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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

In this chapter, the main entities to be discussed are corporations (*Aktiengesellschaften*) under Liechtenstein law. In Liechtenstein, the Societas Europaea ("SE") is not very frequent.

It should be noted that Liechtenstein does not have a stock exchange of its own. Listed Liechtenstein corporations/companies are therefore listed on foreign stock exchanges, predominantly on the SIX Swiss Exchange.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

The key legislative source is the Liechtenstein Persons and Companies Act ("PCA"), which is not only the fundamental piece of legislation for Liechtenstein companies of any type, but also provides the legal framework for Liechtenstein corporations. Due to Liechtenstein's membership to the European Economic Area ("EEA"), the SE EU Council Regulation ("EC") 2157/2001 of 8 October 2001 is applicable in Liechtenstein. As a result, Liechtenstein enacted its national SE Act, which complements the aforementioned EU Regulation.

As Liechtenstein does not have a stock exchange of its own, there is no specific legislation in this field, such as a Stock Exchange Act, that lists rules or a code of best practice for listed companies. Nonetheless, there are a number of laws which deal with similar rules, such as the Takeover Act (*Übernahmegesetz*) and the Disclosure Act (*Offenlegungsgesetz*). In addition, such Liechtenstein companies are subject to certain Liechtenstein law requirements (Art. 1096a PCA), one of which constitutes the obligation to prepare a corporate governance report.

For regulated corporations, such as banks, life insurers or asset managers, additional laws which form part of the financial services regulation are relevant, including the FMA Act.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

As a result of the COVID-19 pandemic, the Liechtenstein legislator decided to maintain certain transitional provisions which aimed at facilitating the holding of shareholder and board meetings. Consequently, the PCA was amended in 2022, and further in 2023, in order to permit virtual board and shareholder meetings and to provide enhanced legal certainty for hybrid shareholder and board meetings.

Additional relevant developments in recent years include Environmental, Social and Governance ("ESG") issues, Corporate Social Responsibility ("CSR") and the implementation and adaptation of the sanction regime triggered by the conflict between Russia and Ukraine.

Comprehensive amendments to the PCA have been enacted in order to implement Directive (EU) 2019/1151, which will primarily introduce the possibility to digitally incorporate companies, as well as the electronic filing of entries in the commercial register. It is also intended to permit digital notarisation and certification services. Finally, the cross-border exchange of information via the European System of Register Interconnection is intended to be expanded. Accordingly, electronic applications for entry in the commercial register, including online incorporation, digital notarisation and certification, as well as the exchange of information via the European Registry Networking System, will be possible in due course.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short termism and the importance of promoting sustainable value creation over the long term?

Short termism is not specifically dealt with by the provisions in the PCA. Nonetheless, the PCA supports the long-term aspects of a corporation's management. Liechtenstein case law has developed in the last two decades, and today the Business Judgment Rule is qualified as a key factor in a corporation's management. This also means that the board of directors must take into account long-term implications for the corporation itself, its employees and its creditors when preparing a management or administration decision.

On a related note, short termism can constitute a factor in the context of the remuneration of a corporation's managers and board members. For banks and listed corporations, specific requirements and limitations have been enacted (Art. 7a Abs. 6 BankG and Art. 367m PCA).

Nonetheless, there is no general provision which would entitle the shareholders to have a general "say-on-pay" in every corporation.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Under Liechtenstein law, shareholders are only obligated to pay the shares to which they have subscribed. However, they do not owe any duty of care, loyalty, or any other duty to the corporation. This principal applies to both minority and majority shareholders in their capacity as shareholders.

On the other hand, shareholders, in proportion with their voting powers, can influence the key decisions to be taken in relation to corporate governance issues on the level of the shareholder meeting. In this regard, their voting rights can prove a useful tool to supervise and influence the board of directors and the strategy pursued by the board. However, it must be noted that, under Liechtenstein law, a shareholder is neither required to participate in the shareholder meeting, nor to exercise his voting right on any agenda item of such meeting.

