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Corporate Governance of Subsidiaries: Emerging Risks and Best Practices

Unraveling the Subsidiary Board's Roles and Responsibilities, Interplay With Parent Board, Liability Risks, and More

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Today's faculty features:

Debbie K. Hoffman, Chief Legal Officer, **Digital Risk**, Maitland, Fla.

Paul Marcela, President & Managing Director, **Governance Partners Group**, Alpharetta, Ga.

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GOVERNANCE PARTNERS GROUP

Corporate Governance of Subsidiaries:

Basic Principles and Board Practices

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

DIFFERENT TYPES OF LEGAL ENTITIES

- CORPORATIONS
  - Controlled by well-developed statutes and established case law
  - Shields shareholders from liability if corporate veil is protected
  - Board acts on behalf of shareholders
  - Viewed as separate legal entity for tax purposes

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

DIFFERENT TYPES OF LEGAL ENTITIES

- LIMITED LIABILITY COMPANIES
  - Relatively new form of legal entity
  - Flexible governance structure; can be managed like a corporation or like a partnership
  - Governed by an operating agreement
  - Shields owners/members from personal liability
  - Members or managers control the company

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

DIFFERENT TYPES OF LEGAL ENTITIES

- PARTNERSHIP
  - General partnership – unlimited liability
  - Limited partnership
    - General partner(s) – unlimited liability
    - Limited partner(s) – liability limited to their investment

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

GOVERNING DOCUMENTS FOR DIFFERENT TYPES OF LEGAL ENTITIES

CORPORATION – Articles/Certificates of Incorporation and Bylaws

- Location of offices
- Rules governing meetings of Shareholders and Board of Directors
- Number, election and removal of directors and creation of Board Committees
- Titles and duties of officers

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

GOVERNING DOCUMENTS FOR DIFFERENT TYPES OF LEGAL ENTITIES

- LIMITED LIABILITY COMPANY – Operating Agreement
  - Style of management (member managed or manager managed), meetings, admission of new Members, indemnification)
  - Number, election, removal, resignation, vacancy, powers and authority of managers
  - Officer titles and appointment and removal of officers
- PARTNERSHIP – Partnership Agreement

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

PLACE OF FORMATION

- DELAWARE
  - Corporation statute allows entities to be governed efficiently and contains future restrictions on what an entity can do than do other state corporation statutes
  - Judiciary has reputation for issuing reasonable corporation and limited liability company legal decisions
  - Office of the Secretary of State is relatively responsive and efficient
- OTHER JURISDICTIONS

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

REQUIRED CORPORATE FILINGS

- RESERVATION OF NAME
- ARTICLES OF INCORPORATION (for a corporation)
- ARTICLES/CERTIFICATES OF FORMATION (for a limited liability company)
- CERTIFICATES OF REGISTRATION AS A FOREIGN CORPORATION

INITIAL ORGANIZATIONAL MEETING

- SET NUMBER OF DIRECTORS AND APPOINT INITIAL DIRECTORS AND OFFICERS
- ESTABLISH ANNUAL STOCKHOLDER AND BOARD OF DIRECTORS MEETINGS
- APPROVE BYLAWS
- DESIGNATE AGENT FOR SERVICE OF PROCESS
- REGISTER TO DO BUSINESS AS A FOREIGN CORPORATION
- DOCUMENT INITIAL SHAREHOLDER INVESTMENT AND ISSUE STOCK/OWNERSHIP INTERESTS
- APPROVE STANDING RESOLUTIONS

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

SELECTION OF OFFICERS AND DIRECTORS

CORPORATIONS

- Business and affairs managed by or under the direction of a Board of Directors
- Number of directors and duties and titles of officers specified in the bylaws
- Directors elected by the shareholders at the annual meeting
- Director vacancies can usually be filled by the remaining directors or the shareholders
- Board of Directors can create Board Committees
- Required officers are President, Secretary and Treasurer; one person can hold more than one office
- Officers make operating decisions; Board of Directors makes directional/policy

