THOMPSON COBURN LLP

Management Team Buyouts

A legal outline for liquidity events

Market Dynamics

When a company is sold, often the management team is left to its own devices. Surely, the buyer and seller have their own counsel looking out for their interests. But what about the management team?

Thompson Coburn's Management Team Buyout Group can assist management teams, from one individual to dozens, in connection with various change-of-control transactions, including:

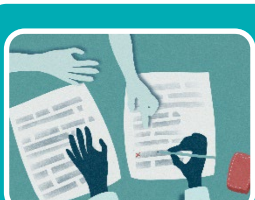
- When a family or entrepreneur business is sold to a private equity sponsor or strategic purchaser;
- When a private equity sponsor sells to another private equity sponsor or group of sponsors or strategic purchaser; or
- when a firm goes public.

We also assist individual senior executives in connection with their individual exits from a high-level position whether at a privately held, private equity backed or public business to another .
We are a cross-discipline group with the mergers and acquisition, private equity, securities, executive compensation, tax , estate planning and employment experience required to navigate these concerns for various management team members. Our attorneys capably handle these transactions in a cost-effective, efficient manner. We have worked with some of the world's leading private equity firms and understand the specific transaction and market dynamics, enabling us to create custom solutions for our management team clients, which range from one senior executive to dozens of members of a management team. Often a PE sponsors will even pay our fees.

Considerations for Management Teams in Buyouts

Economic Terms

- Sometimes management teams are receiving cash or equity incentive bonuses from a proposed transaction and requested to "roll over" or contribute all or a portion of this amount into the "Newco." We can often structure these transactions in a tax-advantageous manner.
- Often these executives will be provided with the opportunity to invest "alongside" the new investors on a "pari passu" basis.

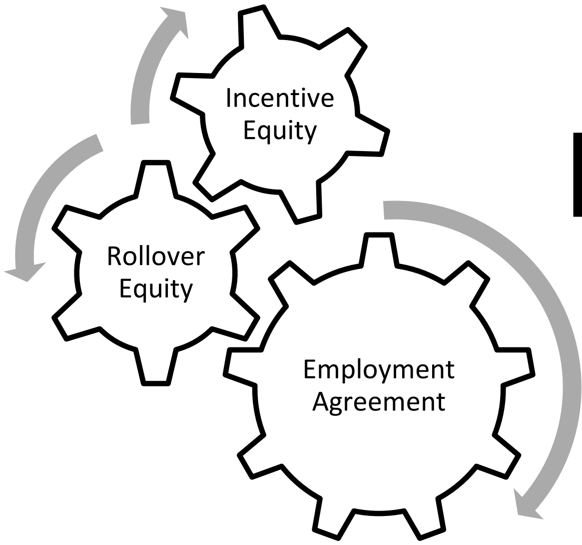


Other Investment and Employment Terms

- Generally, executives will be required to sign a shareholders, LP or limited liability company agreement outlining the terms of their ongoing investment in Newco. Sometimes these agreements include tag-along rights, put and call rights, transfer restrictions and anti-dilution protections.
- Executives may be asked to sign a new employment agreement or work for hire agreement, including non-competes, non-solicitations and, possibly, a new vesting schedule on existing equity.
- Newco may establish a new incentive equity pool to retain and attract management members.

Tax Issues

- Tax issues are heavily dependent on existing tax classification of company (e.g., c-corp, s-corp., partnership) and can have important implications for management team members.
- We often work with management teams to optimize tax structures and incentives.



Management Economics

Employment Agreement

- The private equity sponsor may want to tighten existing non-compete provisions and related restrictive covenants. Note that management members who are selling shareholders will typically be required to also agree to certain restrictive covenants as part of the transaction agreement. The law is constantly evolving in this area.
- Management will want to make sure that salary and bonus provisions are adjusted if, for example, they have fallen below market.
- Severance protection will also likely be negotiated, including the definition of “Cause” and “Good Reason” for determining when severance will be triggered.

Rollover Equity

- The private equity sponsor will expect that key senior management members rollover transaction proceeds (equity and transaction bonus) that are material both in terms of absolute dollar amounts and percentage of total transaction proceeds. Management will want to ensure that its rollover equity is treated in the same manner as the sponsor’s invested equity to the greatest extent possible, and that the rollover is accomplished in the most tax efficient method possible.

Incentive Equity

- A private equity sponsor will establish a new incentive equity program. Key economic issues will include the size of the incentive equity pool, the split between time-based vesting and performance-based vesting (as well as the length of time and performance hurdles that must be satisfied for vesting to occur) and what happens to the equity upon various termination of employment scenarios.

Going Private

In addition to the issues raised above, a going private transaction has a few additional wrinkles:

- The board and officers must carefully consider the fiduciary duties that they owe to their existing owners..
- Securities law disclosures will bring added scrutiny to any compensation earned or to be paid to management at closing.
- Exception from golden parachute excise tax application will not be applicable, so attention must be paid to minimizing excise taxes that might otherwise be due