



## Public Company and Corporate Governance

Sound corporate governance is an essential pillar of any successful business. Our corporate governance team is a trusted advisor to leading and emerging companies and government entities on corporate governance matters, providing strategic advice and guidance.

We offer comprehensive counsel and representation to public and private companies concerning the regulatory landscape and best practice for corporate governance matters. We assist clients with implementing new governance statutes, rules and regulations; auditing compliance; evaluating disclosure issues; investigating allegations of wrongdoing; and responding to civil, administrative or criminal actions. We also provide board and management continuing education programs.

We have significant experience in advising senior management, boards of directors and special committees of public companies of all sizes on governance matters. Others have experience in areas that directly concern governance issues, such as government controversies (internal investigations and regulatory enforcement proceedings), white collar criminal defence, government affairs, securities litigation and executive compensation.

We also have considerable experience in advising shareholders of listed and unlisted companies on best practice in relation to corporate governance issues. We advise clients on:

- Specifying the distribution of rights and responsibilities for stakeholders, board members, committees and managers
- Specifying the rules and establishing procedures for making decisions among stakeholders, board members, committees, managers and auditors, and
- Implementing structures for corporate governance so that the shareholder objectives can be met.

From an institutional investor perspective, we also recognize and advise investors on the importance of governance as a mechanism for monitoring the actions, policies and decisions of corporations in order to achieve an alignment of interests among stakeholders.

### CAPABILITES

Our corporate governance services cover:

- Board structure and performance monitoring
- Conflicts of interest

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#### Sander Wiggers

- Compliance best practice, auditing and training
- Design and review of corporate governance programs
- Review of corporate governance structures within the compliance framework
- Disclosure of price-sensitive market information
- Directors' and Officers' duties
- Protection of company funds from non-arm's length, related party dealings
- Remuneration and indemnification of Directors
- Reporting obligations
- Risk management and minimisation

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For shareholders:

- Obligations of shareholders as owners
- Shareholder rights to engage with management
- Shareholder activism

## EXPERIENCE

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We recently advised a UK bank subsidiary of a non-EU parent company who required advice in the context of a larger overseas restructuring, which gave the FSA ("Financial Services Authority") concerns about the protection of the UK bank's assets. As a result of these concerns, the FSA imposed an own-initiative variation of permission ("OIVOP") on the UK bank which prohibited it from transferring assets to the parent or affiliated group companies without the permission of the FSA.

DLA Piper was particularly suitable for this instruction because of our strong reputation for understanding banking businesses and financial services clients and of how the regulators approach their supervisory powers in the context of stressed situations.

The firm provided advice in relation to:

- the UK bank's obligations to the FSA;
- the UK bank's obligations to the to its overseas parent; and
- the UK bank's board members on their obligations as board directors to:
  - the FSA under UK financial services regulatory law and under the OIVOP;
  - to the UK bank, as directors subject to English company law; and
  - to the parent company, as directors of a subsidiary of the parent.

This involved advising the client on the implications of the OIVOP for the client's freedom of action at board level and of their obligations under FSA senior management requirements and UK company law. In doing so, advice was provided in relation to aspects of the FSA regulatory environment, the UK company law framework and the company law framework of the non EU parent company.

We also participated in meetings between the client and the FSA (at Head of Department level) in the context of the imposition of the OIVOP, which required an enhanced understanding of SYSC (Senior Management Arrangements, Systems and Controls), SUP (Supervision Manual), APER (Code of Practice for Approved Persons) and the FSA Principles for Businesses as well as the FSA's supervisory tools and enforcement options.

In addition, we advised the client with regard to their interactions with their UK clearing bank and the implications of the OIVOP for their clearing and for their day to day transactions. We also assisted the client's board in managing its relationship with its parent in order to explain the implications of the OIVOP for normal parent/subsidiary relationships and governance.

## INSIGHTS

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### Publications

## **Brazil: ESG and the capital markets**

13 October 2021

The capital markets can play an important role in enhancing companies' ESG actions.

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## **The global landscape of data privacy: Important points about new laws in three key jurisdictions**

21 September 2021

### **PRACTICAL COMPLIANCE**

New data privacy requirements in three important jurisdictions – the European Union, China, and Brazil – with an emphasis on action steps for compliance officers.

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## **Blockchain and Digital Assets News and Trends**

20 May 2021

### **BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS**

SEC issues Staff Statement on investments in the bitcoin futures market, plus latest legal developments governing the use and acceptance of blockchain technology, smart contracts and digital assets.

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## **Blockchain and Digital Assets News and Trends**

23 April 2021

### **BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS**

SEC revises token safe harbor proposal; UK updates tax treatment of cryptoassets.

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## **SEC Commissioner Peirce issues revised token safe harbor proposal**

23 April 2021

The proposed rule provides two paths to an exit that would allow the company to keep operating without registration of the tokens.

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## **Credibly incorporating the UN Sustainable Development Goals into bond issues**

9 April 2021

On 1 April 2021, the SDG Impact initiative published the final version of its SDG Impact Standards for Bond Issuers, part of a body of work intended to improve use of the UN Sustainable Development Goals (SDGs) across private equity, bond issues and enterprises, including to combat perceptions of “rainbow washing” or “impact washing.”