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

SELECTION OF OFFICERS AND DIRECTORS

LIMITED LIABILITY COMPANIES

- May be Member-managed or manager-managed
- Members may be legal entities
- Each Member has equal voting rights unless the operating agreement allocates voting rights based on capital contributions or other criteria
- Each Member can bind the limited liability company
- Limited liability companies may appoint officers and committees

CORPORATE GOVERNANCE OF SUBSIDIARIES: BASIC PRINCIPLES

DISSOLUTION OF SUBSIDIARIES

- Execute directors consent resolution recommending the dissolution and accepting the resignation of officers
- Provide notice to the stockholder(s) of the dissolution
- Execute stockholders' resolution consenting to the dissolution and accepting the resignation of directors
- Execute a Certificate of Dissolution (for corporations) or a Certificate of Cancellation (for limited liability companies) and file it with the Secretary of State
- Tax Department completes and files final annual franchise tax report
- Withdraw foreign corporation registrations and cancel stock certificates

CORPORATE GOVERNANCE OF SUBSIDIARIES: BOARD PRACTICES

ROLE OF SUBSIDIARY BOARD VS. PARENT BOARD

SOME GENERAL PRINCIPLES

- Good governance includes the management of the structure of all of a company's legal entities
- Companies of all sizes have to comply with applicable corporate governance requirements
- It is important for a parent company to manage the various corporate governance requirements, policies and procedures that are relevant to its subsidiaries
- A company should determine the reasons that each of its subsidiaries exist from managerial, legal and operational perspectives and eliminate those that are not needed

ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

SUBSIDIARY BOARD STRUCTURE

- Parent companies typically implement measures intended to maintain control of their subsidiaries via:
  - The composition of subsidiary Boards of Directors
  - Maintenance of substantial ownership
  - Control of subsidiary business operations

CORPORATE GOVERNANCE OF SUBSIDIARIES: BOARD PRACTICES

THE ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

SUBSIDIARY BOARD STRUCTURE

- Each subsidiary should have an active, engaged and functioning Board of Directors and Officers for the supervision of the subsidiaries' operations instead of having either Boards and Officers that are merely formal and inactive or no Board or Officers at all

- The subsidiary Board of Directors should also oversee the effectiveness of the subsidiary's corporate veil to shield the parent company from subsidiary liabilities

- There should be a robust subsidiary corporate governance framework in place

- The responsibility for administering corporate governance policies, processes and procedures should be with the subsidiary's elected Corporate Secretary

CORPORATE GOVERNANCE OF SUBSIDIARIES: BOARD PRACTICES

THE ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

SUBSIDIARY BOARD STRUCTURE

- The parent company's Chief Governance Officer should implement good corporate governance practices at the subsidiary level
- Directors of subsidiary Boards of Directors have the same fiduciary duties as Directors of the parent company or any other Board of Directors
  - Director Standards of Conduct
    - Standard of care
    - Standard of loyalty
  - Director conflicts of interest

CORPORATE GOVERNANCE OF SUBSIDIARIES: BOARD PRACTICES

THE ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

SUBSIDIARY BOARD STRUCTURE

- The subsidiary Board should:
  - Supervise subsidiary management but not actually manage the day-to-day affairs of the subsidiary
  - Review the subsidiary's strategic plans, assess its business and regulatory risks and review its internal control processes and procedures
  - Be responsible for the stewardship of the subsidiary and act in the best interests of the subsidiary in order to deliver value to its shareholder, the parent corporation

CORPORATE GOVERNANCE OF SUBSIDIARIES: BOARD PRACTICES

THE ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

SUBSIDIARY BOARD STRUCTURE

- It is important for a parent company to establish a corporate group culture that forms the backbone of subsidiary corporate governance

- Officers of each subsidiary should know and understand the parent corporation's guidelines on management, individual conduct and corporate social responsibility

- Boards of both parent and subsidiary corporations should insist that transactions between the parent corporation and its subsidiaries and between subsidiaries should be conducted at arms length and be documented via inter-company agreements

ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

SUBSIDIARY BOARD STRUCTURE

- Joint ventures present unique challenges for the Office of the Chief Governance Officer
    - The joint venture agreement should specify how governance issues will be handled
        - Composition of the Board of Directors
        - Appointment of Corporate Secretary
        - Maintenance of corporate records
        - Designation of Signature Authority
- Directors and officers of joint ventures need to fully understand their duties and responsibilities and significant risks of conflicts of interest

CORPORATE GOVERNANCE OF SUBSIDIARIES: BOARD PRACTICES

ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

SUBSIDIARY BOARD STRUCTURE

- In addition to protection of subsidiary corporate veils, subsidiary Boards of Directors should insist on the observance of subsidiary corporate formalities for purposes of being prepared for:
  - A potential sale of the subsidiary
  - A potential subsidiary financing transaction
  - A potential IPO of the subsidiary
  - Financial statement and audits and reviews and tax audits

CORPORATE GOVERNANCE OF SUBSIDIARIES: BOARD PRACTICES

THE ROLE OF THE SUBSIDIARY BOARD VS. PARENT BOARD

BOARD COMPOSITION

- Depending on the size and complexity of a subsidiary's operations, it is important that subsidiary Directors bring the right skills to the subsidiary's Board to provide effective oversight of subsidiary operations

- Representatives of the parent corporation who are knowledgeable about a particular subsidiary's business and operations are good candidates to be Directors and Officers of that subsidiary

- A subsidiary Board of Directors should not be mirror image of the parent corporation's Board of Directors or Executive Management Team

CORPORATE GOVERNANCE OF SUBSIDIARIES
BASIC PRINCIPLES AND BOARD PRACTICES

CONCLUSION

QUESTIONS & DIALOGUE

Paul Marcela
Governance Partners Group, LLC
paul.marcela@governancepg.com
770-815-4445
www.governancepg.com

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GOVERNANCE PARTNERS GROUP LLC

Corporate Governance of Subsidiaries

Debbie K. Hoffman, Esq

Trends In Subsidiary Corporate Governance

I. Three Models of Corporate Governance

1. Subsidiary is assigned its own supervisory board which manages day to day operations of the subsidiary
   - Usually found in large overseas operations where the parent company or companies
     (if a joint venture) may find it difficult to continuously monitor the day to day activities of the sub
2. Formal BOD at Subsidiary level
   - This model arises from the need to handle legal reporting and compliance requirements or issues based on jurisdiction the subsidiary is located in
   - BOD does not handle much else in terms of subsidiary governance
   - Can be mandated by law
   - Common model of subsidiary governance

I. Three Models of Corporate Governance

3. Subsidiary has no dedicated board – parent governs
    - This model is found in the largest number of entities
    - Default model to keep organizations efficient and lean
    - Attempt to avoid managing the subsidiary via a local subsidiary board unless required to do so by law.
    - Subsidiary management acts as department, rather than discrete entity
    - Interaction between subsidiary and parent company is typically limited to administrative and legal matters
        - The parent company BOD controls and makes all decisions regarding operations of the sub
        - Subsidiary management does not serve as a decision making entity or stand alone subsidiary board, but rather as a conduit of information and enforcement of policies and procedures that are decided by parent company BOD.

II. The Position of the Corporate Secretary

1. The role of Corporate Secretary is also called the “Chief Governance Officer” (CGO)
2. The Corporate Secretary (CS) is evolving into a strategic player
   - Allows for support of the parent company board
   - Also supports corporate governance among subsidiaries
3. CS has become “custodian of governance”
   - responsibility of assisting directors in managing their responsibilities