Depending on the amount of their stakes, shareholders are subject to certain statutory disclosure requirements as regards their shareholdings. Such obligations apply to shareholders of listed corporations, or of companies which are regulated and under the supervision of the Liechtenstein FMA (see question 2.6 below).

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

Liechtenstein law does not impose on the shareholders of a Liechtenstein company any duty or obligation except the obligation to pay up the shares which they subscribed. In particular, the shareholders do not owe to the company a duty of care or loyalty. It should be noted that, under Liechtenstein law, a shareholder cannot be forced to exercise his voting rights.

However, if a shareholder at the same time is a member of the board of directors, he/she will be subject to the duties owed by board members to the corporation, in particular, a duty of care and loyalty.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

Typically, there is at least one shareholder meeting per year (annual shareholder meeting/ordinary shareholder meeting). At the occasion of such annual general meeting, the key decisions are taken by the shareholders on financial matters (annual accounts, use of profits, other financial aspects for which a shareholder vote can be required under a corporation's articles, etc.). In addition, the shareholders at such meeting decide on the discharge of the board of directors and, in some instances, of the management board and, to the extent necessary, elect or re-elect members of the board of directors and the auditor of the corporation.

If all shareholders are present or validly represented by a proxy, the shareholder meeting qualifies as a "universal/full shareholder meeting" for which the requirements and timelines regarding the calling of a shareholder meeting do not apply. Shareholders who jointly hold 10% of all countable votes arising from the share capital are entitled to request the calling of a shareholder meeting. In addition, shareholders of at least 5% of all the votes arising from the corporation's share capital are entitled to request that an item be placed on the shareholder meetings agenda.

It is possible for shareholders to be represented by another shareholder or an independent proxy provided that the articles do not contravene such option. Under the revised PCA, it is now possible to hold virtual shareholder meetings provided that the articles of a corporation permit the holding of such virtual meetings.

Furthermore, it is possible to hold additional/extraordinary general shareholder meetings. Such meetings can either be convened by the board of directors in accordance with the articles and statutory law. It is also permissible for a shareholder who represents at least 10% of the corporation's share capital to request the board to convene such extraordinary shareholder meeting.

While shareholders are entitled to inspect the shareholder register as far as their own shareholding is concerned, they have no such inspection right in relation to the identity and the stakes of other shareholders. It is the obligation of the board of directors to monitor the exercise of such shareholder inspection rights and to keep the shareholder register up to date at all times.

It should be noted that, for certain material shareholder resolutions, simple majorities are not sufficient. For such resolutions, a qualified majority (as defined in the articles or by statutory law) will be required. This can *de facto* result in a blocking power of majority shareholders, the consent of whom would be required to reach a qualified majority.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

Under Liechtenstein corporate law, shareholders have freedom to vote and how to vote. As mentioned in question 2.2 above, a shareholder does not have a fiduciary or loyalty duty to the corporation. Consequently, shareholders generally cannot be held liable (in their capacity as shareholders) for acts or omissions of the corporation or of the board of directors. This is different if a shareholder also acts as a member of the board of directors. In such capacity, it will be subject to the statutory provisions of personal liability of board members.

It should be noted that major shareholders are exposed to a certain risk to be qualified as *de facto* organs/directors if they influence or participate the decisions of the board of directors beyond the shareholder meeting. According to Liechtenstein case law, such *de facto* directors/organs are subject to very similar liability standards as members of the board of directors. In addition, the law (Art. 221 PCA) provides that shareholders with a stake of at least 10% of the share capital can become liable if they act as *de facto* organs outside of the board.

The EU Shareholders' Rights Directive II (2017/828) has strengthened the influence of the shareholders. Arts 367–367s

PCA were introduced for this purpose. However, these provisions only apply to Liechtenstein corporations which are listed in an EEA Member State.

