Personal Due Diligence and Protection for the C-Suite Executive

Whether you've been pounding the pavement for months looking for a job or were handed a top-tier position on a silver platter, there are many things to consider before signing on the dotted line.

One of the first things to consider: Should I make upside employment-agreement "asks" and/or protect against downside termination-of-employment "risks?" You may decide to bypass potential upsides and ignore potential downsides, but by considering all issues at the outset, you should at least be starting your new job with your eyes wide open.

You, the prospective new executive, should conduct a thorough investigation of your prospective employer before the first substantive interview. This will allow you to "read between the lines" during the interview process. Many times employers do not want to air their dirty laundry to a potential employee, so it is your responsibility as the would-be executive to do your best to fully understand the situation before joining a company. This reduces your chance of being blindsided after accepting a new position.

If possible, reach out to current employees and other players or stakeholders to get the company's and management team's back-story (if there is a back-story). If possible, speak with those who are working somewhere else, but who, in their prior life, reported directly to your potential manager. If you are a would-be CEO, do your best to speak not only with your future board members, but also with those who have worked with (preferably on other boards) with your future board members.

If you are thinking about joining a public company, review the company's public filings and the exhibits attached to those filings. By doing so, you will be able to review your prospective employer's employment (and other significant) agreements with its most senior officers (the terms of the agreements will be described in various public filings and the actual agreements will be attached as exhibits to one or more public filings). You will also be able to examine additional compensation-related information, company financial information, and other company disclosures. You can access your prospective employer's public filings online via search engines or at www.sec.gov or www.edgar.com.

No matter what you uncover, you will walk into the interview better informed. The more information you have, the better prepared you should be to decide whether the job is for you, and if the job is for you and you have some leverage, the better equipped you should be to negotiate the terms of your employment.

Once you've decided you want the job, decide whether you will accept the job offer "as is" or whether you are willing to make some "asks." If you are ready to make some "asks," then there are many "asks" you should consider before joining the company. Base salary, bonuses, commissions, long-term incentive plans, perks, severance, equity protection and much more should be considered and weighed before negotiating the employment agreement.

As you negotiate, keep in mind that "Even CEOs Get Fired" all the time. Ask yourself: "Do I want to (and do I have the negotiating leverage to) protect myself against the reality that I too may be fired at any time for any reason, including a totally irrational reason?" If the answer is "yes," then your employment agreement's post-termination-of-employment severance and benefits section is one place to secure the protections you seek. Post-termination-of-employment protection might include severance pay, accelerated vesting of equity, health benefits, and much more. Your employment agreement is, in a very real sense, a professional prenuptial agreement – in other words, a separation agreement negotiated on day one.