

August 21, 2018

Main Street Loves ESOPs . . . And So Does Congress!

By Sheila Ninneman, JD

The Main Street Employee Ownership Act (MSEOA), signed into law on August 14, 2018 (as part of the John S. McCain National Defense Authorization Act), eases the way for small companies to establish employee stock ownership plans (ESOPs). The Act allows the Small Business Administration (SBA) to loan a company up to approximately \$5 million for purposes of establishing an ESOP. The company in turn would loan the SBA-guaranteed funds to its newly established ESOP to purchase company shares. As much as 85% of the loan can be guaranteed by the SBA. In addition, the Act empowers the SBA to assist small business owners in establishing the ESOP through outreach and training programs.

At this point, it is unclear how many small businesses can, and will, take advantage of this new resource. What is clear is that Congress has sent a strong message that it endorses employee ownership through an ESOP. This is welcome news in light of recent concerns that the Federal government might see ESOPs as a source of revenue, by limiting the tax advantages offered to these plans. The National Center for Employee Ownership notes that the Main Street Employee Ownership Act “is the most significant change in employee ownership law since the series of laws that allowed ESOPs to be shareholders of S corporations in the late 1990s and early 2000s.” ESOP

companies have emphatically made the point to their Congressional representatives that ESOP companies are generally more profitable than non-employee owned companies, and provide meaningful employment.

Even though MSEOA (the Congressional acronym people needed to do a better job on this one) may entice banks to offer loans to smaller companies to set up an ESOP, we continue to advise business owners to perform careful due diligence before entering into any ownership transition arrangement, including an ESOP. A company whose success hinges on a key employee or one major client faces huge risks in establishing an ESOP, and these factors should be reviewed carefully with competent ESOP counsel. While the flexibility provided to the Small Business Administration by the MSEOA can be a powerful tool for companies considering an ESOP, and may sway a decision, it should not be the primary consideration in establishing an employee stock ownership plan.

For more information, contact Ken Hohman, at 502.253.4628 or Ken.Hohman@findley.com; Alex Grasser, at 502.253.4636 or Alex.Grasser@findley.com; Sheila Ninneman at 216.875.1927 or Sheila.Ninneman@findley.com or the Findley consultant with whom you normally work.