



Outsourcing the Role of the Corporate Secretary for Subsidiaries of Parent Corporations

The Issues Subsidiaries Face

In many cases, while Corporate Secretaries of parent corporations devote necessary resources to meeting a parent company's corporate governance requirements, there are not sufficient staff resources to adequately attend to the corporate governance needs of the company's subsidiaries. This situation can result in exposure to the parent company for the liabilities of its subsidiaries if lawsuit plaintiffs can "pierce the corporate veils" of the subsidiaries to access the parent company's assets. Properly attending to subsidiary corporate governance requirements dramatically increases the workload of the Corporate Secretary whose job it is to work with the board and executive management to implement and continuously manage subsidiary corporate governance practices. Many companies don't have sufficient internal staff resources in terms of background, experience or time to adequately perform this enhanced Corporate Secretary role in a thorough manner. This can prove problematic in companies where the Corporate Secretary role is typically assigned to other corporate officers whose time is consumed by performing their own substantial day-to-day executive responsibilities and who may not have the bandwidth to effectively perform subsidiary Corporate Secretary responsibilities.

The Solution

A cost-effective and value-added solution is to outsource all or a part of the Corporate Secretary's responsibilities to a managed corporate governance services firm. For many years, this type of firm has provided corporate governance support services for many companies in the U.K. and many British Commonwealth countries. Similar firms are emerging in the U.S., and companies are recognizing the value of externally staffing the Corporate Secretary role by retaining managed corporate governance services firms that have the resources and relationships necessary to fully deliver the services of an expert Corporate Secretary. These firms assign experienced corporate governance professionals to their clients to fortify the Corporate Secretary role and to allow company executives to perform their primary duties without distraction and without increasing staff. An external Corporate Secretary helps companies to implement good corporate governance practices advocated by the Society for Corporate Governance, the National Association of Corporate Directors and the Private Directors Association. Their services can be retained on a full-time, part-time or special project basis.

Managed corporate governance services firms typically serve mid-market public and private companies, private equity portfolio companies, venture capital backed emerging growth companies, pre-IPO private companies, subsidiaries of other companies and nonprofit corporations. For parent corporations with multiple subsidiaries, the use of an external corporate secretary allows for uniformity and consistency in corporate governance practices at all of a corporation's subsidiaries. Their professionals collaborate with a company's elected Corporate Secretary to provide the following services:

BOARD AND COMMITTEE SUPPORT

- Manage and attend shareholder, board and committee meetings
- Prepare meeting minutes
- Present resolutions to the board for approval
- Implement board and committee charters and foundational documents
- Identify and implement best corporate governance practices
- Maintain key corporate governance documents and records

BOARD MEETING PREPARATION

- Assist management to plan board and committee meetings
- Help to determine meeting objectives
- Identify matters for board discussion and decision-making
- Develop, distribute and present board and committee materials

SUBSIDIARY MANAGEMENT

- Serve as Corporate Secretary for subsidiaries
- Ensure global legal entity management
- Facilitate periodic subsidiary board meetings
- Maintain subsidiary corporate minute books



SERVICE PARTNER MANAGEMENT

- Coordinate the retention of best-in-class third party corporate governance service vendors
- Manage board portal providers, registered agents, transfer agents and subsidiary management firms and other vendors

GOVERNANCE CONSULTING

- Perform audits of existing corporate governance processes
- Develop recommendations for improvement
- Facilitate corporate governance process development and improvement
- Manage implementation of board and committee evaluations
- Develop and implement delegation of authority and resolution approval processes



Importance of a Robust Office of the Corporate Secretary

Strong governance practices help prepare corporations for successful transactions while protecting them from legal action. Corporate boards have developed an appreciation for the importance of sound governance practices in connection with corporate transactions such as public or private debt transactions, initial public offerings and divestiture and other exit strategy transactions. The outcome of governance due diligence review processes can affect a company's value for purposes of these transactions, and transaction closings require current, accurate corporate governance documentation. Managed corporate governance services firms can help companies have that documentation available when needed.

Also, documenting corporate formalities and board discussions and decisions helps a company to defend itself against lawsuits designed to "pierce the corporate veil" to gain access to shareholder assets and shareholder derivative lawsuits claiming breach of fiduciary duties by directors and officers. Managed corporate governance services firms help companies to ensure that there is adequate and appropriate documentation of board decision-making so that it can be available when needed to defend against these types of lawsuits.

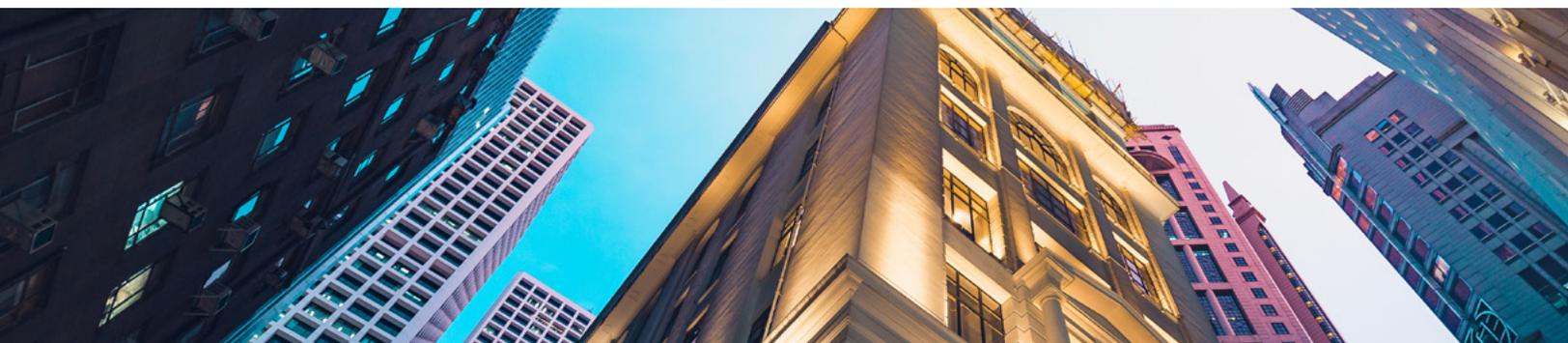
Summary

Retaining an external Corporate Secretary allows companies to:

- Improve the robustness of corporate governance capabilities without increasing staff
- Allow company officers to focus on their primary executive responsibilities while ensuring that the Corporate Secretary function is fully performed by a seasoned professional
- Access additional resources and relationships to complete a myriad of corporate governance related projects and initiatives
- Ensure that corporate formalities are maintained and board discussions and decisions are appropriately documented
- Prepare for successful corporate transactions

Conclusion

Whether a company chooses internal or external resources, it is critical that the company's Corporate Secretary performs his or her obligations to the board and its committees in a thorough manner to ensure proper corporate governance in the best interests of the company and its shareholders.



About the Author

PAUL MARCELA served as General Counsel and Secretary of two Cerberus Capital Management portfolio companies. Previously, he performed as Associate General Counsel and Assistant Secretary of Dow Corning Corporation. Paul is now President of Governance Partners Group, a professional services firm that is exclusively devoted to providing external Corporate Secretary services for companies that seek to outsource all or a portion of their Corporate Secretary functions.

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