II. The Position of the Corporate Secretary

4. The role of a CS is to:
   - Assist board members in making sure the enterprise and subsidiaries are properly directed and controlled
   - Distribute rights and responsibilities among different participants in the corporation- from the BOD down to subsidiaries
   - Define rules and procedures for making decisions on corporate affairs
   - Complete regulatory filings associated with the enterprise and each subsidiary
   - Staying current with regulations and local jurisdictional requirements
   - Manage the legal entity lifecycle:
     - Understand the Business need
     - Plan and execute legal entity formation
     - Prepare legal entity documentation
     - Attend to filings and registrations
     - Begin initial organizational activity
     - Attend to ongoing maintenance

II. The Position of the Corporate Secretary

5. The CS must act as a conduit between subsidiary board members and parent board members
    - Example – RBC created Subsidiary governance office (SGO) to manage governance among subsidiaries
    - The SGO officer reports to the Corporate Secretary who in turn reports to Chief Legal Officer of RBC
6. For organizations with a global reach the CS's control can be difficult. Options for enhanced governance include:
    - Creating corporate secretarial hubs for certain geographical regions
    - Hubs would be assigned a regional CS to oversee all functions in their respective region.

III. Subsidiary Boards

- Better Controls

1. More focus is being placed on leader and the composition of subsidiary boards.
2. The following are measures being taken for better controls:
    - Establishing uniform guidelines for board composition and better guidance for directors
        - Implementation of internal support structure can include a director's guide
        - The guide can spell out a directors obligations, risks and indemnification
    - Performing a comprehensive analysis of the company and all its entities
        - This analysis should account for all subsidiaries and whether a subsidiary board is in place.
        - The parent company BOD should be analyzed to determine what best practices and governance frameworks are being used that can translate over to the subsidiaries based on the subsidiaries individual needs

III. Subsidiary Boards

- Better Controls

3. For increased objectivity, it may be advisable to have directors from various business units, such as finance, legal, risk management, compliance, etc.
    - This allows a parent company to construct a sub board that will be able to properly determine risks, cost, and legal implications associated with subsidiaries.
    - There should also be a corporate executive from the parent company to make sure that any concerns and interests of the parent company are taken into consideration.
4. Each board should be assessed according to the size and scope of the subsidiary, its geographical area, regulatory relationship and financial impact of the subsidiary on the parent. The complexity of the subsidiary's operations is also to be considered.

III. Subsidiary Boards

- Better Controls

5. The parent company BOD must supervise the leaders and managers of the subsidiary, but not replace them. The parent company BOD should play more of an advisory role, rather than full on decision maker.
6. The Board owes a duty to act in the best interest of the subsidiary while still taking into account the interests of the parent.
   - If the subsidiary is wholly owned, there has to be resemblance between the parent's strategic direction and that of the subsidiary
7. Directors of subsidiaries are being tasked with the same fiduciary responsibilities as parent company directors.

III. Subsidiary Boards

- Better Controls

8. Governance models are stressing management accountability and limits on authority
   - Example: could a decision be made by the subsidiary or does it need to reviewed by Parent company BOD
9. An outside director risks impeding initiatives and slowing the business process if they are not familiar with the inner workings of the company.
10. The Board owes a duty to act in its best interest with due regard for the interests of the parent.
    - If the subsidiary is wholly owned, there has to be resemblance between the parent's strategic direction and that of the subsidiary

IV. Subsidiary Boards: Increased Focus

- Director Accountability and Responsibility

1. To offer effective oversight, Directors need to follow certain standards of conduct in which they:
   - Avoid harm to the subsidiary, affiliate or joint venture
   - Promote the good of the subsidiary, affiliate, joint venture and their shareholders or members
   - Exercise reasonable care in doing so
2. Two identifiable Standards of care owed by Directors:
   - A director must inform him or herself prior to making a business decision with all material information reasonably available
   - A director may rely on corporate records, advice of counsel, management representations, accountant reports and the like
3. Standard of loyalty – A director must act in good faith and in a manner the director reasonably believes to be in the best interests of the company and its shareholders

V. Adoption of Governance Operating Models

- Consisting of:

1. Organizing operational, financial, risk management and reporting processes so that the parent board receives information to effect good governance and management
2. Creating the level of roles, responsibilities, reporting lines, and communications to bridge the gap between the governance framework and day to day operations of the subsidiaries
3. A governance model to help subsidiary directors answer questions such as, “Why are we doing this?” “Is this okay?” “Whose call is this?” and “Who do we need to tell about this?” and to know when to ask such questions
4. Means to sustain governance by creating a feedback loop in which the board and management can identify and respond to new business, operational, competitive, and regulatory needs

VI. Transparency of Subsidiary

1. With governance models and creations of governance boards for subsidiaries, it is easier to keep track of governance policies and procedures
2. Such models also allow for transparency with regulators, parent companies and stockholders
3. Also applies to risk management responsibility
   - More parent companies are realizing the importance of transparency with regards to their dealing with their subsidiaries
   - Being transparent and cooperative with regulators will generally help in bringing lighter fines and penalties should they be imposed on a subsidiary
   - Thus, the regulatory risk associated with subsidiaries can be mitigated

VII. Adoption of Technology

1. Parent companies are using software programs to help manage subsidiary information.
   - Such programs allow for a safe and secure way to store information regarding subsidiaries and governance.
   - The programs further provide a reliable method for maintaining, tracking, and accessing controls and administrative efficiencies by way of a central database of corporate records.
   - Technology is becoming a significant component of a total governance model, helping in not only maintaining a governance model but also in creating it.
   - The technology allows directors to access information to make informed decisions – even while spread out geographically

VII. Adoption of Technology

2. The implementation of technology is critical to the effectiveness and reliability of the subsidiary governance system:
   - Can provide regulators, management and directors with accurate and timely information about a subsidiary, policy and procedure manuals, subsidiary board contact information, etc.
   - Allows the chief governance officer to ensure consistency in the application of policies and procedures.
   - There are technology companies that produce cloud-based software which can display this information and is accessible 24/7 anywhere there is internet access.
3. Utilizing technology allows a subsidiary to reduce the potential liability of risk.
   - Information and data can be stored on secured servers and quickly accessible.
   - With the quick accessibility of subsidiary information most issues that arise from the subsidiary can be assessed quickly.

Corporate Governance of Subsidiaries: Emerging Risks and Best Practices

Debbie K. Hoffman, Esq

Risk Management Responsibilities

I. Integrating Risk Mitigation into Board Framework

1. Organizations often do not understand the risks attached to subsidiaries until something goes wrong
2. Companies that have effective governance frameworks have a “risk intelligent culture” that have some of the following characteristics:
   - Ethics among directors are aligned with the organizations risk strategies
   - Risk is considered in all activities
   - Continued improvement in dealing with risks
   - Transparency in communications and regulatory disclosures
   - Responsibility and accountability among directors and employees
3. Some risks associated with subsidiaries can arise from:
   - Regulatory violations
   - Fines/penalties associated with violations
   - Stringent settlement requirements
   - Financial aspects
   - Cost of keeping/dissolving subsidiary (overhead)

II. Ineffective Dealing of Risks & Subsidiary Governance

1. There is a misconception that bringing in an outside, unbiased director will help in reducing risk
   - A parent company should utilize directors and individuals from within the company that know
     the industry and company strategies
2. Reasons companies fail to develop subsidiary governance:
   A. Myth: If a share price cannot drop, no need for corporate governance:
      - Some companies focus on shareholder value and funnel resources to parent company while neglecting the subsidiaries
   B. Some companies maintain the idea that if it is not illegal it is not wrong
   C. Subsidiary management takes care of subsidiary governance
      - Most directors state that managing subsidiaries means trusting the local management

III. Effectively Managing Risks

1. To effectively manage risk, companies need to align legal governance structure and compliance of the parent company with that of the subsidiary business
   - Day to day business operations can continue while simultaneously enabling effective and legal decision making
2. There is increased interest from shareholders, regulators and the public on how legal entity governance risks are managed
   - Directors need to understand duties and be held responsible for the actions of their companies
   - Parent companies should provide sufficient guidance or support for subsidiary directors around their duties and liabilities when appointed to multiple sub boards in multiple jurisdictions
3. To deal with potential legal and regulatory liabilities, the corporate secretary managing subsidiaries must be familiar with:
   - What businesses and assets does the subsidiary own and where are they located?
   - Which governmental regulators are relevant to the subsidiary and what activities of the subsidiary are they regulating?
   - What are the reporting and compliance obligations of the subsidiary?