For listed corporations, Arts 332/332a, Arts 339a-e and 340a PCA provide for certain specific rules regarding the convocation and the holding of shareholder meetings. These rules filled the gap between traditional Liechtenstein corporate law, and the practical needs which listed corporations today face when holding shareholder meetings.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

It is possible for a shareholder to seek such enforcement action. For instance, a shareholder can be entitled to sue a member of the board of directors or the corporation's auditor on the shareholder's own behalf or, in a scenario of the corporation's financial distress, on behalf of the corporation, e.g., for breach of duties.

Furthermore, it is possible under Liechtenstein corporate law that a shareholder can challenge a shareholder resolution, provided that such legal action complies with the statutory requirements and timelines.

However, a shareholder cannot challenge a decision of the board of directors or the management body. Nonetheless, the law grants protection since board resolutions that infringe basic rules qualify as null and void. A shareholder can therefore submit such resolution to the court and request that the court declares such resolution null and void.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

Statutory law does not provide for such limitations as far as the maximum number or percentage of shares or securities held by shareholder are concerned. It is possible, but not very frequent, that a corporation's articles include such limit, as far as the exercise of voting rights is concerned (also by introducing different share categories with different voting rights). Conversely, Liechtenstein laws provide for certain disclosure obligations. Such obligations mainly concern listed companies and other companies that are regulated by and supervised by the Liechtenstein FMA. If an investor acquires or sells, directly or indirectly, shares in such company so that his voting rights reach, depending on the type of target, exceed or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50% or 66%, such transaction and the resulting new shareholdings must be notified in advance to the FMA and to the target company. Arts 25 *et seq.* of the Disclosure Act (*Offenlegungsgesetz*) further provide very detailed disclosure rules for a number of different scenarios. However, these rules only apply to Liechtenstein corporations that are listed on a stock exchange.

Please note further that Liechtenstein law does not have a national Merger Act. However, due to Liechtenstein's membership in the EEA, the EU/EEA merger control framework also applies to Liechtenstein corporations.

As a result of the Anti-Money Laundering Legislation, a corporation must timely register those of its shareholders/beneficial owners that hold more than 25% of the voting rights/share capital (or do otherwise control the corporation) in the Register of Beneficial Owners, which is maintained by the Office of Justice in Vaduz.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

There is no such legal requirement. When acquiring shares, an investor is not required to disclose its intentions, plans or proposals related to such investment. However, in relation to a public offer of shares, the offer documentation must also describe the strategic planning and intentions for the target's business activities and related matters (Art. 7 Abs. 1 lit. i ÜbG).

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Liechtenstein corporate law does not directly address shareholder activism. Furthermore, in practice, shareholder activism is not a widespread phenomenon in Liechtenstein. Nonetheless, general corporate law provides shareholders with certain rights that can constitute potential tools to initiate shareholder activism. Such shareholder rights cannot be opted out in a corporation's articles. Such rights include the right of certain qualified shareholders to have an extraordinary shareholder meeting convened, the right to place certain items or motions on the agenda of such meeting, and the right to vote on the discharge of directors and frequently also the auditing company of the corporation.

No significant increase in shareholder activism was noted during recent years.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The supreme executive/management body of a Liechtenstein corporation is the board of directors. Additional supervisory bodies are not common in Liechtenstein, although statutory law permits a corporation to have such supervisory body.

It is possible for the board of directors to directly manage the corporation. Alternatively, as it is the case in larger corporations, the board of directors delegate operations and daily management to the executive management (*Geschäftsleitung*). Liechtenstein law allows such delegation to be very comprehensive. There are only very few obligations of the board of directors which cannot be transferred, such as the general supervision duty and the ultimate responsibility to keep the corporation in a financially sound condition. A delegation to the executive management must be dealt with in separate organisational regulations. It is also possible that such regulations permit "personal overlapses" so that a board member can also be a member of the executive management. The organisational regulations (*Organisationsreglement*) must define the powers which remain with the board of directors and the powers that are delegated to the executive management body.

