



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

Andrew D. Ledbetter

Partner
Seattle
T: +1 206 839 4845
andrew.ledbetter@dlapiper.com

Dr Andreas Meyer-Landrut

Partner
Cologne
T: +49 221 277 277 362
andreas.meyer-landrut@dlapiper.com

Kerstin Schnabel

Partner
Cologne
T: +49 221 277 277 363
kerstin.schnabel@dlapiper.com

Sanjay M. Shirodkar

Partner
Washington, DC
T: +1 202 799 4184
sanjay.shirodkar@dlapiper.com

Alex Tamlyn

Partner
London
T: +44 (0)20 7796 6185
alex.tamlyn@dlapiper.com

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

For shareholders:

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

EXPERIENCE

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

Publications

Partner
Amsterdam
T: +31 (0) 20 5419 928
sander.wiggers@dlapiper.com

RELATED SERVICES

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OECD releases global tax reporting framework for crypto-assets; SEC investigating NFTs and Yuga Labs.

OECD releases finalized global tax reporting framework for crypto-assets

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Implementation of the CARF will ultimately be left to each country.

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Canada may have a reputation as a law-abiding and democratic nation, but it is also notorious as a place where it is easy to engage in money laundering.

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A look at the status of Mexico's fight against corruption and new forms of money laundering.

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The regulators are seeking to incentivize legitimate use of crypto-assets and lower money laundering risks.

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IRS releases draft Form 1040 with new cryptocurrency question; lawsuit may expand liability exposure of blockchain software developers.

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The age of data analytics in corporate compliance programs and regulatory enforcement is here.

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Proposed legislation aims to strengthen CFTC oversight of crypto marketplace; SEC imposes automatic penalties for failure to comply with a consent order; NFT projects reconsider licensing strategies

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Bankruptcies begin for crypto firms as “crypto winter” settles in; two US states will tax income from NFT sales; agreement reached on EU’s new MICA regulation

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At least 73 percent of the world’s largest companies in the food and beverage sector have a sustainable development target, but only a quarter of these are setting time-bound targets and the remaining 27 percent have no sustainability strategy, according to the World Benchmarking Alliance.

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Responsible Financial Innovation Act, the new proposed crypto regulation bill, provides some clarity on tax issues.

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OECD releases public consultation document on crypto tax reporting in effort to increase transparency.

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For boards of directors and management teams as they discuss measuring, disclosing and reducing the company’s climate impact.

Proposed EU corporate sustainability due diligence directive: what US companies need to know

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If adopted, the proposed directive could have significant implications not only for EU enterprises but also for US and other non-EU companies conducting business within the EU.

SEC proposes mandatory climate-related disclosure and governance rules

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The SEC's latest effort to advance the Biden Administration's climate agenda.

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Infrastructure bill, including crypto "broker" rules, becomes law.

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

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

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.

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.”

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

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

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

Climate change disclosures – under SEC scrutiny

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This new directive does not come as a surprise.

Climate activism: Status check and opportunities for public companies

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

SEC 2021 and beyond: What to expect

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

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

Corporate governance also means protecting your technology and information

7 MAR 2013

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

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Understanding the new reporting requirements.
