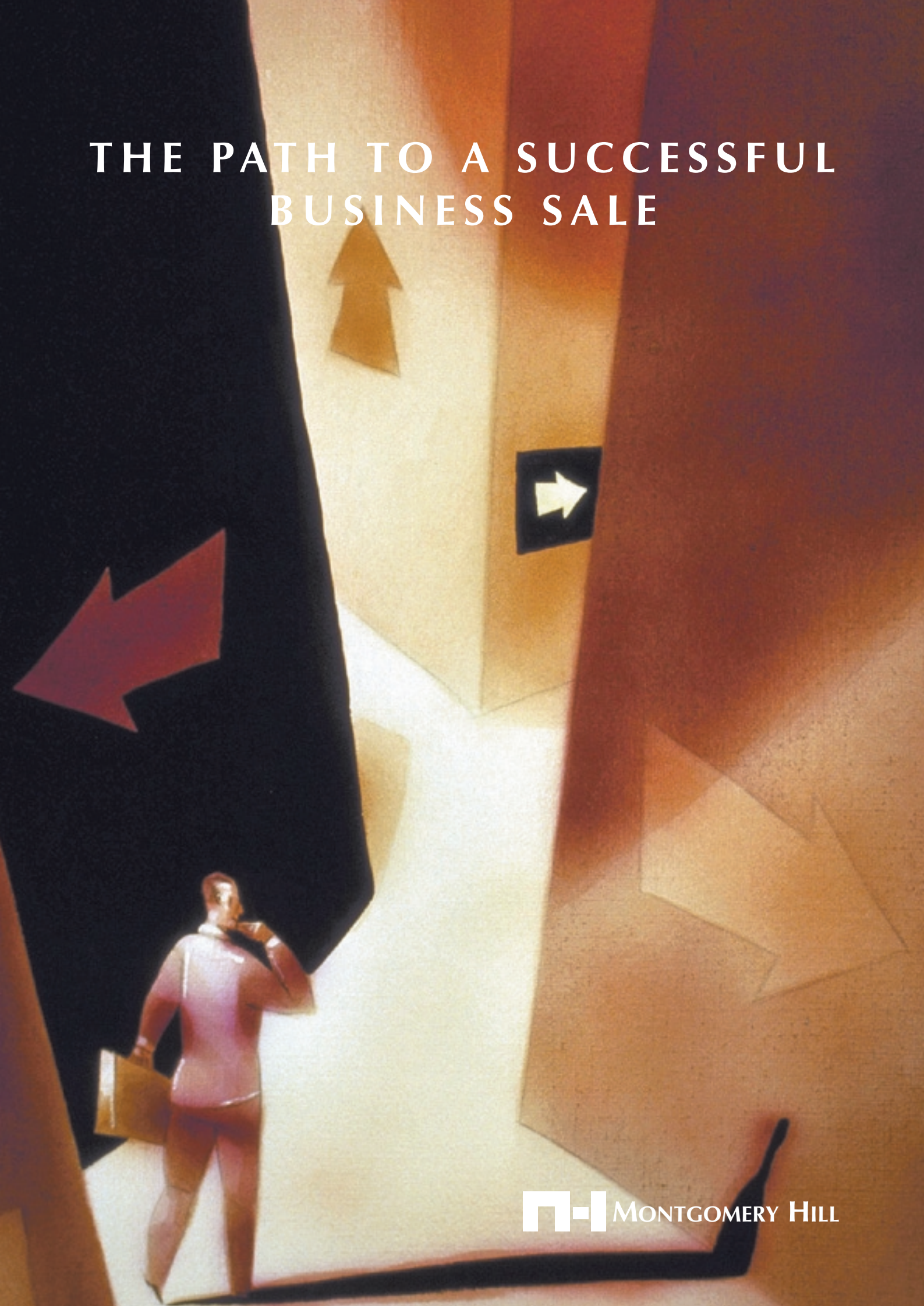


THE PATH TO A SUCCESSFUL BUSINESS SALE





WHAT CONSTITUTES A SUCCESSFUL BUSINESS SALE?

Simply stated, a successful business sale is one where both the buyer and the seller feel that they have “won” when the deal is completed. Deal making is fundamentally about people, and without a willing buyer and motivated seller there’s no deal. To conclude a successful negotiation, both sides should understand each other's needs and wants, with the objective being to structure a transaction that comes as close as possible to meeting those needs.

UNDERSTANDING THE NEEDS OF THE BUYER

Buyers and sellers speak different languages. Sellers seek reward for the years of hard work they have put into a business, whilst buyers are concerned only with future profitability. Put yourself in the

buyer’s shoes. Why would you buy this business? What challenges can you perceive ahead? Buyers want certainty, and don’t like surprises. The more you can do to eliminate the fear of the unknown the closer you are to a sale. Honesty plays an important part in this process, as too does getting the big issues on the table early in discussions. The more you can find out about the buyer the better chance you have of discovering what risks there are to getting the deal done. Knowing what's important to a potential buyer means that you can highlight those aspects of the business that appeal to the buyer's agenda. Qualifying the buyer, both financially and professionally, is also important in eliminating time wasters. A truly serious buyer will be flexible and open when it comes to issues like providing background and references about themselves.

WHY ARE YOU SELLING?

When a profitable and growing company is for sale,

the first reaction of a prospective buyer is “why?” Sellers have visibility into a company’s trading outlook, the area of key concern to a buyer. Thus, the more valid your reason for selling, the more confident and less suspicious the buyer will be.

COMMITMENT AND TIMING

Selling a business can be a lengthy and time consuming process. A buyer does not want to commit resources to negotiating with a seller who is not committed to selling. Commitment is signalled in several ways, from the reputation of the intermediary handling the transaction, to the quality of the sales pack that describes the business.

