

Business Succession & ESOPs OVERVIEW



About Kegler Brown's Business Succession & ESOPs Practice Area

Making intelligent choices regarding business succession has never been more important than it is right now. With an economy in flux and a national corporate marketplace facing rising financial uncertainty, finding innovative solutions to grow and transition your business is a necessity. Through our innovative business succession tools, your company can put itself in a better position to achieve its most important goals, including succession planning, employee incentives, acquisitions, tax reductions and more.

Introduction to Business Succession

Business Succession at Kegler Brown is a comprehensive, dynamic and integrated system of business solutions that includes management succession, executive compensation, merger/acquisition, ownership transfers, tax reduction and estate planning. Each of these areas, in turn, has sophisticated tools that we custom design to meet your goals and objectives.

- Management Succession (including best practices in corporate governance)
- Executive Compensation (including non-qualified deferred compensation)
- Merger/Acquisition (including tax-deductible acquisitions)
- Ownership Transfers (including stock and asset sales and ESOPs)
- Tax Reduction (at both the shareholder and company level)
- Estate Planning (for both wealth preservation and business planning)

ESOPs and Business Succession

An employee stock ownership plan ("ESOP") is a special type of qualified defined contribution pension plan under Section 401(a) of the Internal Revenue Code (the "Code") that also meets the requirements of Code Sections 409 and 4975(e). ESOP provisions were first introduced by amendments to the Code in 1974 and were included in the Employee Retirement Income Security Act of 1974 ("ERISA").

The primary application of ESOPs has been among closely-held corporations. Shareholders selling to ESOPs may be eligible for deferral or exemption from capital gains taxes while the corporation can fund the ESOP purchase with pre-tax contributions and pay principal on stock acquisition loans on a pre-tax basis. With an S corporation ESOP, both the corporation and the ESOP (as the shareholder) are tax-exempt and do not pay income taxes.

The comprehensive advantages of forming an ESOP are too many to list. There are, however, three far-reaching benefits that result from the "ESOP Business Model" as a business succession tool that should be highlighted, including the following:

- Yields superior cash flow through substantial and on-going tax advantages;
- Facilitates best practices in financial controls and corporate governance; and
- Does not impair managerial control, even in a company owned 100% by its ESOP.

There are numerous other benefits to ESOPs, including those for tax and estate planning purposes and for the benefit of the employee owners.

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What We Do

Kegler, Brown, Hill & Ritter's Business Succession & ESOPs practice provides experience in:

- Feasibility Analysis
 - Corporate Structure
 - Summary Valuation
 - Liquidity Analysis
 - Net Benefit Analysis
 - ERISA Compliance
- ERISA Compliance
 - Transaction Financing
 - Transaction Structure
 - Seller Financing
 - Mezzanine Financing
 - ESOP Loan Documents
- ESOP Design
 - Allocation Methods
 - Repurchase Obligation
 - 401(k) Integration
 - Voting Rights & Tender Offers
 - Prohibited Allocations
 - Distribution Alternatives
 - KSOPs
- Document Preparation
 - ESOP Document
 - IRS Approval Documents
 - Summary Plan Description (SPD)
- Fiduciary Compliance
 - Fiduciary Training
 - Plan Procedure Guide
 - Valuation Checklist
 - Review of Valuations
 - Corporate Governance
- S corp ESOPs
 - 409(p) Compliance
 - C Corp Conversion
- Merger/Acquisition Applications
 - Tender Offers
 - Acquisition Techniques
 - Defensive Techniques
- Financial Planning
 - ESOPs and Estate Planning

Our Team

Practice Area Chair: Tim Jochim, *Director*

- Luis M. Alcalde, *Of Counsel*
- Paul D. Ritter, Jr., *Director*
- Tom Sigmund, *Director*
- Jeremiah Thomas, *Associate*
- Jeffrey W. Stiltner, *Director*
- Kristine Madzia, *Paralegal*