

Shareholder Activism

Making your voice heard



Generally shareholders have little opportunity to be involved in the operational decision making processes of a company. Whilst companies may from time to time engage with their key shareholders and shareholders have certain rights, there has been a recent increase in shareholders taking matters into their own hands and using prescribed processes to shape the agenda for the companies in which they hold shares. Whilst these have had varying degrees of success, here are our top tips for shareholders in making their voices heard:



Be clear on the objective

- From the outset, shareholders should be clear as to what they are trying to achieve, whether it be board representation; change of the board; a sale of assets; return of capital; delisting; or, an alternative funding proposal to one being considered by the company.
- Consider the best way to achieve this goal. Most often this will be through engagement with the company and its directors, with the threat of a more formal process or action mooted in the background.
- The chairman or senior independent director (SID) can be a powerful tool in these negotiations as they often do not have the vested interests that the executive directors have.



Know your rights and obligations

- Shareholders should understand what their rights are. These will either be set out in the company's constitution, as a matter of general law or under the rules of any relevant stock exchange.
- Shareholders should take advice where they intend to rely on a statutory or similar prescribed right under the articles. There will be a strict process to be followed. If shareholders do not follow this procedure, it can undermine the exercise of those rights and impact the activist shareholder's credibility.
- Shareholders should take advice about their obligations: if shareholders are acting collectively then they may be deemed to be acting in concert and, if shares are acquired after they commenced acting in concert, they may be required to make a mandatory offer under the UK Takeover Code or applicable provisions in the articles of association. Shareholders should also be aware of their obligations with regard to insider dealing and market abuse, amongst other things, when encouraging others to take actions.
- Nominees may be reluctant to requisition meetings and to propose resolutions; consider transferring shares into the name of the beneficial owner.



Seize the initiative when calling a meeting or proposing a resolution

- The threat of calling a meeting or proposing a resolution at an AGM can often be a powerful tool for shareholders to achieve their objectives in a far less public way.
- Follow the procedure for requisitioning a meeting or proposing a resolution precisely. The company will not have to call a meeting if the due process has not been followed.
- Make sure that the shareholder serving the requisition is the registered owner of the relevant shares and holds the percentage of voting rights required under the articles of association.
- Companies will often have to circulate a statement on behalf of shareholders in connection with a general meeting, if requested by a certain number of members or members holding a specified percentage of votes.
- Shareholders should put their view forward - use financial PR and a regulatory information service ("RIS") to communicate the message to fellow shareholders at the time of making the requisition and in advance of the meeting.
- Keep to the facts – companies can refuse frivolous or vexatious requisitions and avoid defamatory statements.
- Consider engaging someone to carry out a review of the shareholder register so that contact can be made with other shareholders to support the proposals.



Be prepared to deal with responses

- The board will respond using an RIS and by issuing circulars to shareholders – remember any disputes will be in the public domain.
- The requisition of a meeting or the proposing of a resolution by a shareholder will usually be announceable by the Company and so activist shareholders should be prepared for a public rebuttal of their proposals.
- Use similar communication channels e.g. an RIS to answer any rebuttal from the company.
- The boards of companies have a number of tools at their disposal and shareholders should be prepared for a company to serve tracing notices to see who is ultimately behind certain shareholders.
- Do not ignore tracing notices as failure to respond may lead to certain shareholder rights being suspended.



Don't leave it to chance – work to carry support at a meeting

- The process for shareholders to attend and vote at a meeting is a formal process.
- Shares are often held by nominees. The beneficial shareholders must make sure that the nominee takes all actions necessary to ensure that the nominee exercises the rights to vote for those shares. The nominee should be instructed to complete voting or proxy forms in good time.
- Where shares are held by a nominee, it is the nominee, not the beneficiary, who has the right to attend meetings. Companies can refuse entry to non-shareholders. Nominees should be instructed to appoint corporate representatives so that beneficial shareholders can be physically present at the meeting. More than one corporate representative can be appointed for a shareholding so activists can have more than one corporate representative present. Appointment of a corporate representative may require the passing of a board resolution of the nominee.
- Shareholders can speak at the meeting. Shareholders should prepare a statement, to be read at the meeting, to emphasise why the particular resolution being proposed is the right course of action for the company.
- If the proposals are defeated, shareholders will often have the right to require an independent report on the voting on a poll to make sure that the votes have been accurately calculated.

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