If the board of directors has not duly delegated tasks to an executive management body, it remains responsible to run the day-to-day management.

Unlike in other European jurisdictions, employees are not entitled to send representatives to sit on the board of directors of a Liechtenstein corporation. Nonetheless, it is possible that the articles of a corporation provide that a member of the employees is entitled a seat on the board.

Liechtenstein law does not require board members to comply with any statutory independence requirements. Nonetheless,

case law has adopted, in some decisions, the principle that a board member must have sufficient availability, capacity, and time to duly and carefully fulfil its obligations as a board member in a corporation.

3.2 How are members of the management body appointed and removed?

It is the task of the general meeting of shareholders to elect and re-elect the members and the chairman of the board of directors. To the extent not dealt with differently in the corporation's articles, a simple majority of the votes is required for such election.

Typically, the board of directors appoint the members of the executive management body. However, there are corporations which also require a shareholder vote for the appointment of such members.

As far as the removal of members of the board of directors and the executive management is concerned, corporate decisions to remove such members are the exception rather than the rule. It is more common for a member to resign unilaterally or not to stand for re-election.

Under Liechtenstein law, there is no general obligation for the board of directors to consist of more than one member. However, for corporations with a nominal share capital exceeding the amount of Swiss Francs 1 million, the board of directors must consist of at least three members. Board members can either be individuals or legal entities/corporate directors. For certain regulated companies (such as banks, insurers or asset managers) specific requirements apply pursuant to the pertinent legislation.

It should be noted that the board of directors is free to organise itself within the ambit of statutory law. Consequently, the board of directors can also set up internal committees for specific purposes in order to enhance the corporate governance and organisation of the corporation.

For corporations which are not subject to any licence requirement to carry out its activities, the law requires that at least one board member must be a citizen of Switzerland or an EEA state and in possession of a licence as a professional trustee, or a licence pursuant to Art. 180a PCA.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

Under Liechtenstein law, there is no general "say-on-pay" requirement for a Liechtenstein corporation. Liechtenstein companies that are listed on a foreign stock exchange will be subject to the pertinent foreign rules, in this regard. Furthermore, Art. 367o PCA stipulates the obligation of a Liechtenstein corporation listed in an EEA Member State to issue a remuneration report based on the corporation's remuneration policy. The shareholders have a consulting vote therein.

In practice, however, larger corporations have a separate compensation committee as a special unit within the board of directors.

For banks and other regulated companies, there are specific statutory provisions which regulate and limit the scope of variable remuneration and bonuses. For other companies, only the general information regarding the remuneration of the board members and members of the executive management body, as required by law (Art. 1022 PCA), must be disclosed.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

There are no such limitations under Liechtenstein corporate law. However, certain disclosure rules can be applicable in relation to the annexes of the annual accounts.

3.5 What is the process for meetings of members of the management body?

For both the board of directors and the executive management body, Liechtenstein statutory law only provides for very few and general rules as far as the meetings of these bodies are concerned. Typically, the articles or, if existing, the organisational regulations, spell out in greater detail the mechanism and the rules that apply for such meetings. Such rules include the time period for the convocation of a meeting, the requirements for the agenda and other materials to be sent to the members for preparation purposes, etc.

3.6 What are the principal general legal duties and liabilities of members of the management body?

The principal general legal duties of the board members include their statutory duty of care and loyalty to the corporation. Furthermore, the members of the board must treat the shareholders of the corporation equally in the same circumstances. Under Liechtenstein law, board members must act in accordance with the principles of the Business Judgment Rule. When doing so, they must safeguard the best interests of the corporation and act on the basis of adequate information, without bias and free of any conflict of interests. When doing so they must also consider the interests of the employees and other stakeholders.

The above rules apply accordingly to members of the executive management body.

