# Management and Board of Foreign Subsidiaries

The Board of Directors is a crucial instrument for the development and implementation of long-term strategies, for the controlling and support of management, and for the communication between the various stakeholders, the general public and the public interest agencies.

A well-structured and active board is not only indispensable for a successful business, but is also an assurance for local and international partners (banks, suppliers, clients) and for current and future management personnel.

The simplest form of management is the partnership. In the Anglo-American common-law and European civil law nations, if not a limited partner, every partner is entitled to take part in the firm's business. If a partnership agreement provides that ordinary partners shall not participate in the management of the firm, he/she is a dormant partner, however still personally liable for all debts and obligations incurred by the managing partners.

The management structure of companies and corporations is more complex. English, Belgian, Italian, and Scandinavian law provide for the simplest structure, by which the shareholders periodically elect a board of directors who collectively manage the company's affairs and reach decisions by majority vote. They also have the right to delegate any of their powers, or even the whole management of the company's business, to one or more of their members. It is common under such a structure to appoint a general manager "directeur general, direttore generale," usually with one or more assistant managing directors, and for the board of directors to authorize them to conduct the company's business, subject only to the general supervision of the board and its individual approval of particular important actions.

The U.S. system is based on this basic pattern. The laws of most states require the board of directors, elected periodically by the shareholders, to appoint executive officers (president, vice president, treasurer, and secretary).

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The latter two have no management power and fulfill administrative functions; but the president (and in his/her absence the vice presidents) have by law and/or by delegation from the board the same full powers of day-by-day management as an English Managing Director.

While the management of private companies under French and German law is assigned to one or more managers "gerants, Geschäftsführer" who have powers like managing directors, the structure of public companies under these systems are probably the most complex ones.

Under German law, a two-tier structure composed of a supervisory committee "Aufsichtsrat," elected periodically by the shareholders and the employees of the company (in a certain proportion), and the management board "Vorstand," comprising of one or more managers appointed by the supervisory committee, but not from its own members. The affairs of the company are managed by the management board, subject to the supervision of the supervisory committee, to which it must report periodically and which can require information or explanation at any time, but is forbidden to undertake the management of the company itself. By law, it is the supervisory committee that sets compensation of the managers and has the power to dismiss them. The company's constitution may also require individual approval by the supervisory committee for particular transactions (such as borrowing or establishing branches overseas).

Newer corporate governance structures under European Union rules are slowly taking roots, and some internationally active large European public corporations have or are considering adopting them. However, most German, Austrian, and Swiss companies are still under the structure of a limited liability corporation [GmbH] and its variations, as well as the share-based public corporation [AG].

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In its simplest comparison, the U.S. corporation is management by the board of directors, who assigns day-by-day management responsibilities to one or more of its leading members, while the German structure corporation is managed by one or more managers, elected and supervised by a separate non-managing supervisory committee (under U.S. consideration a committee composed fully of ‘outside directors’, versus a board more often than not selected and staffed by management insiders). In consequence, the common U.S. board of directors is more of an ‘advisory’ board to a management with controlling powers, while management under the German structure is an executive group selected by the shareholder appointed ‘supervisory’ committee.

For managers of European subsidiaries in the U.S., used to the American structure, the difference is often difficult to understand; and it is a daunting task to accommodate the different expectations and its impact on daily decision-making and reporting.

As a result for these subsidiaries the Board of Directors is the center of communications, interactions and control for the parent company.

Recent developments in markets across the continents have emphasized the need for a strong, well organized, and active Board of Directors which includes representatives of the parent company, the local subsidiary, as well as independent outside directors with experience in both cultural environments.

The demand on members of the Board of Directors of international subsidiaries is unique: to balance the global requirements of an international corporation headquartered overseas with the daily needs of the local operations of the subsidiary.

JRB&Company has the hands-on experience and a direct understanding of the particular requirements presented to these Directors from its own long work as members of the Board of Directors for such subsidiaries. This allows us to identify and select the best suited professionals for the Board of Directors of European subsidiaries in North and South America.

Our Board of Directors service group provides competent and confidential recruiting of outside directors.

JRB&Company’s principals serve as members of the Board of Directors for a number of international subsidiaries ■

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