Best Practices for Corporate Governance and Subsidiary Management

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Subsidiary Governance – The Good, the Bad and the Ugly

<u>The Good</u> – *Efficiency, reducing costs, lowering risk*

<u>The Bad</u> – *The opposite of good*

<u>The Ugly</u> – *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

Sample Risk	Mitigation
Compliance	Understand applicable laws, legislation and regulation (e.g., data protection, anti-bribery, corruption, "spam" laws)
Operational and Regulatory	Conduct proper and functional business review
Litigation	Limit exposure
Reputational	Reduce risk that subsidiary actions can have negative reputational impact on parent/affiliates

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?