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Get your own exit strategy and don't let a buy out leave you exposed

Alan Jones, partner at Averta Employment Lawyers, who offer dedicated employment law advice to directors and senior executives in areas such as severance terms, boardroom disputes, compromise agreements or contractual problems, highlights the personal risks to directors involved in management buy outs.

Most ambitious business people wish not only to be a company director, but also a shareholder in the business they are working for, and preferably a successful one. For most directors being part of a management buy-out (MBO) team can be one of the most exciting periods of their career. As part of a buy-out team they have the opportunity to combine their hard work and expertise, plus a modest investment to create a company that is an attractive proposition to the market. And if the sale or flotation of the company goes to plan, it can then generate a large profit for the directors and make all the stresses and hard work worthwhile.

Often putting together a buy-out team is a fraught process, where the pressure is on as the current company owners are keen to offload the company one way or another or investors want to complete the purchase fast. Raising money and choosing the right people to work with are the prime concerns of the directors and their enthusiasm to get part of the action can blind them from the commercial risks.

But as many management buy-out teams are usually knee deep in lawyers and advisors how can it be that directors could be unaware of any potential commercial risks – what have they missed? Well this blind spot occurs as the focus is corporate, with the emphasis on the sale and purchase of the business rather than on the personal position of the directors themselves and employment law.

In the midst of an MBO so much needs to be done in a short period of time, personal issues are often put to one side. The directors who make up the team have to put the business plan together and in addition other tasks such financial modeling, tax planning, financial due diligence all need input from key players. So raising issues of a personal nature can be difficult and it seems odd to be talking about what happens if you lose your job when you are a key part of the buy-out.

However the risks directors take in not considering their personal position carefully are great. If for example a director is dismissed before any subsequent sale or float he or she can lose not

only the big opportunity make a great deal of money from the sale, but also the original investment as dismissal (even an unfair one) in the early days often means an exit deal is based on the market value of shares, not return of capital injected.

So although the last thing you may feel like doing as a director who is part of an MBO team is involving yet another expensive lawyer. But make sure you do, as an employment lawyer who is on your side and not looking just at the wider commercial and corporate issues may save you a great deal of money and heartache in the long run.

Quality advice will help you work through the basis on which you can be dismissed, and what it really means in the new situation. One of the most important considerations is how your shares will be valued, and what are 'good' or 'bad' leaver provisions. You need to clearly understand in what circumstances your original investment is at risk, and work to minimize the risks. Nothing hurts quite like dismissal from a successful business before an exit, where you get next to nothing for your shares.

Usually the ££££ signs cause temporary blindness, exacerbated by the reluctance of the VC to lose control over driving the transaction and the running of the business - and why should they, as they are the major investor. So it is in the interest of the individual to check out his own position, not the investor.

So although being part of an MBO team presents huge opportunities, a reality check from a good employment lawyer who can punch his or her weight with the corporate lawyers can nip any potential problems in the bud, or at least identify the risks. This is especially true against a background of diminishing generosity towards senior managers and directors when dismissed.

It is no longer the case that a director can automatically expect to receive a generous compensation payment on dismissal.. Also additional benefits such as continued use of car, payment of bonus', share options, and other incidental benefits have been under threat. You will do well to achieve a 12 month notice entitlement, and 6 months notice is more usual, so if you are thinking of becoming part of an MBO team your position needs to be clarified, so in the worst case scenario your own 'exit' strategy' is as clear as the one the team has developed for the company.

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