Best Practices for Corporate Governance and Subsidiary Management

Session 404

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4:30-6:00
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Subsidiary Governance –
The Good, the Bad and the Ugly

**The Good** – Efficiency, reducing costs, lowering risk

**The Bad** – The opposite of good

**The Ugly** – Your company’s name on the front page of the business section
Purpose of Subsidiaries

• As businesses grow, it is essential to establish subsidiaries to accomplish a variety of corporate goals:
  – Ring-fencing assets and liabilities
  – Conducting specific transactions
  – Facilitating tax planning and creating tax efficiencies
  – Establishing local presence
  – Satisfying legal or regulatory requirements
  – Entering a new line of business

• Subsidiaries are necessary but must be managed effectively to add value, be cost effective and mitigate risks.
Subsidiary Governance Framework

- Approach (centralized vs. decentralized)
- Policy
- Implement and communicate
- Monitor, audit, report and review
- Evolving process
Principled Approach

• Entity categorization (type of business, revenue, risk)
• Structural change approval process (who approves new subsidiary or subsidiary lifecycle events)
• Board composition and meeting policy (independent directors, meetings in person or by resolution)
• Director training
• Mandates
• Standard documents
• Gatekeepers
Select Subsidiary Leadership

- Focuses on management of a subsidiary
- Appropriate representation and oversight from head office
- Ensures proper reporting (financial, corporate governance, etc.)
- Facilitates coordination from head office, communication of corporate policies (including tone at the top, etc.)
- Ensures compliance with laws and regulations
- Provides senior executive training and leadership opportunities
Manage Intercompany Arrangements

- Proper understanding of subsidiary structure:
  - Emphasizes the focus on proper approval of intercompany arrangements (e.g., corporate service/administration agreements, tax arrangements, transfer pricing, etc.)
  - Ensures review of support from one affiliate to another (e.g., marketing & sales)
  - Addresses regulatory issues (e.g., tax issues, stock exchange rules, implications for regulated industries, non-profit status, etc.)
Utilize Technology

• Corporate governance as center of excellence
  – Board portals
  – Subsidiary management solutions

• Centralized repository of information

• Cloud-based hosted systems

• Facilitates
  – Crisis events/disaster recovery
  – Privacy
  – Reporting
  – Tracking of directors and officers
  – Document management
  – Reviewing board materials and making decisions
  – Communications with all stakeholders
Review Corporate Structure Periodically

- Ensures ongoing/evolving understanding of company’s business(es)
- Allows for recognition of changing laws and regulations
- Potential to focus business on core activities
- Maximizes focus on areas of need, risk or opportunity
- Assists with regulatory requirements
- Facilitates training and vetting of directors, officers, employees, vendors, etc.
Mitigate Risks with Effective Subsidiary Governance

<table>
<thead>
<tr>
<th>Sample Risk</th>
<th>Mitigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance</td>
<td>Understand applicable laws, legislation and regulation (e.g., data protection, anti-bribery, corruption, “spam” laws)</td>
</tr>
<tr>
<td>Operational and Regulatory</td>
<td>Conduct proper and functional business review</td>
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<tr>
<td>Litigation</td>
<td>Limit exposure</td>
</tr>
<tr>
<td>Reputational</td>
<td>Reduce risk that subsidiary actions can have negative reputational impact on parent/affiliates</td>
</tr>
</tbody>
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Best Practices for Corporate Governance and Subsidiary Management

Key Takeaways
Best Practices

• Purpose of Subsidiaries
  – Advance the goals of the organization
  – Protect assets and limit liability
  – Contain risks within an entity
  – Provide tax planning opportunities
Best Practices

• Subsidiary Governance Framework
  – Reduces number of unnecessary subsidiaries
  – Provides for consistent and disciplined review of structural changes
  – Creates efficiencies and streamlined processes
Best Practices

• Principled Approach to Subsidiary Governance
  – Focuses management’s efforts on key subsidiaries
  – Creates periodic review process and accountability for subsidiaries
  – Provides strategic information to business
Best Practices

• Select Subsidiary Leadership
  – Ensures alignment of head office and subsidiary objectives
  – Increases revenue and cost-control potential
  – Ensures proper reporting and escalation of issues
  – Mitigates risk of piercing corporate veil
  – Takes advantage of leadership and training opportunities for executives
Best Practices

- **Intercompany Arrangements**
  - Maximizes possibility of centers of excellence
  - Encourages proper review of arrangements (including legal, tax, accounting, regulatory, etc.)
  - Creates periodic opportunities to review arrangements
Best Practices

• Technology
  – Reduces manual involvement (fewer errors, improved data integrity)
  – Enables more effective decision-making
  – Minimizes risk of sensitive materials being disseminated inappropriately; better compliance
  – Provides data mining opportunities and better information to stakeholders
Best Practices

• Review of Corporate Structure
  – Encourages focus on core business activities
  – Reduces non-compliance with evolving legislative and regulatory requirements
  – Forces business to understand that structure is integral to maximizing business opportunity
Best Practices

• **Mitigate Risks with Effective Subsidiary Governance**
  
  – Effective subsidiary management reduces penalties, fines, etc., from non-compliance
  
  – Proper monitoring of subsidiary structure reduces compliance, operational, regulatory, litigation and reputational risks
  
  – Enables the subsidiary to be a strategic partner with other functional groups
Questions?