

Executive Voluntary Departure Checklist

October 2008

A. Restrictive Covenants

1. Understand whether future plans are impacted by restrictive covenants. Check offer letter, employment agreement, equity and other incentive awards as well as any stand-alone agreement. If so, determine consequences and develop strategy to position for most advantageous outcome. The existence of a non-compete enforceable by injunction is a key threshold issue; covenants enforceable by monetary consequences (e.g., forfeiture or “clawback” of awards) often can be addressed with a future employer.
2. Compliance with restrictions on use of confidential/proprietary information; non-solicitation of employees and customers.
3. Identify other continuing restrictions in agreements, e.g., non-disparagement, continued cooperation, notification undertakings.
4. How do covenants relate to your personal intentions? Under the circumstances, is it or is it not advisable to request confirmation of no violation, clarification and/or seek renegotiation?

B. Financial and Legal matters

1. Notice period for termination, if applicable. What are the consequences? Might be negotiable.
2. Equity and incentive awards (check plans, policies and award agreements)
 - a. Vesting
 - b. Forfeiture
 - c. Exercise periods
 - d. Eligibility for pro rata awards



3. Benefits

- a. Any questions about tax-qualified retirement plans, continuation of medical coverage (COBRA), continuation or conversion of life insurance, retiree medical/life benefits (if available)?
- b. Are severance benefits available? (Might be negotiable if circumstances are not entirely voluntary; if applicable, has a voluntary termination for “good reason” provision been triggered?)
- c. Any in-kind benefits or reimbursements (e.g., financial planning)?

4. Other considerations

- a. Any required loan repayments?
- b. Identify any Section 409A implications. (For example, are all non-qualified deferred compensation pay-out dates and amounts identified? Will anything be accelerated by termination?)
- c. Address continuing indemnification rights. Are you currently involved in any company-related litigation?

5. Personal income tax reconciliations relating to any international assignments

- a. Have reconciliations/reimbursements been closed out for all years? Seek written confirmation, if needed. Is there indemnification with respect to prior returns?
- b. Confirm any period post-termination for which returns will continue to be prepared at employer’s expense.
- c. Confirm no restriction on executive’s ability to personally retain firm thereafter.

C. Transition Planning and Preserving Business Relationships

1. Identify planned departure date consistent with any required notice period.
2. Emphasize seamless transition and alignment of communications; in context of amicable departure, speak to personal goals.
3. Development of fully aligned communications plan in which your confidence in management and business direction is evident to all constituents.
 - a. Ask for your approval of any press release or announcement of your departure.
 - b. Constituents to be considered in communications plan might include staff (e.g., support morale and confidence in their ability to meet business milestones), senior management, customers, regulators, investors, lenders, rating agencies.

4. Confidential information: consider suggesting a process be put in place to determine what information or material you retain in connection with the departure. Goal is transparency from you and confidence in you about preserving the confidentiality of employer competitive-sensitive information to avoid distraction and expense of post-employment disputes.
5. Business operational issues (if any).
6. Willingness to entertain short-term consulting agreement to assist in post-departure transition period, if employer desires and if consistent with your plans; if so, consider 409A issues.

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