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CORPORATE RISK
CORPORATE LEGAL AUDIT: LEGAL BLINDAGE TOOL AND GOOD CORPORATE MANAGEMENT

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The global village is becoming smaller, along with this, it continues to arise the need of establishing clear, efficient game rules that must be complied. Speaking today of corporate governability implies more than a series of ideas and ethereal pretended Rights. Today an entity pretending to exist, expand and evolution cannot achieve this goal if does not pay due attention to its main actors who intervene with and relate to that living being that is the company: Its shareholders, creditors, employees, directors, clients, vendors, the State.

In today's world, marked by global financial crisis, millionaire frauds and weaken strong economies, there is no space for an entity that does not know how to play the game, protect itself, foresee and make corrections, to subsist. An adequate blindage through knowledge and preventive actions on those legal aspects that govern the economic activities in its exploitation ambit is precisely the quid of the legal audit.

We are not referring to complicate matters and create internal company bureaucracy, we are referring to create or improve the existing procedures, controls and mechanisms to mitigate the business risks associated to all business activities, moreover in markets such as ours, in order to make them more efficient, foresighted and protectors of the corporate economic unit.

Legal Audit, the concept.

Consists in the collection, gathering and evaluation of evidence on information on an entity to determine and report the level of compliance between the information and the established criteria, or to be established as result of same. It is a systematic process to obtain and evaluate, in an objective manner, the evidences related to statements on business activities and other issues having a direct relation with the activities performed in a public or private entity. The purpose of the process consists in determining the level of accuracy of the informative contents with the originating evidences, as well as to determine if said statements have been elaborated following those principles established on the matter. It must be based on a set of logic principles and organized by whoever performs the audit according to clear and predetermined parameters. The legal audit plays a

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fundamental roll in the management of entities as it implies control of the resources available to same¹

The active roll of the attorney in the corporate practice is of great importance for the implementation of the legal audit, from the realm of a real juridical evaluation of the entity. It is an added value to the traditional corporate legal services, which must seek preventive diagnosis of the legal structure of an entity from a general view, in order to be able to foresee any irregularity or to suggest improvements to aggregate value, to concentrate powers and to ensure control of the corporate vehicle which governs. In the roll of the lawyer it is pursued to facilitate the encounter between the juridical normative and the reality of the entity, consequently, in daily changing situations, the legal audit is considered to be a periodical exercise², and not exclusive, in order to be able to guarantee the full compliance by the entity to the juridical situation as the entity evolves and according to the evolution of the legal normative. It shall be vested of professional responsibility, confidentiality and compliance to the most recent and en force applicable regulations.³

How does it work?

It is a detailed insight evaluation of the entity in different axes:

-Global Evaluation: It starts with the identification of the entity profile and of the specific legal ambit applicable to the area or branch of business exploited by the entity. In a specific manner that may be necessary to establish that there is concordance amongst the stated objectives, the existing formal organization and the activities that in practice are performed by the entity.

-Detailed Analysis: To know its members, partners, shareholders, directors, business management and control scheme. To evaluate and understand if the formal structure of the entity has a real performance or if is far from that goal.

-Corporate Evaluation: Hand in hand with the applicable legislation on mercantile entities, whether local or foreign, to ensure the due compliance, corporate management and standing of the company, as well as the healthful relationship between shareholders, directors and managers.

-Fiscal assessment and compliance: It is convenient to perform a careful analysis of the fiscal legislation applicable to the company which is being audited, with the assistance and support of auditors and accountants.

¹ Whittington, o Ray, CIA, CMA, CPA, y Pany, Kurt, CFE, CPA. "Auditoría un Enfoque Integral". McGrawHill, 12ª, edición, P. 4.

² Heredia Bonetti. Luís. "Derecho, Economía y Empresa". Santo Domingo, 1990. P. 136.

³ Silvestre, Maricell. La Auditoría legal mecanismo de soporte. Santo Domingo. 2005. P. 39.

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-Patrimony: Assessments of the legal status of the corporate patrimony, assessment of the personal and real estate properties, their ownership rights and liens, if any.

-Contracts: To assess that the company is fully compliant with its contractual obligations and that same are in force.

-Labor legislation and social security: It shall be determined in light of the legislation the level of compliance to the applicable regulations. This implies the review of work contract, working hours, minimum salary, vacation, staff status, payroll, collective agreement, unions, if any, compliance to social security and contributions, safety manuals, as well as the due compliance to the terms imposed by the pertaining governmental agencies.

-Safety: The legal audit may inclusive be extended to matters related to work safety and sanitation, including the verification of the validity and enforcement of insurance coverage against risk, fire, and others, as well as the compliance to the existing normative regulation regarding physical platform and contingency plans in case of emergencies.

-Specific Regulations: For those entities in special regulated fields, first, it is of vital importance to become familiar with the applicable legislation and second, faithfully comply with same. It is when most probably failures might be timely detected and to anticipate corrective actions in order to guarantee full legal compliance.

-Judicial Proceedings: To become aware of any open judicial proceedings by the company or if it may be exposed to same in a short or medium time term, as well as the adequate assessment of each existing proceeding, , meeting deadlines, use of open recourses and probabilities of success.

-Review of Credit and Collections: The analysis of the account receivables statement and collection management as mechanism to guarantee the economic health and cash flow of the company.

-Assessment or Final Report: All legal audit must conclude with a kind of general standing balance of the company from the point of view of its legal matters and providing specific recommendations related to the matters requiring greater attention, as well as any prevention or modification to the manner in which is performed by the company, as to ensure the smooth management of the company.

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Benefits of the legal audit.

In summary, it deals with having information to use it in favor and behalf of the company. It seeks to safe keep the economical and patrimonial assets of the company, as well as to guarantee the use of the legal recourses available to the mercantile entity in question.

In some occasions is a preventive measure, and in other occasions is a corrective measure, seeking that the legal audit serves as basis to the design and execution of an adequate corporate management, allowing:

- The maximization of the resources of the company and its performance;
- The growth and profitability of the company;
- To guarantee the internal legal security of the company through clear accounts;
- It allows designing or improving corporate practices;
- It allows evaluating or establishing administrative and financial control mechanisms;
- Recognize risks, mitigate and eliminate them;
- To guarantee the actual performance and to prepare the company for future succession.

The legal audit acts as guarantor of the transparency of the company and allows achieving a fully corporative management.

Legal Audit in Corporate Matters

Our actual General Law of Mercantile Entities and Individual Companies of Limited Liability No. 479-08, and its amendments, provide a new range of novel opportunities that were not available in the dispositions of our Commerce Code that governed the mercantile entities.

In such way we verify the existence of mandatory policies and provisions to be applied, according to the corporate type or in general, for the mercantile entities. Thus, the law tells us about the:

- Requirements for the valid constitution and existence of a corporate entity. (Art. 13 a & ssq);
- Rules to exercise the administration and representation (Art. 25 & ssq.);
- Recording of the operations and their supporting documents, financial statements and other records (Art. 31 & ssq.);

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- Lifting of the corporate veil in the event of frauds (Art. 12);
- Right of financial information of the shareholders and safekeeping of minor shareholders (Art. 36 & ssq.);
- Compulsory and content of the annual management reports and quality of the financial information. (art. 39 & ssq.).

Conclusión.

The corporate legal audit represents the ideal option to try to shield through legal mechanisms the faithful legal compliance of the company, ensure its corporate governance and to maximize its business performance.

This summary solely contains general information on the items cited, therefore, this document does not constitute a legal opinion. It is recommended to obtain specific legal counseling for each particular matter.

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