Choosing the moment to sell, rather than being forced into a sale, allows the seller to maximise business value. Taking a proactive attitude, the commitment to sell is a timing consideration, driven both by macro economic and business specific factors. Ideally, you should sell when the business indicators (growth and profitability) are good and the outlook is even better. Remember, the buyer is purchasing future profitability, so the greater their expectations, the greater the value they will place on your business.

PREPARATION IS KEY

Proper preparation serves both to smooth and expedite business sale negotiations. Engage experienced legal and tax advisors as early as possible.

You need to be able not only to understand what makes your company a viable purchase, but also how to present it in such a way that potential buyers can see the benefits as well. Historical financial records



are fundamental to determining a business valuation, so care should be taken in their preparation and presentation. Ideally, three years of audited accounts should be made available. Other company documents should be gathered together, as these will be required

for due diligence review prior to the sale. These will include statutory books and records, license agreements, employment contracts, credit agreements, loan agreements, equipment lease contracts, lists of fixtures and fittings, tax returns, and insurance contracts. A review of these documents will minimise the

potential for surprises later in negotiations.

Tidying up the business property and equipment, and cleaning up the balance sheet are also important. Write down slow moving items of stock, and take a charge for long standing debts.

Sellers must consider how existing contractual commitments will be met. Business contracts are not automatically transferred in an asset purchase. The seller is still obligated to fulfil the terms of a contract, unless the other party to the contract agrees to release the seller from their obligations. Ongoing or pending litigation, tax issues, compliance issues and employee issues should also be addressed and resolved wherever possible.

SET A REASONABLE TARGET PRICE

The sale of a privately held company involves three objectives which are often inter-dependent: speed, confidentiality, and price. You should identify the two objectives that are most important to you and prioritise these.

Various techniques can be applied to produce a range of valuations for a privately held business, but ultimately the

market will decide a fair price. Sellers need to set a price that will attract interest, whilst buyers need to know if that price is fair. Price is based on a number of economic factors, and emotion isn't one of them, so it's important for the seller to remain emotionally detached from the analysis and be able to defend the target price rationally.

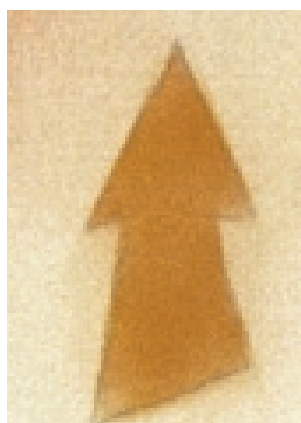
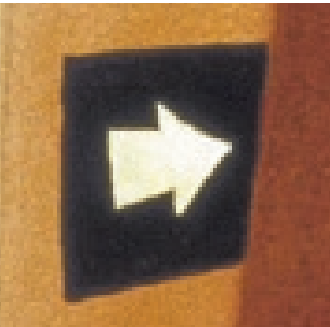
An unreasonably priced business may remain for sale for quite some time. This can damage the seller's credibility and indicate to prospective buyers that there's something wrong with the business.

Finally, sellers should not be afraid to walk away from a deal that is going badly. Having an undisclosed 'drop dead' price, below which you are not prepared to go, can be a useful tool in such situations.

NEGOTIATION IS ABOUT LISTENING

Of course, both buyer and seller want a deal on as favourable terms as possible, but a flexible and open approach to negotiation is key to solving both the emotional and practical issues involved in creating a "win-win" transaction.

You should acknowledge and accept that you have an emotional attachment to your business that may, on occasion, influence your judgement and actions. Try to avoid reacting emotionally and becoming defensive if a buyer criticises your business, and listen to what they are really saying. You should embrace ego-centric comments, since they often indicate that the buyer feels the business could be more profitable under their "superior" management. These beliefs may positively influence the value that the buyer is willing to attribute to the business.



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PRICE IS JUST ONE COMPONENT OF THE DEAL

A successful business sale should provide the seller with a fair price, a reasonable assurance of payment, and limited exposure to future liabilities. These factors together form the terms of the deal, and an open and flexible approach to the terms will increase the number of potential buyers.

Various factors can influence the selling price, including:

- *the payment structure – cash or cash plus a loan note*
- *tax and timing considerations*
- *which assets and liabilities are being transferred*
- *the extent of the guarantees (warranties) that the seller is offering*
- *post-sale agreements relating to consultancy and competition*

You should consider all aspects of the deal at the same time, and these should be laid out in the conditional offer from the buyer, known as the 'heads of agreement'. Leaving an issue for later discussion can lead to last minute re-negotiation.



TIME IS A DEAL KILLER

The longer the period from initial negotiation to completion, the greater the chances are that the deal will fall apart. Unforeseen adverse conditions may impact business performance. Buyers may have second thoughts or discover a more attractive target. Limiting the exclusivity period is important, as is the preparation of company

documents for review, as discussed earlier. Eliminate as many conditions to closing as possible before going into final contract negotiation. It is wise not to leave bad news to be discovered when the buyer has gone into exclusivity, as they may well be tempted to exploit it. If you have some doubts about disclosing something, disclose it. Surprises kill deals, or can result in litigation after completing the sale.

BUSINESS CONTINUITY

A seller can become preoccupied with the sale process and lose sight of the day-to-day management issues of the business. Remember, the buyer wants certainty, and a business that is declining will be a major cause for concern. Maintaining business continuity is critical to a successful sale.

This document aims to provide general guidance only. The reader is advised to seek professional advice on all matters discussed herein. All reasonable care has been taken in the preparation of this document. No responsibility or liability is accepted by the authors, Montgomery Hill, in respect of actions taken or refrained from as a result of information given herein.