Minimizing Liability Risks

I. Hundreds & Thousands of Subsidiaries

1. It is not uncommon for a parent company to have hundreds or thousands of subsidiaries to minimize risk
2. Companies are utilizing governance frameworks to minimize liability faced with having so many subsidiaries
3. Creation of a subsidiary committee is a must
   - This committee should be chaired by the subsidiary governance officer and consists of professionals from the multi-disciplinary functions throughout the company
   - This helps to ensure consistency and coordination in implementing best practices and policies relating to subsidiary governance
4. A framework plays an important role in affecting active integration of subsidiaries added through strategic acquisitions and alliances

I. Hundreds & Thousands of Subsidiaries

5. The framework creates a "Corporate Gatekeeper" in charge of managing the creation and dissolutions of subsidiaries
   - This helps in minimizing the financial risk faced by parent companies
6. Example of successful framework: RBC's SGO evaluates and manages subsidiary life cycles. The framework includes processes to:
   - Identify subsidiaries
   - Terminate/Create subsidiaries
   - Analyze risk to parent company of an existing subsidiary, or from creating a new subsidiary
   - Analyze cost to parent company for keeping an inactive subsidiary

I. Hundreds & Thousands of Subsidiaries

- International Subsidiary Management

1. Non-U.S. subsidiary corporate governance compliance is often managed by third parties devoted to assisting clients with compliance with jurisdictional corporate governance requirements
2. The basic principles related to U.S. subsidiary corporate governance apply to non-U.S. subsidiaries. However:
   - There are typically local law limitations that affect the governance of non-U.S. subsidiaries
   - Often, directors and officers need to be residents of the particular country in which the subsidiary is formed and there may be other requirements

I. Hundreds & Thousands of Subsidiaries

- International Subsidiary Management

3. Determine whether there are any residency requirements for directors and officer appointments.
   - If there are, there are potentially significant immigration, tax, liability and employment considerations
4. When making internal director and officer appointments, understand the in-country requirements and make sure that the appointees have sufficient knowledge and capability to fulfill the local regulatory requirements

II. Protecting the Corporate Veil

1. The separate corporate existence of a subsidiary will under most circumstances serve as a corporate veil or shield to protect the shareholder (the parent corporation) from being responsible for the debts or other liabilities of the subsidiary
2. Courts generally respect the separate legal existence of separate legal entities
3. In some circumstances, a court may “pierce the corporate veil” of the subsidiary and disregard the legal separateness between a parent corporation and a subsidiary corporation and hold a parent corporation liable for the debts or other liabilities of its subsidiary
4. In general, courts are reluctant to disregard the corporate veil unless extraordinary circumstances exist

II. Protecting the Corporate Veil

5. Some factors that a court will typically consider when deciding whether to pierce a subsidiary's corporate veil are whether:
    - The subsidiary was adequately capitalized for the subsidiary's business purposes
    - The subsidiary was solvent
    - The subsidiary paid dividends to the parent company
    - The subsidiary kept proper corporate records
    - Directors and Officers of the subsidiary functioned properly
    - Other corporate formalities were observed at the subsidiary level
    - The parent corporation siphoned corporate funds from the subsidiary
    - The subsidiary functioned as a façade for the parent corporation
    - There were overlapping directors and officers at the parent and subsidiary levels
    - The subsidiary corporation and the parent corporation shared the same address (without an intercompany lease being in place)

