

Successfully Negotiating PE Compensation for a GC Role

If leading legal for a private equity portfolio company appeals to you, compensation will be handled differently than in a well-established public company.

Most large public companies grant restricted stock units (RSUs) and sometimes a small dose of options that typically vest one third or a quarter per year over a three- or four-year period. They pay a bit above market for cash compensation and for a non-GC role might target 25 to 30% of the base salary for an annual equity grant.

Typically, private equity-backed portfolio companies will offer their executives, including the General Counsel, compensation that is slightly below market in terms of cash—both base and annual bonus—and pair that with a one-time grant of equity participation that will have a future value between \$1.5 and \$2 million.

9 STRATEGIES AND TACTICS

1. Benchmark the compensation package against publicly available comparable compensation packages. Look for public company employment agreements out there (e.g., on SEC Edgar) that you can review and determine ranges. From that, you can try to negotiate with private equity. Sometimes it will work, and sometimes it won't—but it is worth trying.
2. Ask for a capital structure table and the waterfall table to see who has preference above your stake.
3. Ask for an investor presentation showing financial projections and exit valuation estimates and scenarios.
4. Assume the worst case from what the company and sponsors are telling you—e.g., if they tell you to exit in 3–5 years, consider what your comp would be in a 5–7-year exit scenario.
5. Try negotiating vesting acceleration triggers for a change of control transaction. Single trigger will let you fully vest immediately on change of control. Double trigger requires you to be terminated without cause for full vesting or to have some other requirements for full vesting.
6. Be willing to ask for additional equity grants if the exit timeframe gets extended or a material adverse event (e.g., change in government reimbursement or major rate spike) impacts company's financial results and future prospects.
7. Try to find out what the other members of the management team are getting. Prepare to take significantly less than the CEO and probably a bit less than the CFO—though aim for CFO level. Be realistic in your equity request about your years of experience and number of prior GC roles relative to the rest of the executive leadership team and how long each has been with the company.
8. Ask for a transaction bonus at the top of the waterfall in the transaction expense bucket, which will create more certainty of outcome than solely having participation in a lower share class at the bottom of the waterfall.
9. Consider retaining an attorney specializing in employment agreement/compensation negotiations and work with an experienced recruiter.