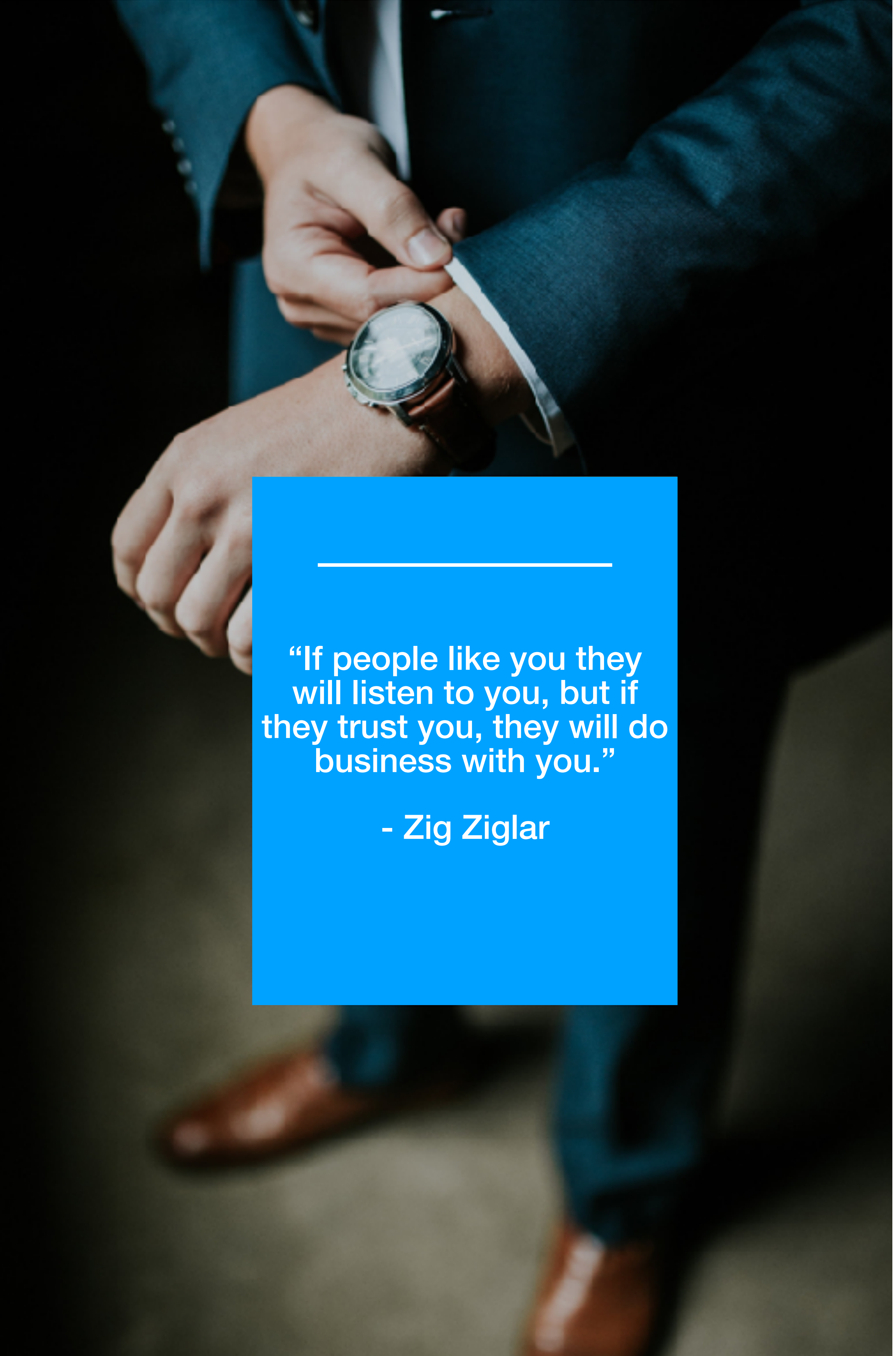
BARRETT
VENTURES

# Business Sale Guide



> "If people like you they will listen to you, but if they trust you, they will do business with you."
>
> - Zig Ziglar

# Introduction

As a business owner, you have probably made thousands of business decisions in your lifetime. Deciding when is the right time to sell your business, however, still remains one of the most difficult choices you'll make as an entrepreneur. As with any business decision, it is best made with as much insight as possible into the process and a full understanding of what is involved. This guide aims to clarify the particulars of selling a business and will hopefully remove any uncertainties you have about how to go about it.

