



The SA Special Event SeriesSM

BUYING AND SELLING YOUR NEW YORK CITY RESTAURANT: YOUR TOP 10 INGREDIENTS FOR SUCCESS



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Objectives of Program

- Provide an overview of the key issues in buying and selling a restaurant in NYC
- Provide you with confidence in handling your next restaurant deal
- **DISCLAIMER:** This presentation is intended as general information on the subject matter herein and should not be construed as legal advice. The purchase and sale of a restaurant business is a complex undertaking. Before taking any such action, you should seek the advice of experienced lawyers, accountants and other business advisors.

Roadmap of Program

- **(1) Introduction**
- **(2) Summary of Sale and Purchase Deal**
- **(3) Top 10 Ingredients**
- **(5) Questions and Answers**
- **(6) Conclusion**

About Shelowitz & Associates

- **Business Law Firm in New York City**
- **Extensive Restaurant Experience**
- **Big Firm Service without Big Firm Prices**
- **Mission: To Help Clients Reach Business Goals**

M. Shelowitz Background

- **Business lawyer with over 16 years of experience**
- **Experience at Top New York/Israeli Firms**
- **Former General Counsel for Public Co.**
- **Involved with full range of restaurant issues - startup; purchase; sale; partnership issues**
- **Over 10 years experience with foreign businesses active in the US**

The Purchase and Sale Deal: Summary

- **(1) Beginning of Discussions**
- **(2) Non-Disclosure Agreement**
- **(3) Negotiate Business Terms**
- **(4) Due Diligence (legal, financial)**
- **(5) Negotiate Agreement**
- **(6) Approvals**
- **(7) Closing**

Your Top 10 Ingredients for Success



Top 10 Ingredients for Success

1. Write Down Agreed Terms of Sale or Purchase

Understand Scope and Structure of Transaction

- (a) Term Sheet
- (b) Letter of Intent
- (c) Memorandum of Understanding
- (d) Back of Napkin

Top 10 Ingredients for Success

2. Write Down Agreements with Business Partners

- (a) Despite friendships and trust, don't forget to write it down
- (b) Make sure that all partners are fully committed
- (c) Agree upon and understand roles in the business e.g., operating partner vs. finance partner
- (d) Recognize potential for disputes

