



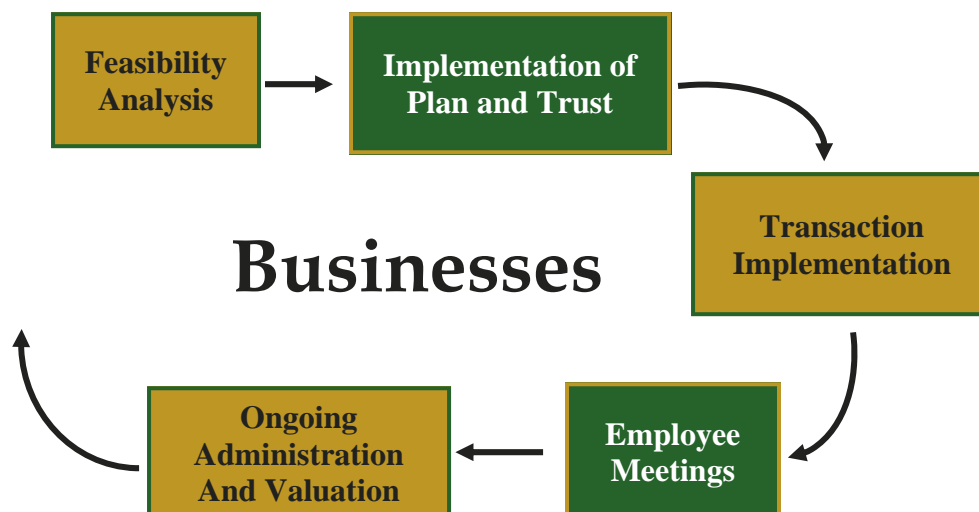
# ESOPs

## Employee Stock Ownership Plan

*ESOP is an acronym for Employee Stock Ownership Plan. An ESOP is a qualified retirement plan that provides the employees an ownership interest in the company and is one of the alternatives for business owners to exit ownership.*

An Employee Stock Ownership Plan (ESOP) is an employer provided qualified retirement plan that provides the employees an ownership interest in the company. The employees are provided with stock ownership, often at no up-front cost to the employees and are part of the employees' retirement compensation for work performed. The shares allocated to the employees can be held in trust until those employees retire or leave the company. The shares are then sold, usually back to the ESOP or the company. The company can often benefit from increased cash flow, tax savings and increased productivity from highly motivated employees.

Due to the many benefits to the company, ESOPs are highly regulated and proper administration is crucial to its success. You will want a highly experienced collaborative team of professionals working with you from start to finish, including ongoing administration and counsel. Eagle & Fein works with a collaborative team that has unmatched combined experience and working knowledge of ESOPs. We will work with you to determine whether an ESOP is



# ESOPs

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## Benefits of ESOPs

### Benefits of ESOP to Seller

- Diversifies non-liquid and highly concentrated equity position
- For C Corporations - tax deferral and potential elimination of capital gain tax
- Creates the necessary cash flow for advanced Estate Planning Strategies
- For S Corporations - converts ordinary income to capital gain
- Leaves a lasting legacy and provides for the continuation of the business
- Can create a discount for transferring interests to family members or trusts for the benefit of family members

### Benefits of ESOP to Company/Purchaser

- Increases cash flow by allowing tax deductions for both principal and interest payments
- Increases cash flow by allowing non-cash share contributions to ESOP
- Increases employee productivity from the employees being “Employee Owners”
- Keeps jobs in the community v. a potential outside sale
- Can create tax free entity for 100% owned S Corporations

### Benefits to Employees

- Provides employees an equity interest in the corporation without cost
- Creates a “We Can” culture v. an “Us” and “Them” culture
- Provides employees with increased retirement plan contributions
- Allows employees to maintain positions and remain employed

## Our Process

### Feasibility Analysis

During this phase of the engagement we determine what is the best structure for your company’s ESOP. Working together with our collaborative group of professional advisors we will:

- Preliminarily value the company
- If appropriate, compare succession planning alternatives to an ESOP such as a sale to third party, conducting a private equity auction, selling to key management, and/or transferring by gift to family members
- Run a detailed cash flow analysis which will serve as the starting point for the transaction valuation and serve as a model to determine the impact that the transaction will have on the company’s free cash flow
- Compare and analyze structuring the transaction with a seller installment note or third party borrowing
- Compare an S Corporation structure with a C Corporation structure to assist the company in determining which structure is best for the company desired, explore third party financing options
- Analyze and make recommendations as to the terms of executive compensation which will be incorporated as part of the transactions; if an S Corporation structure is desired, we will also conduct appropriate 409(p) pre-testing
- Determine the terms of the internal note between the company and the ESOP
- Determine the terms of seller notes, if any
- Determine the corporate governance structure that best fits the company
- Facilitate a structuring design meeting wherein transaction structure, qualified plan alternatives, corporate governance, management compensations and succession, and other corporate matters will be addressed and finalized (the “Structuring Meeting”)

During this phase, we conduct extensive management discussions, and extensive corporate finance and legal due diligence.

# ESOPs (Our Process Continued)

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## **Implementation of the Plan & Trust**

If the company decides to move forward, we, working together with our collaborative group of professionals, work to implement the ESOP Retirement Plan and Trust and provide the company with ongoing third party administrations of the ESOP. Working together with our collaborative group of professionals and based on the decisions made during the Structuring Meeting, we, together with our collaborative group of Professionals, draft and implement the Employee Stock Ownership Plan and Trust, Summary Plan Descriptions, Employee Beneficiary/Information Packages, and in the appropriate year file the Company's Plan and Trust with the Internal Revenue Service to request a determination letter.

## **Transaction Implementation**

During this phase of the process we prepare and review the transaction documents, including, but not limited to the (i) ESOP Purchase Agreement and related documents, and ESOP Term Loan Agreement and related documents; (ii) employment and non-compete agreements; (iii) executive compensation plan/agreements; (iv) preparing the appropriate board and shareholders resolutions; (v) counseling the company as issues arise; (vi) representing the ESOP at all meetings, including, but not limited to, the closing; (vii) reviewing the ESOP plan, trust, summary plan descriptions, and employee packages; (viii) reviewing and negotiating third party financing documents; and (ix) if necessary, preparing our legal opinion for the closing.

To accomplish the transaction, we recommend the ESOP consider using an independent trustee. We have a number of independent trustees that we have worked with in the past and can make the appropriate recommendation at the time when the company decides to move forward with the transaction.

## **Employee meetings**

After the transaction is complete, we recommend that the company hold an "Employee Celebration." At this celebration, the company will announce to the employees that they are now "Employee Owners" and discuss why the ESOP was implemented. We can assist the company with this meeting and be the lead facilitator. We also recommend certain members of our collaborative group of professionals to join us at this meeting.

## **Ongoing Administration and Valuation**

It is important that the company works together with an experienced third party administration firm. We have a number of third party administrators that we have worked with in the past and will make the appropriate recommendation at the time when the company decides to move forward with the transaction.

In addition to ongoing administration, a valuation will need to be accomplished annually. If the Trustee desires, we can recommend a qualified business appraiser from our collaborative group of professional advisors.

# ESOPs –Next Steps

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After the transaction is complete, we stand ready to provide counseling as legal needs may arise. Our fees are billed as needed at our then published hourly rates as set forth in our *Billing Philosophy*.

For many of our clients, the resulting tax savings and increased worker productivity due to the implementation of an ESOP far outweighs the cost of the feasibility analysis, implementation and annual administration.

For more information or to arrange a complimentary “get to know you” conference call or meeting, please contact us.