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## **SEC interim final amendments signal stricter regulation on Chinese and other emerging market companies**

29 March 2021

Under the new requirements, certain companies must establish that they are not owned or controlled by a foreign government entity and must disclose any foreign government influence.

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## Blockchain and Digital Assets News and Trends

22 March 2021

### [BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)

Wyoming moves to clarify legal status of DAOs; court dismisses class action against a cryptocurrency exchange.

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## Blockchain and Digital Assets News and Trends

25 February 2021

### [BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)

Canada's AML regime amendments: is your interactive entertainment service or platform operating a "money service business"?

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## Climate change disclosures – under SEC scrutiny

25 February 2021

This new directive does not come as a surprise.

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## Climate change convergence? The potential for global collaboration following China's momentous announcement

17 December 2020

With the election of Joe Biden, it is widely expected that the US will reengage with the international community in the fight against climate change and in efforts to reduce overall emissions.

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## Climate activism: Status check and opportunities for public companies

14 December 2020

The systemic risk of climate change is being discussed and managed in board rooms around the world.

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## SEC 2021 and beyond: What to expect

7 December 2020

Some likely areas of SEC focus, from both the regulatory and enforcement perspectives, in 2021 and beyond.

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## Blockchain and Digital Assets News and Trends

23 November 2020

### [BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)

IMF issues report on regulatory framework for CBDs and GSCs, SEC invites feedback on application of custody rule to digital assets.

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## Contracting for the climate: The Climate Contract Playbook is a trove of climate clauses

11 November 2020

Contracts have become an essential vehicle for companies seek to mitigate their environmental risks and limit their carbon footprints.

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### **New York Department of Financial Services calls on financial institutions to consider climate change risk**

9 November 2020

Investors increasingly view climate as an area of business risk, and regulators are viewing it as a supervisory risk as well.

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### **Assessing ESG factors in the energy sector**

27 October 2020

#### **[ESG HANDBOOKS AND GUIDES](#)**

A reference tool for energy companies as they discuss and refine their ESG programs.

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### **Blockchain and Digital Assets News and Trends**

21 October 2020

#### **[BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)**

SDNY finds Kin token is a security; unpacking the DOJ's cryptocurrency guidance – plus latest legal, regulatory and case law developments.

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### **Blockchain and Digital Assets News and Trends**

21 August 2020

#### **[BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)**

California appellate court affirms judgment for Coinbase in lawsuit over Bitcoin Gold – plus latest legal, regulatory and case law developments.

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### **US moves forward on enhanced securities regulations focusing on Chinese companies**

17 August 2020

Latest developments in US efforts to address the financial risks posed by emerging market companies.

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### **Blockchain and Digital Assets News and Trends June 2020**

18 June 2020

#### **[BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)**

World Economic Forum announces Presidio Principles as a foundation of blockchain ecosystem design – plus latest legal, regulatory and case law developments.

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### **World Economic Forum announces Presidio Principles as a foundation of blockchain ecosystem design**

18 June 2020

WEF's foundational values for a decentralized future.

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## **Boardroom Brexit - 15 June 2020**

15 June 2020

### **BOARDROOM BREXIT**

Boardroom Brexit - Britain rules out extension (15 June 2020).

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## **Preparing for global class actions arising from COVID-19**

28 May 2020

The risk to companies of global and cross-border class action and collective redress proceedings is rising.

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## **Chinese and other emerging market companies listed in the US face increased scrutiny from Congress and Nasdaq**

27 May 2020

Within a span of two days, the US Senate, House and Nasdaq each took steps to safeguard investors in the US capital markets.

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## **Blockchain and Digital Assets News and Trends**

20 May 2020

### **BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS**

California may limit application of securities laws to tokens, French court says bitcoins are fungible assets – plus latest legal, regulatory and case law developments.

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## **Coronavirus: Directors' duties and making decisions in a crisis (Australia)**

4 May 2020

Directors need to carefully consider the risks of the COVID-19 outbreak within their business, given its impact on the global economy. As many now face significant, and increasing, cash flow pressure, directors should carefully consider their actions in the context of the legal framework.

In this new guide we have set out the practical steps directors should be taking to protect their company and its business going forwards.

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## **US securities regulators focus on China and emerging markets: Further risk and disclosure considerations are necessary**

4 May 2020

Key takeaways for China-based US-listed companies.

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## **BC company shareholder meetings during the COVID-19 pandemic — temporary rules permit virtual-only meetings**

## and delays in annual meetings

30 APR 2020

The British Columbia government has recognized that business as usual with regard to shareholder meeting requirements for BC companies would be problematic. By order of the BC Minister of Public Safety and Solicitor General, BC has temporarily embraced hosting shareholder meetings by solely virtual means. Similarly, the BC Registrar of Companies will be deferential to requests for delaying annual general meetings of shareholders for BC companies and is providing a simplified process to make such requests.

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## Post-COVID-19: What to expect in the "next normal"

30 April 2020

Issues that are front of mind, based on an informal survey of some of the largest companies and most influential global business leaders.

