When a business owner is approached about selling his or her business, the potential purchaser oftentimes presents a purchase offer that includes, in addition to the purchase price for the business, a generous salary or consulting fee that can be earned by the business owner for a number of years following the sale of the business. In deciding whether or not to accept a purchase offer, a business owner frequently bases his or her decision, in part, on the value of the salary or consulting fee to be paid to him or her after the transaction is closed.

However, in order for the business owner to ensure that he or she actually receives such salary or consulting fee, the business owner must carefully negotiate the terms of the employment or consulting agreement that will govern his or her provision of services on behalf of the purchaser post-closing. This involves, among other things, ensuring that such agreement provides for a clear term and restricting the purchaser’s ability to earlier terminate the agreement to only those instances in which “cause” exists for such termination. The agreement should also specify instances in which the remaining value of the agreement will be paid out immediately if the business owner terminates the agreement for “good reason.”

Our firm’s Business & Finance Department has developed an extensive, dedicated practice representing clients in connection with the purchase or sale of a business. In such capacity, we regularly negotiate employment and consulting agreements on behalf of the selling business owner. If you are a business owner who has received or is expecting a sale offer, contact the Chair of our Business & Finance Department, Paul T. Rushton (prushton@rjglaw.com), or one of the other attorneys in our Business & Finance Department to learn more about these services.