

## Things to Consider When Selling Your Business to Private Equity

*by Richard Lieberman*

Selling your company to a private equity purchaser (a “PE Buyer”) involves a number of special issues to consider beyond the typical ones encountered in the sale of any business. Sales to a PE Buyer can provide certain advantages over a sale to other kinds of purchasers, but also presents complexities often not present in other sale transactions. This article highlights some of the key issues expected to arise in a transaction with a PE Buyer.

### Similarities With Typical Merger and Acquisition (M&A) Transactions

A PE sale resembles other sale transactions in many respects. The parties customarily agree on a non-binding basis regarding the basic deal terms, which are typically memorialized in a term sheet or letter of intent. The buyer will then conduct extensive diligence on your company. If it continues to pursue the transaction, counsel for the parties will prepare the purchase documents. The parties will seek to obtain necessary consents and approvals needed to consummate the transaction and then close the deal. Following the closing, the parties will integrate the acquired company and its workforce into the purchaser’s business.

These same steps usually occur in a PE transaction as well, but often with some changes. For example, a PE Buyer may conduct more extensive due diligence on your company than other buyers, so it will be important to have your financial statements and records in order.

### Additional Typical PE Aspects of an M&A Transaction

**Rollover Equity:** A distinguishing feature of PE transactions is the frequent desire by the PE buyer to have the key owners of the selling company retain some ownership in the company to be sold or to roll it into its successor. That retained interest is called “Rollover Equity.” Thus, a key factor to consider when contemplating a sale to a PE Buyer is whether to have Rollover Equity and, if so, how much of the seller’s existing ownership will be “rolled.” From the PE purchaser’s point of view, the more of the ownership it can convince the seller to retain, the less capital the PE firm will need to raise to consummate the deal. A PE Buyer will often encourage sellers to contemplate a “roll” of 20% or more of the transaction.

The Rollover Equity can be a potential advantage of a sale to a PE Buyer because the seller will have a retained equity interest in the new company after the sale and thus can benefit from any future appreciation that may arise. In addition, the PE Buyer may have greater access to needed capital (debt

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or equity) to help finance future growth than might other buyers of your company. Thus, the potential exists to share in some of the anticipated future appreciation of the new company through the Rollover Equity investment.

You may wish to evaluate this issue in light of your personal financial situation and goals. Note that you will no longer be in control of the company following the sale, even if you remain active in its operations. The new company will likely have significant debt obligations that affect its future performance because that debt was obtained in part to finance the purchase of your company and perhaps to provide additional capital for future growth. These considerations should be balanced with the anticipated future potential value of the retained equity interest.

The transaction can often be structured so that the Rollover Equity is received without triggering a tax at the time it is rolled over into the new company. Your tax and legal advisors can advise on these issues.

**Governance Rights in the New Entity:** If you will have Rollover Equity in the new company, you will be a minority owner of it after the closing. What will be the nature of your rights compared to the majority owner? Will you receive the same class or series of equity interests, or will others have preferred rights to dividends, distributions or voting rights? Will you have a seat on the board of directors or managers? Will you have approval rights over certain kinds of transactions? What happens if you are no longer participating in the management or operation of the new company? These governance issues should be addressed and may influence your Rollover Equity decisions.

**Future Transaction Considerations:** One reason to consider a transaction with a PE Buyer is the anticipated future growth opportunities of the company. You may wish to seek protections or rights in the event a future transaction might change the value of your Rollover Equity. Similarly, the PE Buyer may wish to sell its interests in the new company, but is there a requirement to give you the opportunity to sell your equity interests in that sale? You may wish to consider having rights to invest in new transactions on the same terms and conditions as the PE Buyer or its affiliates, as well as to “tag along” on any future sales of their interests on the same terms as they will receive. Consider the impact a future transaction might have on your continued employment with the company and on any unpaid portion of the purchase price.

While this article discusses some of the issues that often arise in a PE transaction, each sale presents unique issues and concerns important to their owners and the proposed transaction. If we may be of service to you on any potential business transaction, please feel free to contact the author or a member of Kutak Rock’s Scottsdale Corporate and Securities Group listed on the left. You may also visit us at [www.kutakrock.com](http://www.kutakrock.com).