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## COVID-19: conducting internal investigations in remote work settings

24 April 2020

For companies conducting internal investigations or responding to an investigation, practical solutions in a time of distancing.

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## Corporate commitment to compliance helps bank avoid FCPA charges despite alleged \$4.5M bribery scheme

24 April 2020

The SEC's complaint provides insight into what made the compliance program so effective that the individual's former employer avoided government sanctions.

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## Declaration and payment of dividends in a time of economic uncertainty

23 April 2020

Delaware case law provides guidance for boards facing challenging economic pressure regarding dividends.

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## US antitrust enforcers on high alert for collusion in labor markets during COVID-19 pandemic

21 April 2020

### [ANTITRUST AND COMPETITION: NOVEL ISSUES IN A POST-CORONAVIRUS WORLD](#)

Antitrust enforcers are closely monitoring employer coordination to disadvantage workers.

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## Investment adviser compliance in the COVID-19 pandemic – pay attention to valuation and strategy deviation issues

17 April 2020

Investment advisers still must comply with their obligations to maintain and implement fair pricing policies and procedures and follow their disclosed investment strategies.

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## US CPSC advises consumers certain recall remedies may be unavailable due to COVID-19 – four key takeaways

15 April 2020

Guidance will evolve as the pandemic develops, and CPSC-regulated firms are encouraged to consider these actions.

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## Contract analysis in a crisis: flowcharts

7 April 2020

Flowcharts providing considerations for analyzing commercial contracts in the context of the COVID-19 pandemic through a logical process flow that can serve as a practical checklist.

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## SEC provides additional filing relief and disclosure guidance in light of COVID-19

6 April 2020

In addition, the Division of Corporation Finance issued disclosure guidance regarding the impact of the pandemic.

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## The barbarians are coming ... time for public companies to reinforce the gate

2 April 2020

While it is far too early to understand or evaluate the true impact that the COVID-19 outbreak may have on the M&A market, for so long as market prices remain depressed, public companies are encouraged to remain cognizant of the potential threat of coercive takeover attempts.

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## eSignature and ePayment News and Trends

March/April 2020

### [ESIGNATURE AND EPAYMENT NEWS AND TRENDS](#)

COVID-19 special edition

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## Annual shareholder letter considerations and guidance

1 April 2020

This alert provides an update on practice as of the date of publication as well as general guidance and insights to assist boards of directors and senior management of US public companies as they evaluate their communication strategies.

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## Coronavirus: Warning from SEC on insider trading highlights importance of disclosure controls during the COVID-19 pandemic

31 March 2020

A statement on March 23 warned that the SEC would be on heightened alert for signs of insider trading and other misconduct that might harm investors.

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## ESG: The rise of private ordering and the role of the NCGC committee (United States)



26 March 2020

## **ESG HANDBOOKS AND GUIDES**

This inaugural ESG handbook, part of our 2020 Proxy Season Hot Topics series, aims to help public companies as they develop and maintain a robust ESG program.

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### **Blockchain and Digital Assets News and Trends**

25 March 2020

## **BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS**

The age of viral outbreaks – key contract considerations in a post-COVID-19 world, plus latest legal, regulatory and case law developments around blockchain and digital transformation.

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### **Coronavirus: business resilience and continuity planning**

19 March 2020

Prudent companies understand that their response to the COVID-19 pandemic should be consistent with their business resilience plans.

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### **Coronavirus: stock repurchase considerations and guidance for US public companies**

18 March 2020

General guidance and insights to assist boards of directors and senior management of US public companies as they evaluate potential stock repurchases.

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### **Coronavirus: SEC provides guidance for conducting annual meeting (United States)**

17 March 2020

The SEC provides a process for companies to notify shareholders of a change in date, time or location of the annual meeting and guidance on the holding of virtual or hybrid annual meetings and the presentation of shareholder proposals.

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### **Considerations for virtual annual shareholder meetings in light of the coronavirus (United States)**

6 March 2020

With the proxy season upon us, many public companies are grappling with how to responsibly hold annual shareholder meetings in light of the COVID-19 outbreak.

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### **SEC provides filing extension for companies affected by coronavirus (United States)**

5 March 2020

Companies that file public reports that are unable to meet filing deadlines due to the COVID-19 outbreak will have an additional 45 days to file.

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## **Coronavirus considerations and guidance for US public companies (United States)**

3 March 2020

While the situation remains fluid and the specific impacts on most companies are uncertain, the coronavirus COVID-19 outbreak may create risks in all aspects of business.

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## **COP25's key outcome: adoption of the San Jose Principles on carbon market mechanisms – takeaways for business**

12 February 2020

Ambitious countries are not waiting for full consensus on carbon markets.

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## **International tax and withholding considerations for US companies and their directors**

19 MAY 2015

Multinationals commonly elect boards with international representation; it is also common to convene board meetings outside the US. US companies that do either – or both – of these things must be mindful of any resulting US or foreign tax implications

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## **Corporate governance also means protecting your technology and information**

7 MAR 2013

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## **Conflict mineral reporting rules impact many public companies: *new supply chain requirements and new Form SD***

19 Sep 2012

Understanding the new reporting requirements.

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