II. Protecting the Corporate Veil

- Mitigating the Risk of Piercing the Veil

6. There are many practical methods to mitigate or manage the risk that a subsidiary corporate veil might be pierced, some include:
    - The parent corporation should treat the subsidiary as a separate legal entity with separate Directors, Officers, facilities and operations
    - The subsidiary should observe all corporate formalities such as:
        - The subsidiary should be formed by filing Articles of Incorporation with the Secretary of State of the state in which the subsidiary is intended to be incorporated
        - The “incorporators” of the subsidiary should elect the subsidiary’s initial Directors and adopt bylaws/operating agreement for the subsidiary

II. Protecting the Corporate Veil

- Mitigating the Risk of Piercing the Veil

7. Create strong internal processes
    - Develop standard policies, practices and procedures for subsidiary governance
    - Develop a process to make sure that all constituencies (legal, tax, treasury, accounting and operations) are aware of and have signed off on actions to be taken
    - Communicate, coordinate and collaborate with your company's finance, tax and business development teams regarding subsidiary management issues
    - Do not backdate documents such as minutes, written consents, powers of attorney, etc.
    - Calendar due dates for annual meetings, annual report filings, etc.

II. Protecting the Corporate Veil

- Mitigating the Risk of Piercing the Veil

8. Periodically review your corporate structure
   - Review dormant entities to determine if they can be eliminated (either through dissolution or liquidation).
   - Keep up to date on changes in law that may affect your structure (changes in tax treaties that may affect offshore holding company structures)
   - Be sure that management understands the costs associated with adding new legal entities to your corporate structure.
9. Be aware of differences between jurisdictions

III. Collaboration to Ensure Proper Oversight

1. Representatives from various departments including finance, risk management, compliance, tax, law, etc. should meet to collaborate and ensure proper oversight of governance
   - The frequency of these meetings should reflect the amount of time, expense, and risk incurred by the parent company in creating and maintaining subsidiaries
   - The Governance framework should be effective for a subsidiary not only during normal day-to-day operations, but also in times of crisis. Companies that have governance plans/frameworks that work for the board during crisis will help minimize any risk experienced from that crisis

III. Collaboration to Ensure Proper Oversight

- With Corporate Governance Providers

2. If a company utilizes them, it is important to know and review your corporate governance service providers
   - Maintain a database of service providers – this is especially important for non-U.S. legal entities where you will need assistance from service providers for most in-country activities
   - Be reasonable about what you can do in-house and what needs to handled by outside corporate governance service providers (for example, the formation of non-U.S. subsidiaries)
   - Look for cost savings through consolidation of service providers

IV. Transparency

1. Transparency among the governance framework and the board of a subsidiary help to mitigate any risk incurred should regulatory agencies become involved with those subsidiaries and/or the parent company
2. Risks generally associated with investigations from those regulatory agencies that can be mitigated include fines and less serious conditions of settlement should a company be found in violations of any acts or regulations
3. Transparency also helps to save face with the consumer. When a company is transparent with their customers this can help to dispel the notion that large corporations are
up to "no good."

V. Technology

1. As discussed earlier, adoption of technology can make the process of managing and identifying risks associated with subsidiaries much less burdensome on parent corporations
2. Information should be structured to help the director easily identify information regarding policies, procedures, and best practices of the sub and be simple enough to search through and easily locate when needed
3. Utilizing technology which provides a “Board Portal” can help to better govern subsidiaries
   - Helps to manage board communications
   - Should provide organizations with the tools they need to complete the mandatory tasks to meet corporate governance requirements
   - The benefits and reduced risks of employing a board portal for board communications are extensive

V. Technology

1. Technology should become the anchor of the governance framework.
    - Accurately oversee the activities of its subsidiaries
2. Goals of implementing the use of technology in subsidiary governance:
    - Create a central database for all corporate records
    - Utilize software to create a web-based intranet to allow company wide access to governance framework policy and procedures.
3. Critical elements of effective and reliable subsidiary governance system:
    - Provide regulators, management and directors with accurate timely information
    - Allow chief governance officer to ensure consistency in the application of policies and procedures

Thank you,

Debbie K. Hoffman, Esq
dkhny@yahoo.com