



Corporate Governance Considerations: Early-Stage and Beyond

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Corporate governance issues are often overlooked in early-stage growth companies, overshadowed by operational, go-to market, and other build-the-business activities. It's the all-too-familiar story of the urgent crowding out the important. A focus on a strong board, good alignment between the board and the executive team, and clearly defined roles of the board and individual board members that allow for evolution over time is essential to healthy growth, particularly for tech companies with the potential to disrupt a market.



Our discussion will include planning in advance for the “known unknowns” and the “unknown unknowns,” through table-top exercises and other tools to help cope with everything from cybersecurity breaches to pandemics. This program will examine the most important – and often thorniest – corporate governance issues that companies should be thinking about.

What to expect when your client's outside investors join the board (e.g., the tension between founding and independent directors vs. a VC board member)





When founders and boards clash — what to do?
Keeping “the client” in focus when the CEO who hired you answers to a board they no longer control


Transitioning to a proper division of roles takes planning

Board approves corporate strategies and monitors management's implementation

At a well-governed company

Management implements corporate strategies, including day to day operations

In early-stage companies, founder and team play both roles

A high-angle photograph of four business professionals (three men and one woman) seated around a dark wooden conference table. They are engaged in a discussion, with one man gesturing with his hands. Papers, a pen, and a pair of glasses are scattered on the table. A large, semi-transparent blue circle is centered over the image, containing white text. The overall tone is professional and collaborative.

Dealing with board
factions and/or the
crusading director
who wants to recruit
you as their ally



Importance of having (if practicable)
and using independent directors

Trados case, 73 A.3d 17 (Del.Ch. 2013)
(see also Memorandum opinion; Harvard Law
School Forum on Corporate Governance article)

- Composition of the Board of Directors
- Potential structure and procedural steps
- Potential contractual steps



Helping boards prepare for “Black Swan” events — Unpredictable events that are

- *Rare*
- Have potentially *severe* consequences
- Many will insist were *obvious* in hindsight

Case Study #1

Your client's board chair calls you to say its president has been accused of a crime.
Now what?



Case Study #2

Your CTO or CISO tells you the company's network has been breached. The intruder has accessed name and credit card information for all of your customers!



Case Study #3

Finding smoking gun emails in response to a DOJ investigation into your pharma client that shows executives intended to encourage use of opioids



2020's Black Swan: COVID 19

As a result Boards are facing



Increasingly complex
demands and pressures
from stakeholders

Heightened expectations for
societal engagement

Radical uncertainty about
the future

– Harvard Business Review
(Oct 2020)



Learnings from COVID 19



Clarify lines of authority (Board vs. management) so decisions can be made quickly



Plan for greater board engagement in crises



Designate committees and/or officers to handle specific emergency response tasks



Decide which and when outside advisors will be consulted

Challenges to traditional shareholder-centric governance model

Increasing emphases
on social engagement,
corporate citizenship,
and stakeholder
engagement

