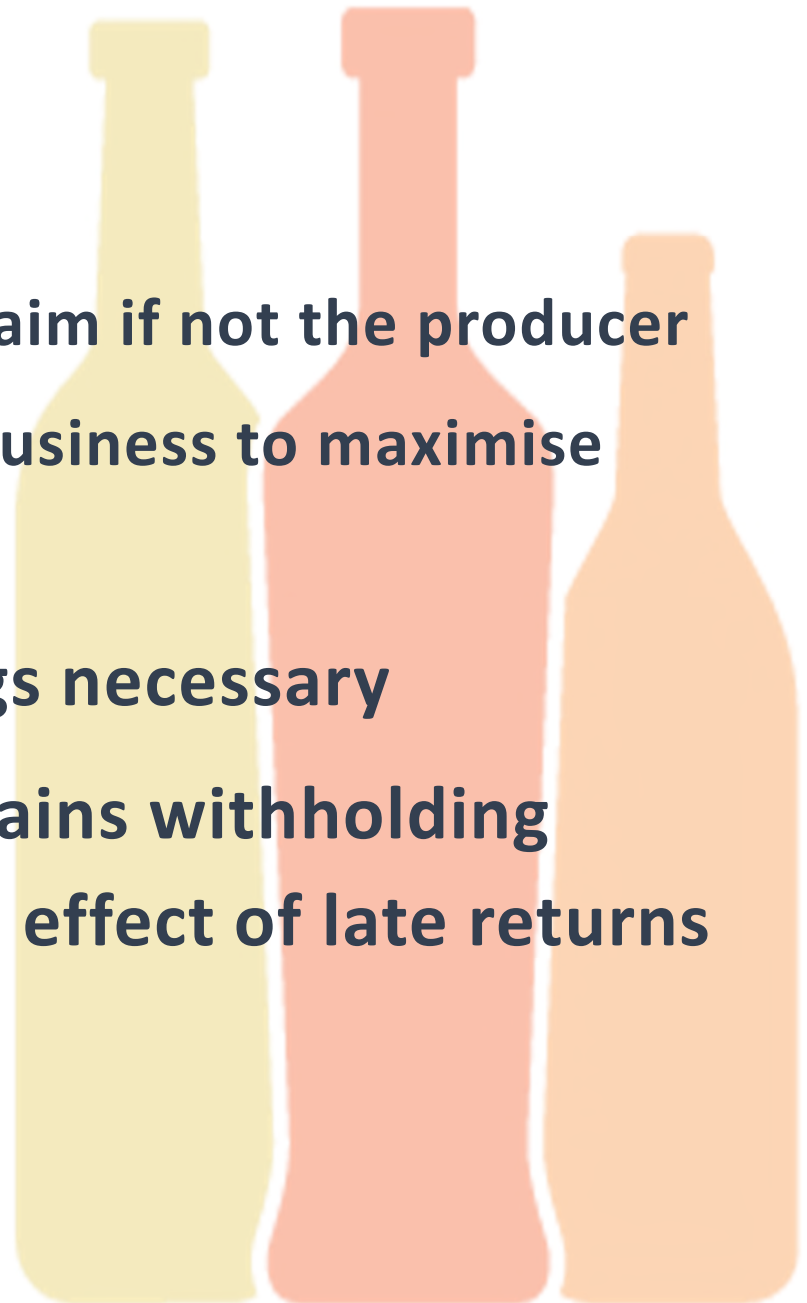
PPSR

- **Client understanding**
- **Timing of paperwork**
- **Search on all elements (ABN, ACN, company name, individuals (NB d.o.b. required))**



Tax

- **WET Rebate**
 - Ability of purchaser to claim if not the producer
 - Timing of sale of stock, business to maximise vendor claim
- **‘going concern’ – all things necessary**
- **Foreign resident capital gains withholding clearance certificate – NB effect of late returns**



FIRB

- **Not just value of current purchase – consider purchaser's other holdings**



Costs pending completion

- Pruning and other vineyard costs
- Bottling (cost versus conversion to packaged value)
- Disposal of stock



Other compliance issues

- LIP records
- Privacy, GDPR



REVEJ

FIXATION
BREWING COMPANY

Austins & Co



rob dolan

CAPE BYRON
DISTILLERY



HIPA
beers with character

TAYLORS
OF CLARE VALLEY
The wine is everything.

HEATHCOTE
ESTATE

Yabby Lake Vineyard
Mornington Peninsula



ORIGINAL
BUCHA
of Byron
KOMBUCHA



AALBORG
AKVAVIT

TULLOCH

CHANDON

IOX

GIANT STEPS
VIGNERONS
TARRAVALLEY AUSTRALIA

AVIÓN
TEQUILA



SOUTHERN WILD
DISTILLERY

MONTALTO

SPRING VALE
VINEYARDS
A family passion.
www.springvalewines.com

BRANCOTT
ESTATE
NEW ZEALAND

JACOB'S CREEK



YOUNG
GUN
OF
WINE

Bangor
WINE &
OYSTER SHED

OAKRIDGE

Swish
wine

NEW ZEALAND WINE
PURE DISCOVERY

pacha
mama



A+
AUSTRALIAN
WINE

WCA
Wine Communicators of Australia Inc
The Independent Association of Wine Professionals



RICARD

THE
GIBEL
GIN
CO



pizzini
WINES



SINGHA



VINO MOFO

PINOT
PALOOZA

STANDING ROOM

SHIKI

DALZ
OTTO

AKARUA
CENTRAL OTAGO | NEW ZEALAND

Hop Trial
Brewing Co.



All Saints
ESTATE



BOATROCKER
BREWING CO.



Curly Flat