The desire to sell your business can be bought on by a range of factors, some of which may be out of your control. They can include ill health, divorce, a need to liquidate assets, a desire to take a new strategic path, boredom or even becoming overwhelmed. Regardless of your motivation, having a full understanding will prepare you for any actions that you need to take and allow you to move forward with ease.

The following guide is set out in a Frequently Asked Questions (FAQ) style answering the most common questions that arise for a business vendor (the seller) as they try to navigate the sale. The guide is not comprehensive by any means and is deliberately kept simple in its approach so as not to overwhelm individuals in a time period that could already be burdensome. For any further clarifications please feel free to contact us using the details provided at the end of the guide.

# Business Sale FAQs

A guide for potential business vendors

## What exactly is a business sale?

A business sale can be considered as the sale of an asset that generates a future economic benefit. This comes in 2 forms:

- the sale of the shares of an entity that is currently generating or will generate future sales
- the sale of assets owned by a commercial entity such as property, equipment, machinery, vehicles or stock

The second form (the sale of assets) by itself is simply known as an asset sale whereas the first form (selling the shares) is what is regarded as a business sale. A business sale will most often include the transfer of the ownership of the entity's assets in the transaction, since by right, whoever owns the shares also owns the assets owned by the company. From a seller's perspective, a share sale would be advantageous because not only are the assets of the business being transferred over during a sale but also the liabilities. Any loans, money owed to suppliers, mortgages and outstanding lines of credit would become the responsibility of the new owners.

## How long does it take to sell my business?

Multiple factors dictate the length of a sale so it can be anywhere between as little as 2 months to as long as 8 months. We are happy to move as quickly as the situation demands but it will ultimately come down to each party playing their part to move the sale along.

## Can it be kept confidential?

We deal with every sale with the highest level of confidentiality. We would both sign Non-disclosure agreements (NDAs) that protect both parties from sharing sensitive information.

## What if I change my mind about selling?

You are free to change your mind at any stage in the process and we won't hold it against you. Once we are at the later stages, however, fees will be incurred and we only think it's fair that any party that drops out once these fees have been paid should subsidise these.

## What documents do I need?

Initially, we may ask for the last 3 years worth of financial statements that an accountant has produced and where applicable a set of management accounts. We are also likely to ask for any reports or valuations done on the assets or stock listing if any along with the price paid. This allows us to determine a valuation for the business so we know what a fair price would be. At a later stage, during a due diligence process, we would then ask for further documents related to the business including but not limited to:

- bank account statements, loan contracts, and tax filings
- staff contracts and supplier contracts
- current and future work contracts
- recent letters or important business communications

## How do I hand over the business?

We like the previous owners to stay on as consultants for an agreed period. This is a paid consultancy period that allows us to knowledge transfer and ensures a smooth transition when dealing with employees as well as other operational matters. A handover will include but is not limited to:

- finding out the key tasks the current owner performed on a day to day basis that would go missing in the owner's absence and filling that void with other personnel
- documenting and knowledge transfer of important business procedures
- developing relationships with staff, existing clients, suppliers, and other key business acquaintances
- handing over executive functions of important websites, bank accounts, locks, safes and other secured areas of access pertinent to the business

## What happens to the cash left in the business bank account?

The cash in the bank account is an asset belonging to the business much like the vehicles, equipment, property or stock is an asset. Being an asset of the business, any cash in the bank is also transferred over to the new owners after a sale. Removing assets from the business before a sale could potentially cause tax implications, the discussion of which is beyond the scope of this guide. It is best to seek advice from a professional in regards to tax.

## What happens to the staff?

Employees are protected by laws in the U.K when a business is sold. The law ensures that their employment continues with the same terms and conditions as before the sale. This includes redundancy packages, salary, holiday entitlement, and any other employee benefits. As we regard every employee as an asset, we are always keen to continue investing in their future. For us, this would mean training the current staff to be more effective in their roles and finding ways to promote them where possible. Having the right staff in place with the right skillset and commitment to continue the work is of the utmost importance to us.

## Are there any tax implications for selling a business?

To reward individuals for taking a risk, the U.K government gives what is known as 'Entrepreneurs Relief' to owners that are selling their business. Instead of the regular capital gains tax rate, individuals that sell shares of a company, having ownership that meets certain criteria, are eligible to claim a relief rate of 10% on the sale price. The relief goes up to a certain amount, which, at the time of writing is £1,000,000. If a business is sold for £1m, therefore, a personal tax liability of £100,000 would become due during the next financial tax year.

