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How to take references on a candidate – effectively and legally

SAVANNAH WHITE PAPER



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- Phil Peters

This white paper is part of a series which explores different aspects of building high performance management teams within venture capital and private equity portfolio companies. This paper deals specifically with reference checking and its use as a tool when assessing potential candidates. We set out below our view of a number of questions that clients sometimes raise about reference checking. If you plan to take references yourself then be aware of the legal duty of care you owe to the candidate. If you plan to use an executive search firm then this paper also sets out our view of best practice.

Is it best to take references from the people suggested by the candidate or use the board members' network and talk to a greater variety of referees?

We recommend selecting around six people who have recently worked closely with the candidate as a member of his/her board or management team. This should be done following a review of the candidate's CV and would mainly include former line managers and related board members as well as some peers and subordinates in what we call a 360 degree reference check. We recommend requesting specific named referees, for example, "the Finance Director the candidate worked with in 2005 when at IBM" from the candidate. We do not recommend accepting a person nominated by the candidate unless you have independently concluded that this person meets the above criteria. The selection should also reflect the range of recent employers the candidate has worked for. The candidate should then be asked to contact the referees in order to facilitate the process. The designated person should then conduct a structured telephone interview with each referee with a brief to probe achievement against agreed core competencies. Care should be taken to construct appropriate questions and a sub set should then be selected to pose to each referee.





If a board member knows someone well, who knows the candidate, should you also speak to this person?

Yes but, again, you should ensure that the candidate is aware of this. To minimise the risk of exposure to civil or criminal liability the board must demonstrate that the candidate has given consent to the process. It doesn't matter how many people you talk to or who makes the enquiries about the candidate as long as you can demonstrate that the candidate has given permission.

What happens if the candidate refuses to facilitate this process?

First of all establish if it a matter of timing and/or issues of confidentiality. Some candidates, understandably, do not wish to submit to reference checking if there are several other strong candidates also under consideration and/or the candidate is currently employed and has a reputation to protect. We suggest that you make it clear that, ultimately, you will not be able to progress to offer stage unless the process is facilitated.

Is it best to quote what the referee said verbatim or summarise the conversation?

We recommend recording the conversation in writing and quoting the referees verbatim. By accurately reporting what is said about the candidate, you minimise the risk of negligent misstatement. We also advise focusing the reference on the candidate, and avoiding releasing statements about third parties e.g. ex-colleagues. A candidate will be able to sue for defamation if you have reported an oral reference in a malicious/reckless manner or for an improper purpose.

Can a UK based candidate ask to inspect the content of a reference provided on him/her?

Yes and this is particularly relevant if he/she does not get the job. In most circumstances, you will be obliged to provide the information in a reference, or at least a substantial part of it. UK based candidates have extensive rights of access under the Data

Protection Act. So referees should be told that the reference may be disclosed. Even if a referee does not consent to disclosure, you may still be obliged to provide the reference without consent. In law, you must weigh the referee's interest in having their comments treated confidentially against the candidate's interest in seeing what has been said. The legal guidance recommends taking the following factors into account:

- any express assurance of confidentiality given to the referee;
- any relevant reasons the referee gives for withholding consent;
- the potential effect of the reference on the individual;
- the fact that a reference must be truthful and accurate and that without access to it the candidate cannot challenge its accuracy;

How should you ensure you comply with the Data Protection Act?

To minimise the risk of exposure to civil or criminal liability all candidate data must be:

- fairly and lawfully processed;
- processed for specific purposes;
- accurate and where necessary kept up to date; and
- not kept longer than is necessary.

Under the first principle, you should inform candidates that you will be obtaining references from referees. The safest criterion to rely on is that the candidate has given consent to the process. The best way to do this is to gain consent by an email exchange with the candidate, disclosing who you plan to speak to. Special additional restrictions apply to the processing of 'sensitive' personal data i.e. data which relates to race, political opinions, religion, trade union membership, health, sex life or criminal proceedings. Therefore be extra careful if your enquiries relate to any of these areas.

Can I outsource the reference checking process?

Yes, you can use a third party to undertake this work even if the candidate has been introduced by you or a colleague. You can also consider



this approach even if the candidate has been introduced by an executive search firm if you are concerned either about the search firm's independence or their competence.

If the reference checks are inconclusive what should I do?






You should probably look for an alternative candidate or you might consider management assessment or psychometric testing to acquire additional data on the candidate.

