

The Executive Committee in Times of Crisis

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Second in a series of updates on how the pandemic is implicating basic governance topics.

The role and operation of the board executive committee has been highlighted by the current pandemic-driven crisis. The need for unique board engagement in coordinating organizational responses can be frustrated by the inability to gather the full board in a timely manner. Rarely is action by unanimous written consent a practical alternative.

The concept of a committee with powers to act on behalf of the full board between regular meetings (or otherwise when such meetings are impractical) offers an attractive governance option. But there are legal and governance policy perspectives that should guide the committee's formation and operation.

Factors to consider when creating, or re-establishing, a board-level executive committee include, but are not limited to the following:

- The specific circumstances prompting the need for executive committee action.
- A description of the power and authority of such a committee.
- Identifying the limitations on the authority (under state law or otherwise) of the committee.
- The composition of the committee (including the number of independent directors).
- The manner of CEO participation with the committee.
- The frequency and manner by which the committee reports back to the full board.
- The coordination of executive committee functions with those of other committees.
- The term of existence of the committee.

A primary legal policy interest is in preserving the basic role of the full board. It is thus important to protect against the risk that the executive committee gradually evolves to assume all of the critical

governance functions, essentially disenfranchising the directors who do not serve on the executive committee. It is also important to assure that the executive committee is not being formed as a means for circumventing certain board constituencies or otherwise executing an “end around” the full board.

Click here to access the first article in this series, [Corporate Authority for Extraordinary Delivery of Care Decisions](#).

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