Diversity
of directors



Building value through great corporate governance



Support the board

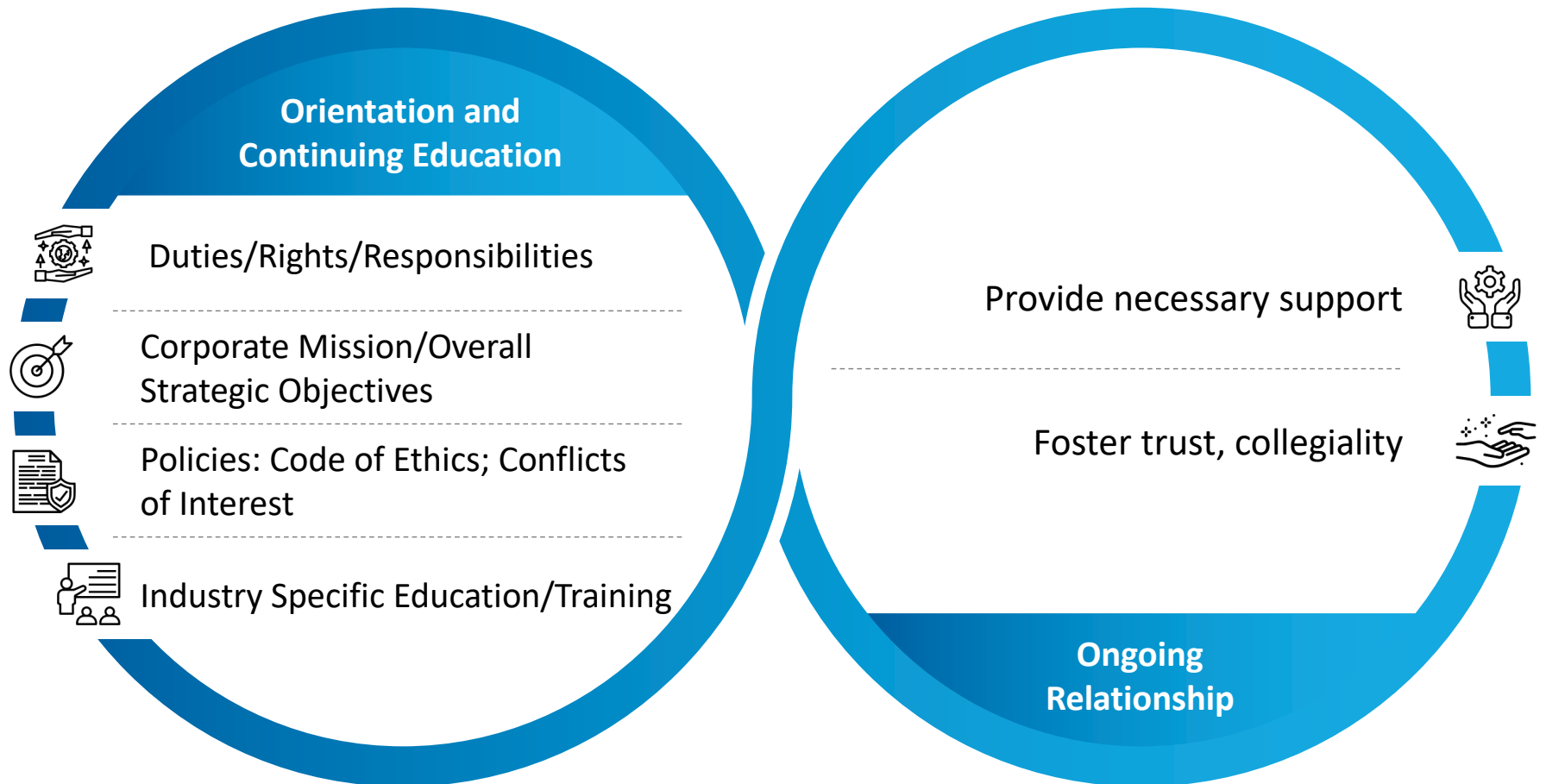


Develop annual workplan

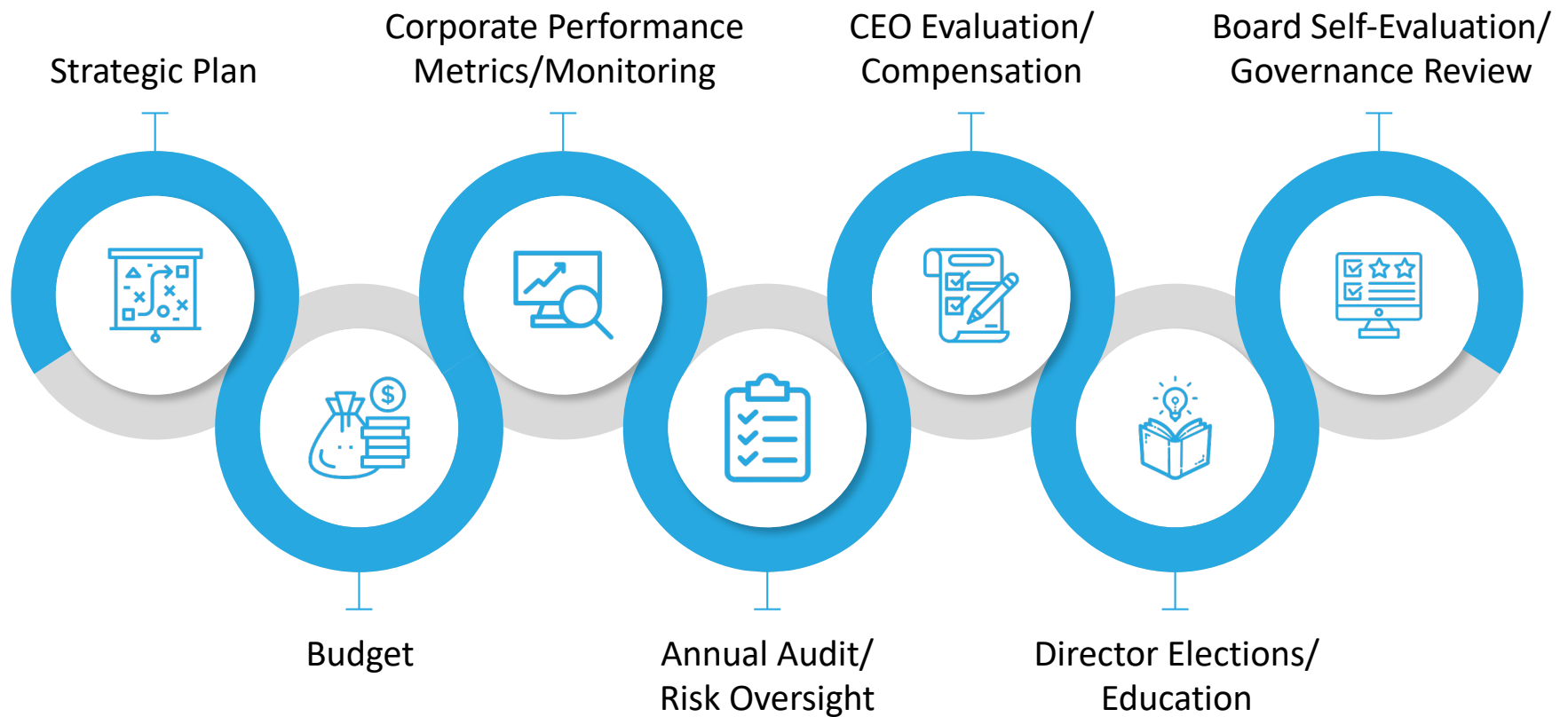


Communicate clearly

Support the Board

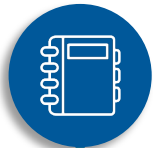


Develop Annual Workplan



Communicate Clearly

Create Templates: Focus on priority work and keep accurate records



Agendas, Meeting Materials, Reports



Issue Papers

Issue; Recommended Action (MOTION language); History; Discussion



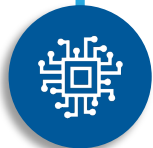
Minutes

Attendance; Quorum; Date/Time/Location; Discussion; Actions Taken



Periodic Messaging

Keep Directors informed and engaged



Use Technology

Electronic Board portals; DocuSign, etc.



**Use good
governance to
keep your eyes
on the prize**

Ask yourself “How will
future investors in due
diligence evaluate how
the board handled this
problem?”

Include in your
process assessing
actions from the long
term/exit perspective



Questions

FURTHER READING

Harvard Law Corporate Governance Forum article on Covid and corporate governance:

<https://corpgov.law.harvard.edu/2020/07/16/the-long-term-impact-of-the-pandemic-on-corporate-governance/#:~:text=A%20critical%20impact%20of%20the,in%20a%20good%20faith%20manner.&text=This%20is%20not%20to%20suggest,irrevocably%20changed%20by%20the%20pandemic.>

HBR article on Covid and corporate governance:

<https://hbr.org/2020/10/covid-19-is-rewriting-the-rules-of-corporate-governance>

Business Roundtable statement on corporate governance:

<https://opportunity.businessroundtable.org/ourcommitment/>

Corporate Director's Guidebook:

<https://www.americanbar.org/products/inv/book/393868735/>

Guidebook for Directors of Nonprofit Corporations:

<https://www.americanbar.org/products/inv/book/214005/>