Look Beyond First 6 Months

Top 10 Ingredients for Success

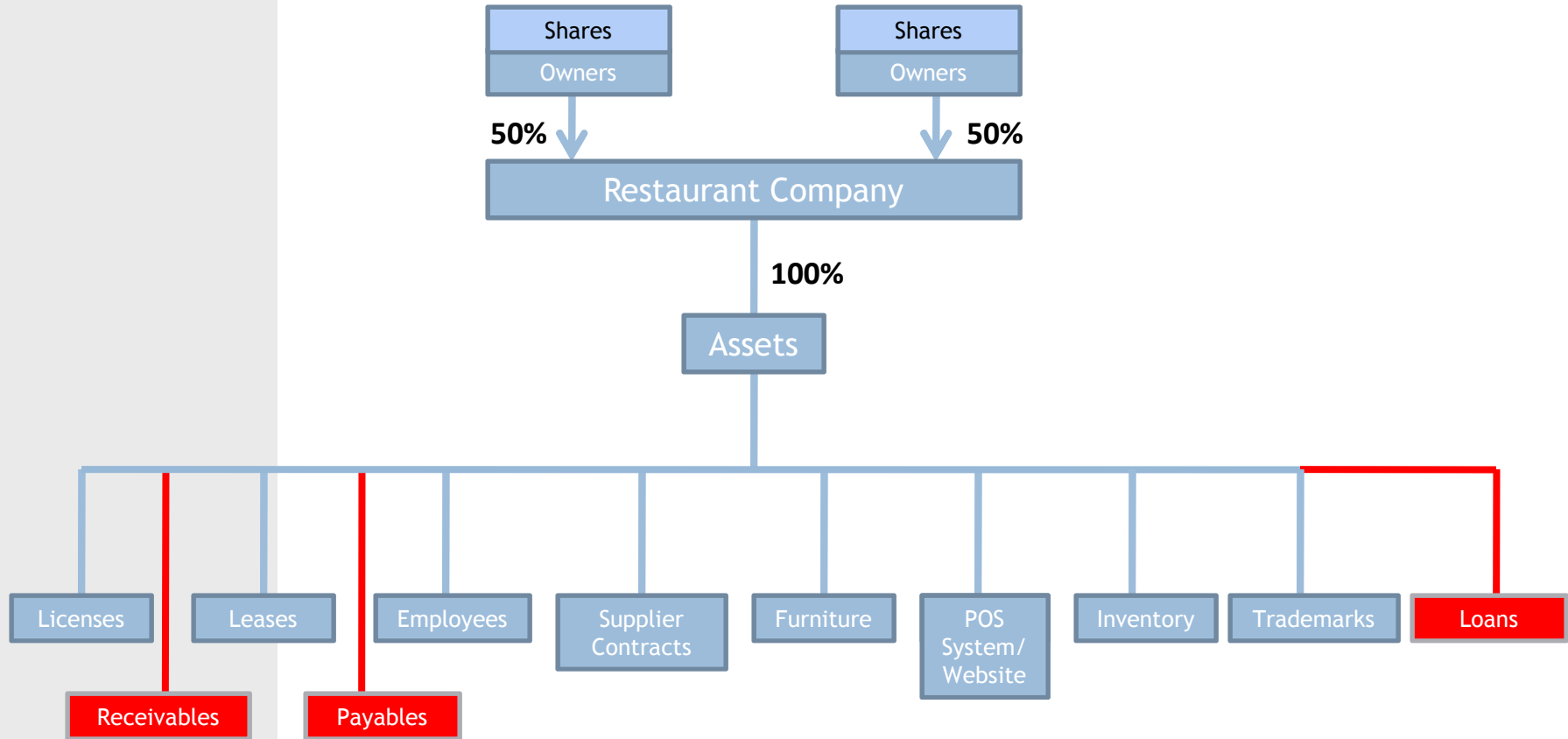
3. Understand Deal Structure

* Know difference between **Asset and Stock Purchase**

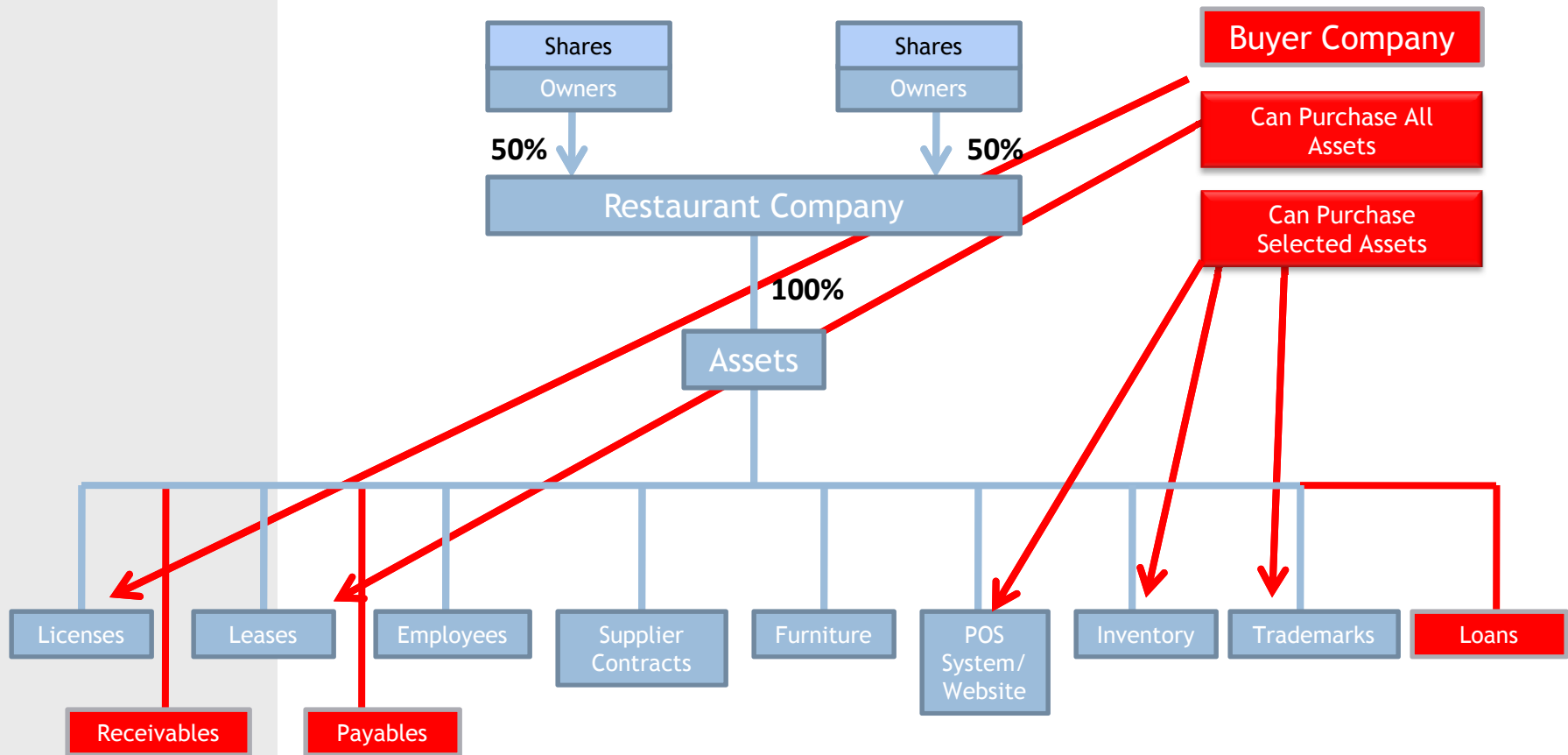
(a) Asset Purchase: Buyer acquires assets