Liechtenstein law provides for the personal liability of board members in the event they have infringed their legal obligations and duties. For such liability, not only a damage must be proven, but also that the board member acted intentionally or negligently, and that such conduct caused the damage. The liability of various board members is of joint and several nature.

Board members are liable for their wilful or intentional misconduct and their negligence. If a board member is liable for damages, the legal entity can only assert such damages against a board member if such board member has not been released from liability due to a discharge resolved by the shareholder meeting. If the corporation has no claim for damages, it is possible that the shareholders can directly enforce their claim for damages against the board members.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

Under Liechtenstein law, the board of directors is responsible to ensure a sufficient corporate governance. However, statutory law does not include explicit provisions which would constitute a specific legal obligation for the board in this regard. The law, however, contains various single tasks which must be duly organised and complied with by the board of directors. Such

tasks include the overall management, financial situation, and organisation of the corporation, as well as the supervision of the members of the management body. The board must also ensure that the corporation's financial documents are in line with the applicable accounting standards.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Yes, it is common for board members and/or the members of the management of larger corporations to be insured under a D&O insurance. In this context, it is acceptable that the respective company pays the insurance premium for the board members and the members of the management.

However, it would not be compatible with the law if the company accepted an obligation to indemnify the board members, and the members of the management against any and all liabilities which they incur towards the company or its shareholders. Nonetheless, it is possible for a company to agree to such indemnity in a specific case/law suit.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

Under Liechtenstein law, it is the responsibility of the board of directors to define and adjust the company's strategy. In its capacity as the supreme executive body of a Liechtenstein company, the board cannot delegate this obligation to another body. The only exception is the change or adjustment of a strategy that requires a change in the articles of the company: such changes, for example, the change of the purpose clause in the articles, requires the consent of the shareholders by way of majority vote pursuant to the articles.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

The board/management body must safeguard the (overall) interest of the corporation. In this context, the primary provision in the articles is the definition of the purpose clause. In this regard, corporations that belong to a group of companies (*Konzern*) often provide, in their purpose clause, that the company can also act in the interest of the entire group (for instance, with regard to up-stream or cross-stream distributions or securities).

4.2 What, if any, is the role of employees in corporate governance?

The corporate governance under Liechtenstein laws does not provide for a significant role of the employees. In particular, there is no requirement to provide for a mandatory representation power of the employees in a company's board or management body. In larger companies, employees are entitled by the law to have their own representative body (*Arbeitnehmervertretung*). However, such representation is limited to the information and the consultation about certain important transactions but does not provide the employees with a co-decision right, let alone a veto right regarding such tasks. In the vast majority of cases, the rights of the employee representation are limited to certain consulting and information rights. The result of such consultation is not binding on the board.

4.3 What, if any, is the role of other stakeholders in corporate governance?

Liechtenstein law does not attribute a mandatory role in corporate governance matters for such other stakeholders (such as persons who are neither members of the board/management or stakeholders). In certain major corporate transactions such as mergers or de-mergers, creditors of a company have certain privileged rights regarding their claims but cannot prevent or veto such transactions as such.

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility and similar ESG-related matters?

The Liechtenstein Parliament approved the Paris Climate Agreement and thereby committed Liechtenstein to reduce its emissions by 2030 by 40% compared to 1990. In doing so, the 17 Sustainable Development Goals ("SDGs") are to be observed as strategic guidelines for government activities. In implementing the SDGs, it is important for the government to build partnerships with the private sector and civil society.

The most important national instruments for implementation are the CO_2 Act, the Emissions Trading Act, and the Energy Strategy. Liechtenstein's financial intermediaries (banks, asset managers, pension funds, insurance companies, etc.) also have the opportunity to have their financial assets tested free of charge in order to be able to make an increased contribution to achieving the goal of CO_2 reduction.