## What legal assistance do I need?

Both parties (buyer and seller) need representation from a corporate lawyer to complete the transaction. The reason for the legal representation is two-fold. The primary reason is that the contract for a business sale, whether that is the purchase of shares from the current owner or the sale of the business assets, is only legally binding if certain criteria are met. The criteria are most easily satisfied when a corporate lawyer has been instructed and is involved in the process of reviewing and explaining the points of the contract.

The second reason is for the protection of both parties. A satisfactory explanation of the contract is given by the lawyer so that each party knows the terms of the agreement. If any terms need to be added, amended or removed, the lawyer is best placed to ensure the wording is such that these terms have full legal standing.

## Can I use the same solicitor that I used to buy my house for representation?

The simple answer is no. In much the same way you wouldn't take a lorry to be fixed by a car mechanic it is best to avoid using a solicitor that has no experience in advising on the sale of a business. The sale of a business is specialist in nature when it comes to the legal aspects. Some corporate lawyers know the full details of the law when it comes to the transfer of business assets and shares. A solicitor or lawyer not fully versed in this area could ill advise a client and ruin a perfectly good deal for both parties.

We advise to only use legal representation from a law firm or individual that has a great deal of experience in transactions of this nature. The cost of these lawyers can be high but there are a few that will work on a fixed fee basis and only require payment once the transaction is complete. This saves huge fees being racked up due to hourly billing that may even result in the sale not going through but the bill still has to be paid. We can point you in the direction of a few different law firms that can represent you if necessary. We can also guide you on the amount to expect to pay although this can vary depending on the law firm used.

## What is the legal process?

The first moment a lawyer may be instructed is when the vendor receives an offer for their business. The offer, also known as an indicative offer, comes in the form of a letter describing the most important terms of the sale i.e the price to be paid along with any other considerations. Although signing the letter is not legally binding, a legal representative may be instructed to clarify any parts of the consideration offered.

The next step in the process is the signing of the Heads Of Terms. The Heads Of Terms document will include:

- the payment structure i.e timings and amounts
- assumptions for the business at the time of purchase
- any security offered for the sale
- exclusivity rights
- proposed consultancy period

The Heads Of Terms (HOT) is a simplified agreement that allows both parties to finalise the offer. The document is not legally binding except for a specified number of clauses such as the exclusivity clause. It is advisable to have legal representation at this stage to ensure you are happy with agreeing to those clauses. The signing of this document allows the buyer to perform a due diligence process, fully analysing the business by requesting confidential documents and reviewing each aspect of the business in detail to ensure they know exactly what is being purchased.

Due to costs being incurred during this stage of the process, either party can become liable for these costs if they decide to pull out of the sale without good reason.

The vendor will receive a Sale And Purchase Agreement (SPA) after signing the HOT (normally within 2 weeks). This document is the final contract to be signed for the sale of the business to be complete. As the document is lengthy and wordy, it is typical for the corporate lawyer to handle the review of this agreement and ensure it matches both parties' terms and conditions.

## How do I get the money from the sale?

Selling or buying a business is similar to selling or buying a house when it comes to the transfer of the proceeds. Once the Sale And Purchase Agreement has been signed, on completion the money owed to the selling party is transferred to their personal bank account (if shares are being sold by an individual) via the seller's corporate solicitor.

## Do I get the full purchase price paid on completion?

The amount paid on completion of the sale is based on what is agreed between the buyer and the seller and dependent on the situation. A typical sale of a business would include a proportion of the purchase price paid on completion with the other portion paid over several years as the business achieves certain milestones. Milestones could include:

- the revenue for the business is above a certain criteria
- the previous owner has stayed on to satisfy a consultancy period
- contracts have been satisfied or legal obligations met

The reason for this approach is first to align the seller's interests with the buyer's interests. If both parties are working together to ensure the milestones are achieved, it facilities a smooth handover and continuation of the business. The second reason is to mitigate risks for the buyer. If the vendor has not been forthcoming with information that then causes a material impact on the operation of the business, the funds can be diverted temporarily to get the business back on track.

There are instances when a purchase agreement does not follow the typical approach. The situation may be that:

- the business is burdened with debt or only has a small profit each year.
- the business may be dwindling due to the economy or other industrial factors such as a change in regulation

The seller is then left in a difficult position trying to convince a third party that the business is worth acquiring. The seller may also be in a rush to sell and doesn't have the privilege of being able to wait for the due diligence required to secure the funding. In these scenarios, an earn-out agreement can be used to structure the sale.