(b) Stock Purchase: Buyer acquires all outstanding equity (shares, membership interests)

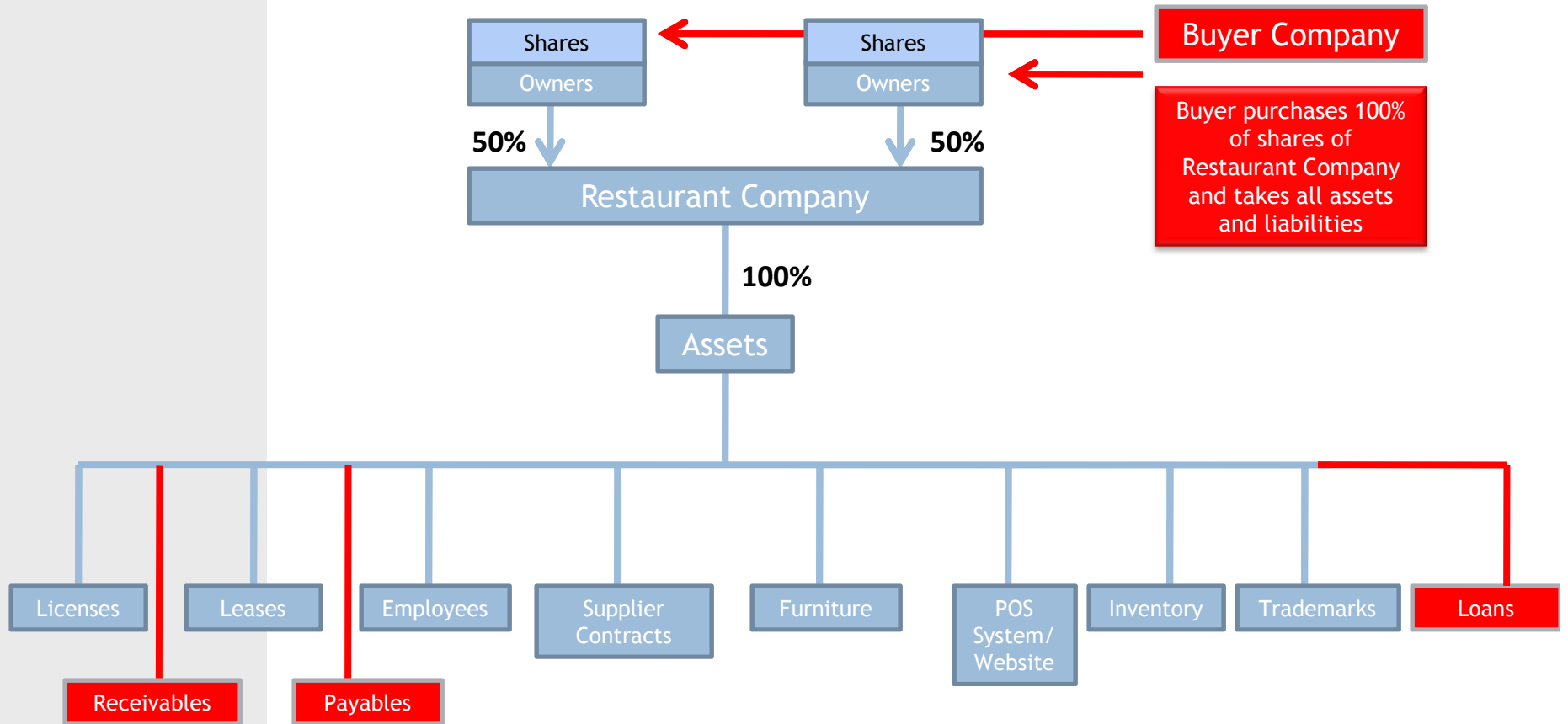
Ownership Structure



Asset Purchase - Ownership Structure



Share Purchase - Ownership Structure



Top 10 Ingredients for Success

3. Understand Deal Structure (cont'd)

(a) Asset Purchase: Buyer acquires assets which may include:

- Lease
- POS System
- Employees
- Trademarks
- Inventory
- Furniture
- Supplier List
- Bank Accounts
- Books and Records
- Licenses, Permits, and Authorizations
- Other tangibles and intangibles (goodwill)
- Website
- Email