Financial market participants in Liechtenstein already have, or are creating, a sustainability strategy that largely incorporates the inclusion of sustainability risks and sustainability factors into the business strategy or good business management principles. A growing trend towards more sustainability in investments is evident at all levels of the Liechtenstein financial market, including charitable foundations and trusts.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency and what is the role of audits and auditors in these matters?

The ultimate responsibility for disclosure and transparency lies with the board of directors. In particular, the board is responsible to draw up the annual report. The auditors must review this annual report.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Liechtenstein law does not impose a general obligation on a Liechtenstein corporation to disclose its corporate governance or to report thereon. Only for Liechtenstein foundations, specific statutory rules regarding the governance of foundations were implemented.

Nonetheless, for Liechtenstein corporations of public interest, the law sets forth an obligation to appoint an audit committee

(Art. 347a PCA). Within such committee, at least one member must have adequate experience and skill in accounting and/or auditing matters. The main duty of such committee is the regular monitoring of the corporation's financial reporting and its efficiency, as well as the supervision of the corporation's risk management.

Liechtenstein companies that are subject to foreign listing rules, due to their listing on a foreign stock exchange, are subject to such foreign listing rules.

According to Art. 1096a PCA, companies whose shares are admitted to trading on a regulated market in an EEA Member State must include a corporate governance report in their annual report. Further, pursuant to Art. 182a PCA, the members of the board of directors of a legal entity, which is obliged to keep proper accounts, have a collective duty to ensure that the required accounting documents, as well as the corporate governance report, are prepared and disclosed in accordance with the provisions on accounting.

Furthermore, institutional investors and asset managers shall develop and publicly disclose a participation policy. The participation policy shall describe how institutional investors and asset managers monitor the companies in which they have invested with regard to important matters, in particular with regard to corporate governance (Art. 367h Abs. 1 Ziff. 2 PCA).

5.3 What are the expectations in this jurisdiction regarding ESG- and sustainability-related reporting and transparency?

The impact of ESG criteria on a company's risk and return profile, and thus on an investor's investment portfolio, is increasingly in focus. However, Liechtenstein law was recently amended to impose on certain Liechtenstein corporations a general obligation to include ESG considerations in its corporate governance reporting.

The EU legal acts adopted for sustainability (Level I and Level II) have EEA relevance. This means that the various legal acts are to be incorporated into the EEA Agreement and, where necessary, national transposition or implementation measures are to be taken in Liechtenstein.

Liechtenstein enacted the EEA Implementation Act on Sustainability for Financial Services ("EWR-FNDG"). In a nutshell, this piece of legislation implements EU Regulations 2019/2088 and 2020/852 to strengthen the protection of investors on the Liechtenstein financial market.

Furthermore, the legislator enacted an amendment of the PCA in order to implement the CSRD (EU 2022/2464) and the CBCR (EU 2021/2101). From mid-2024 onwards, companies which qualify as PIE (Public Interest Entity) are obligated to report on their sustainability strategy and related aspects. This obligation will already apply for the business year 2024.

5.4 What are the expectations in this jurisdiction regarding cybersecurity and technology-related reporting and transparency?

In this area, Liechtenstein will follow the international trends and developments in legislation and regulation.

Last year, Liechtenstein enacted the so-called Cyber Security Act (*Cyber-Sicherheitsgesetz*; CSG). This piece of Liechtenstein legislation implements EU directive (EU) 2016/1148 and constitutes the national legal basis for the direct applicability of EU Regulation (EU/2021/887). This new law introduces certain notification duties in the event of a cyber security incident for certain Liechtenstein companies: on the one hand, this concerns operators of material services, such as service providers in the areas of public health, energy, infrastructure, public traffic and public information and communication technologies, if a critical security incident is caused. Furthermore, digital service providers are requested to provide adequate and proportional technical and organisational measures in order to accommodate and protect against risks for the security of network and information systems that they use when providing their digital services. These service providers are also obligated to notify the authorities with any security incidents that can materially affect their services.

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