

THE SHAREHOLDERS RIGHTS & ACTIVISM REVIEW - EDITION 4 - UNITED KINGDOM

16 October 2019 | London

Legal Briefings - By **Gavin Davies, Greg Mulley and Mark Bardell**

OVERVIEW

Shareholder activism continues to grow in prevalence and significance in the United Kingdom, in common with global trends. Although shareholder activism is not a new concept in the UK market, the types of investors undertaking activism, the companies that they are targeting and the outcomes that they are seeking to achieve have continued to evolve over recent years, influenced in large part by the development of such activity in the United States.

‘Shareholder activism’ is a generic term that is usually used to describe an approach by a shareholder or shareholder group to a company’s board, and if necessary to its fellow shareholders, seeking to effect change within a company. Although shareholder activism in the United Kingdom has historically been focused on obtaining board representation, activist investors have begun to utilise the legal and regulatory tools available to them to achieve a more diverse range of outcomes, short of a full control transaction.

Shareholder activism campaigns in the United Kingdom can be categorised in many different ways. One simple approach is to distinguish between:

1. event-driven activism, where an activist shareholder will seek to assert its influence on a company’s current corporate activity, particularly in relation to a takeover or other M&A situation; and
2. strategic or operational activism, where outside a company’s current corporate activity,

a shareholder activist seeks to address operational performance, the balance sheet or other strategic issues, or some other longer-term concern at a company, such as governance or remuneration. Although strategic or operational activism is often associated with management or leadership changes, achieving control in the strict company law sense is not usually an objective and paying a control premium is something activists will seek to avoid.

Just as the type of shareholder activism can vary broadly, there is no one type of shareholder activist in the United Kingdom, and the term can cover a wide range of investors. Some activists are specific investment funds with activism as their business model, and it is these investors that are generally classed as 'activist' shareholders. Equally, existing shareholders may become 'active' shareholders; for example, where they consider that the company is underperforming or they disagree with the decisions being made by the company's board. Traditionally, institutional investors in the United Kingdom have refrained from voicing their concerns or criticisms of management in the public domain, and the vocal activist community has historically been composed of hedge funds, specific investment funds and other alternative investors. Increasingly, however, institutional investors and other shareholders are becoming more prepared to air their concerns in the open, or to lend their support (publicly or privately) to those who are more willing or able to do so, when they feel that their concerns are not being registered by management. Activist shareholders are sometimes described as performing a 'lightning rod' role for such dissent in the public market; they can sometimes provide a useful channel for the dissatisfaction felt by a wider group of shareholders and potentially gain their support.

The established shareholder activist funds operating in the United Kingdom are generally well researched, tactically astute and determined, and come armed with the access to funds needed to support their campaigns. These activists will be prepared for a hostile response (and will not shy away from public disagreement) but may prefer to reach a consensual agreement with a board if they can. They are persistent (some with multi-year time horizons on their investment) and relatively resistant in the face of an initial knock-back (with a number of examples of activists willingly reiterating arguments and returning to shareholders for a second shareholder vote).

[Read the full article](#)

Reproduced with permission from Law Business Research Ltd

The articles were first published in September 2019

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



GAVIN DAVIES
HEAD OF GLOBAL
M&A PRACTICE,
LONDON
+44 20 7466 2170
Gavin.Davies@hsf.com



GREG MULLEY
PARTNER, LONDON

+44 20 7466 2771
greg.mulley@hsf.com



MARK BARDELL
PARTNER, CO-HEAD
MANUFACTURING &
INDUSTRIALS,
LONDON
+44 20 7466 2575
Mark.Bardell@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

© HERBERT SMITH FREEHILLS LLP 2021