Management Assessment and Benchmarking

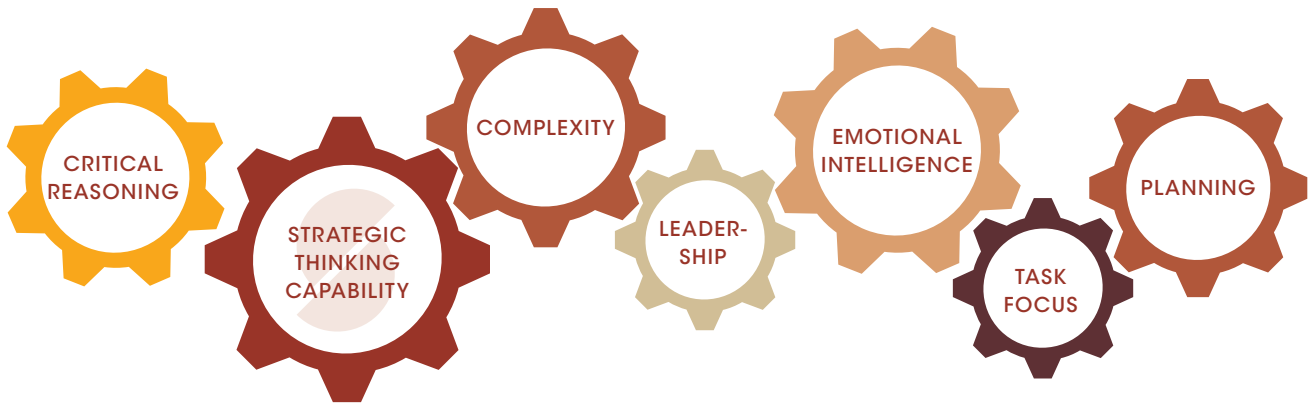
For this assessment you would evaluate the candidate on a range of core competences which would be specific to each job. For example,

for a CEO it may include relevant industry sector experience, experience of equivalent scale in terms of people management, familiarity with a particular business model. For a Finance Director it might, for example, include investor relations and acquisition experience. An Executive Search Consultant from the portfolio company's industry sector would normally lead this aspect of the assessment and draw upon his/her experience to compare the manager with strong external candidates you might expect to recruit through an executive search.

This would involve the candidate preparing a CV and then conducting a face to face interview with the consultant. The search consultant would also meet all of the other members of the management team along with key stakeholders such as investors or non-executives. The search consultant would then place the candidate into one of the five categories below along with the reasons for reaching this conclusion:

Outstanding Candidate. Already able to take on greater responsibility.	
Strong Candidate. Competent to do the current job.	
Short-listable. Has relevant experience and ability but stronger candidates may exist.	
Long-listable. Insufficient experience, potential or achievement. Not short-listable on a search.	
Not Relevant. Would face a long learning curve and high risk of failure	

This can also be part of a broader organisational design service including the need for succession planning.



Psychometric Testing

For this assessment the candidate will be asked to take several psychometric tests including reasoning tests, personality measures and a structured face-to-face interview with an Occupational Psychologist. This would require a half day time commitment from each candidate being assessed. Each candidate would then receive a score of 1 to 5 on the categories noted below along with the reasons for reaching this conclusion. A score of 3 would be considered to be a minimum level of competence to execute at the required performance level. A score of 5 is a benchmark of what would be available from strong external candidates if an executive search is used. To do this we would measure the following capabilities which in our view are predictive of effective management performance:

Intellectual skills

- **Critical Reasoning:** the ability to assimilate complex verbal, numerical/financial and diagrammatical data and make appropriate judgements.
- **Complexity:** the ability to engage with new and novel problems that are open – ended or ambiguous and that cannot be resolved using computational logic as measured through reasoning tests above.
- **Strategic thinking capability:** the ability to shuttle effectively between broad strategy and operational focus.

Interpersonal Skills

- **Leadership:** the ability to align and motivate a team behind a business plan and manage performance effectively towards achievement of financial goals.
- **Emotional intelligence:** the ability to manage own emotions and those of others in a professional manner, particularly in board meetings, through a sound set of business influencing skills.

Action Skills

- **Task Focus:** the ability to maintain a disciplined focus on business goals (such as EBITDA growth); communicating a strong conviction for follow through, persistence, resoluteness and conscientiousness.
- **Planning:** the ability to react to changes in the market and formulate and deliver coherent strategic plans.

Deliverables:

The personality, work experience and reference checking assessments should then be integrated and reported on to allow for an informed selection decision to be made. This is typically a mix of written reports and interactive workshop style presentations.



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