

Checklist

Executive Officer and Director Succession Planning Checklist (Annotated)

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Contributed by *Doreen E. Lilienfeld, Gillian Emmett Moldowan, and Matthew Weston, Shearman & Sterling*

Editor's Note: As part of their enterprise risk management, corporate boards should have a succession plan in place to deal with planned transitions and the unexpected absence or loss of one or more key individuals. The following checklist includes best practices and key considerations for corporate boards when establishing executive officer and director succession plans.

Establish a Succession Planning Team

Determine whether the full board of directors ("Board"), the nominating and governance committee, or another Board committee will be responsible for managing the succession plan.

Comment: There may be different committees covering executive officer and director succession planning. With respect to director succession, for NYSE listed companies, the nominating and corporate governance committee is responsible for identifying qualified director candidates consistent with board-approved criteria and selecting or recommending to the full board director nominees for shareholder approval. NASDAQ rules merely require a group of independent directors to select or recommend director nominees.

- Ensure that the company's corporate governance guidelines identify the committee responsible for managing the succession plan and all related policies and principles.

Comment: The NYSE requires listed companies to adopt and disclose corporate governance guidelines that address director qualification standards that include, at a minimum, prescribed independence requirements. These NYSE listing standards also provide that companies *may* also address other substantive qualification requirements, including director tenure, retirement, and succession, in their guidelines. According to the NYSE, "succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO." NASDAQ doesn't require companies listed on its exchange to adopt corporate governance guidelines or otherwise address CEO succession.

- Define specific roles, duties, and responsibilities for members of the succession planning team, including identifying a succession plan leader.
- For executive officer succession planning:
- Determine CEO involvement and responsibilities in the succession plan.

Comment: Generally speaking, given the CEO's industry expertise and knowledge of the company's management team, it is customary for the executive officer succession planning team to solicit the CEO's input as to both internal and external candidates.

- Determine whether to involve the company's human resources personnel, for example, the chief human resources officer.
- Consider the role of external advisors such as compensation consultants, executive search firms, and succession planning consultants.
- Establish the frequency of succession planning meetings.
- Consider making succession planning a regular Board/committee agenda item.
- Consider reviewing the succession plan in detail at least annually and on a more frequent basis when there is a planned departure.

Develop a Succession Plan

- Identify critical positions to be covered by the succession plan.
- Establish succession scenarios to consider:
 - Emergency (for example, sudden resignation, illness, disability, death, governmental investigation, violation of company code of ethics or other material company policy, etc.);
 - Near-term (within one year);
 - Mid-term (between one to five years); and
 - Long-term (more than five years).

Comment: Note that the succession plan should address both planned transitions and emergency succession.

- Identify the qualifications necessary for each position covered by the succession plan and how those qualifications fit within the company's culture and short- and long-term strategic plans.
- Develop individual evaluation matrices and charts for assessing skills, experiences, competencies, qualifications, and other qualities such as diversity and reputation, of each individual currently holding the position, including specialized skills such as directors who are financial experts.
- Develop a profile of the desired skills, experiences, competencies, qualifications, and other qualities such as diversity and reputation, for the candidate.
- Track expected departures by identifying expected/future retirements, including those resulting from mandatory retirement age and, in the case of directors, the end of any applicable term limit.
- Identify whether any key roles can be shared among remaining executive officers and directors in the event necessary to fill gaps left by a departing person.

Comment: Consider providing current executive officers and directors with educational or development opportunities for purposes of developing bench strength for differing roles in the event of an unexpected departure.

- Establish methodology for evaluating and selecting internal and external successor candidates.
- Identify/evaluate availability of external candidates.
- Consider utilizing external advisors such as a compensation consultant and executive search firms to identify and evaluate external candidates.
- Require external advisors to enter into nondisclosure agreements.
- Identify at least two internal candidates for executive officer succession planning, which may include directors or other executive officers, for both planned and emergency scenarios.
- Develop internal candidates by:
 - Identifying developmental opportunities within the company such as assignments across different businesses/departments/geographies within the company;
 - Providing coaching/mentoring programs; and
 - Providing frequent Board/senior executive interaction.
- Regularly review/evaluate internal candidates' performance, skills, and overall fit within the company.
- Solicit feedback from CEO and other supervisors regarding performance of each executive officer candidate.

- For emergency succession planning purposes, identify potential interim candidates for immediate succession pending appointment of a longer-term successor.

Comment: Note that for emergency succession planning purposes, the executive officer succession planning team should identify successors and interim successors who can immediately step in and provide short-term stability. A Board member will often serve as an interim successor to a CEO or CFO, especially in cases where the Board member may be a retired senior executive officer of the company or of another company in a similar industry or having comparable levels of complexity and size, and there is not an expected or obvious successor for a CEO or CFO.

- Evaluate legal, regulatory, and contractual obligations.
- Consider whether to consult with outside legal counsel regarding legal interpretations and contractual obligations.
- Evaluate contractual obligations and related disclosure requirements.

Comment: Companies and the succession planning team should analyze company contracts, including debt and finance agreements, to determine whether any departure or appointment breaches any representations or covenants or otherwise triggers a default or notice obligation.

- Consider whether any successor search constitutes material non-public information requiring a blackout in securities trading activities for those with knowledge.
- Develop D&O questionnaire to analyze potential conflicts of interest and related party transactions with successor candidates.
- Require candidates and search firms to enter into nondisclosure agreements.

Comment: For a candidate considered as an emergency successor, companies should require the candidate to promptly complete the D&O questionnaire once the candidate is identified, and update it at least annually, to ensure a seamless and timely transition in the event of an emergency.

- Develop a process for conducting comprehensive background checks.
- Consider retaining an outside firm to perform background checks. Require the outside firm to enter into a nondisclosure agreement.

Comment: For a candidate considered as an emergency successor, companies should conduct a background check once the candidate is identified, and re-run background checks as necessary to keep current, to ensure a seamless and timely transition in the event of an emergency.

- Develop a written transition plan for each role.
- Consider whether the out-going executive officer or director will be needed for a transition or consulting period.
- Develop a communications plan for shareholders, employees, government agencies (if relevant), and customers and suppliers in the event of a succession, including press releases, media appearances, scripted employee communications, organizing town hall meetings, and statements to applicable government agencies.
- Consider circumstances under which the company would retain an external public relations firm to help manage the communications process.