

Negotiating Your Employment Contract

In the face of burgeoning demand for senior executive talent, organizations are grappling with increasing complexity of leadership hiring. Increased leadership hiring activity is seen across sectors in addition to leadership demand from several Greenfield and sunrise industries. The Indian senior leadership market is undergoing rapid change and we are witnessing increased cross-sector movement of senior executives. Sunrise sectors like organized retail are lapping up talent especially from the FMCG sector. In the past telecom and retail financial services have drawn talent extensively from FMCG companies. This means companies are under pressure to retain their top talent and also these are challenging times trying to hire leadership talent from outside. Indian Managers are confronted with plethora of opportunities like never before.

At the same time, organizations are ring fencing their senior executives by devising long term wealth creation opportunities in the form of incentives, retention pay, stock plans and deferred bonus plans. Hence leadership hiring today is akin to an M&A transaction in sheer complexity and long term financial and contractual implications for both the company as well as the employee. Organizations today are moving away from a 'one size fits all' approach and are structuring compensation and employment contracts as per individual needs. The days of standard templates for appointment letters are gone! At very senior levels, we are seeing the emergence of 'super lawyers' who counsel senior executives and negotiate on their behalf. This is an accepted practice in more developed markets like the United States.

Moreover today we are seeking to attract expatriate talent for certain specific skill sets especially in sectors like retail, hi tech manufacturing amongst others. In addition Indian corporations are today dealing with a multi-cultural work force as they acquire companies and expand globally. So it is no longer only the spoken word which is important but the employment contract is gaining more significance than ever.

We are also witnessing instances of senior executives walking out of contracts or accepting more than one contract and companies have very little recourse. In a recent instance one company had insisted on a penalty clause in the event the executive reneges on his contract to join the organization. In this case his current employer managed to retain him, but had to pay up the agreed amount on his behalf, to his prospective employer.



So as you contemplate your next move, you need to watch out for the following

- Get a broad idea of the different dynamics in the new sector/ organization. For example, executives foraying into the retail sector (there is a mass euphoria!) need to assess the ability of the company to stay invested long term in a capital and asset intensive industry with wafer thin margins. Also it is important to get a sense of the company's long term game plan.
- Understand the risks involved in the change from a career as well as a financial standpoint. You need to assess the upside as well as the downside and build suitable protection clauses in your contract. Usually companies are open to incorporate 'golden parachute' clauses that provide the executive with a severance package in the event of his/her termination. The clause may include a continuation of salary and perquisites for a defined period and at times accelerated vesting of stock options. This clause is seen more in the case of C-suite executives.
- Organizations in different phases of evolution have different compensation philosophies. Established brand name corporations tend to be less flexible. Here the risks are lower and so is the upside. In case of start-ups or new businesses especially Greenfield or sunrise businesses the opportunity to create long term wealth exists. Plan for success and ensure that you negotiate a handsome wealth creation plan in the form of pre IPO options, deferred bonus plans and retention pay. These days 'C' level executives even insist on a sweat-equity or an equity purchase plan.
- As you will realize by now that the complexity of employment contracts is increasing all the time, understand and clarify every aspect of the contract and if necessary seek counsel. Watch out for the fine print, especially items like 'non-compete' clauses and understand your recourse.
- Excessively focusing on compensation and contracts is a 'put off' for most organizations. Though compensation is an important barometer for measuring an opportunity on a short term basis, your decision should be guided on the long term potential of the role, the industry and the impact on your future employability.

As executives negotiate even harder to get the bigger slice of the cake, one should keep in mind that corporations are unlikely to tolerate incompetence and non-performance and have every right to demand maximum output. We are seeing that the average tenure spent by executives in organizations is reducing all the time

