

New Straits Times, Business Times – Thursday, 17 August 2023



**DEVANESAN
EVANSON**

INFLUENCING DECISION-MAKING

SHAREHOLDER ACTIVISM

The goals of activist shareholders can be diverse, including pushing for changes in corporate strategy, advocating for better environmental and social practices, demanding improved financial performance or seeking greater shareholder rights.

SHAREHOLDER activism is a strategy employed by individuals or groups of shareholders to influence the decision-making and governance of a company by using their ownership stake as leverage. It is a way for shareholders to engage with the management and board of directors to drive changes they believe will enhance the company's performance, governance practices and overall value.

In Malaysia, we have the Institutional Investors Council (IIC) and Minority Shareholders Watch Group (MSWG) performing their respective roles to advocate shareholder activism among institutional and retail shareholders.

IIC, whose members comprise institutional investors, plays a pivotal role as their ownership stakes are substantial to influence behaviour of public-listed companies (PLCs). MSWG holds a minimal one-board lot of shares in the PLCs that it monitors. Due to the insignificant shareholding, MSWG resorts to persuasion and influence to motivate change. Its advocacy works include asking questions at general meetings and providing thought leadership through its weekly newsletter, media columns and commentaries. The organisation also holds seminars occasionally to instil awareness among the investing public.

Shareholder activism can take various forms, ranging from private discussions with the board to public campaigns involving media exposure and proxy battles. The goals of activist shareholders can be diverse, including pushing for changes in corporate strategy, advocating for better environmental and social practices, demanding improved financial performance or seeking greater shareholder rights.

Motivations and objectives

Activist shareholders often become involved with a company due to concerns about its strategic direction, financial performance, corporate governance or other operational matters. Some activists focus on enhancing shareholder value through divestitures, mergers, acquisitions or spin-offs. Others may be concerned with environmental, social and governance (ESG) issues and push for more responsible business practices. ESG is high on the agenda of activists and climate change has been a focus with the release of the task force on climate-related financial disclosure (TCFD). TCFD disclosure obligations under the Bursa Malaysia Listing Requirements will kick in at the end of 2025.

Methods of engagement

Activists can engage with a company's management and board through various channels, including private negotiations, direct letters to management, meetings with executives and participation in shareholder meetings. In some cases, activists might file shareholder proposals to be put to vote during annual meetings, advocating for changes in areas like executive compensation, board structure or other governance matters.

Proxy contests and proxy voting

Proxy contests involve activist shareholders seeking to elect their nominees to the board of directors, often in opposition to the company's recommendations. This process typically requires soliciting other shareholders' votes through proxy statements. Proxy voting is crucial in such contests, as shareholders can express their support for either the activist or the company's nominees.

Types of activists

Activist shareholders can be categorised into different types based on their motivations and strategies. Some focus on short-term value enhancement, seeking immediate changes to boost the stock price. Others adopt a more long-term approach, emphasising governance improvements and sustainable practices. Hedge funds, institutional investors, individual investors and even pension funds can all engage in shareholder activism. Institutional funds can also seek board representation if their stakes are substantial enough.

Engagement vs confrontation

While some activists adopt confrontational tactics to gain attention and push for change, others choose a more collaborative approach. Engaging constructively with management and the board can lead to more successful outcomes, as it can foster productive dialogue and cooperation. Institutional investors with substantial stakes can seek and get private audiences with the PLCs, at which they can make known their expectations privately. Other shareholders will have to communicate with the PLCs, typically through the investor relations function.

Role of media and public perception

Activists often use media exposure to garner public support for their initiatives and pressure the company's leadership to address their concerns. This can lead to greater attention from other shareholders and stakeholders.

Legal and regulatory considerations

Activist shareholders must navigate legal and regulatory requirements. These include filing

disclosures when they acquire significant ownership stakes, adhering to proxy solicitation rules during contests and following guidelines for shareholder proposals. Understanding these regulations is crucial to avoid potential legal challenges. PLCs must be mindful of the court pronouncements like injunctions. On the shareholders' part, they must be mindful of the sub-judice rule and not run foul of the law.

Success and impact

The success of shareholder activism varies. Some activists achieve their goals and bring about positive changes, while others may face resistance from management or lack sufficient shareholder support. Successful outcomes might involve changes in board composition, executive compensation, strategic direction or improved corporate governance practices.

Long-term value vs short-term gains

A critical debate in shareholder activism is the balance between pursuing short-term gains and focusing on the long-term value and sustainability of the company. Critics argue that short-term activist actions might sacrifice long-term growth prospects for immediate profits.

Evolution and trends

Shareholder activism has evolved. It has gained prominence as investors recognise the potential impact of responsible corporate practices on long-term value. As for minority shareholders, even the act of voting on resolutions or asking questions at general meetings is a form of shareholder activism.

The writer is chief executive officer of Minority Shareholders Watch Group