

Corporate Governance in an Era of Geoeconomics

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Overview

- We are entering an era of geoeconomics –
“The pursuit of power politics using economic means”
- This era raises the potential use of private profit-oriented enterprises for political power
- Corporations may not be prepared
- How should this new risk impact corporate governance?

Key Contributions of the Article

- Documenting the potential impact of geopolitical rivalry on private enterprise
- Suggesting conceptual shifts as the world moves away from
 - Globalization
 - Shareholder primacy
- Identifying ways that US corporations should respond

Tangible Response Recommendations

- The government as a stakeholder in ESG
- The need for geopolitical expertise through senior executive and director skillsets and external sources
- Liability exposure under Caremark
- Securities reporting requirements – a “new” material risk
- Shareholder proposals and general objections
- Supply chain management

A few questions

- How much of this is new?
- How much of this (for US corporations) is China-specific?
- Some questions about scope and terminology
- Corporate national identity

Is All This New?

- Multinational operations create distinctive risks
 - *In the Matter of Caterpillar, Inc.* (SEC Release No. 34-30532) – SEC enforcement action for disclosure failures related to Brazilian operations
 - SEC 2010 guidance re disclosure of climate-related supply chain risks
- Countries frequently interfere in cross-border transactions to protect national interests
 - French involvement in battle between GE and Siemens for Alstom (2014)
 - Kraft's takeover of Cadbury led to a revamp of UK takeover rules (2011)
 - Flowserve's attempt to acquire Velan (2023) and Teledyne's attempt to acquire Photonis (2020)
- State ownership of corporations facilitates promotion of government interests

Is All This New?

- But increasing fusion of government and corporate policy (jobs, products, technology, innovation)
- Expansion of the nature of national security interests – TikTok
- Expansion (possible) of US government control of private business operations - US Steel/Nippon Steel merger



- Policy goal – maintaining US control over steel supply
- 50% steel tariffs
- \$14.9 billion merger (\$55/share all cash merger for US stockholders)
- US CEO and majority of board of directors
- US Govt to hold golden share with unspecified powers

How much of this is China-specific?



Trump to keep tariffs
to pressure Mexico,
Canada, China on
fentanyl, aides say

Terminology

- Is there is difference between geoeconomics and geopolitics?
- Useful to distinguish the scope of concern from traditional issues of national security
- How is geoeconomic political risk different from domestic political risk?
- Political engagement as risk management
- Globalization vs. Isolationism – impact on employees, customers

Corporate National Identity

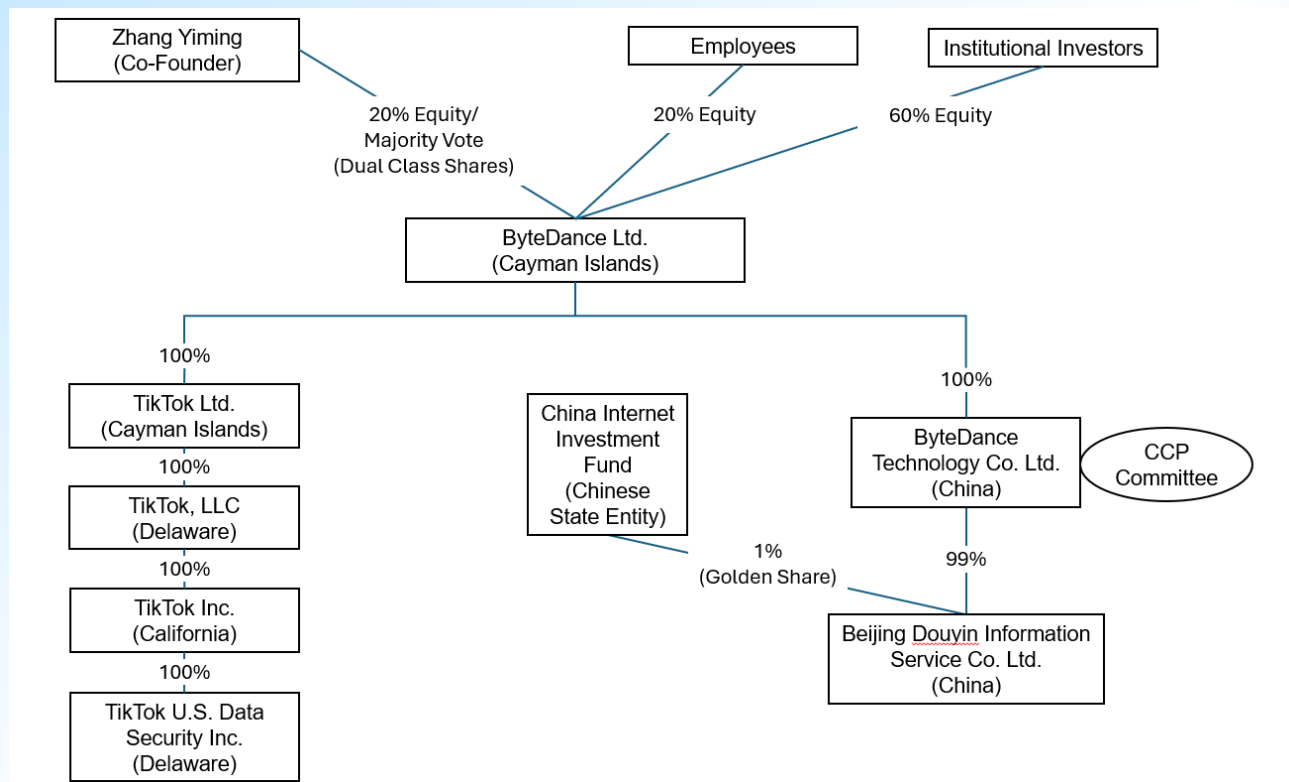
- What determines a corporation's identity?
 - Incorporation
 - Stock exchange listing
 - Headquarters
 - Principal place of business
 - Nationality of major investors
 - Employees/customers
- Implications of identity for
 - Capital formation
 - Branding
 - Geoeconomic regulatory authority
 - National security interests

Corporate National Identity

- Complicating factors
 - Choice of state of incorporation
 - Exchange competition – “Singapore washing”
 - Promotion/restrictions on foreign investment
 - Structural complexity
 - Merger policy
 - Tax considerations

The TikTok example (see Milhaupt & Puchniak)

TikTok's Ownership Structure (based on publicly available information)



Conclusion

- Thought-provoking and innovative project
- Implications of geoeconomic risk for US business go well beyond corporate governance
- US CEOs and directors are facing challenging times