* Buyer can exclude unattractive assets and liabilities

Top 10 Ingredients for Success

3. Understand Deal Structure (cont'd)

(b) **Stock Purchase**: Buyer acquires all outstanding equity (either stock in corporation or membership interests in LLC) of selling restaurant company:

- Takes all debt, liabilities, and assets of Company
- Faster process
- Can entail greater risk
- No need to transfer title to assets
- Compliance with securities laws
- Lease assignment issues

Top 10 Ingredients for Success

4. Carefully Check Lease Restrictions

- (a) Assignment restrictions
 - Usually apply to asset and stock deals
 - Additional security on assignments
 - Key money issues (Who gets Key Money?)
 - Subject to landlord approval
- (b) Permitted use restrictions
- (c) Renewal Options
- (d) Insurance Requirements
- (e) Good Guy Guaranty
 - Limited absolute guaranty
 - Check notice period
 - When space is broom clean and keys returned liability period should end

Top 10 Ingredients for Success

5. Is the Restaurant Name and Trademark Protected?

- (a) Are there any competing restaurants with similar names?
- (b) Has the seller received NY or Federal Trademark Registrations?
- (c) Are there any claims threatened or pending regarding the use of the name?
- (d) Confirm that this critically important asset has value

Top 10 Ingredients for Success

6. Don't Ignore Employee Issues

- (a) Obtain complete list of employees
- (b) Determine who is key employee
- (c) Immediately identify risks of undocumented workers
- (d) Understand payroll situation and practices
- (e) Don't underestimate severity of penalties

Top 10 Ingredients for Success

7. Corporate Compliance Issues Are Critical

(a) Regarding Seller:

1. Is corporation or LLC in good standing?
2. Check by-laws and Operating Agreement for restrictions
3. All resolutions and consents provided to approve sale?

(b) Regarding Buyer:

1. Which entity to choose? LLC or Corporation
2. Which State: New York or Delaware?
3. Are all corporate resolutions done and signed?
4. Are share certificates issued to owners/investors/partners?

Top 10 Ingredients for Success

8. Confirm Assignability of Agreements to New Owners

- (a) Will pricing on supplier agreements continue
- (b) Are POS software licenses transferable to new owner?
- (c) Can equipment leases be assigned?

Top 10 Ingredients for Success

9. Don't Forget Bulk Sale Notification (AU-196.10)

- (a) Buyer pays Seller's sales tax on ASSET SALE ONLY
- (b) Penalties for failure to file are painful
- (c) Signing of Agreement and Closing must be at least 10 days apart
- (d) Purchaser is responsible for paying Seller's tax
- (e) Amounts must be held in Escrow pending Release from Department of Taxation
- (f) Buyers have been held liable for huge tax penalties of seller

Top 10 Ingredients for Success

10. Review Status of Required Permits and Licenses

- (a) Transfer Liquor Licenses (apply for temporary permit)
- (b) Apply for Health Permit (expeditors can help)
- (c) Certificate of Authority
- (d) Cabaret License
- (e) Public Assembly Permit
- (f) Sidewalk Café Permit

Top 10 Ingredients for Success

BONUS INGREDIENT 1

Don't Overlook Key Planning Issues

- (a) Timetable
- (b) Budget
- (c) Professional Advisory
 - Architect
 - Contractors
 - Accountant
 - Lawyer
 - Insurance Broker
- (d) Cost and time overruns are the norm: Always expect process to take longer and to cost more than planned

Top 10 Ingredients for Success

BONUS INGREDIENT 2

Know What to Expect: How is the Deal Completed?

Closing Documents:

1. Purchase Agreement
2. Bill of Sale
3. List of Employees
4. Shareholder and Directors Resolutions
5. Landlord Consent
6. Legal Opinion of Seller's Counsel
7. Certificate of Authority
8. Health Permit
9. Escrow Instructions
10. Delivery of Keys
11. Delivery of Cash
12. Bulk Sales Notice

Top 10 Ingredients for Success

1. Write Down Agreed Terms of Sale or Purchase
2. Write Down Agreements with Business Partners
3. Understand Deal Structure
4. Carefully Check Lease Restrictions
5. Is the Restaurant Name and Trademark Protected?
6. Don't Ignore Employee Issues
7. Corporate Compliance Issues Are Critical
8. Confirm Assignability of Agreements to New Owners
9. Don't Forget Bulk Sale Notification (AU-196.10)
10. Review Status of Required Permits and Licenses

BONUS: Don't Overlook Key Planning Issues
BONUS: Know What to Expect

Top 10 Ingredients for Success

➤ **QUESTIONS?**

Summary of Program

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- **(4) Questions and Answers**
- **(5) Conclusion**

Thank You

For more information, please contact:

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