An earn-out consists of the business vendor being paid the purchase price over a fixed or variable time period. It can include regular scheduled fixed payments, a bulk payment after a certain period, or most commonly include a mixture of the two. The advantages to this approach are:

- the speed in which the transaction can be settled (weeks rather than months)
- the new owners can operate the business to improve profits thereby allowing the seller to benefit from the uplift in the value of the business
- the vendor gains part of the future value of the business rather than the current value; with the future value being more closely aligned to the purchase price satisfying the seller

There are so many different ways to agree an earn-out that it is beyond the scope of this guide. A further discussion can be had when the earn out situation arises and is part of the negotiation phase of the sale.

The other type of business sale agreement is where the business is rich with assets and the owner is happy to sell the business for simply the fair value of the assets. These assets may include property, various plant equipment, machinery or vehicles. In this instance, the vendor may be paid all of the purchase price on completion.

## What kind of price can I get?

We value the business based on two criteria: 1) the value of the assets the business contains such as property, machinery, vehicles or stock and 2) the value of the earnings of the business. A typical offer would be in the region of the fair value of the assets plus a 3-5x multiple of the earnings of the business.

# Who are Barrett Ventures and why write this guide?

Barrett Ventures was set up by entrepreneurs for entrepreneurs. Our mission is simple; to help 100 Small to Medium size enterprise business owners exit their business so that they can transition to the new life they deserve.

We have increasingly found that business owners of small enterprises are now at a stage where they are looking to retire and transition completely out of the business they founded. Having done a great job growing the company over their lifetime, it sometimes comes as a surprise how difficult it is to find the suitable candidates to carry on their legacy. They require candidates that come with the commitment, knowledge, and expertise to continue operating the business efficiently as well as drive its growth. These individuals are often lacking amongst their network, however.

The other challenge that owners have is finding candidates with the financial acumen and backing to reward them; compensation for the sacrifices made and the hard work put in to get the business to its current level. The business has gained tangible and intangible value for which an owner should be compensated accordingly if they are to hand over its economic benefit. The measurement of this economic benefit tends to be subjective which makes putting a price to the business a non-trivial task at the best of times.

The solution that Barrett Ventures provides to solve those problems is to buy the company from the owner at a fair and reasonable price to both parties. After the sale is agreed, we carry out our handover strategy to transition the previous owner out of the business over a period of time. This allows the business to continue to run smoothly after being sold. We then use our combined business acumen in sales, marketing, finance, and operations to grow and scale the business while continuing to increase the economic value of the company.

We raise the capital needed to pay the vendor from our partnerships with financial institutions, investors and high net worth individuals. Drawing down on this capital requires us to be diligent with our valuation of the company as well as being certain of its future prospects.

Every business owner we encounter has a different set of circumstances and has a distinct set of needs when selling their company. We find that there is no one size fits all proposition. One of the advantages of selling a business, however, is that there are numerous approaches to agree on and complete a sale. We pride ourselves, therefore, at being able to adapt to each situation and coming up with a solution that fits the needs of each party. If both parties come to the table with an open mind and apply some creativity, we often find there is a greater benefit gained for everyone involved.

In our experience, we encounter a lot of business owners that are not aware of the many approaches that can be taken if and when they decide to sell their business. Neither are vendors informed of the steps involved and what procedures need to be followed to complete the sale. In these situations, both parties can become frustrated mostly due to not progressing expectedly. There may be some nervousness around the sale on the part of the vendor because they were not well prepared for a scenario or they are uncertain how to proceed. They may seek guidance from friends or loved ones and be wrongly advised which ultimately leads to the end of what could have been a great deal for both parties.

We have gone about preparing this business sale guide to alleviate such a problem. We like anyone we do business with to be well informed of the process and have an understanding that a mutually beneficial agreement can be easily obtained. The guide tries to dispel some of the most commonly held myths around how a business is sold and what transpires after the sale. It highlights the different approaches for selling a business and gives suggestions about which might be the best path to follow in a particular circumstance. The goal of the guide is to align the interest of both the buyer and the seller and help the vendor to make better judgments when it comes to the sales procedure and negotiation phase.

We hope the business owners that take the time to read this guide find it useful. We also encourage them to add to the findings with further research and we are more than happy to explain any of the points outlined within in greater detail.

This guide was written and edited by

**Colin Winsper - Board Chairman**

**Andre Barrett - CEO**

## Contact Information

Barrett Ventures Ltd

www.barrettventures.co.uk

+44 (0)203 8587453

info@barrettventures.co.uk

**Barrett Ventures,**

20-22 Wenlock Road,

London,
N1 7GU